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Legislation to Approve the U.S.-Mexico Transboundary Hydrocarbons Agreement

Curry L. Hagerty

Specialist in Energy and Natural Resources Policy

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Summary

The offshore areas of the Gulf of Mexico provide a setting for domestic and international energy production, U.S. military training and border operations, trade and commerce, fishing, tourism, and recreation. These governmental and commercial activities depend on healthy and productive marine and coastal areas for a range of economic and social benefits. Consequences of hurricanes and oil spills demonstrate that offshore areas in the Gulf of Mexico are governed by a number of interrelated legal regimes, including treaties and international, federal, and state laws.

A key congressional interest has been the federal role in managing energy resources in deepwater areas of the Gulf of Mexico, particularly in waters beyond the U.S. exclusive economic zone (EEZ, more than 200 miles from shore). In 2012, the United States and Mexico signed an agreement known as the U.S.-Mexico Transboundary Hydrocarbons Agreement (the Agreement). This Agreement could mark the start of an energy partnership in an area of international waters that the U.S. Department of the Interior's (DOI's) Bureau of Ocean Energy Management (BOEM) estimates to contain as much as 172 million barrels of oil and 304 billion cubic feet of natural gas. The main purposes of the partnership between these two countries would be to lift a moratorium and to jointly develop reservoirs of oil and natural gas, referred to as "transboundary resources," that exist in areas straddling the marine border of both countries. The Agreement stems from a series of bilateral treaties originating in the 1970s. Like other diplomatic measures, for the Agreement to take effect, it must be placed before each country's national lawmakers for review. Both countries have completed review and accepted the Agreement. Further legislative attention is anticipated as part of implementing the Agreement.

In the United States, implementing legislation involves the two main commitments of the Agreement. First, under the Agreement, the two countries take steps to establish a framework for jointly developing 1.5 million acres along a 550-mile border. Diplomats on both sides of the border claim that this framework would achieve a mutual goal of greater options for energy production to help gain greater energy independence for both countries. A concurrent commitment is the cessation of the treaty-based moratorium on oil and gas development, encompassing 158,584 acres along a 135-mile portion of the border. Original treaty provisions recognized the ban until 2014.

Congress approved the Agreement during the first session of the 113th Congress (P.L. 113-67, the Bipartisan Budget Act of 2013). Prior to enactment, both chambers had also passed legislation approving the Agreement (H.R. 1613, S. 812). Arguably, implementing the Agreement faces hurdles in both countries. In the United States, among other hurdles is the statutory mandate to present an implementation plan to Congress. In Mexico, implementation poses various other constitutional and regulatory challenges, the pace of which has not been determined.

This report analyzes relevant legislative initiatives (S. 812 and H.R. 1613) and other legislative action surrounding Congress's approval of the Agreement (P.L. 113-67). A related report, CRS Report R43606, *U.S.-Mexico Transboundary Hydrocarbons Agreement: Background and Issues for Congress*, provides a description and basic analysis of the Agreement and related diplomatic activities, including diplomatic perspectives on Congress's approval of the Agreement.

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Introduction

Since the 1970s, prompted by high fuel prices and a mutual interest in greater energy security, the United States and Mexico have agreed to a series of bilateral treaties defining territorial claims and laying the groundwork for future offshore oil and gas development partnerships.¹ These treaties and other diplomatic activities are helping to define each nation's stake in oil and gas resources in ocean areas in the western Gulf of Mexico beyond each country's 200-mile exclusive economic zone (EEZ).²

A prominent component of these treaties has been an offshore moratorium on oil and gas development covering a 158,584-acre area within a larger transboundary area encompassing 1.5 million acres.³ The stated purpose of this moratorium is to allow time for both countries to form a partnership for jointly developing transboundary oil and gas resources beyond each country's EEZ.

The United States and Mexico are moving to form a partnership to jointly manage areas for offshore drilling operations. This entails lifting the temporary moratorium and replacing it with a framework for a joint development scenario.⁴ The United States and Mexico are not alone in seeking this type of energy partnership. Around the world, nations claiming ocean areas beyond established national borders are forming similar partnerships to cope with challenges associated with managing offshore areas for developing oil and gas resources.⁵ The global race for ocean energy resources is among other contributors to legislative interest in diplomatic talks between the United States and Mexico. These talks concluded in 2012 with both countries signing the U.S.-Mexico Transboundary Hydrocarbons Agreement (the Agreement).⁶

With passage of the Bipartisan Budget Act of 2013 (P.L. 113-67), the U.S. Congress approved the Agreement and set in motion options for U.S. implementation.⁷ Determining implementation

¹ U.S. leases and various permitting and financing applications typically include a government plat indicating the precise location of a lease and cartographic information regarding the various geographical elements of the proposed well, the location of drilling equipment, among other things. Thus, a plat must exist indicating these locations along with information regarding the various spatial elements of any proposed drilling operations. 30 C.F.R. §550.411; 30 C.F.R. §551.

² *Treaty to Resolve the International Boundary*, signed on November 23, 1970; *Treaty on Maritime Boundaries between the United Mexican States and the United States of America*, signed on May 4, 1978; and *Treaty between the Government of the United Mexican States and the Government of the United States of America on the Continental Shelf*, signed on June 9, 2000.

³ For legal jurisdictions related to ocean energy development, see CRS Report RL33404, *Offshore Oil and Gas Development: Legal Framework*, by Adam Vann.

⁴ Under the U.S.-Mexico Transboundary Hydrocarbons Agreement, both countries might proceed with deepwater development via "unitization," a model commonly used for federally regulated drilling in the U.S. Gulf of Mexico. A framework (specifically to support unitization as a model for development, which is explained in a basic fashion in the next section) is widely recognized as necessary for offshore exploration and production to occur.

⁵ For details about developments involving China, see CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke. For details about developments involving multinational interests in the Arctic, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke.

⁶ Department of State, *Summary of the U.S.-Mexico Transboundary Hydrocarbons Agreement* (July 30, 2012). This summary can be found at <http://www.state.gov/r/pa/prs/ps/2012/02/184235.htm>.

⁷ H.J.Res. 59 was enacted on December 18, 2013, and signed by the President on December 26, 2013. This measure is the vehicle for the budget agreement negotiated by the chairs of the House and Senate Budget Committees and includes (continued...)

options consistent with the Agreement is the responsibility of the Bureau of Safety and Environmental Enforcement (BSEE), an agency within the Department of the Interior (DOI), among other federal agencies.⁸

Recent Developments

Controversy that surrounded U.S. review of the Agreement highlights a persistent tension between proponents of ocean oil and gas drilling seeking to accelerate production of domestic energy supplies and those who support maintaining the moratorium in order to provide time for safety and environmental issues to be more fully addressed.⁹

Recent legislative activities (discussed in greater detail below) have occurred within a statutory framework for managing areas beyond the U.S. exclusive economic zone (EEZ)¹⁰ involving shared powers found within the U.S. Department of State and the U.S. Department of the Interior's (DOI).¹¹ Consistent with the objectives of two programs (the Five-Year Outer Continental Shelf Oil and Gas Leasing Program¹² and the Offshore Renewable Energy Program¹³), DOI manages more than 8,000 domestic leases organized in a grid system that was established at the start of the program in 1953.¹⁴

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the Bipartisan Budget Act of 2013 and the Pathway for SGR Reform Act of 2013. Prior to passage of H.J. Res. 59, U.S. review of the Agreement included House and Senate passage of legislation to approve and implement the Agreement. On June 27, 2013, the House passed H.R. 1613 (H.Rept. 113-101); and on October 14, 2013, the Senate passed S. 812 by unanimous consent. While the Agreement awaited a U.S. determination, the moratorium on oil, gas, and mineral activities that was established in a previous treaty remained in place.

⁸ Bureau of Safety and Environmental Enforcement (BSEE, pronounced “Bessy”), is responsible for oversight and enforcement, field operations, inspections, workforce safety, and decommissioning. BSEE promulgated new safety rules in 2010 and 2011 in the wake of the *Deepwater Horizon* oil spill. These new safety requirements are anticipated to be fully operational in 2014. For analysis of these topics as they relate to recent reforms, see CRS Report R42942, *Deepwater Horizon Oil Spill: Recent Activities and Ongoing Developments*, by Jonathan L. Ramseur and Curry L. Hagerty. For more information about management changes within the DOI bureaus responsible for offshore energy production, see GAO-13-283 *High-Risk Series* (February 14, 2013). This report outlines management challenges related to drilling programs. It is updated every two years, at the start of each new Congress. See also *Department of the Interior: Major Management Challenges*, GAO-11-42T (March 1, 2011).

⁹ The main tension expressed by supporters and opponents of H.R. 1613, as reported by the House Committee on Natural Resources, involved provisions to exempt actions taken by public companies in accordance with the transboundary hydrocarbon agreement from requirements under Section 1504 of the Dodd-Frank Act and the Securities and Exchange Commission's Natural Resource Extraction Disclosure Rule. For arguments in favor of these provisions, see H.Rept. 113-101, and for counterarguments, see “Statement of Administration Policy on H.R. 1613” (June 25, 2013), at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/sap1613r_20130625.pdf.

¹⁰ The U.S. EEZ generally includes territory 200 nautical miles seaward of state waters. See Presidential Proclamation No. 5030, 48 *Federal Register* 10605 (March 14, 1983).

¹¹ Bureau of Ocean Energy Management (BOEM, rhymes with “Rome”) is tasked with offshore leasing administration, including developing maps, completing scientific and economic analyses, and issuing leases. BOEM also participates in some international relations missions regarding U.S. ocean energy resources.

¹² See Five-Year OCS Oil and Gas Leasing Program 2012-2017. This program was approved on August 27, 2012, and is anticipated to be in place through 2017. Each program is mandated by the Outer Continental Shelf Lands Act (43 U.S.C. §1344) to be “a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which ... will best meet national energy needs.”

¹³ 43 U.S.C. §1337(p). For more information about deployment of renewable energy projects, see <http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx>.

¹⁴ After 1953 the federal land tenure system reflected a federal grid system beginning seaward of state submerged land tenure systems. Starting in 1983 this grid system recognized the U.S. EEZ.

DOI estimates future revenues of \$50 million in 2014 from energy activities projected to take place in the transboundary area.¹⁵ U.S. ocean energy production currently accounts for 26% of domestic oil production and about 16% of domestic natural gas production. While most offshore acreage is found in the Alaska region (approximately 1.03 billion acres of a total of 1.7 billion acres), oil and gas leases are located mainly in the Gulf of Mexico (89% of the federally regulated offshore energy activity is concentrated in an area accounting for about 2% of U.S. waters).¹⁶

Review of the Agreement¹⁷

The Agreement is widely recognized as an initial step toward a joint development scenario involving three U.S.-Mexico commitments: (1) eliminating the moratorium in waters beyond their respective exclusive economic zones (EEZs); (2) studying the transboundary areas (exchanging geological information); and (3) potentially deploying joint oil and gas operations associated with developing transboundary reservoirs.¹⁸

The Agreement consists of seven chapters and 27 articles. Provisions attracting particular attention include Chapter 3 (Articles 10-13: establishing a joint development scenario) and Chapter 7 (Article 24: terminating the current moratorium).

Following a statement of “General Principles” including the scope,¹⁹ definitions,²⁰ jurisdiction²¹ and permissible activities,²² the Agreement establishes a process for jointly determining the

¹⁵ See DOI *FY2014 Congressional Budget Justification*, Bureau of Ocean Energy Management (BOEM), p. 12. DOI bases this statement on assumptions about bonus payments and other predicted revenue streams for rentals and taxes deriving from operations in the transboundary area cited in the Agreement. Estimates of federal budget effects vary widely. For example, a recent estimate by the Congressional Budget Office (CBO) provided as part of analysis of a specific bill to implement the Agreement (H.R. 1613) concluded that approving and implementing the Agreement in that instance would increase federal receipts by \$25 million from 2014 through 2023.

¹⁶ In addition to generating domestic energy supplies in these areas, federally regulated offshore energy projects are recognized as generating significant public receipts, including approximately \$6.9 billion in 2012. Statistics about annual energy supplies and annual receipts from bonus bids, rentals, and royalties are published through numerous sources. The statistics in this report are derived from the Office of Natural Resources Revenue within DOI, available at <http://www.ONRR.gov>. For ocean energy revenue statistics, see <http://www.ONRR.gov>. FY2012 federal offshore reported revenues were \$6.9 billion; FY2011, \$6.5 billion; and FY2010, \$5.3 billion.

¹⁷ This section does not provide a comprehensive legal examination of the Agreement’s contents and does not offer an in-depth analysis of U.S. interests in various provisions. A variety of topics addressed in other CRS reports analyze policy perspectives surrounding U.S. interests in the Agreement: peacetime military engagement; fisheries enforcement, search and rescue, drug interdiction, trade, investment and marine pollution law enforcement. These topics are distinct in many ways from topics surrounding U.S. interests in managing ocean energy resources in U.S. waters. For more information on these aspects of U.S.-Mexico relations, see CRS Report R42917, *Mexico: Background and U.S. Relations*, by Clare Ribando Seelke; CRS Report R41349, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, by Clare Ribando Seelke and Kristin Finklea; and CRS Report R42965, *NAFTA at 20: Overview and Trade Effects*, by M. Angeles Villarreal and Ian F. Fergusson.

¹⁸ Joint commitments listed in the Agreement involve goals for the safe and equitable exploitation of transboundary reservoirs. These commitments are intended to unfold over many years through further negotiations aimed at facilitating more specific approaches to such issues as standards for operations and environmental review. Until the Agreement is accepted, the timeline for implementation remains unclear. Numerous federal regulators might be involved in activities covered by the Agreement. Operational safety and revenue obligations related to any future oil and gas leases have already been delegated to BOEM. See CRS Report R42599, *Department of the Interior (DOI) Reorganization of Ocean Energy Programs*, by Curry L. Hagerty.

¹⁹ Article 1 provides that the Agreement applies to areas extending “across the Delimitation Line” This line begins beyond 9 nautical miles from the coastline of Texas and ends 550 miles to the east, at the point to the west of the Eastern Gap.

existence of transboundary reservoirs.²³ These guidelines offer basic details for a “Unitization Agreement,”²⁴ for joint management principles,²⁵ and for production allocations.²⁶ As a requirement for steps taken by unit operators²⁷ and any future fiscal terms related to exploiting oil and natural gas reservoirs in specific areas,²⁸ the Agreement states basic guidelines for terminating the treaty-based moratorium on hydrocarbon development.²⁹

Possible By-Products of Implementing the Agreement³⁰

It is too early to speculate on all the possible scenarios following U.S. approval of the Agreement. Prior to both countries approving the Agreement, diplomats in the United States and Mexico described possible implications of implementing the Agreement as follows:

- The United States is anticipated to complete an implementation plan as a first step toward jointly managing the transboundary area.
- Cessation of the diplomatic moratorium on oil exploration and production is anticipated 60 days after the exchange of U.S. diplomatic notes with Mexico. BOEM reports this exchange is expected sometime after May 17, 2014.³¹
- A cooperative process for managing the maritime boundary region would begin.

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²⁰ Article 2 provides definitions for 24 terms, starting with “Confidential Data” and ending with “Unit Operating Agreement.”

²¹ Article 3 states that nothing in the Agreement “shall be interpreted as affecting the sovereign rights and the jurisdiction which each Party has under international law ...”

²² Article 4 establishes requirements for consultations “on exploration and exploitation activities” carried out within certain areas surrounding the Delimitation Line.

²³ Article 5 outlines a multi-step process for reaching a determination on the existence of a Transboundary Reservoir. This determination entails deadlines for consultations and submissions to the “Joint Commission” as defined elsewhere in the Agreement.

²⁴ Article 6 details the components of a Unitization Agreement, including requirements to measure production; procedures for ensuring accurate payments of royalties and other proceeds; and safety and environmental measures to be taken under the national laws of each party.

²⁵ Article 7 addresses management guidelines prior to the formation of a transboundary unit.

²⁶ Articles 8 and 9 provide for determining and redetermining allocation of production.

²⁷ Article 10 reads as follows: “The Executive Agencies shall ensure that a unit operator for a Transboundary Unit is designated by agreement between the Licensees. The designation or change of the unit operator shall be subject to the approval of the Executive Agencies. The unit operator will act on behalf of the Licensees.”

²⁸ Article 13 provides the following: “Income arising from the Exploitation of Transboundary Reservoirs shall be taxed in accordance with the legislation of the United Mexican States and the United States of America respectively, as well as the Convention between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed on September 18th, 1992, as amended (and as may be amended in the future), or any Convention superseding that Convention as the Parties may enter into in the future.”

²⁹ Article 24 reads as follows: “Upon entry into force of this Agreement, the period of any moratorium on the authorization or permitting of petroleum or natural gas drilling or exploration of the continental shelf within the boundary “Area” as established by Article 4, paragraph 1, of the 2000 Treaty on the Continental Shelf and extended by any subsequent exchanges of notes shall be terminated.”

³⁰ Some information used for this section was obtained from the U.S. Department of State Fact Sheet dated February 20, 2012, and found at <http://www.state.gov/r/pa/prs/ps/2012/02/184235.htm>.

³¹ BOEM communication to CRS, April 23, 2014.

- It would be possible for commercial activities to occur, with options for companies to voluntarily enter into unitization arrangements. In the event such an arrangement is not achieved, the Agreement also establishes options by which companies might develop potential resources on each side of the border.
- Joint inspection teams addressing compliance with applicable laws and regulations would be activated by both governments to review operational plans relevant to transboundary reservoirs.³²

Possible impacts on activities in the Gulf of Mexico or, from a broader perspective, on the national ocean energy portfolio remain a matter of conjecture.³³ For example, as part of estimating fiscal impacts, many in Congress have turned to the Congressional Budget Office (CBO) score for H.R. 1613.³⁴ On May 17, 2013, CBO estimated that “enacting H.R. 1613 would increase offsetting receipts from offshore lease sales by \$25 million from 2014 through 2023.” As part of this analysis, CBO assumes, first, that approving the Agreement would allow DOI to offer leases for acreage which is currently under moratorium and, second, that approving the Agreement would increase values of other leased tracts in the nearby area.³⁵

Related Legislation

The Administration and some in Congress had advocated for swift U.S. acceptance of the Agreement. With a backdrop of oversight hearings in the House and Senate during the 113th Congress, lawmakers continue examining domestic energy production options.³⁶ Others expressed skepticism that the Agreement is an optimal approach to expand the U.S. ocean energy portfolio in the Gulf of Mexico. The Bipartisan Budget Act of 2013 (P.L. 113-67) approved the Agreement, and two other legislative initiatives (H.R. 1613 and S. 812) were considered as part of U.S. review of the Agreement. To date, attention to this Agreement has involved differing policy options, with the common theme being to replace the current moratorium on oil and gas development with the start of a joint development plan.

³² See joint statement adopted by Presidents Obama and Calderon, Washington, DC, May 19, 2010.

³³ Concurrent with regulating operations in the Gulf of Mexico, DOI is assessing energy resource potential off the coast of the Mid- and South Atlantic and off the coasts of California and Alaska, including in the Chukchi and Beaufort Seas. For a comprehensive statement of current federal policies toward offshore oil and gas development, see *77 Federal Register* 40080 (July 6, 2012).

³⁴ For a full CBO report on H.R. 1613, see <http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr1613.pdf>.

³⁵ For information about the lease sales referred to in the CBO score see Five-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012–2017, *77 Federal Register* 40080 (July 6, 2012).

³⁶ The hearings listed below and elsewhere in this report reflect two visions: seeing the need to grant access to some areas to enhance energy production and—as a counterbalance—seeing the need to defer access to some areas to protect people and the environment from risk. On March 14, 2013, the House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere held a hearing entitled *U.S. Energy Security: Enhancing Partnerships with Mexico and Canada*. On April 25, 2013, the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, held a legislative and oversight hearing entitled *U.S.-Mexico Transboundary Hydrocarbon Agreement and Steps Needed for Implementation*.

P.L. 113-67, the Bipartisan Budget Act of 2013

P.L. 113-67, the Bipartisan Budget Act of 2013, was signed by the President on December 26, 2013. P.L. 113-67 includes provisions that, among other provisions, accepts the Agreement and requires DOI (after not more than 180 days) to submit an implementation plan to Congress, presumably signaling implementation will be managed by DOI.

In contrast to other legislation to approve the Agreement (discussed below), P.L. 113-67 amends the Outer Continental Shelf Lands Act to require a DOI implementation plan consistent with the following: (1) approving unitization agreements;³⁷ (2) sharing certain information;³⁸ (3) acting in a manner consistent with various determinations defined under the Agreement;³⁹ and, (4) detailing inspection and stop work criteria.⁴⁰ P.L. 113-67 differs from other relevant legislation considered by Congress (and discussed below) in the following respects: (1) no hearing record exists to offer insights about legislative dialogue related to approving the Agreement, (2) the enacted provisions amend the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.), empowering the Secretary of the Interior to implement the Agreement but only after DOI submits an implementation plan to Congress; and (3) P.L. 113-67 is silent on reporting requirements found within the Securities Exchange Act of 1934.⁴¹

H.R. 1613

H.R. 1613, “Outer Continental Shelf Transboundary Hydrocarbon Agreements Authorization Act,” was considered and passed by the House on June 27, 2013.⁴² This legislation would establish guidelines and procedures for implementing the Agreement; and among other measures, would provide for legislative review of any future agreements governing that area. The bill would amend the Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 et seq.) to implement the Agreement by providing new powers to the Secretary of the Interior for approving unitization agreements.⁴³

³⁷ Article 6 of the Agreement details the components of a unitization agreement, including requirements to measure production; procedures for ensuring accurate payments of royalties and other proceeds; and safety and environmental measures to be taken under the national laws of each party.

³⁸ Article 2 of the Agreement defines 24 terms, including “Confidential Data.”

³⁹ Article 5 of the Agreement outlines a multi-step process for reaching determinations on the existence of a transboundary reservoir. This determination entails deadlines for consultations and submissions to the “Joint Commission” as defined elsewhere in the Agreement.

⁴⁰ Articles 18 and 19 of the Agreement generally reference “applicable national law” as a basis of joint inspections in the area.

⁴¹ Securities Exchange Act of 1934, 157 U.S.C. 78m(q). This topic was a component of the House bill (H.R. 1613) discussed in the next section.

⁴² To help understand the role of the House of Representatives with respect to review of this Agreement, it is important to clarify that the Agreement has not been submitted to the Senate as a treaty. Under the U.S. system, a legally binding international agreement can take different forms. Unlike agreements taking the form of a treaty (that would enter into force if approved by a two-thirds majority of the Senate and subsequently ratified by the President), this Agreement was negotiated and signed by the executive branch as a non-treaty. In the case of a non-treaty, to be legally binding, it must either be authorized by a statute passed by Congress (“congressional executive agreements”) or a prior treaty approved by the Senate, except when it concerns matters falling under the exclusive constitutional authority of the President (“sole executive agreements”). For further discussion, see CRS Report RL32528, *International Law and Agreements: Their Effect upon U.S. Law*, by Michael John Garcia.

⁴³ H.R. 1613 was referred to three committees: Committee on Natural Resources, Committee on Foreign Affairs, and (continued...)

By adding a new section to the end of the OCSLA (“Section 32”), the bill would authorize the Secretary to implement the Agreement with Mexico by completing the following steps:

- submitting the Agreement to the Speaker of the House; the Majority Leader of the Senate; the Chairs of the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources;
- including in the submission (1) legislation relevant to implementation, (2) economic analysis of impacts of the Agreement on domestic production of offshore oil and gas resources, (3) a description of regulations expected to be issued to implement the Agreement, and (4) provisions adopting unitization as the approach to developing the area.⁴⁴

Furthermore, H.R. 1613 would exempt U.S. firms from certain reporting requirements of the Securities Exchange Act of 1934.⁴⁵ Currently, publicly traded companies are required to disclose certain information regarding business dealings related to extractive operations to investors through filings with the Securities and Exchange Commission (SEC). Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203) amended the Securities Exchange Act of 1934 by expanding certain required public company disclosures.⁴⁶ When applied to the commercial development of oil, natural gas, or minerals, the act requires the disclosure of certain payments made to the federal government or foreign governments by public companies required to file annual reports with the SEC. The provision in H.R. 1613 entitled “Exemption from Resources Extraction” provides that actions taken by such a public company pertaining to any transboundary hydrocarbon agreement shall be exempt from such disclosure requirements.⁴⁷

S. 812⁴⁸

This bill would authorize the Secretary of the Interior to implement the Agreement in a manner consistent with legislative provisions proposed by the Administration and referred to in the Administration’s 2014 budget request.⁴⁹ Specifically, under the legislative proposal referred to in

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Committee on Financial Services. On June 6, 2013, the Committees on Foreign Affairs and Financial Services discharged the bill.

⁴⁴ In addition, H.R. 1613 offers placeholders for implementing Agreements with four other countries: Canada, Russia, the Bahamas, and Bermuda. Although placeholders are sometimes included in bills that are introduced, they have rarely been enacted as law.

⁴⁵ Securities Exchange Act of 1934, 157 U.S.C. 78m(q). This section of the bill is summarized by Gary Shorter, CRS Specialist in Financial Economics.

⁴⁶ CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel.

⁴⁷ In general, the American Petroleum Institute (API) and other business groups have resisted implementation of Section 1504 of the Dodd-Frank Act. This resistance has been demonstrated by challenging SEC’s new rule requiring publicly traded U.S. oil and gas companies to report information about projects that potentially could benefit their overseas national oil companies.

⁴⁸ Descriptions of SEC obligations were authored by Gary Shorter, CRS Specialist in Financial Economics.

⁴⁹ See DOI FY2014 Budget Justifications, “Budget Highlights,” p. 23. See also BOEM Office of Congressional Affairs written communication to CRS, May 16, 2013. The budget justification refers to draft legislation offered by the Administration to the House and the Senate as follows:

The Secretary is authorized to take actions necessary to implement the terms of the Agreement
(continued...)

the budget request and under S. 812, the Secretary of the Interior would be provided with new authorities to approve unitization agreements and related arrangements within certain guidelines. This approach contrasts with H.R. 1613 in several respects.

A key distinction between the Senate and House bills is the additional provisions in the House bill, particularly regarding disclosure requirements for investment information pursuant to U.S. Securities and Exchange Commission (SEC) rules. Specifically, the House bill clarifies the application of Section 13(q) of the Securities Exchange Act of 1934⁵⁰ in matters related to joint development projects in the transboundary area. In contrast, S. 812 is silent on this point, not addressing the treatment of U.S. firms and SEC obligations.

Looking Ahead

Dialogue surrounding U.S. initiatives to grant (or defer) offshore oil and gas drilling rights beyond the U.S. EEZ will likely continue.⁵¹ Beyond resource management, other issues and national interests (diplomatic, military, trade) are part of engaging Mexico in areas beyond the U.S. EEZ.⁵² Related issues include how to handle public receipts (royalties and other gains), if any, anticipated from jointly managed ocean energy projects and how to cope with oil spill risks and other risks associated with a joint development scenario.

Legislative action in the House and Senate highlighted differences in how best to implement the Agreement. In the House, debate underscored a policy divide that frequently accompanies legislative review of ocean energy initiatives.⁵³ Arguably, two main legislative approaches exist: one focusing on the benefits of maintaining a moratorium on ocean drilling and the other focusing on gains anticipated from options to generate new energy supplies and public revenues. Some commentary highlights external factors associated with U.S.-Mexico relations.⁵⁴ However, most arguments are reminiscent of the historic choices faced by U.S. lawmakers in the past about whether, when and where to allow ocean drilling and how to monitor development scenarios where permissible.

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between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico, which is hereby approved, including: to approve unitization agreements and related arrangements for the exploration of, and development or production of oil or gas from, transboundary reservoirs and geological structures; to disclose as necessary under such an Agreement information related to the exploration, development, and production of a transboundary reservoir or geological structure that may be considered confidential, privileged, or proprietary information under law; and to accept and take action not inconsistent with an expert determination under such an Agreement.

⁵⁰ 157 U.S.C. 78m(q). For a discussion of this theme, see <http://thehill.com/blogs/e2-wire/e2-wire/296235-house-gop-moves-to-shield-oil-companies-from-disclosure-rules#ixzz2RyR0jqGZ>.

⁵¹ The offshore drilling debate is a combination of several discrete debates about oil and gas leasing activity in federal and international waters. Congress addresses multiple issues related to access (state-federal consultations about state revenue sharing, adequacy of environmental reviews, timetables for drilling permitting, operational safety, federal receipts and disbursements to federal programs, research).

⁵² See, for example, Greenpeace, *Transboundary Agreement Spells Disaster for the Gulf*, February 22, 2012.

⁵³ H.Rept. 113-101, including Dissenting Views.

⁵⁴ For a comprehensive discussion of U.S.-Mexican relations see CRS Report R42917, *Mexico: Background and U.S. Relations*, by Clare Ribando Seelke.

Appendix. Summary of Congressional Hearings

Legislation accepting the Agreement and formalizing DOI authority to implement the Transboundary Hydrocarbons Agreement passed on December 18, 2013, as part of P.L. 113-67, the Bipartisan Budget Act of 2013.⁵⁵ There is not a robust legislative hearing record for U.S. acceptance of this Agreement. Legislative records of deliberations surrounding enacted legislation afford few details about lawmaker points of view on the Agreement.

Prior to enactment, both chambers had passed separate bills: S. 812 and H.R. 1613. Lawmakers favoring these bills expressed support for a general goal of approving the Agreement but there was little to indicate consensus on other aspects of the legislation. For example, hearings conducted in the House were conducted prior to lawmakers introducing relevant bills.⁵⁶ At these hearings, absent the opportunity to parse introduced legislation, witnesses mainly offered general statements relevant to the Agreement. As a result, House hearings lacked the more precise legislative analysis and stakeholder discussion that can come from review directly related to pending legislation.⁵⁷ Objections to specific provisions in the House legislation were expressed by those in Congress opposed to eliminating certain Securities and Exchange Commission (SEC) disclosure requirements found only in H.R. 1613, as reported by the House Committee on Natural Resources.⁵⁸

Furthermore, in the Senate, the single hearing on this Agreement allowed for an examination of specific legislative provisions relevant to U.S. interests in transboundary hydrocarbon reservoirs (S. 812), however, the context for parsing the legislation was rather limited due to the federal government shutdown in effect at that time.⁵⁹

House Committee on Foreign Affairs

On March 14, 2013, the House Committee on Foreign Affairs, Subcommittee on the Western Hemisphere held a hearing entitled *U.S. Energy Security: Enhancing Partnerships with Mexico and Canada*.⁶⁰ At the hearing the four witnesses representing academia and private sector firms⁶¹

⁵⁵ H.J.Res. 59 was passed by the House of Representatives on December 12, 2013. It was passed by the Senate on December 18, 2013. See also CRS Report R43068, *The Federal Budget: Issues for FY2014 and Beyond*, by Mindy R. Levit.

⁵⁶ Both hearings in the House are discussed below; all relevant legislation is discussed in the section above entitled “Legislative Interests.”

⁵⁷ This Agreement has been characterized as very technical in nature, as compared to earlier U.S.-Mexico compacts related to governance of acreage in western Gulf of Mexico. For a discussion detailing the technical aspects of the Agreement see *U.S.-Mexico Agreement on Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico: A Blueprint for Progress or a Recipe for Conflict?* by Jorge A Vargas, (San Diego International Law Journal Fall, 2012).

⁵⁸ As noted in the Statement of Administration Policy on H.R. 1613, the Administration supports implementing legislation, without the inclusion of provisions such as those relating to Section 1504 of the Dodd-Frank Act that arguably would dilute U.S. efforts to increase transparency and accountability. These provisions would exempt actions taken by public companies from requirements under a section of the Securities and Exchange Commission’s Natural Resource Extraction Disclosure Rule. It is widely recognized that, among other provisions found in H.R. 1613, these disclosure provisions involve issues extraneous to approving the Agreement.

⁵⁹ Lawmaker and witness participation as well as press attendance at the hearing were notably limited by conditions not found when the government is not shutdown. CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

⁶⁰ See <http://foreignaffairs.house.gov/hearing/subcommittee-hearing-us-energy-security-enhancing-partnerships-> (continued...)

claimed that U.S. approval of the Agreement would impact U.S. and Mexican interests through one or more of the following considerations:

- “Approving the treaty will create new levels of legal certainty for U.S. and Mexican firms operating in the Gulf border regions, encouraging them to engage in the risk-taking required to produce oil from deep waters.”⁶²
- “Swift ratification of the Transboundary Hydrocarbon Agreement is important to our nation’s energy security and long-term economic growth.”⁶³
- “The current focus on hydrocarbon reform in Mexico also means that extended U.S. inaction on the Transboundary Hydrocarbons Agreement will be noticed, with potentially negative consequences for the broader bilateral relationship.”⁶⁴

House Committee on Natural Resources

On April 25, 2013, the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources held a legislative and oversight hearing entitled *U.S.-Mexico Transboundary Hydrocarbon Agreement and Steps Needed for Implementation*.⁶⁵ At this hearing, six witnesses representing federal agencies, private firms, academia, and an internationally recognized environmental organization offered perspectives on U.S. involvement in the Agreement.⁶⁶ With one exception, witnesses voiced support for the Agreement and draft legislation, by claiming that U.S. acceptance of the Agreement offered greater legal certainty for U.S. energy interests in the Gulf of Mexico. The one exception was Mr. Manuel, Sierra Club, arguing that the Agreement was not needed due to the backlog of U.S. leases already in effect in the Gulf of Mexico.⁶⁷ Witnesses asserted varying perspectives on the Agreement, based on one or more of the following considerations:

- The Agreement permits, for the first time, firms on the U.S. side of the border to cooperate with Mexico’s national oil company, Petróleos Mexicanos (PEMEX), on joint exploration and development projects.⁶⁸

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mexico-and-canada.

⁶¹ Witnesses included Duncan Wood, Ph.D., Director, Mexico Institute, The Wilson Center; Daniel R. Simmons, Director of Regulatory and State Affairs, Institute for Energy Research; Kyle Isakower, Vice President, Regulatory and Economic Policy, American Petroleum Institute; Michael A. Levi, Ph.D., Senior Fellow for Energy and the Environment and Director of the Program on Energy Security and Climate Change, Council on Foreign Relations. No Administration witness was on the panel.

⁶² Testimony of Duncan Wood.

⁶³ Testimony of Kyle Isakower.

⁶⁴ Testimony of Michael Levi.

⁶⁵ See <http://foreignaffairs.house.gov/hearing/subcommittee-hearing-us-energy-security-enhancing-partnerships-mexico-and-canada>.

⁶⁶ Witnesses included Tommy Beaudreau, Acting Assistant Secretary for Land and Minerals Management U.S. Department of the Interior (DOI); Ambassador Carlos Pascual, Special Envoy and Coordinator for International Energy Affairs U.S. Department of State (DOS); Erik Milito, American Petroleum Institute; Daniel R. Simmons, Institute for Energy Research; Steven Groves, Heritage Foundation; and, Athan Manuel, Sierra Club.

⁶⁷ Sierra Club statement is found at <http://naturalresources.house.gov/uploadedfiles/manueltestimony04-25-13.pdf>.

⁶⁸ This point was made by both Mr. Beaudreau (DOI) and Ambassador Pascual (DOS). For the complete written testimony of both witnesses see <http://naturalresources.house.gov/uploadedfiles/beaudreautestimony04-25-13.pdf> and (continued...)

- The Agreement allows more numerous options for U.S. oil and natural gas companies to invest in and to operate in the Gulf of Mexico, creating jobs and enhancing U.S. energy security.⁶⁹
- Lacking specifics about safety and environmental protection, it remains unclear whether the Agreement is compatible with U.S. interests in fishing and tourism in the Gulf of Mexico.⁷⁰

Of the witnesses testifying in favor of legislative review and acceptance of the Agreement, each cited clarifying U.S.-Mexico relations with respect to governing the transboundary area was needed for safe and responsible energy development to commence. In contrast to the testimony of these witnesses, the Sierra Club witness expressed skepticism that swift U.S. acceptance was needed “given that the oil and gas industry is sitting on a large number of inactive leases in federal waters, proving accelerated leasing in the Gulf of Mexico to be unnecessary.”⁷¹

Following these hearings, legislation (S. 812, H.R. 1613) was introduced in both chambers on April 25, 2013. This legislation would approve and implement the Agreement taking slightly differing approaches.⁷²

Senate Committee on Energy and Natural Resources

On October 1, 2013, the Senate Committee on Energy and Natural Resources held a legislative hearing on S. 812 and H.R. 1613, as part of examining the proper federal management role relevant to transboundary hydrocarbon reservoirs, and for other purposes. Government witnesses⁷³ offered testimony consistent with support for implementing the Agreement. Private sector witnesses offered testimony expressing opposing views: industry supporting the implementing legislation and environmental groups expressing objections.⁷⁴ The following highlights describe hearing testimony:

- Without the Agreement, firms on both sides of the border will likely not explore and develop deepwater projects of interest to both countries.⁷⁵

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<http://naturalresources.house.gov/uploadedfiles/pascualtestimony04-25-13.pdf>

⁶⁹ This point was made by both Mr. Milito and Mr. Groves. For the complete written testimony of both witnesses see <http://naturalresources.house.gov/uploadedfiles/militotestimony04-25-13.pdf> and <http://naturalresources.house.gov/uploadedfiles/grovestestimony04-25-13.pdf>.

⁷⁰ This point was made by Mr. Manuel. For the complete Sierra Club statement see <http://naturalresources.house.gov/uploadedfiles/manueltestimony04-25-13.pdf>.

⁷¹ See Sierra Club written testimony, p. 3. For further information on offshore acreage leased but not producing see *Oil and Gas Lease Utilization – Onshore and Offshore*, Report to the President, U.S. Department of the Interior (March, 2011) found at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=239255>.

⁷² These bills are summarized in the section of this report entitled “Legislative Interests.”

⁷³ Ambassador Carlos Pascual, Special Envoy and Coordinator, International Energy Affairs, U.S. Department of State and Tommy P. Beaudreau, Acting Assistant Secretary, Land and Minerals Management, DOI.

⁷⁴ Ms. Jacqueline Savitz, Vice President, U.S. Oceans, Oceana expressed opposition to both bills; Mr. Erik Milito, Director, Upstream and Industry Operations, expressed American Petroleum Institute support for the legislation.

⁷⁵ This point was made by Mr. Beaudreau (DOI) and Ambassador Pascual (DOS) and Mr. Milito. For the complete written testimony of these witnesses see <http://www.energy.senate.gov/public/index.cfm/2013/10/full-committee-hearing-to-consider-s-812-and-h-r-1613>.

- The Agreement allows for more legal certainty for all parties with a stake in planning offshore development scenarios. Many perceive this added certainty as creating a more favorable business atmosphere for U.S. oil and natural gas companies seeking to finance operations in the Gulf of Mexico.⁷⁶
- Lacking detailed provisions related to safety and environmental protection in the Agreement, lifting the current moratorium is premature and raises concerns about pollution events including increased Green House Gas (GHG) emissions and oil spills that could jeopardize U.S. fishing, tourism and other interests in the Gulf of Mexico and elsewhere.⁷⁷

The timing of this hearing and public admission to the hearing were affected by the Senate experiencing the first day of the federal government shutdown. After this hearing the Senate Committee on Energy and Natural Resources discharged S. 812 by unanimous consent. On October 12, 2013, the Senate passed S. 812, without amendment, by unanimous consent.

Author Contact Information

Curry L. Hagerty
Specialist in Energy and Natural Resources Policy
chagerty@crs.loc.gov, 7-7738

⁷⁶ This point was made by both government and industry witnesses.

⁷⁷ This point was made by Ms. Savitz. For the complete Oceana statement see http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=4acfb140-c30a-4baf-9513-710733d3c945.