

## **Syllabus and Outline of Offshore Energy Development Course**

Course # / Section #:	5297 / 24526
Professor:	R Scott McCay
Location:	_____
Time:	Tuesdays from 7:30 to 9:30 p.m.
Course Materials:	Blackboard postings two weeks in advance of class date
Office Hours:	One hour after class in classroom or by appointment
Contact Information:	Phone or text – (713) 898-2080
Email address:	<a href="mailto:smccay@central.uh.edu">smccay@central.uh.edu</a>
Grading:	Open materials final exam; No internet access Class Participation is factored into grade
Absences:	Third absence results in notice to School Administration
CAPS:	See information at end of syllabus.

### **Note: Following outline is subject to change during course**

- I. Week One – Introduction, History, and Jurisdiction
  - A. Class Introductions – Professor and Students
  - B. Offshore Development History
  - C. International Boundaries
    1. Common Law, International Comity, and Law of Sea Treaty (UNCLOS)
    2. Tidelands Cases and 1953 Submerged Lands Act, 43 USC §§ 1301, et seq.
- II. Week Two – Outer Continental Shelf Lands Act (OCSLA) Overview
  - A. 1953 Original and 1978 Amendment 43 USC §§1331, et seq.
    1. Declares Federal Rights over continental shelf
    2. Procedures for developing resources and protecting environment

- B. Regulations and Guidance
  - 1. Bureau of Ocean Energy Management (BOEM), 30 CFR Parts 550, 556
  - 2. Bureau of Safety and Environment Enforcement (BSEE), 30 CFR Parts 250, 256
  - 3. Notice to Lessees (NTLs)
  - 4. Industry Standards
- C. Associated Laws and Regulations
  - 1. Environmental and Safety
  - 2. Trade, Customs, and Navigation
- D. Enforcement and Appeals
  - 1. Incidents of Non-Compliance (INC), 30 CFR Part §§250.1400-09
    - a) Warnings, Component shut-in, Facility shut-in
    - b) Penalties and Injunctive Relief
  - 2. Administrative appeals – 30 CFR Parts 290 and 590; 43 CFR Part 4
    - a) Interior Board of Land Appeals (IBLA)
    - b) Judicial Review after exhaustion of administrative remedies

### III. Week Three – Leasing Procedures

- A. Five Year Plans from BOEM – 30 CFR Part 556
  - 1. Environmental Reviews – National Environmental Policy Act (NEPA)
    - a) *Oceana v. BOEM*, No. 12-0981 (D.D.C., March 31, 2014)
    - b) Marine Mammals (NTL 2016-G02) and Biological Opinions
  - 2. Coastal Zone Management Act (CZMA), 16 USC §§1451, et seq
    - a) *Secretary of Interior v. California*, 464 U.S. 312 (1984)
    - b) Texas and Louisiana Coastal Zone Programs

3. Preliminary Sales Notices and Request for Information
  - a) Comments and Deliberation
  - b) Final Sales Notice
- B. Lease Sales
  1. Qualifications and Restrictions on Lessees, e.g. citizenship
  2. Awards and Payments
  3. State sharing – three miles under 2006 GOMESA
- C. Financial Requirements and Bonding (Oil Spill; NTL 2016-N01)
- D. Operator Designations and Transfers
  1. Filing with BOEM
  2. Continuing Liability

#### IV. Week Four – Lease Substance – Rights and Obligations

- A. Similarities / Differences with Onshore Oil and Gas Leases
  1. Grants exclusive right to apply for permits to explore and develop
  2. Does not grant ownership of minerals or ability to immediately drill
- B. Lessee submits Exploration Plan (EP) to BOEM
  1. BOEM obtains Coastal State's consistency determination
  2. BOEM evaluates for NEPA, possibly Environmental Impact Study (EIS)
  3. Application for Permit to Drill (APD) to BSEE
- C. Easements and Rights of Use; Rights of Way (pipelines)
- D. Federal Unitization, voluntary and compulsory
- E. Lease Expiration, Relinquishment, and Cancellation
  1. Differences between Non-producing vs. Producing leases
  2. Remedy: Mobil Oil E&P SE, Inc. v. U.S., 530 U.S. 604 (2000)

3. Lessee's Obligations at end of Lease

## V. Week Five – Joint Operating Agreements (JOAs)

- A. Purpose and need for joint endeavors; Mining Partnership
- B. Structure of JOA and default provisions
  1. Operator Rights and Obligations
  2. Non-operator Rights and Obligations
  3. Authorizations for Expenditures (AFEs) and accounting
  4. Non-consents and Forfeitures; Project Teams
- C. Participation or Farm-out Agreements
  1. Purpose and need for them
  2. Disproportionate costs / interests in assignment

## VI. Week Six – Suspensions of Production (SOP) and Operations (SOO)

- A. 180-day Continuous Operations Clock
- B. Reasons needed; Requirements; Limitations
- C. Implementation in Practice
  1. Requests and Responses
  2. Appellate Review

## VII. Week Seven – Exploration and Drilling

- A. Operator's options to hold lease by drilling; Co-owner AFE's
- B. Federal filings:
  1. Application for Permit to Drill (APD) or Modify (APM)
  2. Oil Spill Response Plans and Containment Demonstrations
  3. Well information from Operations

- C. Contractors' Obligations
  - 1. Presence of numerous contractors on site
  - 2. BSEE's efforts to impose direct liability on contractors

## VIII. Week Eight – Liabilities and Insurance

- A. Applicable Law – Maritime or State
  - 1. Status of Drilling Rig or Production Facility as vessel
  - 2. Effect of Contractual Choice of Law provisions
- B. Civil and Criminal Liability for Oil Spills
- C. BSEE's Regulations and Industry Responses –
  - 1. Safety and Environmental Management Systems (SEMS)
  - 2. Employee Training and stop work authorization
  - 3. Industry Standards / Verification and Auditing Requirements
  - 4. Marine Well Containment Corporation and other response entities
- D. Insurance and Indemnities – Effect of Applicable Law on Enforceability
  - 1. BP v. Transocean's insurance carriers; Workers Comp coverage
  - 2. Indemnities and restrictions – *In re Oil Spill*, 841 F.Supp.2d 988 (2012)

## IX. Week Nine – Appraisal and Development

- A. Appraisal – Activities included in Exploration Phase
  - 1. Not addressed in regulations as separate phase of activities
  - 2. Industry identifies appraisal in Operating Agreements as distinct phase
- B. Development – Lessees decide to build production facilities
  - 1. Operator submits Development and Production Plan (DPP) and Development Operations Coordination Document (DOCD) to BOEM

- 2. Operator submits Conservation Information Document (CID) and Deepwater Operations Plan (DWOP) to BSEE
  - 3. BOEM obtains Coastal State's consistency determination, possibly EIS
- C. Approval Procedures with Co-owners
- 1. Plan submittals and voting under JOAs
  - 2. Final Investment Decisions (FIDs)
- D. Technical and Integrated Project Teams
- 1. Emerging Technologies and Intellectual Property
  - 2. Joint Technology Development Agreements
- X. Week Ten – Infrastructure Construction
- A. Contracting Strategies – Hire general contractor or orchestrate work yourself
  - B. Construction, Operations, and Utilization Agreement (COUA)
  - C. Export Pipelines or Floating Production, Storage, and Offloading (FPSO's)
  - D. Coast Guard approvals of designs and periodic inspections of facilities
  - E. Jones Act Issues enforced by Customs and Border Protection
    - 1. Coastwise Trade of Merchandise
    - 2. Construction and Installation activities and movement
- XI. Week Eleven – Production, Mid-stream Matters and Royalty Issues
- A. Facility operation and maintenance
  - B. Production Handling Agreements (PHA) and tie-ins
  - C. Royalties on Production
    - 1. Calculations, payments
    - 2. Appeal rights

## XII. Week Twelve – Decommissioning and Abandonment

- A. Bonding, Triggers, and extensions
- B. Assignments and liability of former lessees
- C. Bankruptcy Effects on Solvent Operators / Non-operators
- D. Idle Iron and long-term decommissioning plans
- E. Offshore Wind Energy comparisons

## XIII. Week Thirteen – Exam Review

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