Description of Offshore Facilities

- Presentation of Various Types of structures
- Time and Expense of Construction
- Production Life of Reservoirs
- Highly Dependent on Prices of Oil and Gas
- Life Cycle of Assets
Jurisdictional Bases

- Historical Claims to offshore resources – Cannonball rule
- States’ Historical Assertions
- Federal Assertions, Truman Proclamation (1945)
- U. S. v. California, 332 U.S. 19 (1947)
- OCSLA and Submerged Lands Act (1953)
- 1978 Amendments
Truman Proclamation 1945 –
Continental Shelf

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying with the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.
OCSLA Overview

- Balance resource development with environmental protection
- 1978 Amendments expanded roles of states and environmental agencies
- Five-year lease plans specify areas for leasing during each 5-year period
- Lease sales allow companies to bid on areas specified in 5-year plans
- Companies awarded leases prepare plans to explore and develop resources
- At end of operations, companies must decommission facilities
OCSLA’s Environmental Provisions

• Section 1346 requires environmental studies:
  • §1346. Environmental studies
  • (a) Information for assessment and management of impacts on environment; time for study; impacts on marine biota from pollution or large spills
    • (1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale or other lease in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development in such area or region.
    • ...
OCeLA’s Environmental Provisions

- Section 1332 Policy Declaration cites Environmental Protection
- Section 1344(a)(1) requires balancing development and environment
- Sections 1347 and 1348 also address safety and health studies
- Recognizes Coastal Zone Management Act allows input of Affected States
  - States may address impacts on their offshore resources and environment
  - Also may address impacts on onshore population, economy, and environment
Other Environmental Statutes

- National Environmental Policy Act of 1970 (NEPA)
- Endangered Species Act of 1973 (ESA)
- Marine Mammals Protection Act of 1972 (MMPA)
- Coastal Zone Management Act of 1972 (CZMA, reauthorized in 1990)
- Clean Water Act of 1977 (CWA)
- Oil Pollution Act of 1990 (OPA 90)
- Clean Air Act of 1970 (CAA, reauthorized in 1990)
Implementation of OCSLA

- Regulations, Interpretations, Guidance, Notices to Lessees (“NTLs”)
- Bureau of Ocean Energy Management (“BOEM”)
- Bureau of Safety and Environmental Enforcement (“BSEE”)
- United States Coast Guard (“USCG”)
- U. S. Environmental Protection Agency (“EPA”)
Notices to Lessees ("NTLs")

- Authorized by 43 U.S.C. §1334 and 30 C.F.R. §250.103 & 550.103
  - However, OCSLA speaks only to Rules, not to Guidance
- Issued by BOEM, BSEE, or jointly
- Cited in some enforcement proceedings
- Interim Policy Document (2012) related to Contractor Liability
Regulatory Enforcement

- OSCLA § 1348 authorizes DOI and USCG to enforce statute and rules
- Inspections of Lessees’ Facilities and Investigations of Incidents
- Incidents of Non-Compliance (“INCs”); Penalties (§ 1350)
- Administrative Appeal Process
- Judicial Review (§ 1349)
- Citizens Suits (§ 1349), but rarely used – hard to show standing
Primary NTLs for Environmental Matters

  • All Obligations, including Decommissioning: BOEM 2015-N04 and 2016-N01
  • Oil Spills: MMS 2008-N05; Plan for Worst Case Scenarios
  • Coast Guard Certificate of Financial Responsibility, 33 C.F.R. Part 138
• Seismic: BOEM 2016-G02; ESA and MMPA
• Water: Oil Spill Regional Response Plan: BSEE 2012-N06
• Operations: Air emissions BOEM 2016-N03
Primary Permits and Approvals

- Exploration Plans
- Application for Permission to Drill ("APD")
  - Additional Drilling Requirements since Macondo
- Development and Production Plans
- Water Discharge ("NPDES") General Permit
- Decommissioning Plans at End of Lease
Contractual Protections

- Detail Responsibilities between Contracting Parties and Require Insurance
- Joint Operating Agreements (“JOA”)
  - Operators protected from their own negligence, but not gross negligence
  - Non-operators rely on Operators’ Contracts with Third Parties
- Indemnities in Service Contracts
  - Pollution coverage usually depends on where Releases originate
  - Penalty Indemnities may not be Enforceable, depending on Culpability
Legal Issues in Enforcing Indemnities

- Determine whether Admiralty or Adjacent State Law applies
- Anti-indemnity statutes in Texas and Louisiana
- Different tests for Claims in Tort and Contract and very fluid
- Indemnities for Penalties and Gross Negligence / Punitive Damages
- In re Oil Spill by Oil Rig “Deepwater Horizon,” 841 F.Supp.2d 988 (2012)
  - Pollution Indemnities and Coverage for Penalties and Punitive Damages