50 Years on the Outer Continental Shelf

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On August 7, 2003, a milestone for the offshore oil and gas industry was reached. It had been 50 years since Congress passed, and the President signed, the Outer Continental Shelf Lands Act (OCSLA) into law. The result of this action changed the course of the fledgling offshore oil and gas exploration and production industry in the United States forever. In this article we will take a look back over the last 50 years, touch on a little history and highlight some of the events that have molded the offshore program into one of the most successful government programs in recent history.

The right to lease minerals located under the oceans offsetting the various landmasses surrounding the United States comes from the authority granted Congress under the Constitution to manage public lands. Congress has delegated the offshore portion of this authority through specific legislation, directing the Secretary of the Interior to develop and administer the offshore program.

To understand why Congress drafted and passed into law the OCSLA, one needs to understand a little history about offshore oil exploration. It all began in Summerland, California as a result of nature oil and gas seeps visible from the shoreline at low tide. Shallow wells were drilled from wooden piers built into the water. With continued success, more wells were drilled and the offshore industry was born. As time passed, and as the industrial revolution proceeded, the need for oil continued to grow and the search for oil moved to different coasts. In 1938 off Louisiana, a well was drilled drilled 1-½ half miles from shore in the open waters of the Gulf of Mexico. This was a major technological breakthrough for the offshore industry and began the continuing effort to move farther from shore and to drill in deeper waters.

With success came a focused eye by the Federal government questioning its role in managing these offshore minerals that in the past had been of little importance. The debate came to a head in 1945 when President Truman signed a Presidential Proclamation declaring the Federal government as the rightful entity to control management of the natural resources of the subsoil and seabed located off the coasts of the United States. The States that had granted these leases off their coastlines, along with the companies who had acquired the leases, were not pleased with the President's proclamation. As would have been expected the proclamation was challenged in court. After a couple of years of legal maneuvering, a few key cases made their way to the United States Supreme Court. Once in the high court, the court ruled in 1947 and 1950 that the Federal government, not the States, possessed full authority over the lands and natural resources of all submerged land areas off the coasts of the United States.

In response to public concerns about ownership and development of offshore resources, and the fact the Supreme Court had sided with the Federal government on the issue of offshore jurisdiction, in 1953 Congress enacted two laws, the Submerged Lands Act and the OCSLA to resolve the debate. The Submerged Lands Act granted certain jurisdictional rights to offshore lands to coastal States while OCSLA provided a framework for regulating and managing the exploration, development, and production of oil, gas and other minerals of the seabed beyond the area under coastal States' jurisdiction.

The Submerged Lands Act established coastal State jurisdiction over a belt of submerged land located seaward off each State's coastline to a distance of 3 geographical miles. A greater distance from shore (about 10 geographic miles or 3 marine leagues) was granted to Texas and the western coast of Florida because these States had established their jurisdiction over the larger offshore areas before statehood was granted. Oil and gas resource exploration and development is controlled by the offsetting States in these jurisdictional belts.

Congress on the other hand, through the OCSLA, authorized the Secretary of the Interior to offer mineral leases on submerged lands beyond State jurisdiction. OCSLA also established the framework for drafting and implementing regulations to govern oil and gas activity in Federal waters. OCSLA gave the Secretary of the Interior the authority to grant leases for other natural resources located in Federal waters including sand, gravel and sulfur. Through OCSLA a multitude of regulations have been created to ensure the safe and efficient extractions of mineral resources offshore.

Since we now know where the State offshore jurisdiction starts and ends, and by default know where the Federal jurisdiction begins, the next question is where does it end. The answer is actually found hidden away in an international treated signed by Cyrus Vance for the United States but never ratified by the U. S. Senate called the "Law of the Sea Treaty". This particular Treaty contains a provision that allows countries with coastlines to claim sovereign jurisdiction for the exploration, exploitation, conservation, and management of the living and non-living natural resources located on the seabed and subsoil for a distance up to 200 nautical miles (approximately 230 statute miles) from the coastline. This area is known as the Exclusive Economic Zone (EEZ). President Reagan, realizing the United States had signed the treaty under the Carter administration but had not received Senate ratification to enforce the Treaty under United States law, decided to sign a Presidential Proclamation effective March 10, 1983, establishing an EEZ for the United States. The United States claims sovereign authority to develop natural resources from the coastlines of the lower 48 States, Alaska, Hawaii and all United States possessions (e.g. Virgin Islands, Guam, etc…) out to approximately 200 nautical miles. I insert the word "approximately" because there are not 200 nautical miles between the United States and certain other countries such as Cuba. In the case of Cuba, United States jurisdiction extends half way between the two landmasses (approximately 45 statute miles). In all the United States EEZ encompasses over 3 billion acres.

The Minerals Management Service (MMS) is the agency under the Department of the Interior directly responsible for managing the mineral resources in the area under Federal jurisdiction; an area commonly referred to as the Outer Continental Shelf or "OCS." For purposes of the OCSLA, only acreage off of the coasts of the lower 48 States and Alaska fall under the current offshore leasing program offered by the MMS. This area includes approximately 1.7 billion acres. Even though most of the OCS is off limits to leasing and development due to various Presidential moratoria and Department of Interior administrative deferrals, the OCS program has been very successful. As reported in the last Plano Newsletter, from the OCS over the last 50 years the United States Treasury has received approximately $150 billion in revenue, a portion of which has been distributed to the States. In addition, over the last 50 years over 14 billion barrels of oil and 150 trillion cubic feet of natural gas have been produced from the OCS. The primary contributors to the success of the offshore program in the OCS are areas in the Western and Central portions of the Gulf of Mexico.

Overall, the OCS program, developed out of the framework designed by Congress under the OCSLA, has been very successful. In the future the OCS will not only continue to provide revenue to the Federal government, but also play a critical role in providing a portion of this country's domestic oil and gas resources.

(Note: A special thanks to the Minerals Management Service for publishing the various documents from which this Article was based.)