

ENVIRONMENTAL LEGAL ASPECTS OF DOING BUSINESS IN MEXICO

By: Héctor Herrera, Ph.D.
Admitted in Mexico

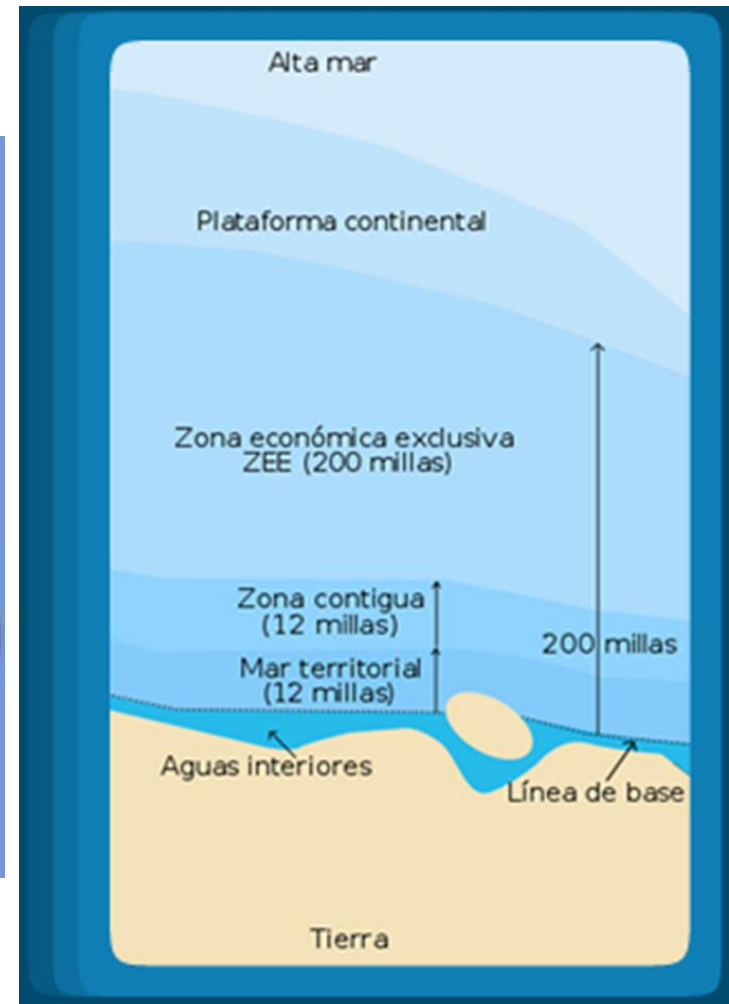
9/29/2015

haynesboone

31 STATES AND 1 FEDERAL DISTRICT



NATIONAL TERRITORY



LAWS IN MEXICO

- **Federal.**- Constitution, Laws enacted by the Congress of the Union, and all Treaties.
- **State.**- Constitution, Laws Enacted by the State Congress.
- **Municipal.**- Local legislation

ENVIRONMENTAL CONSTITUTIONAL BASIS

- **Art. 4.**
 - Right to the protection of health;
 - Right to a healthy environment;
 - Right to access to potable water.



ENVIRONMENTAL CONSTITUTIONAL BASIS

- **Art. 27.- Authority of the Federation to:**
 - Regulate the use of the natural elements subject to appropriation;
 - Take the necessary measures to preserve and restore the ecological balance; and
 - Take the necessary measures to prevent the destruction of the natural elements and damages to ownership.



ENVIRONMENTAL CONSTITUTIONAL BASIS

- **Art. 73, XXIX.G.- Authority of Congress to:**
 - Establish the corresponding authority of the **Federation, States and Municipalities** to legislate in the area of environmental protection and preservation and restoration of the ecological balance.



GENERAL LAW ON ECOLOGICAL BALANCE AND ENVIRONMENTAL PROTECTION

- Regulates constitutional provisions in the area of the ENVIRONMENT.
 - Federation
 - States
 - Municipalities



ENVIRONMENTAL AREAS

- **Environmental impact**
- **Change of the use of forestry land**
- **Forestry**
- **Wastes**
- **Water**
- **Air**



- **Noise**
- **Wild life**
- **Climate change**
- **Environmental liabilities**
- **Ecological zoning**
- **Natural protected areas**

ENVIRONMENTAL IMPACT ASSESSMENT

Works and/or activities that may cause ecological imbalance or exceed the limits and conditions set forth to protect the environment, as well as to preserve and restore the ecosystems, require prior environmental impact authorization.



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

I. Hydraulic works, general communication ways, oil pipelines, gas pipelines, carbon pipelines and multi-pipelines.



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

II. Oil, petrochemical, chemical, steel, paper, sugar, cement and electric power industries;



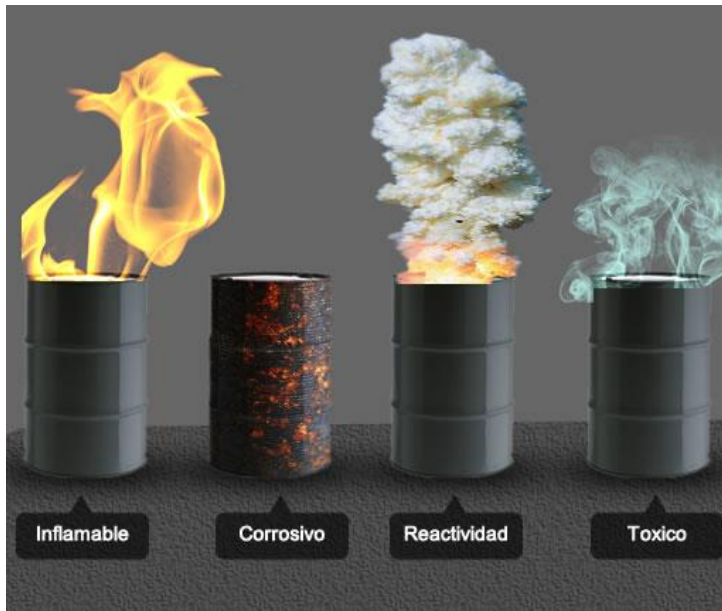
FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

III. Exploration, exploitation and beneficiation of minerals and substances reserve for the Federation in terms of the Mining Law and nuclear legal provisions.



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

IV. Facilities for treatment, confinement or elimination of hazardous wastes, as well as radioactive wastes;



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

V. Forestry uses in rainforest and species of difficult regeneration;



VI. It is derogated;

VII. Change in the use of the land in forestry ground, as well as in jungles and arid zones;



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

VIII. Industrial parks where it is provided to carry out highly risk activities;



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

IX. Real estate developments affecting coastal ecosystems;



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

X. Works and activities in wetlands, mangroves, lakes, rivers lakes and estuaries connected with the sea, as well as its shorelines or federal zones;



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

XI. Works and activities in natural protected areas of federal jurisdiction;



haynesboone



FEDERAL ENVIRONMENTAL IMPACT AUTHORIZATION

XII. Fishing, aquaculture or agricultural activities that might endanger the preservation of one or more species or cause damages to the ecosystems.



INDIGENOUS CONSULTATION

SENER / SEMARNAT must carry out the **PREVIOUS CONSULTATION PROCEDURE** and any other activity to safeguard the interests and rights of **Indigenous communities**.

PURPOSE.- To reach **agreements** or **consent**.

- Art. 120 LH
- Art. 86 RLH

CONVENTION 169

- **Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) of the International Labor Organization.**
 - Executed: June 27, 1989;
 - Entry into force: September 5, 1991;
 - Ratified by 20 countries, Mexico among them;
 - Published in the Official Daily of the Federation on January 24, 1991



CDI

COMISIÓN NACIONAL
PARA EL DESARROLLO
DE LOS PUEBLOS INDÍGENAS



Protocolo para la implementación de consultas a pueblos y
comunidades indígenas de conformidad con estándares del Convenio
169 de la Organización Internacional del Trabajo sobre Pueblos
Indígenas y Tribales en Países Independientes



haynesboone



PROTOCOLO DE ACTUACIÓN PARA
QUIENES IMPARTEN JUSTICIA EN
CASOS RELACIONADOS CON
**PROYECTOS DE
DESARROLLO
E INFRAESTRUCTURA**



SOCIAL IMPACT ASSESSMENT

Authorizations for projects in the area of Electric Power or Hydrocarbons must submit before SENER a **SOCIAL IMPACT ASSESSMENT**.

Art. 121 LH Art. 3 fracc. IV RLH

SOCIAL IMPACT ASSESSMENT

SENER shall issue the resolution and the corresponding recommendations.

That resolution must be submitted by the Permit Holders or Contractors **for purposes of the assessment process for the environmental impact authorization.**

- Art. 121 LH and Arts. 3 fracc. IV and 79 RLH
- Art. 120 Electric Power Industry Law. Art. 86 R-EPIL

WASTES

- Urban solid wastes;
- Special management wastes;
- Hazardous wastes;
- Wastes of the mining-metallurgical industry.



GENERATORS OF WASTES

- Hazardous wastes up to 440 kg/year.- **Micro-Generator.**
- Wastes between 440 Kg/year and 10 tons.- **Small Generator.**
- Wastes more that 10 tons/year.- **Big Generator.**

ACQUISITION OF LAND POLLUTED WITH HAZARDOUS WASTES

- Requires prior authorization of SEMARNAT
- Transfer without the authorization.
- **Environmental due diligence (in accordance with Mexican Law)**.



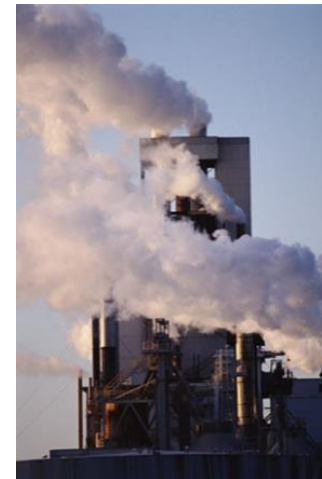
EMISSIONS TO THE ATMOSPHERE

Stationary Sources and Mobile Sources

- Federal
- State
- Municipal

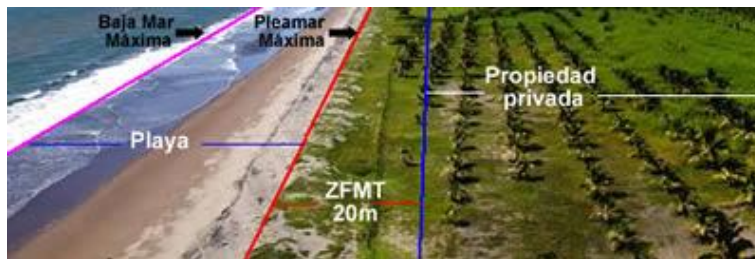
STATIONARY SOURCES OF FEDERAL JURISDICTION

- Chemicals
- Oil and petrochemicals
- Paints and stains
- Automotive
- Cellulose and paper
- Metallurgic
- Glass
- Generation of electric power
- Asbestos
- Cement and limekiln
- Treatment of hazardous wastes



STATIONARY SOURCES OF FEDERAL JURISDICTION

- Sites occupied by all facilities of terminals of federal public transportation (terrestrial, air and aquatic);
- Industrial parks located on assets of public domain of the Federation; and,
- Federal maritime-terrestrial zone.



OBLIGATIONS

STATIONARY SOURCES OF FEDERAL JURISDICTION

- a) Use equipment and systems that control polluting emissions to the atmosphere, in order that such emissions do not exceed the maximum allowable perimeters established in the corresponding Mexican official standards;
- b) Integrate an inventory of its polluting emissions to the atmosphere, in the format that SEMARNAT determines;
- c) Install platforms and sampling ports; and
- d) Measure its polluting emissions to the atmosphere, record the results in the format that SEMARNAT determines and provide those recordings to the latter when so requested.

OBLIGATIONS

FIXED SOURCES OF FEDERAL JURISDICTION

- e) Carry out the perimeter monitoring of its polluting emissions to the atmosphere, when the source is located in an urban or suburban zones, when it is adjacent to natural protected areas, and due to its operation characteristics or its raw materials, products and byproducts, may cause serious deterioration to the ecosystems;
- f) Have an operation and maintenance logbook of its equipment of process and control;
- g) Give prior notice to SEMARNAT of the start of operations, en case of scheduled shutdown, and immediately in case that the latter are not scheduled, if they may cause pollution;
- h) Give immediate notice to SEMARNAT in case of failure of the control equipment, if the failure may cause pollution.

WATER DISCHARGES

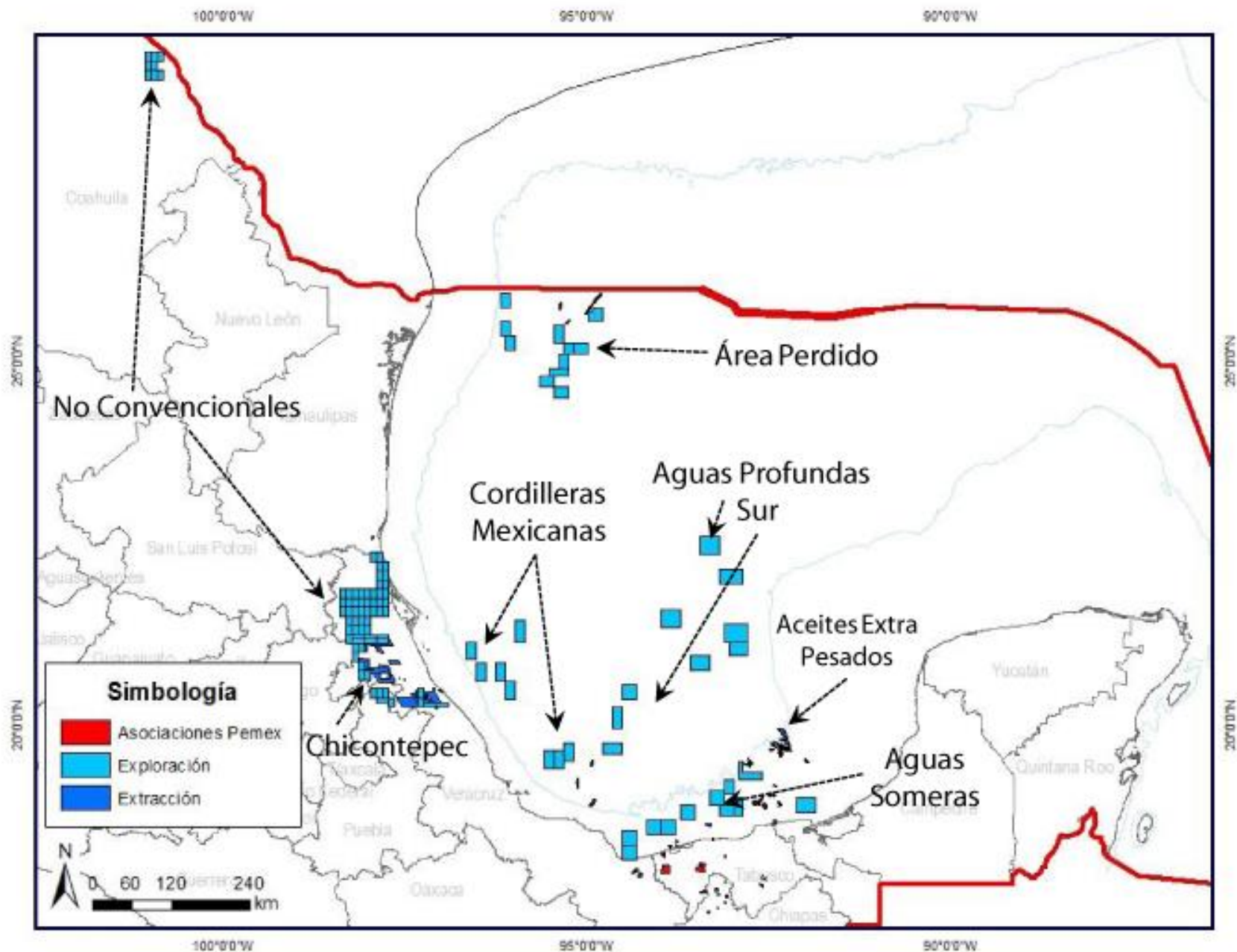
- **Federal Permit.**- Discharges of wastes waters into national waters or national assets, including marine waters.
- **Municipal Permit.**- Discharges of wastes waters into municipal sewage systems.



LIABILITIES

- **Administrative Law:**
 - Fines of up to **US\$32'500,000** for companies of the hydrocarbons sector;
 - Fines of up to **US\$218,000** for other companies;
 - Restoration of damages;
 - Closing down.
- **Criminal Law:**
 - Imprisonment of up to 9 years;
 - Restoration of damages.
- **Civil Law:** Restoration of damages / Indemnification.

haynesboone

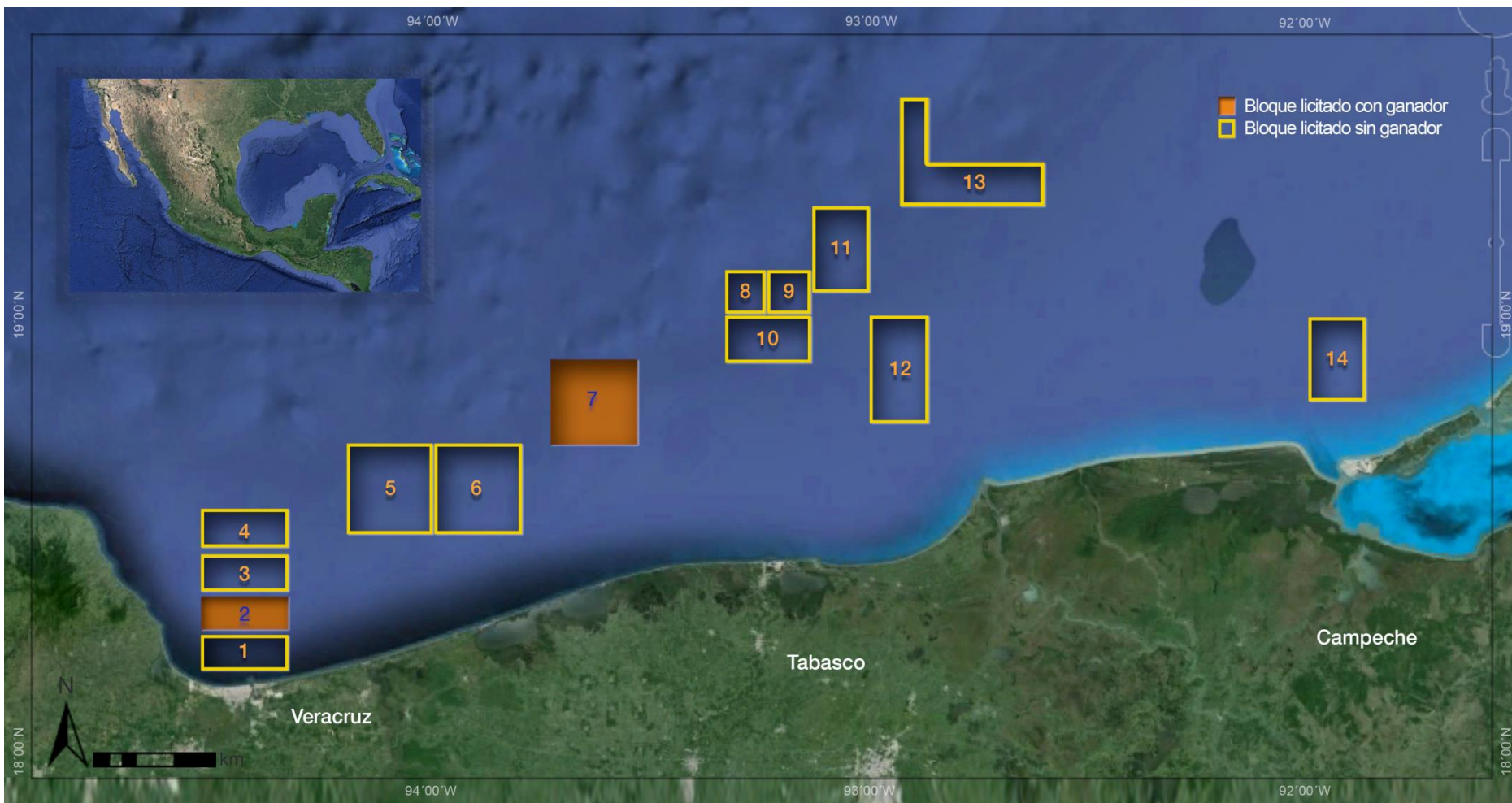


RONDA 1. AGUAS SOMERAS-PRIMERA CONVOCATORIA. LICITACIÓN CNH-R01-L01/2014

CONTRATOS DE PRODUCCIÓN COMPARTIDA PARA LA EXPLORACIÓN Y EXTRACCIÓN DE HIDROCARBUROS

ESPAÑOL

INGLÉS



RONDA 1. AGUAS SOMERAS-SEGUNDA CONVOCATORIA. LICITACIÓN CNH-R01-L02/2015
CONTRATOS DE PRODUCCIÓN COMPARTIDA PARA LA EXTRACCIÓN DE HIDROCARBUROS

ESPAÑOL

INGLÉS

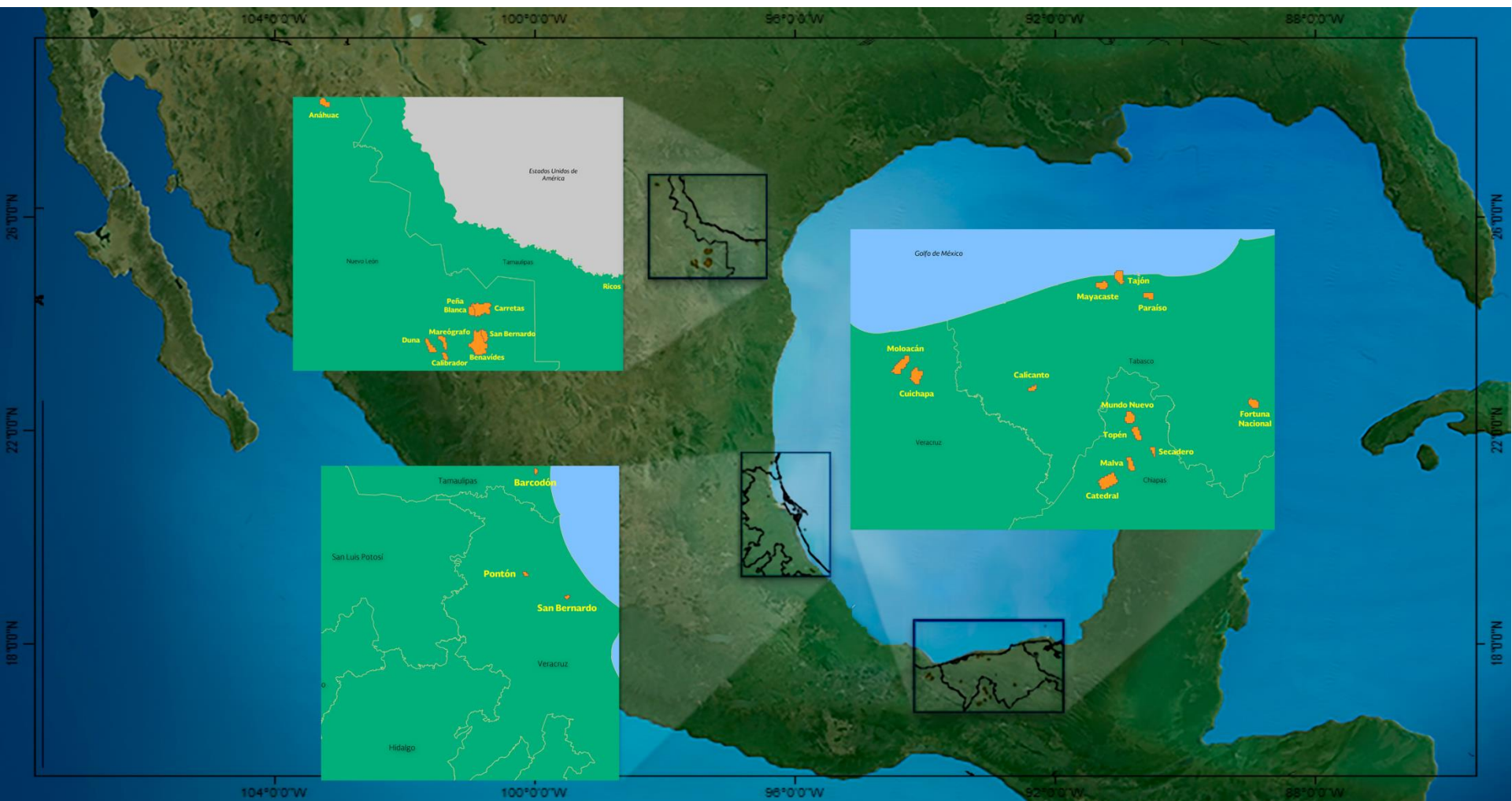


RONDA 1. TERRESTRES-TERCERA CONVOCATORIA. LICITACIÓN **CNH-R01-L03/2015**

CONTRATOS DE LICENCIA PARA LA EXTRACCIÓN DE HIDROCARBUROS

ESPAÑOL

INGLÉS



haynesboone