

Statement by Premier McLellan in Nova Scotia House of Assembly Debates and Proceedings, June 24, 1998 page 1744

“DR. JOHN HAMM: ... On August 26th, I believe it was, in 1986, the Prime Minister of Canada and the then Premier of Nova Scotia signed the Canada-Nova Scotia Offshore Accord. ... My question to the Premier is, how much of the estimated 60,000 square kilometres of the Laurentian sub-basin has been ceded to Nova Scotia by way of that accord?

THE PREMIER: I couldn't honestly say to the honourable Leader of the Progressive Conservative Party. But the line was drawn, the line is set out there, and as to how much, I don't know. **As you know, Mr. Speaker, that of course is not agreed to by Newfoundland.**

Framework to Assess the Nova Scotia Claim

Claim of 1964 Agreement

Elements of Alleged Agreement

***Description
of Boundaries***

All Purposes

135° Line

***To the
Edge of the
Continental
Margin***

Essential Assumptions

***Intention
to Create a
Legally Binding
Agreement***

***Boundaries Were
Separate From
Ownership***

***The Federal
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was Irrelevant***

***Applicable Law
is International
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The September 30, 1964 "Agreement"

“On September 30, 1964, at a Conference of Premiers of the Atlantic Provinces held in Halifax, Premier Stanfield of Nova Scotia, Premier Smallwood of Newfoundland, Premier Shaw of Prince Edward Island and Premier Robichaud of New Brunswick **concluded an agreement on offshore boundaries between their Provinces.”**

***The September 30, 1964 "Agreement"
Nova Scotia Counter Memorial II, para 4***

“the Joint Submission, however was not the 1964 Agreement (and the 1964 Agreement was not the Joint Submission).”

“Newfoundland’s fatal flaw in its treatment of the historical record is to confuse this fact.”

**Basis of Alleged
Agreement**
September 30, 1964,
Joint Statement
Following Premiers
Conference

The Atlantic Premiers Conference held in Halifax on September 30, 1964, with Premier Stanfield of Nova Scotia, Premier Robichaud of New Brunswick, Premier Shaw of Prince Edward Island, and Premier Smallwood of Newfoundland in attendance unanimously agreed:

- 1 That the provincial governments are entitled to the ownership and control of submarine minerals underlying territorial waters including, subject to International Law, the areas in the Banks of Newfoundland and Nova Scotia, on legal, equitable and political grounds. The argument in support of these several grounds set out in the Report prepared in 1959 by Professor Gerard V. LaForest still retains full force and affect.
- 2 That formal recognition of the rights of the provinces to the submarine minerals should be obtained from the Government of Canada as essential to the expeditious economical and orderly development of mineral exploration, essential to the economy of the Atlantic Provinces.
- 3 That the Parliament of Canada be requested to continue to assert the status of the Gulf of St. Lawrence, including the Strait of Belle Isle and Chaleur Bay, Cabot Strait, Northumberland Strait and the Bay of Fundy, as in-land waters or territorial waters.
- 4 That it is desirable that the marine boundaries as between the several Atlantic Coast Provinces should be agreed upon by the provincial authorities and the necessary steps taken to give effect to that agreement.
- 5 That the boundaries described by Metes and Bounds in Schedule A and shown graphically on Schedule B be the marine boundaries of the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland.
- 6 That the Parliament of Canada be asked to define the boundaries as approved by the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland under the provisions of Section 3 of the British North America Act, 1871.
- 7 That an immediate approach should be made to the Province of Quebec so that a united presentation may be made to the Government of Canada.

September 30, 1964 Joint Statement

The Atlantic Premiers Conference held in Halifax on September 30, 1964, with Premier Stanfield of Nova Scotia, Premier Robichaud of New Brunswick, Premier Shaw of Prince Edward Island, and Premier Smallwood of Newfoundland in attendance **unanimously agreed:**

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- 4 That **it is desirable that the marine boundaries** as between the several Atlantic Coast Provinces **should be agreed upon** by the provincial authorities and the necessary steps taken to give effect to the agreement.

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September 30, 1964 Joint Statement

unanimously agreed

That the boundaries described by Metes and Bounds in Schedule A and shown graphically on Schedule B be the marine boundaries of the Provinces

Nova Scotia CM III-6

“That the boundaries described by Metes and Bounds in Schedule A and shown graphically on Schedule B” *are unanimously agreed to* “be the marine boundaries of the Provinces.”

Comparison With Paragraph 4

4 That **it is desirable that the marine boundaries** as between the several Atlantic Coast Provinces **should be agreed upon** by the provincial authorities and the necessary steps taken to give effect to the agreement.

“That the boundaries described by Metes and Bounds in Schedule A and shown graphically on Schedule B” are unanimously agreed to “**be the marine boundaries** of the Provinces.”

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Desirable to Agree on Described Boundaries

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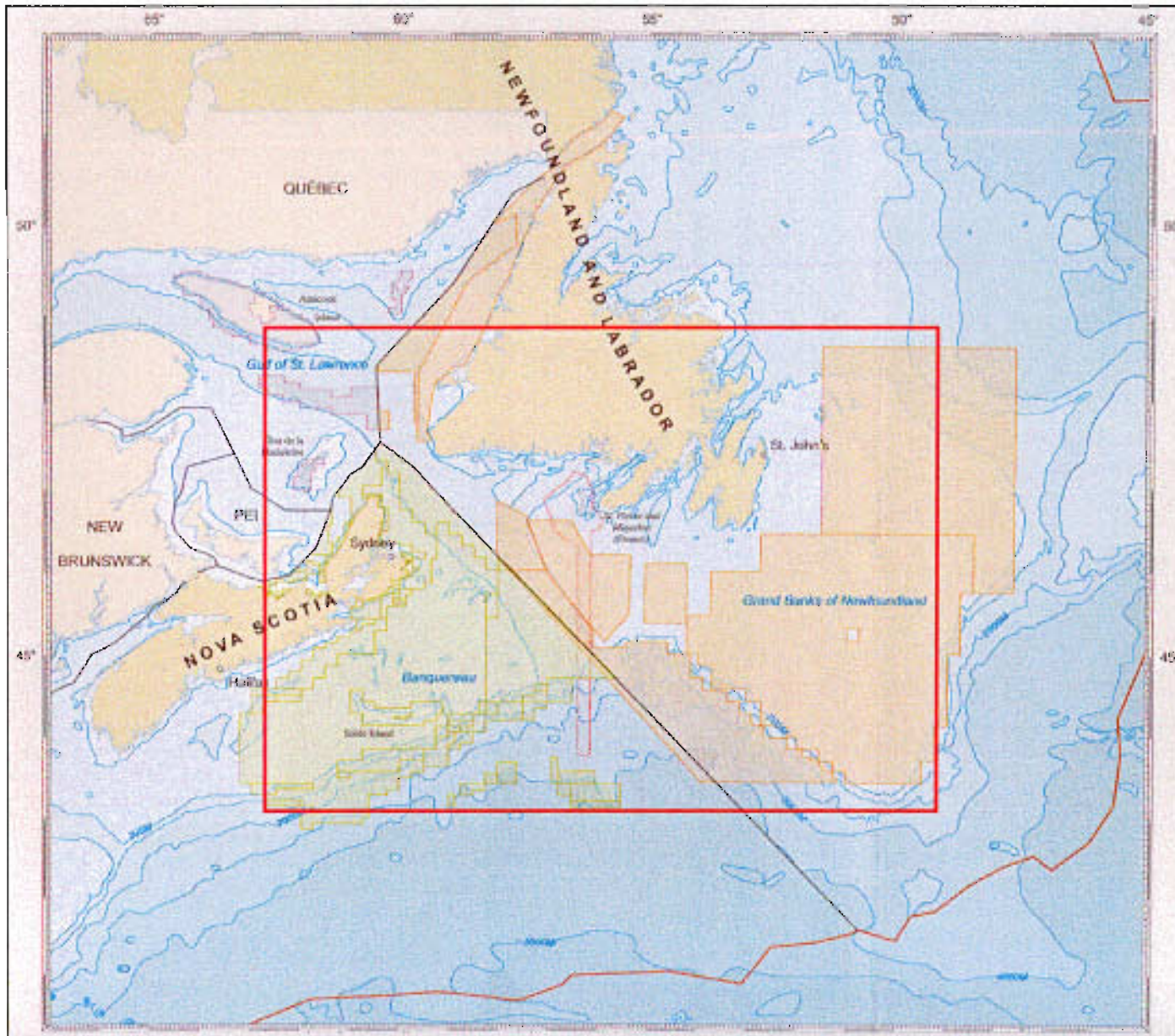
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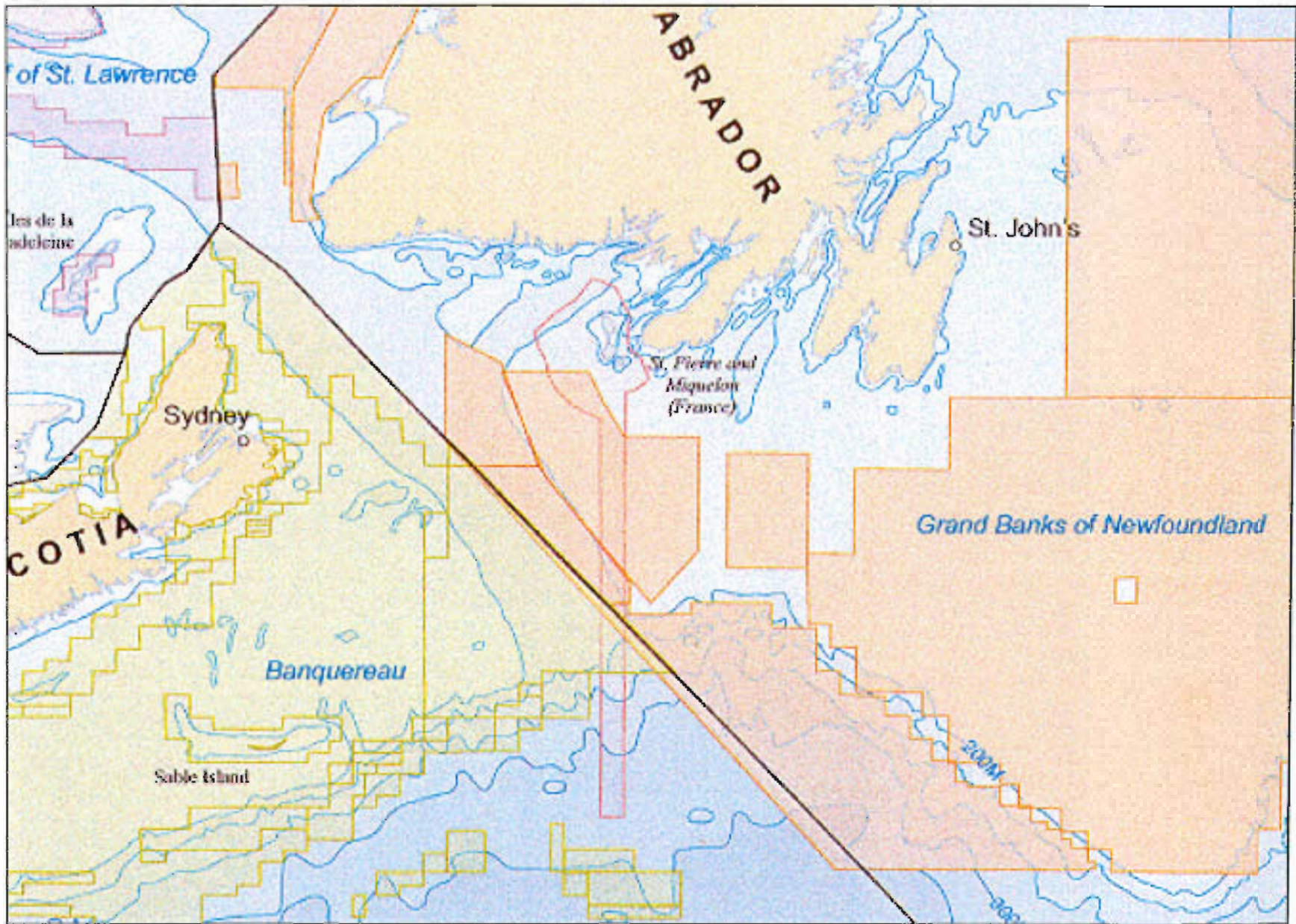
In Figure 28 of the NSCM, Nova Scotia Claims That “The East Coast Provinces Applied and Relied Upon the 1964 Agreement in Issuing Oil and Gas Permits”



Oral Presentation Figure 15

NSCM Figure 28

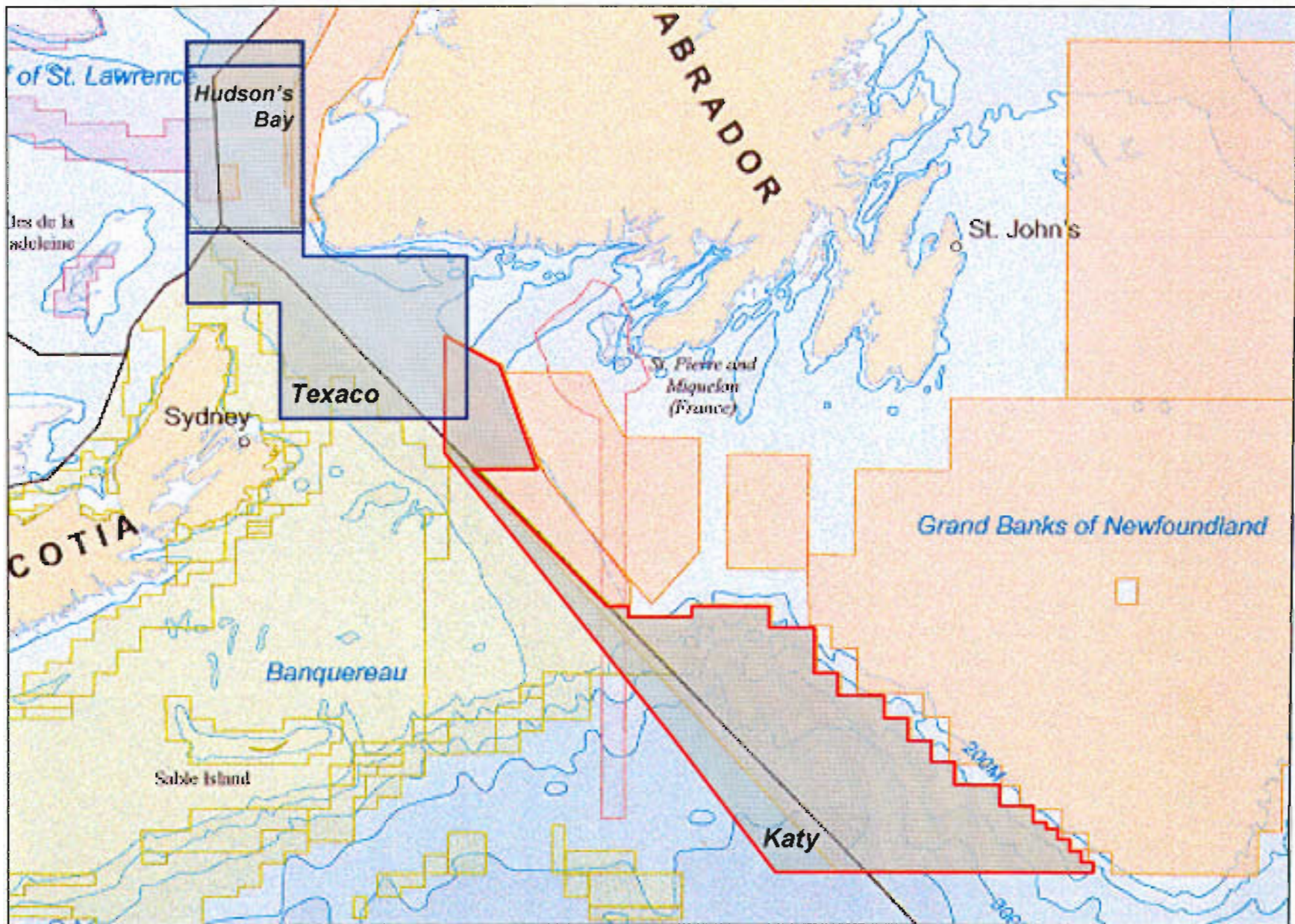
In Figure 28 of the NSCM, Nova Scotia Claims That “The East Coast Provinces Applied and Relied Upon the 1964 Agreement in Issuing Oil and Gas Permits”



Oral Presentation Figure 16

NSCM Figure 28

N & L Conduct Did Not Respect the Alleged 135° Line



Oral Presentation Figure 17

***Terms of Reference - Article Three
The Mandate of the Tribunal***

Applying the principles of international law governing maritime boundary delimitation with such modification as the circumstances require, the Tribunal shall determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia, as if the parties were states subject to the same rights and obligations as the Government of Canada at all relevant times.

***1986 Canada-Newfoundland Atlantic Accord
Implementation Act - Section 6***

(3) For the purposes of this section, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute shall be determined by the Federal Minister after consultation with the provinces concerned in the dispute.

***1986 Canada-Newfoundland Atlantic Accord
Implementation Act - Section 6***

- (4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modification as the circumstances require.**

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Gulf of Maine Judgement, 1984, para 112

- (1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where, however, such agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence.**

Gulf of Maine Judgement, 1984, para 112

(2) In either case, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.

Nova Scotia Counter Memorial

“Applying Canadian domestic law to determine any aspect of this dispute would be fundamentally at odds with the *Terms of Reference* and with the legislation from which they were derived.”

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