



THE SUBSEQUENT CONDUCT OF THE PARTIES

(PART I)

Jean G. Bertrand
Counsel

March 12, 2001

JGB-1



As demonstrated, the *1964 Agreement* established interprovincial boundaries, including the line dividing the offshore areas of Newfoundland and Nova Scotia, on the basis of a description by metes and bounds represented on an accompanying map.

The precise technical coordinates of the boundaries remained to fix by plotting the latitude and longitude of the turning points along the agreed boundaries.

This technical exercise was necessary, *inter alia*, so as to facilitate the granting and precise location of offshore exploration permits.

THE FORMATION OF THE JMRC



Pursuant to a Memorandum of Agreement signed in Halifax on July 16, 1968, the five East Coast Provinces formed the “Joint Mineral Resources Committee”.

The mandate of the JMRC is found in the Memorandum of Agreement dated 16 July 1968.

Source: Annex 36, Schedule A, p. 2

THE FORMATION OF THE JMRC (Cont'd)



1. **JOINT DECLARATION** There is hereby established a committee, consisting of a representative of Quebec, New Brunswick, New South Wales, Prince Edward Island and Newfoundland, to be known as the "Joint Mineral Resources Committee".
2. **APPOINTMENT** Each Province that is a party to this Agreement shall appoint a person who is a member of the Executive Council of the Province to represent that Province as a member of the Joint Mineral Resources Committee and shall notify each other Province of the appointment.
3. **CHAIRMAN** The members of the Joint Mineral Resources Committee shall appoint one of the members to be Chairman of the Committee and shall give him in the exercise of the duties of the Chairman.
4. **MEMBERSHIP** The Joint Mineral Resources Committee may from time to time constitute and appoint sub-committees consisting of members of the Committee or persons nominated by members of the Committee.
5. **FUNCTIONS** The purpose of the Joint Mineral Resources Committee is to initiate and foster cooperation among the Provinces that are parties to the Agreement in the study of questions concerning the management of mineral resources in the subterranean areas of lands within the Provinces and to make recommendations to the Governments of the Provinces for resolving the problems.
6. **COMMENCEMENT** This Agreement shall be effective from and including the first day of July, A. D. 1982, upon the signature hereof, whether or not the same is executed prior to or after that date, and shall remain in force in effect until such time as the Government of any of the Provinces gives notice in the above Provinces of withdrawal.



Annex 36, Schedule A, p. 2.

THE FORMATION OF THE JMRC (Cont'd)



consisting of members of the Committee or persons nominated by members of the Committee.

5. PURPOSE The purpose of the Joint Mineral Resources Committee is to initiate and foster co-operation among the Provinces that are parties to the Agreement in the study of problems concerning the management of mineral resources in the submarine areas or lands within the Provinces and in their common terrestrial border zones and to make recommendations to the Governments of the Provinces for resolving the problems.

6. ENTRY INTO FORCE This Agreement shall be effective from and including the 10th day of July, A. D., 1968, upon



Annex 36, Schedule A, p. 2.

THE BOUNDARY COMMITTEE



At its first meeting, on July 16, 1968, the JMRC established a Sub-Committee and five Technical Committees.

Source: Minutes of the *JMRC* meeting under **Annex 36** at 2

One of the Technical Committees was mandated to fix the precise “[d]elineation and description of the boundaries of the participating Provinces in submarine areas”. The Technical Committee was also known as the Boundary Committee.

Source: **Annex 36** at 2

Several appointments were made:

1. Chairman of the *JMRC*: Nova Scotia’s Minister of Mines Donald M. Smith.
2. Vice-Chairman of the *JMRC*: Québec’s Minister of Natural Resources Paul E. Allard.
3. Chairman of the Boundary Committee: New Brunswick’s Assistant Deputy Minister of Natural Resources John C. Smith.

Source: NSM II – 21



On August 30, 1968, the members of this Technical Committee were informed that New Brunswick's Department of Natural Resources "...has completed plotting of turning points as described in the Agreement reached by Atlantic Premiers."

These points have been calculated in latitude and longitude using a computer program."

Source: See August 30, 1968 letter of Chairman Smith under **Annex 38**

The computer printout of latitude/longitude coordinates (**Annex 39**) was distributed to the members of the Technical Committee on September 5, 1968, for their review and approval.

Source: **Annex 38**

Newfoundland, like the other four East Coast Provinces, verified and confirmed that the latitude/longitude coordinates conformed to the verbal description of its boundary in the *1964 Agreement*.

Source: See January 7, 1969 letter of F. J. Lukins under **Annex 40**

THE BOUNDARY COMMITTEE (Cont'd)



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
 DEPARTMENT OF MINES, AGRICULTURE AND RESOURCES

15902

ST. JOHN'S

7th January, 1969

NO. MB/4/200-II.
 To note when given the
 above number and the date
 of this letter.

Deputy Minister of Mines

Re list of points named in "Notes re Boundaries of Mineral Rights as between Maritime Provincial Boundaries", I have separated out of the list those that refer to the Boundary of Newfoundland. The points as circles on these plans agrees with the points as referred to in the description of the Boundary of Newfoundland.

From the computer listing, I have also separated out the co-ordinates of the points shown on the map of the Atlantic Provinces that pertain to the Boundary of Newfoundland. The co-ordinates of these points are listed below:

<u>Station Number</u>	<u>Latitude</u>	<u>Longitude</u>
2047	51° 11' 56.1314"	57° 7' 10.6191"
2046	50° 59' 55.3499"	57° 45' 14.4266"
2045	50° 34' 26.5736"	58° 01' 26.7111"
2044	49° 50' 54.6636"	58° 56' 28.8392"
2043	48° 46' 53.2019"	60° 28' 39.8043"
2042	47° 45' 37.8383"	60° 24' 17.0723"
2041	45° 25' 22.4213"	59° 45' 31.1102"
2040	46° 44' 50.4276"	59° 0' 29.3400"

FJL/gd

17 Jan 1969

F. J. Lukins, P. Eng.
 Chief Engineer



Annex 40



F.J. Lukins letter of January 17, 1969.



Annex 40

Deputy Minister of Mines.

Re list of points named in "Notes re Boundaries of Mineral Rights as between Maritime Provincial Boundaries", I have separated out of the list those that refer to the Boundary of Newfoundland. The points as circles on these plans agrees with the points as referred to in the description of the Boundary of Newfoundland.

From the computer listing, I have also separated out the co-ordinates of the points shown on the map of the Atlantic Provinces



On January 17, 1969, the “Report of the Technical Committee On Delineation and Description of the Boundaries of the Participating Provinces in Submarine Areas” was presented to the *JMRC*.

Source: See Minutes of the meeting and the Report of the Technical Committee under **Annex 41**

THE BOUNDARY COMMITTEE (Cont'd)



Report of the Technical Committee on Delimitation
and Demarcation of the Boundaries of the
Participating Provinces in
Scholarship Areas

Mr. C. Sastri, Chairman
Assistant Deputy Minister
Department of Natural Resources
New Brunswick

Mr. A. N. Subrahmanian
Assistant Director of Lands
Department of Natural Resources
New Brunswick

Mr. Neil Fleming
Survey Engineer
Economic Improvement Corporation
Prince Edward Island

Mr. Neil Paulin
Director General of Lands
Department of Lands & Forests
Quebec

Mr. F. Coeur
Deputy Minister
Department of Mines, Agriculture
and Resources
Newfoundland

Upon the instructions of the Joint Mineral Resources
Committee, the Technical Committee has determined and agreed
upon the location and methodology for defining the starting points
as described in "Notes on: Boundaries of Mineral Rights in Between
Participating Provinces", as set forth by the Minister
Provisional Order in 1965.

The Technical Committee has not discussed the merits
of each definition of boundaries but have primarily tested their
mutual respectability.

The coordinates of each starting point are determined
and submitted to Committee members for checking. It is my under-
standing that members of the committee are now satisfied with the
coordinates as calculated.

A final list of coordinates will be forwarded to each
participating Province in the near future.

Respectfully submitted,

J. C. Sastri
Chairman



Annex 41, Schedule A

THE BOUNDARY COMMITTEE (Cont'd)



Report of the Technical Committee.



Annex 41, Schedule A

Prince Edward Island

Upon the instructions of the Joint Mineral Resources Committee, the technical committee has determined and agreed upon the location and methodology for defining the turning points as described in "Notes re: Boundaries of Mineral Rights as between Maritime Provincial Boundaries", as set forth by the Atlantic Provinces Premiers in 1964.

The Technical Committee has not discussed the merits of such definition of boundaries but have precisely located those



The Report of the Technical Committee included:

1. a list of the turning points as described in the *1964 Agreement*.
2. their latitude/longitude coordinates as plotted by the Technical Committee.
3. a map depicting the result of the exercise.

Source: Annex 42 reproduced as **Figure 7**

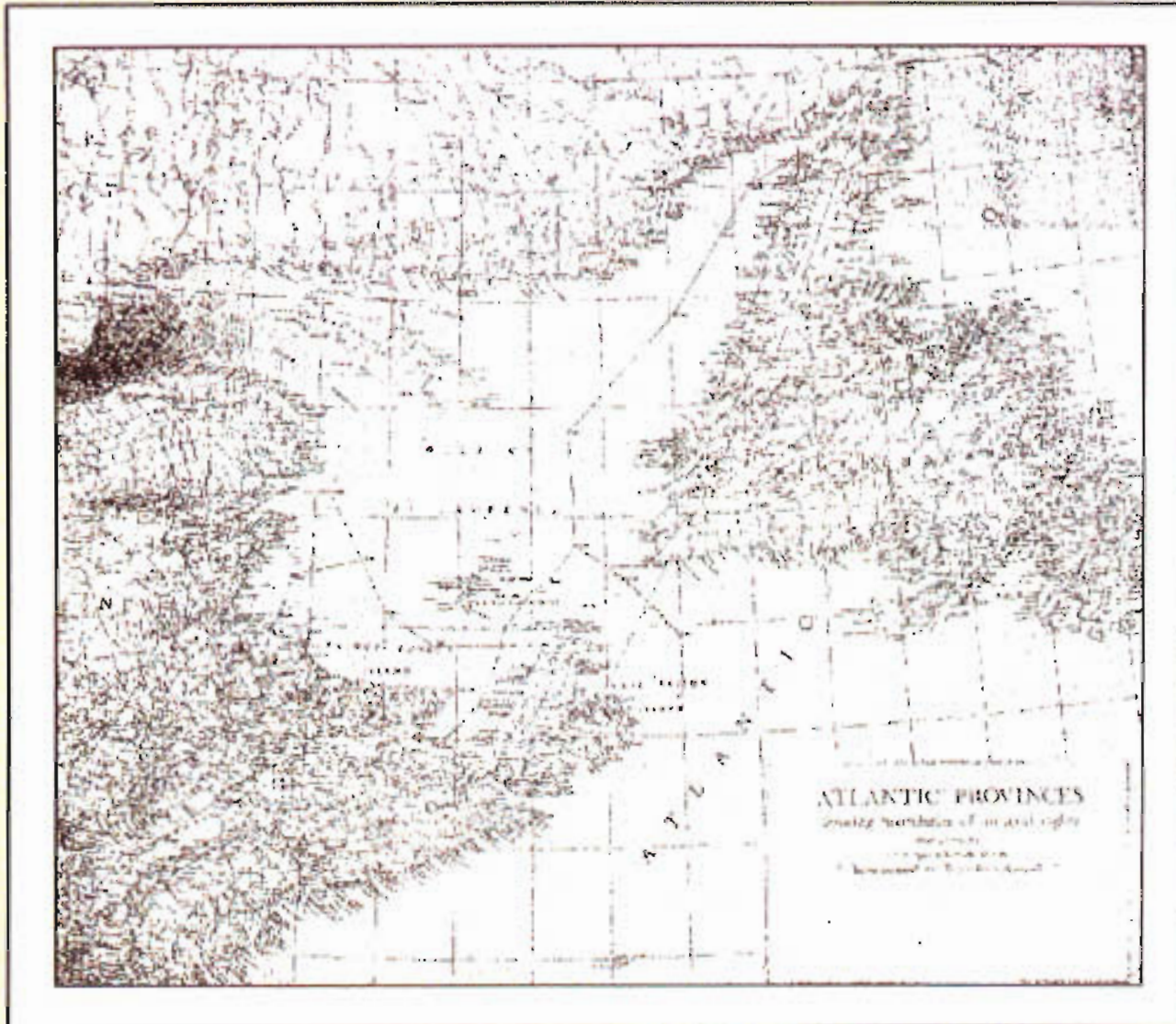


FIGURE 7

Boundary Turning
Points as Approved
by the Premiers
in 1972



Newfoundland's recitation of these events is not substantively different than Nova Scotia's account.

Source: NFLD M par. 40-43 vs NSM II – 19-23

However, Newfoundland notes that:

1. the list of coordinates showed the most seaward extension of the line between Nova Scotia and Newfoundland as Turning Point 2017.

Source: NFLD M par. 45

2. there was no follow-up to the work of the *JMRC*.

Source: NFLD M par. 44, 47



1. Turning Point 2017 is not the most seaward extension of the line.
 - The mandate of the Technical Committee was limited to the “location and methodology for defining the turning points as described in “Notes re: Boundaries of Mineral Rights as between Maritime Provincial Boundaries as set forth by the Atlantic Provinces Premiers in 1964.”
Source: Annex 41, Schedule A
 - Turning Point 2017 is the last turning point provided by the “Notes re: Boundaries”.
Source: Annex 18 or Annex 31
 - The *1964 Agreement* provides for a line running from Turning Point 2017 “S.E. to International Waters”.
 - **Figure 8** is an accurate depiction of the boundary established by the *1964 Agreement*.

Source: Annex 18 or Annex 31

NEWFOUNDLAND'S POSITION IS BASELESS (Cont'd)



FIGURE 8

The *1964 Agreement*
with Defined Turning
Points Approved
in 1972

Source: Figure 8



2. There was a follow-up to the work of the *JMRC*.
 - The *JMRC* had suggested on January 17, 1969 that the turning points of the boundaries be approved by written agreement and confirmed by legislation.
Source: Annex 41 at 2
Source: NFLD M par. 44
 - The chair of the *JMRC* wrote to his colleagues on May 12, 1969 to seek, *inter alia*, agreement of the Provinces on the Boundaries delineated by the turning points and confirmation by provincial and federal legislation.
Source: See the Allard letter under **Annex 43** at 3
 - The East Coast Provinces Premiers did agree to these boundaries at their June 17-18, 1972 meeting.



The *JMRC* met again on May 24, 1972.

The *JMRC* agreed on eight principles relating to various aspects of the common Provincial position on the offshore.

The Secretary of the *JMRC* was directed to write to each of the five East Coast Premiers asking that the eight principles be considered at the upcoming June meeting.

Source: Annex 44, p. 3

The principles are listed in the minutes of this meeting of the *JMRC* and in the June 16, 1972 letter which the Secretary of the *JMRC* wrote to each of the East Coast Provinces Premiers, including Premier Moores.

Source: Annex 44 and Annex 46

Source: NSM II – 24

APPROVAL OF THE TURNING POINTS (Cont'd)



-2-

The Honourable Frank D. Moores

June 16, 1972

- (2) The first negotiations between the four Atlantic Provinces and the Province of Quebec with the Government of Canada should take place at a meeting composed of the Prime Minister of Canada and the Premiers of the four Atlantic Provinces and the Prime Minister of Quebec and such officials as the first ministers deem necessary.
- (3) Ownership of the mineral resources in the submarine areas or lands within the Provinces and in their common territorial border zones is in the Provinces and not in the Government of Canada.
- (4) The Governments of the four Atlantic Provinces and the Province of Quebec should confirm the delineation and description of the boundaries of the said five Provinces in the submarine areas and the turning points in longitude and latitude relating thereto as was requested by the Honourable Paul E. Allard on May 12, 1969, then Vice-Chairman of the Joint Mineral Resources Committee. A copy of the map showing the delineation and description of the said boundaries and the turning points is attached to the Minutes.
- (5) The financial arrangements proposed by Prime Minister Trudeau; namely, a sharing of revenue in the Eastern Offshore Area by way of fifty per cent to the Government of Canada and fifty per cent to the ten provinces of Canada as the ten provinces might agree should be rejected.
- (6) Revenue from the minerals in the Eastern Offshore Area should be shared one hundred per cent by the four Atlantic Provinces and the Province of Quebec (The meeting did not attempt to determine a sharing formula among the said five Provinces. This matter the Committee felt should be determined by the first ministers of those provinces).
- (7) The four Atlantic Provinces and the Province of Quebec should immediately take steps to form an inter-provincial body, which body will concern itself primarily with the following matters:
 - (a) conservation and production,
 - (b) overall administrative policy,
 - (c) be a vehicle through which the Government of Canada will co-operate in resources management of the Eastern Offshore Area.



Annex 46

APPROVAL OF THE TURNING POINTS (Cont'd)



June 16, 1972 letter to the Premiers.



Annex 46

(4) The Governments of the four Atlantic Provinces and the Province of Quebec should confirm the delineation and description of the boundaries of the said five Provinces in the submarine areas and the turning points in longitude and latitude relating thereto as was requested by the Honourable Paul E. Allard on May 12, 1969, then Vice-Chairman of the Joint Mineral Resources Committee. A copy of the map showing the delineation and description of the said boundaries and the turning points is attached to the Minutes.



The first item on the Agenda of the “Meeting of First Ministers of The Atlantic Provinces and Quebec” held in Halifax on June 17-18, 1972 was: “Letter to First Ministers from Joint Mineral Resources Committee / Lettre du Comité Cojoint [sic] des Ressources Minérales aux Premiers Ministres.”

Source: Annex 49

The first ministers agreed to the delineation and description of the boundaries developed by the *JMRC*.

Although no minutes were kept of this meeting, the Premiers’ agreement was recorded in a communiqué issued following the meeting.

Source: Annex 54

Source: NSM II – 26-28

APPROVAL OF THE TURNING POINTS (Cont'd)



COMMUNIQUE ISSUED FOLLOWING MEETING OF THE PREMIERS OF NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND, AND THE VICE PREMIER OF QUEBEC.

THE PREMIERS OF NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND THE VICE PREMIER OF QUEBEC MET IN HALIFAX THIS WEEKEND TO DISCUSS OFFSHORE MINERAL RESOURCES.

THE OCCASION IT REPRESENTS THE FIRST TIME THE PREMIERS SAT DOWN TOGETHER TO DISCUSS THE QUESTION OF OFFSHORE MINERAL RESOURCES.

THE PREMIERS DISCUSSED THE QUESTION OF OFFSHORE MINERAL RESOURCES.

THE FIRST TIME

1. THE PROPOSAL BY THE GOVERNMENT OF CANADA ANNOUNCED IN 1968 IS NOT ACCEPTED.

COMMUNIQUE ISSUED FOLLOWING MEETING OF THE PREMIERS OF NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND, AND THE VICE PREMIER OF QUEBEC.

THE PREMIERS OF NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND THE VICE PREMIER OF QUEBEC MET IN HALIFAX THIS WEEKEND TO DISCUSS OFFSHORE MINERAL RESOURCES.

THE OCCASION HOLDS A RATHER HISTORICAL SIGNIFICANCE IN THAT IT REPRESENTS THE FIRST TIME THAT THE FIVE EASTERN PROVINCES HAVE SAT DOWN TOGETHER AT THE FIRST MINISTER LEVEL TO DISCUSS THE QUESTION OF OFFSHORE MINERAL RESOURCES.

THE PREMIERS DISCUSSED A NUMBER OF TOPICS RELATING TO THE OFFSHORE QUESTION WITH PARTICULAR ATTENTION BEING PAID TO GEOGRAPHY, FINANCIAL ARRANGEMENTS AND DEVELOPMENT OF OFFSHORE MINERAL RESOURCES.

THE FIRST MINISTERS AGREED THAT:

1. THE PROPOSAL CONCERNING OFFSHORE MINERAL RESOURCES MADE BY THE GOVERNMENT OF CANADA ON NOVEMBER 29, 1968, AND AS ANNOUNCED TO THE HOUSE OF COMMONS ON DECEMBER 2, 1968, IS NOT ACCEPTABLE TO THE FIVE EASTERN PROVINCES.

(2)

2. THE GOVERNMENTS OF THE FIVE EASTERN PROVINCES HAVE AGREED TO THE DELIMITATION AND DESCRIPTION OF THE OFFSHORE BOUNDARIES BETWEEN EACH OF THESE FIVE PROVINCES.

3. THE FIVE EASTERN PROVINCES ASSERT OWNERSHIP OF THE MINERAL RESOURCES IN THE SEAS OFF THE ATLANTIC COAST AND IN THE GULF OF ST. LAWRENCE IN ACCORDANCE WITH THE AGREED BOUNDARIES.

4. THE FIVE EASTERN PROVINCES WILL SEEK DISCUSSIONS WITH THE GOVERNMENT OF CANADA CONCERNING ARRANGEMENTS RELATED TO THE DEVELOPMENT OF THE OFFSHORE RESOURCES IN THOSE AREAS.

5. THE FIVE EASTERN PROVINCES WILL SEEK DISCUSSIONS WITH THE FEDERAL GOVERNMENT CONCERNING ARRANGEMENTS RELATED TO THE DEVELOPMENT OF THE OFFSHORE RESOURCES IN THOSE AREAS.

6. THE PREMIERS AND ADMINISTRATORS OF THE FIVE EASTERN PROVINCES WILL SEEK DISCUSSIONS WITH THE FEDERAL GOVERNMENT CONCERNING ARRANGEMENTS RELATED TO THE DEVELOPMENT OF THE OFFSHORE RESOURCES IN THOSE AREAS.

2. THE GOVERNMENTS OF THE FIVE EASTERN PROVINCES HAVE AGREED TO THE DELIMITATION AND DESCRIPTION OF THE OFFSHORE BOUNDARIES BETWEEN EACH OF THESE FIVE PROVINCES.

3. THE FIVE EASTERN PROVINCES ASSERT OWNERSHIP OF THE MINERAL RESOURCES IN THE SEAS OFF THE ATLANTIC COAST AND IN THE GULF OF ST. LAWRENCE IN ACCORDANCE WITH THE AGREED BOUNDARIES.

4. THE FIVE EASTERN PROVINCES AS A UNITED GROUP WILL SEEK DISCUSSIONS WITH THE GOVERNMENT OF CANADA CONCERNING ARRANGEMENTS RELATED TO THE DEVELOPMENT OF THE OFFSHORE RESOURCES IN THOSE AREAS.

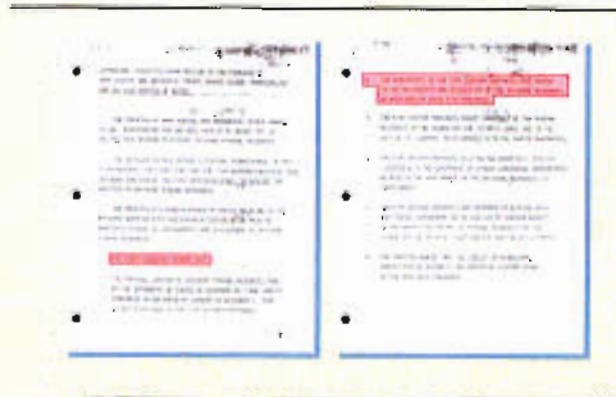
5. THE FIVE EASTERN PROVINCES ARE PREPARED TO DISCUSS WITH THE FEDERAL GOVERNMENT THE DELIMITATION OF CERTAIN ASPECTS OF THE ADMINISTRATION OF THE MINERAL RESOURCES IN THE SEAS OFF THE ATLANTIC COAST AND THE GULF OF ST. LAWRENCE.

6. THE PREMIERS AGREED THAT THE CONCEPT OF A REGIONAL ADMINISTRATIVE AUTHORITY WAS WORTHY OF FURTHER STUDY BY THE PROVINCES CONCERNED.

APPROVAL OF THE TURNING POINTS (Cont'd)



Communiqué of the Premiers.



Annex 54

THE FIRST MINISTERS AGREED THAT:

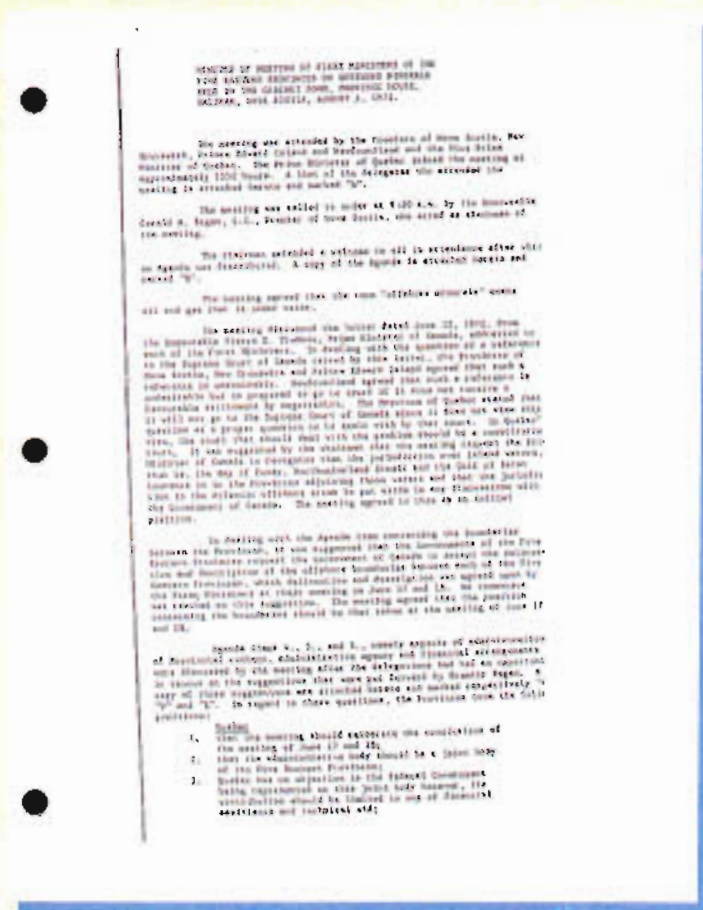
2. THE GOVERNMENTS OF THE FIVE EASTERN PROVINCES HAVE AGREED TO THE DELINEATION AND DESCRIPTION OF THE OFFSHORE BOUNDARIES BETWEEN EACH OF THESE FIVE PROVINCES.

APPROVAL OF THE TURNING POINTS (Cont'd)



The Premiers' agreement is also evidenced in the minutes of their next meeting held on August 2, 1972.

Source: Annex 56



Annex 56

APPROVAL OF THE TURNING POINTS (Cont'd)



Minutes of the August 2, 1972 meeting of the Premiers.



Annex 56

In dealing with the Agenda item concerning the boundaries between the Provinces, it was suggested that the Governments of the Five Eastern Provinces request the Government of Canada to accept the delineation and description of the offshore boundaries between each of the Five Eastern Provinces, which delineation and description was agreed upon by the First Ministers at their meeting on June 17 and 18. No consensus was reached on this suggestion. The meeting agreed that the position concerning the boundaries should be that taken at the meeting of June 17 and 18.

Agenda items 4., 5., and 6., namely aspects of administration of Provincial concern, administrative agency and financial arrangements



Newfoundland notes that:

1. The Premiers did not make any concrete decision at their June 17-18, 1972 meeting but only created a common philosophy.

Source: NFLD M par. 58 and NFLD CM par. 153

2. There is no evidence that one of the maps depicting the boundaries was presented to the Premier of Newfoundland.

Source: Figure 9

Source: NFLD CM par. 64-73



1. The Premiers did agree on the delineation and description of the boundaries in June 1972.
 - Premiers Moores stated so to the Newfoundland House of Assembly on June 19, 1972 upon returning from his meeting with the other Premiers.

Source: Annex 58

Source: NSM II – 30-31

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



June 15, 1952

Page 198

24-1

The House met at 1:00 P.M.

By Speaker in the Chair.

MR. SPEAKER: Order!

MR. SPEAKER: I would like to have a statement in the name of the House regarding the meeting in Halifax over the matter of the Five Eastern Provinces with the four Atlantic Provinces and the Vice-Royalty of Quebec.

The result of these meetings was a seven-point agreement, outlining the areas of cooperation between the provinces. In addition to the seven points, a number of letters relating to offshore resources were discussed including generally, fisheries arrangements and development.

The seven points are:

1. The proposal concerning offshore mineral resources made by the Government of Canada on November 20, 1950, and as amended in the House of Commons on December 1, 1950, is not acceptable to the Five Eastern Provinces.
2. The Governments of the Five Eastern Provinces have agreed on the delineation and demarcation of the offshore boundaries between each of these Five Provinces.
3. The Five Eastern Provinces assert jurisdiction of the mineral resources to the west of the Atlantic Coast and to the Gulf of St. Lawrence in accordance with the agreed boundaries.
4. The Five Eastern Provinces as a united group will seek consultation with the Government of Canada concerning arrangements related to the development of the offshore resources in these areas.
5. The Five Eastern Provinces are prepared to discuss with the Federal Government the delegation of certain aspects of the administration of the mineral resources to the

2491



Annex 58 at 1



Premier Moores' statement.



Annex 58 at 1

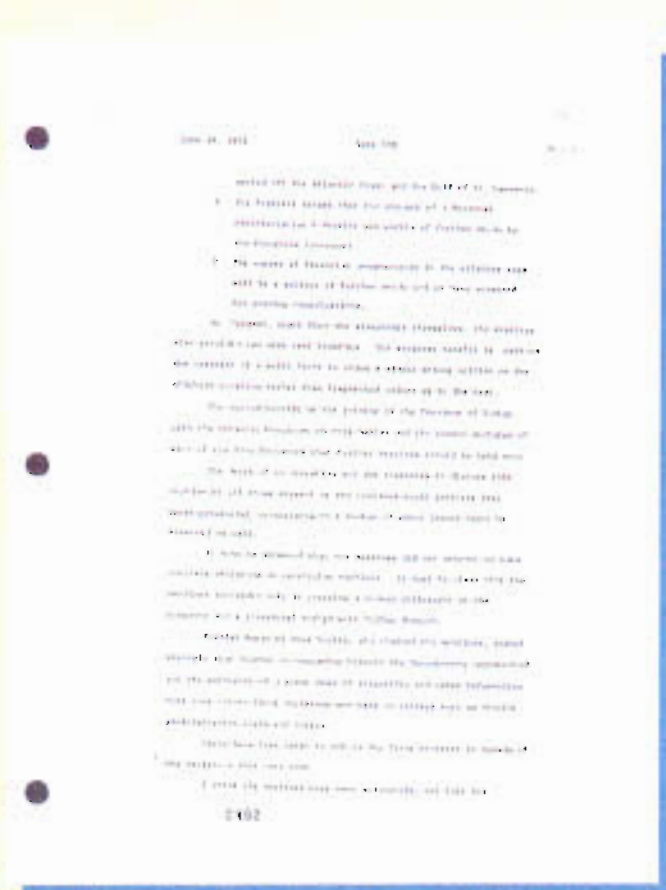
The result of those meetings was a seven-point agreement outlining the areas of co-operation between the provinces. In

The seven points are:

2. The Governments of the five Eastern Provinces have agreed to the delineation and description of the offshore boundaries between each of these five Provinces.



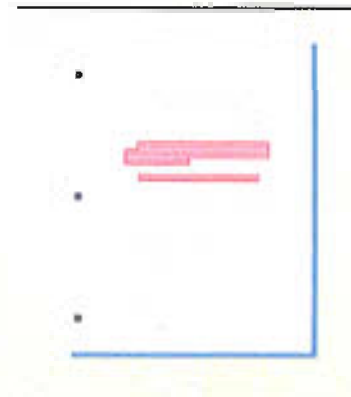
Contrary to Newfoundland's contention, Premier Moores' statement went further than simply reporting on ongoing negotiations.



Annex 58



Premier Moores' statement.



Annex 58

Mr. Speaker, apart from the agreements themselves, the meetings also provided two very real benefits. The greatest benefit is perhaps the creation of a solid front to voice a single strong opinion on the

offshore question rather than fractured voices as in the past.

The second benefit is the joining of the Province of Québec

with the Atlantic Provinces in this matter and the common decision of



Premier Moores' statement.

-
- [REDACTED]
-

Annex 58

The depth of co-operation and the readiness to discuss this problem by all those present at the meetings would indicate that inter-provincial co-operation on a number of other issues might be expected as well.

It must be stressed that the meetings did not attempt to make concrete decisions on particular problems. It must be clear that the meetings succeeded only in creating a common philosophy on the



- Officials from Nova Scotia and Newfoundland understood very well that the Premiers had reached an agreement regarding their boundaries at their June 17-18, 1972 meeting.
 - They said so to Dr. Crosby the day after the Premiers meet in June 1972.

Source: Annex 57

Source: NSM II – 28-30

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



The Deputy Attorney General of Nova Scotia, Mr. McLeod, indicated as follows:

Department of Energy, Mines and Resources
Ministère de l'Énergie, des Mines et des Ressources

CONFIDENTIAL
OTTAWA, K1A 0S4, June 18, 1972

NOTE FOR FILE

Telephone Conversation with Hon. Louis McLeod, Deputy Attorney General of Nova Scotia, this morning in view of the news reports on the meeting of the Premiers of the Five Atlantic Provinces held in Halifax over the weekend. He said he had attended the meeting, which began late Saturday, June 17, and continued over Sunday morning, June 18.

Mr. McLeod said that all the Premiers were present except for Premier Bourassa, and he was represented by his Vice-Premier, Donald MacQuinn. He went on to say that the newspaper reports were not entirely accurate - although the Premiers did assert ownership over offshore mineral rights, this was really nothing new. He said they had agreed on interpretational offshore boundary lines, and in response to one direct question confirmed that there were the same offshore boundaries that had been proposed to the Federal Government by the Hon. Premier of Nova Scotia, H. Stoppard, at the Federal-Provincial Conference of October 14, 1961 (in other words, the Premiers simply reconfirmed the same offshore boundaries that had been negotiated amongst their predecessors some years before for the purpose of sub-dividing respective respective areas of provincial jurisdiction in the East Coast Fisheries. He thought the meeting was a good thing - Premier McLeod had no quarrel to say that they were "short of a good thing - Premier McLeod" with the Federal Government.

When I queried him on the reported provincial requirement for a "regional administrative authority governing offshore resources", he said that really the situation had not changed all that much, although the Premiers did discuss the possibility of a regional board and some sort of agreement with Ottawa as well. When I asked him specifically what the key points were in this regard, he stated in particular that apart from revisiting the Atlantic Fisheries, and dealing with offshore developments, they were advised that discussions might be held in the offshore and they hoped for a considerable period of time, they were advised as to where

Annex 57

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



Dr. Crosby's notes.



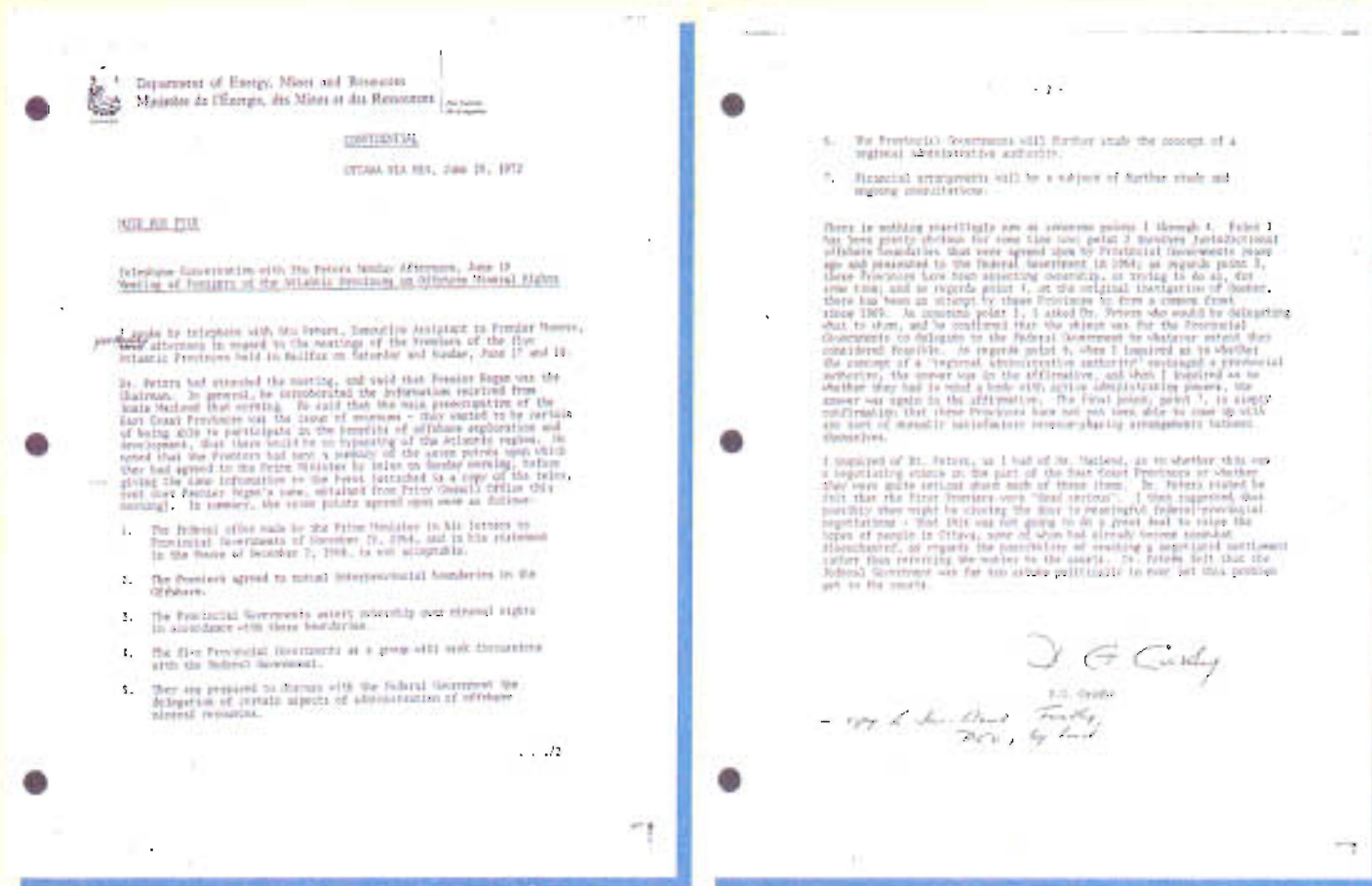
Annex 57

He went on to say that the newspaper reports were not entirely accurate - although the Premiers did agree on the offshore mineral rights, this was really nothing new. He said they had agreed on interprovincial offshore boundary lines, and in response to my direct question confirmed that these were the same offshore boundaries that had been presented to the Federal Government by the then Premier of Nova Scotia, Mr. Stanfield, at the Federal-Provincial Conference of October 14, 1964 (in other words, the Premiers simply reconfirmed the same offshore boundaries that had been negotiated amongst their predecessors some years before for the purpose of sub-dividing respective so-called areas of provincial jurisdiction in the East Coast Offshore). He thought the meeting was a good thing - Premiers had now gone so far that they were "almost forced to open meaningful negotiations" with the Federal Government.

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



For his part, the Executive Assistant to Premier Moores, Stu Peters, corroborated the information conveyed earlier by Innis MacLeod.





Dr. Crosby's notes.

Dr. Peters had attended the meeting, and said that Premier Duggan was the Chairman. In general, he corroborated the information received from Innis MacLeod that morning. He said that the main preoccupation of the East Coast Provinces was the issue of revenues - they wanted to be certain

some over (morning). In summary, the seven points agreed upon were as follows:

IN THE HOUSE OF DECEMBER 27, 1966, IS NOT ACCEPTABLE.

2. The Premiers agreed to mutual interprovincial boundaries in the Offshore.

3. The Provincial Governments assert ownership over mineral rights

There is nothing startlingly new as concerns points 1 through 4. Point 1 has been pretty obvious for some time now; point 2 involves jurisdictional offshore boundaries that were agreed upon by Provincial Governments years ago and presented to the Federal Government in 1964; as regards point 3, these Provinces have been asserting ownership, or trying to do so, for

Source: Annex 57



2. The Premier of Newfoundland had all the information necessary to make an informed decision.
 - There is no doubt that at the June 17-18, 1972 meeting Premier Moores had before him.
 - The minutes of the *JMRC* meeting of May 24, 1972.
Source: Annexes 44 and 49
 - The map prepared by the Technical Committee showing the turning points.
Source: Figure 8
 - Going into the June meeting Premier Moores was already fully aware of the status of the *1964 Agreement* and its boundaries. He had been reminded of them by his Minister of Mines, Mr. Doody, during a meeting with federal officials on May 9, 1972.
Source: Annex 47

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



MEMORANDUM
DEPARTMENT OF COLONIAL AFFAIRS

TO: SECRETARY OF STATE

FROM: HON. J. S. MACDONALD

DATE: MAY 11, 1953

RE: ...

MINUTES OF A MEETING BETWEEN HON. J. S. MACDONALD, PREMIER OF NEWFOUNDLAND, AND JOHN GARDNER, DEPUTY MINISTER OF STATE, DEPARTMENT OF COLONIAL AFFAIRS, ON MAY 11, 1953, AT OTTAWA.

- 1) This is to report a meeting between Hon. J. S. Macdonald, Premier of Newfoundland, and John Gardner, Deputy Minister of State, on May 11, 1953, at Ottawa.
- 2) After one of the usual pleats was appropriated to Premier Gardner's attention of himself and the Deputy Minister. There was reference to a letter written by Newfoundland to the Deputy Minister, in which he had to do with the situation of the island of St. John's. It was noted that he had not yet received his copy, but that there was a planned meeting of the Atlantic Fisheries Commission which would be followed by a meeting of the five islands.
- 3) The Minister returned the hour a number of questions with the Premier and the Deputy Minister's statement of May 10, that he had given to the Premier and that it appeared to be an attempt to ...

Page 2 - Hon. J. S. Macdonald - May 11, 1953

...to have been considered with respect to Newfoundland, which is a ...

- 4) Premier Gardner remarked that in this administration he did not have Federal jurisdiction because of the fact, but that he would be happy to discuss the matter with the Premier. He stated that he would be happy to discuss the matter with the Premier.
- 5) Premier Gardner said that, in going to the Premier's statement in which he said that he would like to have a better understanding of the situation and, in particular, about the situation of the Atlantic Fisheries Commission, that he would be happy to discuss the matter with the Premier.
- 6) The Minister stated that he would arrange to have two of the three officials of the Department, and perhaps from the Department of Finance, go to St. John's for the purpose of providing in detail the background of the situation since December 1948, and providing the information on the situation of the Atlantic Fisheries Commission. He said he would be very happy to discuss these officials. It was understood that Macdonald and Gardner would, O'Connell and Gardner would attend such discussions.
- 7) Premier Gardner raised the question of the situation of the Atlantic Fisheries Commission of the five islands. He stated that the five islands had, some years ago, agreed on boundary lines and showed in detail the situation of the islands. He stated that the situation of the five islands was not clear and that the situation of the five islands was not clear. He stated that the situation of the five islands was not clear and that the situation of the five islands was not clear.
- 8) Premier Gardner advised the Minister that for the time being he would like to discuss the situation with the other islands. He stated that he would like to discuss the situation with the other islands. He stated that he would like to discuss the situation with the other islands.

...



Annex 47



Notes of the meeting with Minister MacDonald.



Annex 47

understood that Newfoundland Ministers Doody, Crosbie and Cheeseman would attend such discussions.

7) Premier Moores raised the question of the distribution of the Provincial portion of offshore revenues amongst the Provinces, and was reminded by Mr. Doody that the five Atlantic Provinces had, some years ago, agreed on boundary lines and spheres of interest.

The Minister noted the problem of Carleton Island in discussions with Nova Scotia and the boundary issue with France. The question of



- Going into the June 1972 meeting, Premier Moores and his officials were undoubtedly aware of the interprovincial boundaries as drawn on the map reproduced as Figure 9.
 - Dr. Crosby's notes for his June 6, 1972 meeting with Premier Moores confirm that a map showing the interprovincial boundaries was shown and remitted to him.

Source: Annex 52



[Handwritten signature]

NOTE RELATED TO REVENUE-UNGAZE MAP FOR BUREAU OF LANDS WITH PARTIAL RECORD

ISLE OF ST. LAWRENCE

Total area (outside e.s.a. line) - 16,000 square miles
Water - 8,000 square miles (50%)
Non-Waterland - 11,000 square miles (69%)
Private Island - 1,100 square miles (6%)
New Seattle - 1,100 square miles (6.9%)
New Approach - 1,100 square miles (6.9%)

Atlantic Pool

Governmental Water - Total area (outside e.s.a. line) - 50,000 square miles
Non-Waterland - 44,000 square miles (88%)
New Seattle - 11,000 square miles (22%)

Atlantic Pool

Governmental Water - Total area - 20,000 square miles
Non-Waterland - 18,000 square miles (90%)
New Seattle - 2,000 square miles (10%)

[Handwritten signature]
U.S. Grant

May 10, 1978

*Natural Annotated of Canada, R.C. 1978, ~~Atlantic~~ Energy, Power
and Resources, Vol. 219, P. 6*



Annex 52



Dr. Crosby's notes for his June 6, 1972 meeting.



Annex 52

NOTES RELATED TO REVENUE-SHARING MAP FOR BRIEFING SESSION WITH PREMIER MOORES

Newfoundland - 13,500 square miles (23%)

Prince Edward Island - 5,500 square miles (9%)

Nova Scotia - 3,500 square miles (5.5%)

Newfoundland - 244,500 square miles (75%)

Nova Scotia - 83,000 square miles (25%)

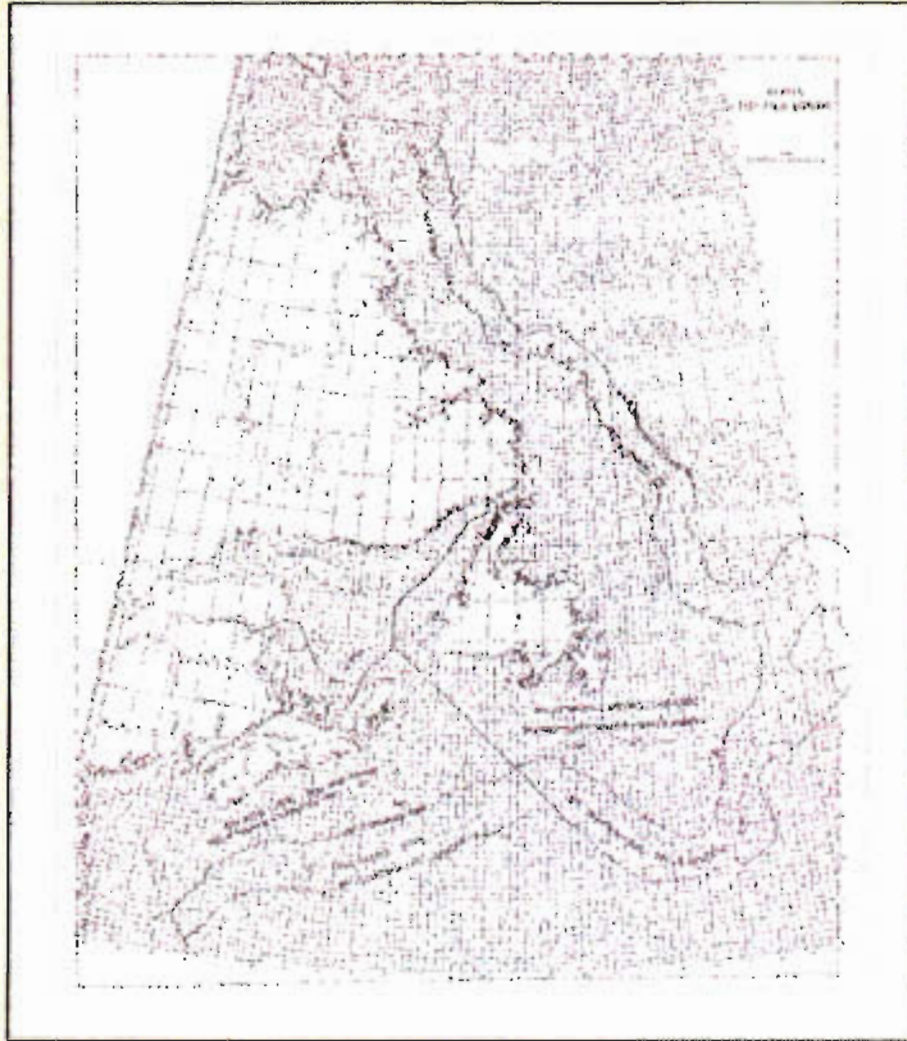


FIGURE 9

East Coast Offshore
Map Presented to
Premiers in 1972

Source: Figure 9

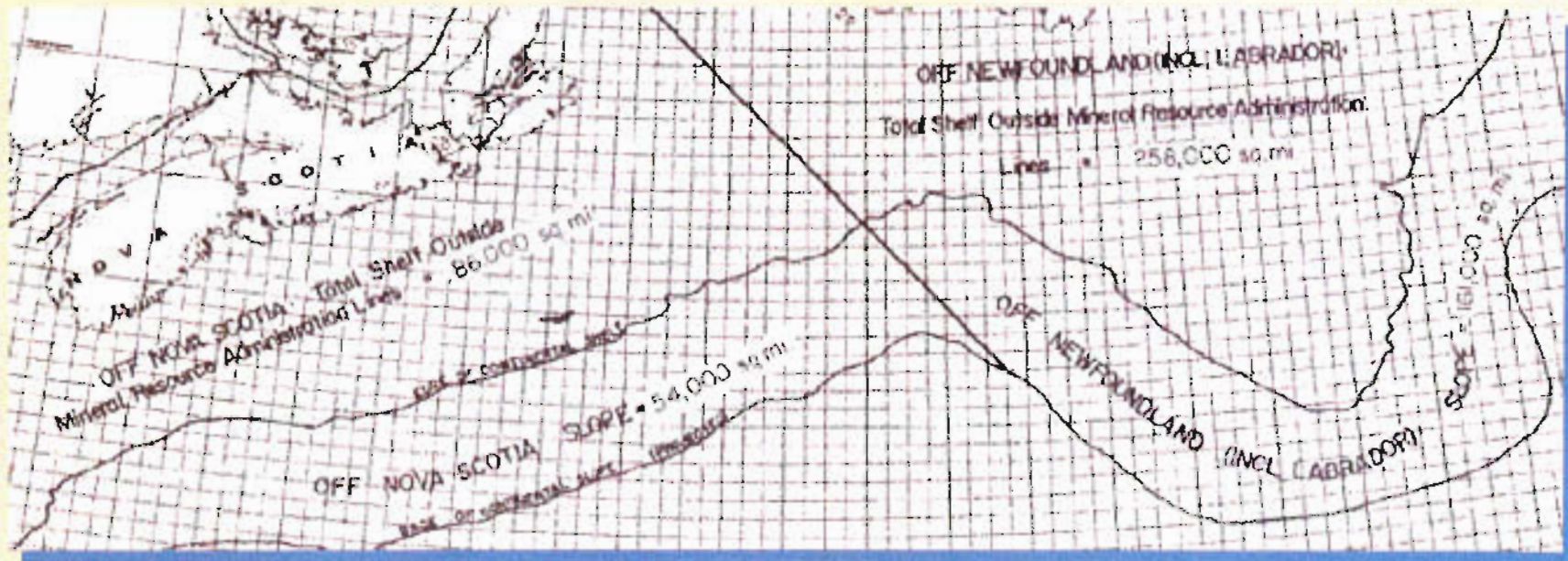
NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



East Coast Offshore.



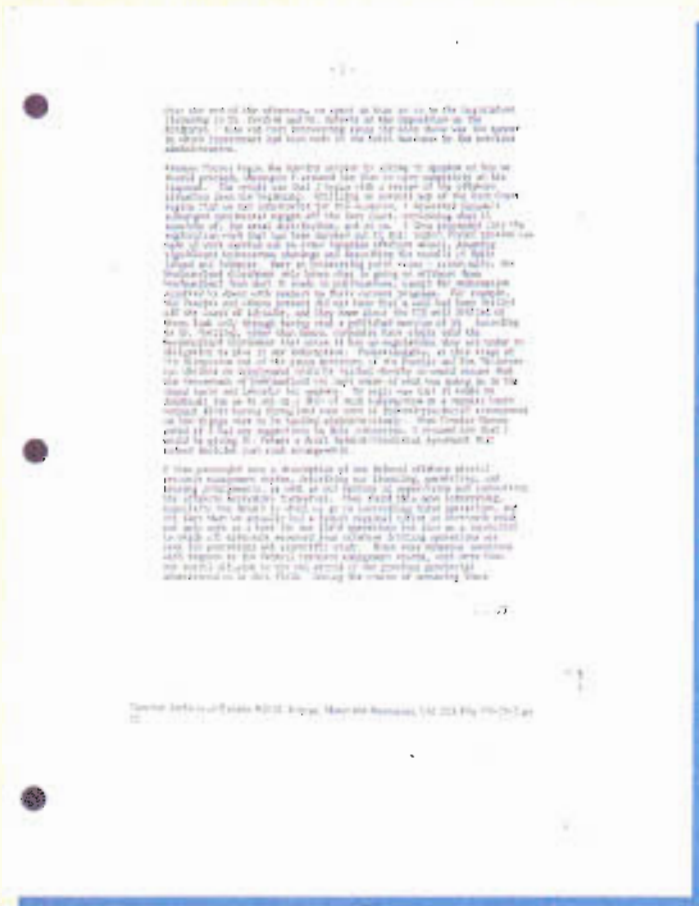
Figure 9



NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



→ Dr. Crosby's June 14, 1972 account of his meeting with Premier Moores provides the same information.



Annex 48



Dr. Crosby's June 14, 1972 account.



Annex 48

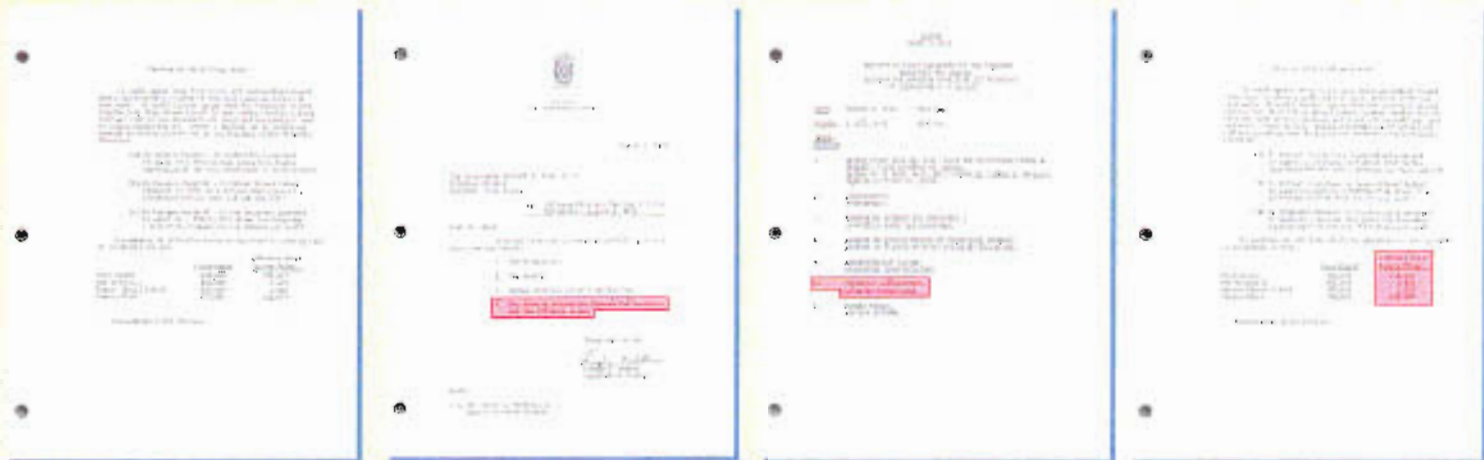
in which investments had been made in the hotel business by the previous administration.

Premier Moores began the opening session by asking my opinion on how we should proceed, whereupon I assured him that we were completely at his disposal. The result was that I began with a review of the offshore situation from the beginning. Utilizing an overall map of the East Coast region that we had constructed for the occasion, I described Canada's submerged continental margin off the East Coast, explaining what it consists of, its areal distribution, and so on. I then proceeded into an exploration work that has been carried out in this region (brief mention was made of work carried out in other Canadian offshore areas), locating

NEWFOUNDLAND'S POSITION IS UNFOUNDED (Cont'd)



→ A map showing these boundaries was used at the Premiers' meeting of August 2, 1972.





Cover letter for the Premiers meeting.



Annex 53, p. 1.,
agenda and item 6

2. The Agenda;

3. Backup material on each agenda item;

4. Map showing boundaries between the Provinces
and the Offshore Areas.

Yours very truly,



Agenda for the August 2, 1972 meeting.



Annex 53, p. 1.,
agenda and item 6

5. ADMINISTRATIVE AGENCY.
ORGANISMES ADMINISTRATIFS.
6. FINANCIAL ARRANGEMENTS.
ENTENTER FINANCIALER.
7. FUTURE ACTION.
ACTIONS FUTURES.



Background material for agenda item no. 6.



Annex 53, p. 1.,
agenda and item 6

A committee of officials should be appointed to come up with an acceptable formula.

	<u>Population*</u>	<u>Offshore Area*</u> <u>Square Miles</u>
Nova Scotia	750,000	140,000
New Brunswick	650,000	2,400
Prince Edward Island	100,000	7,000
Newfoundland	500,000	420,000

*approximate round figures.



- There was a follow-up to the work of the *JMRC* and to the request made by its Vice-Chairman Allard on May 12, 1969 (**Annex 43**).
- In June 1972, the Premiers of the East Coast Provinces agreed to the delineation and description of the boundaries using the turning points developed by the *JMRC*.
- The Premiers' agreement of 1972
 - > confirmed the existence of the *1964 Agreement*.
 - > reiterated the content of the *1964 Agreement*.
 - > was not conditional on the execution of an instrument or the passing of provincial or federal legislation.

P.S. neither was required for the Premiers to have the intent necessary to be bound by their agreement

- > erases any ambiguity that Newfoundland attempts to identify in documents which predate the Premiers' meeting of June 17-18, 1972

1973: NEWFOUNDLAND GOES ON ITS OWN



Newfoundland believed it had a “unique” claim to jurisdiction over its offshore.

Newfoundland believed that it was in a stronger position than other provinces.

In 1973, Newfoundland decided to distance itself from the joint efforts of other Provinces to negotiate an acceptable compromise on offshore jurisdiction.

In fact, the Statement of Premier Moores following the June 1972 East Coast Provinces Premiers’ Meeting was a presage to Newfoundland’s decision to go at it alone.

Source: Annex 58 NSM - II - 32-33



(...)

Newfoundland has a unique case, Mr. Speaker, regarding offshore ownership. All of the five Provinces in Eastern Canada have claims to offshore resources, but Newfoundland has a claim in writing, drafted and signed by Federal Authorities and that is Term 37 of the Terms of Union.

Legally and constitutionally, Newfoundland has the strength to fight any attempt to take these resources away.

(emphasis added)

Source: Annex 58



The *JMRC* had envisioned the possibility of individual Provinces seeking different degrees of control over their offshore.

The *JMRC* had pointed out that first, the Provinces had to agree on the location of their interprovincial boundaries.

Source: Allard Letter, **Annex 43**, p. 3

Once the delineation of the boundaries by the turning points was agreed by the Premiers in June of 1972, this is exactly what Newfoundland did.

Source: NSM II – 32-33

1973: NEWFOUNDLAND GOES ON ITS OWN (Cont'd)



In so doing, Newfoundland did not disavow the boundaries established in the *1964 Agreement*.

Intensive discussions held between the Eastern Provinces in the Spring of 1973 did not reveal any disagreement of Newfoundland with the boundaries established.

Source: Annex 60

Newfoundland's own "Proposal for Provincial Responsibility in Administration" tabled at these meetings does not express any concern with the agreed boundary.

Source: NSM II – 33-34

1973: NEWFOUNDLAND GOES ON ITS OWN (Cont'd)



In September 1973, Newfoundland finally advises the other Eastern Provinces that it will submit its own proposal to the Federal Government.

Source: Annexes 63 and 64

Again in the correspondence exchanged on this occasion, no mention is made of a need to revisit or renegotiate the boundaries.

Source: Annex 63

Newfoundland's 1973 proposal assumed and affirmed the existence of the *1964 Agreement*.

Source: NSM II – 35-37



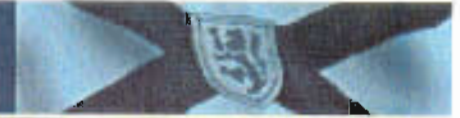
2. (...)

(ii) In this Agreement

(a) “adjacent submarine area” means all that area seaward of the mean low water mark lying off the coast of Newfoundland as defined in term 2 of the Terms of Union between Newfoundland and Canada to which Canada as a sovereign state may claim exclusive rights for the purpose of exploring for and the exploitation of the mineral resources of the seabed and sub-soil thereof *subject to any lines of demarcation agreed to by the Province of Newfoundland with respect to the submarine areas within the sphere of interest of other Provinces.*

(emphasis added)

Source: Annex 63, attachment at 2



In the 1977 *MOU* between the Federal Government and Prince Edward Island, New Brunswick and Nova Scotia.

THE AREA

2. The Area to be covered by the Agreement will be the seabed and subsoil seaward from the ordinary low water mark on the coasts of Nova Scotia, New Brunswick, and Prince Edward Island to the continental margin, or to the limits of Canada's jurisdiction to explore and exploit the seabed and subsoil off Canada's coast, whichever may be farther, and where applicable, **to the Interprovincial Lines of Demarcation agreed upon in 1964 by Nova Scotia, New Brunswick and Prince Edward Island.**

(emphasis added)

Source: Annex 67 NSM II – 37-38



Newfoundland challenges Nova Scotia's record in respect of the *1977 MOU*.

Source : NFLD CM par. 177-178

- Newfoundland ignores that the reasons which led to the replacement of *1977 MOU* by the 1982 Canada-Nova Scotia Agreement are unrelated to the issue of the definition of the offshore area on the basis of the boundaries established by the *1964 Agreement*.

Newfoundland also challenges Nova Scotia's constant use of the boundaries established in the *1964 Agreement*.

Source : NFLD CM Par. 181-182

- Newfoundland's references to the *Petroleum Resources Act* and the *Energy and Mineral Resources Conservation Act* are unwarranted.

Source : Annexes 151 and 156

- Newfoundland's reference to the *Gas Utilities Act* is also unwarranted.

Source : Annex 157



In the *1982 Canada-Nova Scotia Agreement*.

Source: Annex 68

- In Schedule I, the “Area Covered by this Agreement” is described using the metes and bounds of the *1964 Agreement*.
- The line dividing Nova Scotia and Newfoundland is specified as running “to the outer edge of the continental margin” rather than “to International waters”.

Source: NSM II – 39-40

THE 1964 AGREEMENT HAS BEEN APPLIED BY NOVA SCOTIA (Cont'd)



Article 5 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Whereas the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

That the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

That the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

That the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

That the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Source: Annex 68, Schedule I at 2, 3

Article 1 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Article 2 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Article 3 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Article 4 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Article 5 of the 1964 Agreement between the
Government of Nova Scotia and the
Government of the United Kingdom, signed
at London on the 17th day of August 1964 and
approved by the House of Commons on the 24th
day of August 1964, is hereby approved by
the House of Representatives of Nova Scotia
this 1st day of August 1964.

Source: Annex 31, at 24, 25

THE 1964 AGREEMENT HAS BEEN APPLIED BY NOVA SCOTIA (Cont'd)



(Magdalen Islands); thence northeasterly to the midpoint between St. Paul Island and East Point; thence northeasterly to the midpoint between Cape Anguille and East Point;

(Nfld.) From this point the boundary runs southeasterly to the midpoint between St. Paul Island (Nova Scotia) and Cape Ray (Newfoundland); thence to a point midway

westerly to the midpoint between St. Mary Island and Cape St. Gregory; thence southwesterly

thence southerly to the midpoint between East Point (Magdalen Islands) and Cape Anguille, which is the mutual corner of Quebec, Nfld. and N.S.

Boundary with (N.S.) From the above common point, southeasterly to the midpoint between St. Paul Island and Cape Ray; thence southeasterly to the midpoint between Flint Island and Grand Bruit; thence S.E. to International waters.

-- 3 --

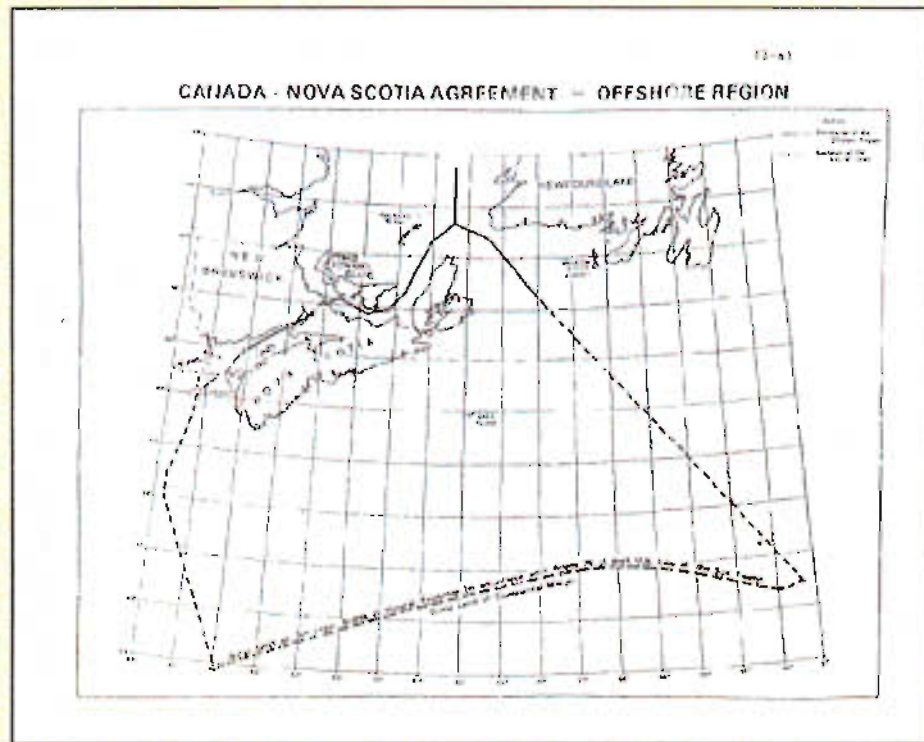
between Flint Island (Nova Scotia) and Grand Bruit (Newfoundland); thence southeasterly to the outer edge of the continental margin;

Source: Annex 31, at 24, 25

Source: Annex 68, Schedule I at 2, 3



The outer limits of Nova Scotia's area were depicted on a sketch attached to the 1982 Canada – Nova Scotia Agreement reproduced in Figure 10.



Source: Figure 10

FIGURE 10

Map Accompanying
1982 Canada-Nova
Scotia Agreement
Showing 1964
Agreement Boundary to
Limits of Continental
Margin



In the 1984 implementing legislation,

- Schedule I reproduces the provisions of Schedule I of the 1982 Canada–Nova Scotia Agreement.
- Schedule I includes the latitude and longitude coordinates for the turning points.
- These coordinates match exactly the ones agreed to by the Eastern Premiers in June 1972.
- The outer segment of the boundary between Newfoundland and Nova Scotia is specified as a line running “southeasterly in a straight line and on an azimuth of 135°00’00” to the outer edge of the continental margin”.

Source: Annex 70 NSM II – 40



5. The 1986 Canada-Nova Scotia Accord and 1988 Canada-Nova Scotia Act
 - both reproduce the language used in Schedule I to the 1984 implementing legislation of the 1982 implementing legislation of the 1982 agreement regarding the limits of Nova Scotia's offshore area.

Source: NSM II – 41

IN SUMMARY



TABLE II

**CONSISTENT APPLICATION OF THE 1964 AGREEMENT
IN FEDERAL-PROVINCIAL AGREEMENTS AND IN LEGISLATION 1964-1988**

AGREEMENTS AND LEGISLATION	DEFINITIONS OF BOUNDARIES AND LIMITS OF OFFSHORE AREAS
<i>1964 Agreement</i>	Offshore areas described by meter and boards, i.e., turning points and straight lines between turning points. Final, seaward (outer) segment of agreed Nova Scotia - Newfoundland boundary defined as southeast or southeasterly "to international waters".
<i>1972 Coordinates Approved By Premiers</i>	Latitude/longitude coordinates plotted for previously agreed turning points described in 1964 Agreement.
<i>1977 MOU</i>	Adoption of "Interprovincial Lines of Demarcation agreed upon in 1964". Offshore areas described by turning points and straight lines between turning points. Final seaward (outer) segment of Nova Scotia - Newfoundland boundary defined as southeast or southeasterly "to international waters".
<i>1982 Canada - Nova Scotia Agreement</i>	Offshore area described by meter and boards, using turning points from 1964 Agreement. Final segment of Nova Scotia - Newfoundland boundary defined as "southeasterly to the outer edge of the continental margin". ¹
<i>1984 Canada-Nova Scotia Agreement Implementing Legislation</i>	Offshore area described by meter and boards, using turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972. Final segment of Nova Scotia - Newfoundland boundary defined as "southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin". ²
<i>1986 Canada-Nova Scotia Accord</i>	Offshore area as defined in 1984 Implementing Legislation; offshore areas described by meter and boards, using turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972. Final segment of Nova Scotia - Newfoundland boundary defined as "southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin".
<i>1988 Canada-Nova Scotia Accord Act</i>	Offshore area described by meter and boards, using turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972. Final segment of Nova Scotia - Newfoundland boundary defined as "southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin".

¹ Adjustments to the description of Nova Scotia's offshore area in the Gulf of Maine were made in recognition of the decision in the Gulf of Maine case, since the Bay of Fundy was excluded from the Agreement.
² Further adjustments were made pursuant to the Gulf of Maine decision; Bay of Fundy included in Agreement.

Source: Table II

NEWFOUNDLAND'S ALLEGED OBJECTIONS



1. Newfoundland refers to a number of documents in support of its contention that it never agreed to the boundaries and even objected to them.
2. Those documents can be classified in 3 different categories:
 - Those stating Newfoundland's position.
 - Those containing Nova Scotia's alleged admissions.
 - Those emanating from the Federal Government.



1. First category: documents stating Newfoundland's position.
 - October 6, 1972 letter of Minister Doody to M. Kirby.
Source: NFLD Doc. #57
 - simply made a technical inquiry regarding the “precise determination of the interprovincial boundary between the Nova Scotia and Newfoundland sectors.”
 - “Newfoundland [was] not questioning the general principles which form the basis of the present demarcation”.

Source: NFLD Doc. # 57 at 1



- Newfoundland expressed the view that “[t]he boundary should be established as accurately as possible”.
Source: NFLD Doc. # 57 at 1

- Newfoundland acknowledged that it had agreed to the boundary.
Source: NFLD Doc. # 57 at 1

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



October 6th, 1972.

Dr. H.J. Kirby,
Principal Secretary to the Premier,
Office of the Premier,
Halifax, N.S.

Dear Dr. Kirby,

I would like to take up a matter which I have previously discussed with you informally. This is the matter of the precise determination of the interprovincial boundary between the Nova Scotia and Newfoundland sectors.

In doing so, the Government of Newfoundland is not questioning the general principles which form the basis of the present demarcation. However, we feel that the line should be established according to those scientific principles generally accepted in establishing marine boundaries. The boundary should be established as accurately as possible.

Attached hereto is what we consider a more accurate reflection of the general principles of division to which we have agreed. I hasten to add that this version is meant for explanatory purposes only and is itself inaccurate because of the limitations of the maps used in its preparation. In essence, it merely follows the configuration of the coasts more precisely.

The Government of Newfoundland feels that if a find were made in an area immediately adjacent the present version of the boundary at a point where it is inaccurately established, then a severe strain would be placed on the regional agreement. I think we both feel that the possibility of such problems arising must be minimized where possible.

The Government of Newfoundland feels sure that a

..... 2/



NFLD Doc 57, p.1

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



Mr. Doody's October 6, 1972 letter.



NFLD Doc 57, p.1

I would like to take up a matter which I have previously discussed with you informally. **This is the matter of the precise determination of the interprovincial boundary between the Nova Scotia and Newfoundland sectors.**

In doing so, the Government of Newfoundland is not questioning the general principles which form the basis of the present demarcation. However, we feel that the line should be established according to those scientific principles generally accepted in establishing marine boundaries. The boundary should be established as accurately as possible.

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



Mr. Doody's October 6, 1972 letter.



NFLD Doc 57, p.1

Attached hereto is what we consider a more accurate reflection of the general principles of division to which we have agreed. I hasten to add that this version is meant for explanatory purposes only and is itself inaccurate because of the limitations of the maps used in its preparation. In essence, it merely follows the configuration of the coasts

find were made in an area immediately adjacent the present version of the boundary at a point where it is inaccurately established, then a severe strain would be placed on the regional agreement. I think we both feel that the possibility of such problems arising must be minimized where possible.



- October 17, 1972 follow-up letter of legal advisor C. Martin to M. Kirby.
Source: Annex 61 or NFLF Doc. # 59
 - Newfoundland states that “there was no response and the issue remained unresolved”.
Source: NFLD M par. 62
 - There is no foundation for such an assertion.



- May 3, 1973 comments by Newfoundland officials: newly appointed Minister Barry (successor to Minister Doody) and legal adviser C. Martin.
Source: Annex 62 or NFLD Supp. Doc. # 13
 - Newfoundland states that it was made clear that “it did not accept the interprovincial boundaries”.
Source: NFLD CM par. 168
 - This is not supported by the account of this meeting of Federal-Provincial officials.
Source: Annex 62 or NFLD Supp. Doc. # 13, pp. 12-13

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



these 300 and 500... following in 1979, 1980, expressed that he did not accept the Board's view on such matters as the... of a point, even though the power could be vested in the land's owner. The right to walk into forest areas on the issuance of a permit would conflict with the Federal Government and the adjacent Province. The idea was more direct, involving some way could be taken as follows: Province has authority in issuing the issuance of all permits. In any case, the province should be in the provincial forest, not in the forest. The board would not have any discretionary power of an administrative character.

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Q1199
Q1200

Source: Annex 62

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



- Minutes of May 3, 1973 meeting of Federal-Provincial officials.



Annex 62

Kirby: Inquired whether Newfoundland accepted the provincial offshore boundaries?

Barry: Indicated that Newfoundland had not decided on a final position; a number of documents relating to this seem to be missing from their files.

NEWFOUNDLAND'S ALLEGED OBJECTIONS (Cont'd)



Annex 62

Martin:

Expressed the view that the Newfoundland Premier had not participated in the interprovincial conference at which the boundary lines were accepted. Considered that Newfoundland did not accept the actual lines, which appeared to have been drawn using strange baseline criteria - if the Federal Government were to build a new lighthouse, the lines might change.

Austin:

Read the preamble of the "Terms of the Federal Legislation" document, from 1871 through to 1874.



- Further, these Newfoundland officials were obviously unaware of :
 - Premier Smallwood's participation to the *1964 Agreement*.
 - Premier Moores' agreement with the turning points in June 1972.
 - both the details of the boundaries agreed to by the Provinces and the means used to determine them.
 - the fact that the boundaries had not in fact been drawn using baselines.

Source: NSM II – 35



- January 6, 1986 comments of Newfoundland's legal advisor R. Penney on the implementing legislation of the Canada Newfoundland Atlantic Accord.
Source: NFLD Doc. # 102
 - Newfoundland states that Mr. Penney “explained that the line between Newfoundland and Labrador and Nova Scotia had not yet been resolved”.
Source: NFLD M par. 105
 - This statement is overreaching.



→ Mr. Penney actually wrote:

“The specific boundary lines between the offshore areas of the various provinces must be defined in the future. The Federal Government wishes to authorize a federal official, the Surveyor General of Canada, to make this determination in the absence of provincial agreement.”

Source: NFLD Doc. # 102, p. 3



- April 16, 1992 Newfoundland internal memo of Regulatory Affairs Specialist P. Laracy.
Source: NFLD Doc. # 109

→ Newfoundland states that, at a meeting of March 27, 1992, its official did not agree with the Nova Scotia ADM for Natural Resources' statement that the offshore boundary with Newfoundland was properly set out in the Nova Scotia Accord legislation.

→ The official would have said rather as follows:

“To my knowledge the province has never officially recognized the boundaries which abut our offshore areas as set out in the Nova Scotia Accord Act.”

Source: NFLD Doc. # 109,p. 2



2. Second category: documents containing Nova Scotia's admissions.
 - October 17, 1972 reply letter of M. Kirby to Minister Doody stating:

“I am confident that any difficulty with regard to the boundary line can be resolved amicably.”

Source: NFLD Doc. # 58
 - is a response to Minister Doody October 6, 1972 letter inquiring about the precise determination of the boundary (NFLD Doc. #57).



- April 30, 1974 comments of M. Kirby at a meeting of Federal-Provincial officials on East Coast Offshore Mineral Resources.
Source: NFLD Doc. # 66
- The statement of M. Kirby “that Nova Scotia had no evidence of Newfoundland agreeing on the boundaries is better understood by reading the full exchange which took place at the meeting.”

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



SECRET

- Scott:** Asked to take to secure written confirmation that Newfoundland has withdrawn from the East Coast Provinces' group and has no further interest in these negotiations and their outcome. Inquired whether any problems would arise from the withdrawal of Newfoundland, for example as regards inter-provincial boundaries.
- Kirby:** Indicated his understanding that there had been an agreement on boundaries among the Provinces some years ago but that Newfoundland claimed they had no written evidence of Newfoundland's acceptance of these boundaries.
- Miller:** Indicated his understanding that the four Eastern Provinces had agreed on boundaries in 1961 and that Quebec had agreed to them in 1966. He did not know whether there was anything in writing as to the original four Provinces' agreement. His understanding was that a sub-committee of representatives of the various provincial land departments had been created and had actually drawn up the boundary agreement.
- Smith:** Noted that all these events predated the administration of the Premier now in office.
- Malins:** Indicated that Messrs. Stanfield and Leung had discussed this boundary matter and that Quebec had indicated its adherence to the proposal.
- Kirby:** Indicated that Nova Scotia had no evidence of Newfoundland agreeing on the boundaries, but would search its files.
- Scott:** Noted that absence of agreed interprovincial boundaries could raise the territorial problem and asked Mr. Smith what the legal consequences might be.
- Smith:** Stated he was not sure of the significance of all this. Stated that he was trying to develop an arrangement that would be legally defensible. Suggested that even if provinces had made an earlier political agreement on boundaries, this did not necessarily mean that they were locked into the arrangement.
- Malins:** Stated that what would be the best document would be used by a group of five-Province arrangement as to boundaries.



NFLD Doc 66, at p. 6

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



SECRET

- Andrus:** Asked to look to secure written confirmation that Newfoundland had withdrawn from the East Coast Provinces' group and that he had no further interest in those negotiations and their outcome. Inquired whether any problems would arise from the withdrawal of Newfoundland, for example as regards inter-provincial boundaries.
- Kilbride:** Indicated his understanding that there had been an agreement on boundaries among the Provinces some years ago but that Newfoundland claimed they had no written evidence of Newfoundland's acceptance of these boundaries.
- Widdowson:** Indicated his understanding that the four Eastern Provinces had agreed on boundaries in 1942 and that Quebec had agreed to them in 1964. He did not know whether there was anything in writing as to the original five Provinces' agreement. His understanding was that a subcommittee of representatives of the various provincial land departments had been created and had actually drawn up the boundary agreement.
- Andrus:** Inquired that all these events predated the administration of the Premier now in office.
- Widdowson:** Indicated that Messrs. Stanfield and Levesque had discussed this boundary matter and that Quebec had indicated its adherence to the proposal.
- Kilbride:** Indicated that New Brunswick had no evidence of Newfoundland's agreeing on the boundaries, but would search its files.
- Widdowson:** Noted that absence of agreed interprovincial boundaries could create the territorial problem and advised that there was the legal consequences might be.
- Andrus:** Stated he was not sure of the significance of all this. Suggested that we were trying to develop an arrangement that would be legally enforceable. Suggested that even if Provinces had made an earlier political agreement on boundaries, this did not necessarily mean that they were locked into the arrangement. Asked to what extent the Federal Government would be involved in a four- or five-Province agreement as to boundaries.

NFLD Doc 66, at p. 6

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



- Minutes of the April 30, 1974 meeting of Federal-Provincial officials.



NFLD Doc 66, at p. 6

this boundary question and that Quebec had not expressed its
adhesion to the proposal.

Kirby:

Indicated that Nova Scotia had no evidence of Newfoundland
agreeing on the boundaries, but would search its files.

Austin:

Noted that absence of agreed interprovincial boundaries could
raise the territorial problem and asked Mr. Smith what the



- August 13, 1974 report of M. Kirby regarding the state of negotiations between the Provinces and the Federal government.
Source: NFLD Doc. # 68
 - Mr. Kirby's observation that among the technical problems yet to be resolved with the Federal Government was an agreement indicating precisely where the boundaries lie between each of the five Eastern Provinces
 - is taken out of context and is given too much importance.
 - is considered purely a "technical problem".
 - pertains to issues relating to the negotiations between the Federal Government on the one hand and the Provinces on the other hand.

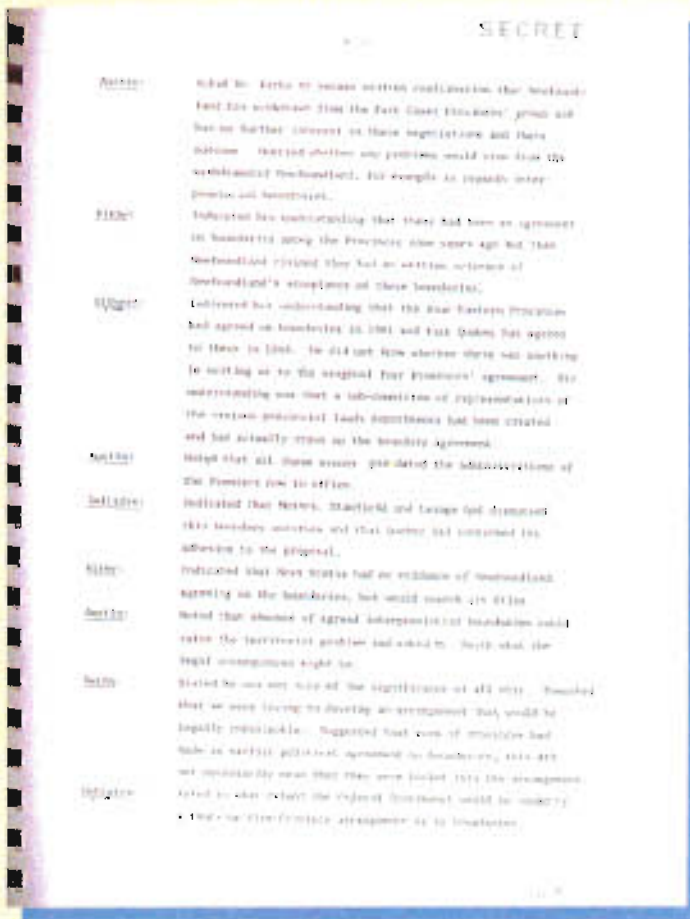


- given that this problem was perceived as one which could be resolved by further negotiations at the officials level, it certainly does not refer to Newfoundland's recently stated position that it never accepted the *1964 Agreement*.
- is probably explained by the Federal government's concern about the attitude of Newfoundland following its withdrawal from the common front (see for example the earlier concern expressed by Federal Deputy Minister Austin at 30 April 1974 Federal-Provincial meeting).

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



- Minutes of the April 30, 1974 meeting of Federal-Provincial officials.



NFLD Doc 66, at p. 6

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



2. There are, however, a number of subsidiary issues that still remain to be settled, such as:

- (a) the nature of the provincial veto over first issuance. What conditions, if any, should be attached to exercise of this veto? What form of legislation can be devised to reconcile the provincial position that, if only for political-cosmetic reasons, there must be an adjacent-Province veto and the federal insistence on retaining ultimate decision-making power?
- (b) the nature of the revenue-sharing agreement and the actual figures for the federal/provincial split. Should there be a regional East Coast pool or should the adjacent Province collect all the provincial share of the revenues derived from its adjacent area? The expressed federal preference is for a regional pool. As regards the federal-provincial split, this is a matter for First Ministers to resolve;
- (c) how should the problem of conflicting mineral grants be settled, i.e. grants issued to different parties by the adjacent Province and the Federal Government?
- (d) what 'territory' will the Agreement cover? The withdrawal of Newfoundland from the negotiations and the possible refusal of that Province to accept the interprovincial boundaries drawn up in 1964 has raised this problem, which is essentially a problem for the Provinces;
- (e) should the Agreement be limited to offshore oil and gas resources or should it cover all mineral resources, which latter is the federal view.

Newfoundland Position

- 1. The Newfoundland position as set out in its submission of September 27, 1975, envisages the federal Government in effect transferring, by legislation, all its powers of administration and control over offshore mineral resources. This was rejected in the Prime Minister's January 28 letter to Premier Moores. To our knowledge, no reply to this letter has been received from Newfoundland.
- 2. According to Dr. Kirby, Chairman of the provincial team in the officials' discussion, the Newfoundland Government has no interest in the current discussions or their outcome; the only discussions it envisages are possible Ottawa-Newfoundland discussions.


T. W. H. H. H.
May 16, 1974



NFLD Doc 67

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



- T. Thorgrimsson's notes of May 16, 1974 on the Federal-Provincial negotiations.



NFLD Doc 67

parties by the adjacent Province and the Federal Government?

- (d) what 'territory' will the Agreement cover? The withdrawal of Newfoundland from the negotiations and the possible refusal of that Province to accept the interprovincial boundaries drawn up in 1964 has raised this problem, which is essentially a problem for the Provinces;
- (e) should the Agreement be limited to offshore oil and gas resources or should it cover all mineral



- Mr. Kirby's observations are thus
 - not indicative of a disagreement between the East Coast Provinces over the issue of the boundaries.
 - simply a reflection of Newfoundland's absence from the negotiation table.
- May 12, 1976 comments of G. Walker at a meeting of Federal-Provincial officials to negotiate what eventually became the *1977 MOU*.
Source: NFLD Doc. #71
 - the statement attributed by the Nova Scotia official G. Walker must be read in its context.

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



SECRET

Bill Enquired whether it would be possible for the administering Agency to handle mineral rights related as well as offshore.

McLellan Noted that this might be done, citing example of RCMP handling police duties under contract to some provinces.

McLellan Raised question of how the Board would be incorporated. It would be set up by federal legislation but there would have to be provincial back-up legislation.

McLellan Suggested that provinces could do legislation with a federally-incorporated Board their agent.

McLellan Noted the Territories would have to agree among themselves as to how they would share revenues.

McLellan Raised the question of the territory to be covered by the agreement.

McLellan Commented that there could be only one area of controversy, that between Nova Scotia and Newfoundland.

McLellan Resolved that it would be necessary to consult Quebec and Newfoundland with regard to the interprovincial types of demarcation.

McLellan Noted that Nova Scotia had no right a milegram from Province before accepting the interprovincial lines of demarcation agreed to in 1984.

McLellan Inquired whether the proposed new federal legislation were compatible to provincial representations?

McLellan Commented that there were only one or two basic points on which FET had some questions but that these were not significant.

McLellan Stated that there would be the opportunity to discuss possible amendments, before drafting is completed and at the Parliamentary Committee stage.

McLellan Stated that Nova Scotia did not see much wrong with the proposed regulations in the technical sense.

McLellan Agreed that FET would be prepared to accept the new legislation.

McLellan Raised the problem of conflicting permits.

A long discussion ensued on resolving conflicting permits. The FET only one work area (over 45 thousand acres) in shallow (6000 meters) - 20000 parcels, but only Nova Scotia 1.5 million acres of federal territory. Most permits are assigned to provincially-owned Crown Corporation permits in which the federal has done its work. It was agreed that officials should meet to work out the problem of conflicting permit issues, and that in the agreement to be reached primary concern be not to require to create any kind of permit conflict.



NFLD Doc 71, p.13

NOVA SCOTIA'S ALLEGED ADMISSIONS (Cont'd)



- Minutes of the May 12, 1976 meeting of Federal-Provincial officials.



NFLD Doc 71, p.13

<u>MacNabb</u>	Noted the Provinces would have to agree among themselves as to how they would share revenues. Raised the question of the territory to be covered by the Agreement.
<u>Walker</u>	Commented that there would be only one area of controversy, that between Nova Scotia and Newfoundland.
<u>MacNabb</u>	Remarked that it would be necessary to consult Quebec and Newfoundland with regard to the interprovincial lines of demarcation.
<u>MacLeod</u>	Noted that Nova Scotia had on file a telegram from Premier Lesage accepting the interprovincial lines of demarcation agreed to in 1964.



- this statement attributed to Mr. Walker
 - refers only to the possibility of a controversy concerning Newfoundland.
 - is in response again to concerns expressed by Federal officials over the impact of the absence of Newfoundland from the negotiation table.
 - is consistent with similar concerns being voiced regarding Québec's absence from the table.
 - > in the case of Québec, however, the assembly is reminded that this Province has given it's consent to the *1964 Agreement* in writing.

- this statement attributed to G. Walker
 - is not indicative of a disagreement between the East Coast Provinces over the issue of the boundaries .
 - is simply a reflection of Newfoundland's absence from the negotiation table.

THE FEDERAL GOVERNMENT'S POSITION



3. Third category : documents emanating from the Federal Government.
- Several are accounts of negotiation meetings between Federal and Provincial officials.
 - Where the federal officials voice concerns about the meaning and possible impact of Newfoundland's withdrawal from the common front.
 - Where Federal officials raise doubts about Newfoundland's continued acceptance of the boundaries established by the *1964 Agreement*.
 - Others refer to the need, in the context of Federal-Provincial agreements, for the Federal government and the Provinces involved to agree on delimitation lines between provinces in offshore areas.
 - They are only indicative of the Federal government's long held view that it was not bound by the *1964 Agreement*.



- Other more recent documents reveal the Federal government's attempts, once Newfoundland had indicated that there existed a dispute over its boundary with Nova Scotia, to resolve it by negotiation between the parties.
- None is really helpful to establish whether Newfoundland disagreed or protested the boundaries established by the *1964 Agreement* after 1972.



- Furthermore, Newfoundland's analysis studiously ignores the various documents emanating from the Federal government in which the existence of the *1964 Agreement* between the East Coast Provinces was recognized
- According to Newfoundland, the various documents emanating from the Federal government are inconsistent with the notion that the *1964 Agreement* is binding on Newfoundland.
- This is simply false.
- The notes to file of D.G. Crosby of his conversations with Stu Peters and Innis McLeod on June 20, 1972 confirm the opposite.
Source: Annex 57
- The August 4, 1976 letter of Prime Minister Trudeau confirms the opposite.
Source: Annex 66, Schedule I at 4

THE FEDERAL GOVERNMENT'S POSITION (Cont'd)



11 26 1964 11 29 112 125 1479

MINERAL RESOURCES

- 4 -

As regards revenue sharing, the federal government would be prepared, provided there is agreement on all other aspects of the proposed new arrangement, to consider sharing in the proportion of 70% provincial, 25% federal all revenues derived directly from mineral resources within the areas covered by the arrangement and seaward of the mineral resource administration lines. The revenues to be shared will be those resulting from the normal process of resource management, such as royalties, rentals, fees and bonuses, and not those derived from price management mechanisms such as export taxes. If it becomes necessary in order to obtain international recognition of Canada's rights respecting seabed resources where our continental margin extends beyond 200 miles to adopt some form of revenue sharing with the international community for those portions of the margin beyond the 200-mile limit, the revenues to be shared with the provinces in respect of these regions will be those appertaining to Canada after any such international revenue-sharing process.

The proportions of the interprovincial division of revenues will also have to be included in the final Agreement. It is understood that this matter is under active consideration by the governments concerned.

The federal government is also prepared, again provided there is agreement on all other aspects of the arrangement, to consider delegating the mineral resource administration lines, seaward of which mineral resource revenues would accrue to the provinces, regardless of whether day-to-day administration is handled by the federal government or a provincial group. The re-located lines would be a minimum of 5 kilometers from the shore and might extend further seaward where there are existing submarine coal ridges.

As regards the limits of the areas to be covered by the arrangement, the interprovincial lines of demarcation agreed upon by the five eastern provinces in 1964 could be accepted as a basis for settlement.

... 5



Annex 66, Schedule I at 4

THE FEDERAL GOVERNMENT'S POSITION (Cont'd)



Annex 66, Schedule I at 4

As regards the limits of the areas to be covered by the arrangement, the interprovincial lines of demarcation agreed upon by the five eastern provinces in 1964 would be accepted as a basis for settlement.



Newfoundland challenges Nova Scotia's record in respect of the *1977 MOU*.

Source : NFLD CM par. 177-178

- Newfoundland ignores that the reasons which led to the replacement of *1977 MOU* by the 1982 Canada-Nova Scotia Agreement are unrelated to the issue of the definition of the offshore area on the basis of the boundaries established by the *1964 Agreement*.

Newfoundland also challenges Nova Scotia's constant use of the boundaries established in the *1964 Agreement*.

Source : NFLD CM Par. 181-182

- Newfoundland's reference to the *Petroleum Resources Act* and the *Energy and Mineral Resources Conservation Act* are unwarranted.

Source : Annexes 151 and 156

- Newfoundland's reference to the *Gas Utilities Act* is also unwarranted.

Source : Annex 157