



SUBSEQUENT CONDUCT (II) & INTERNATIONAL AND DOMESTIC LAW

Phillip Saunders
Counsel
Province of Nova Scotia

March 19, 2001

NS PERMIT RESERVATION GRID SYSTEM

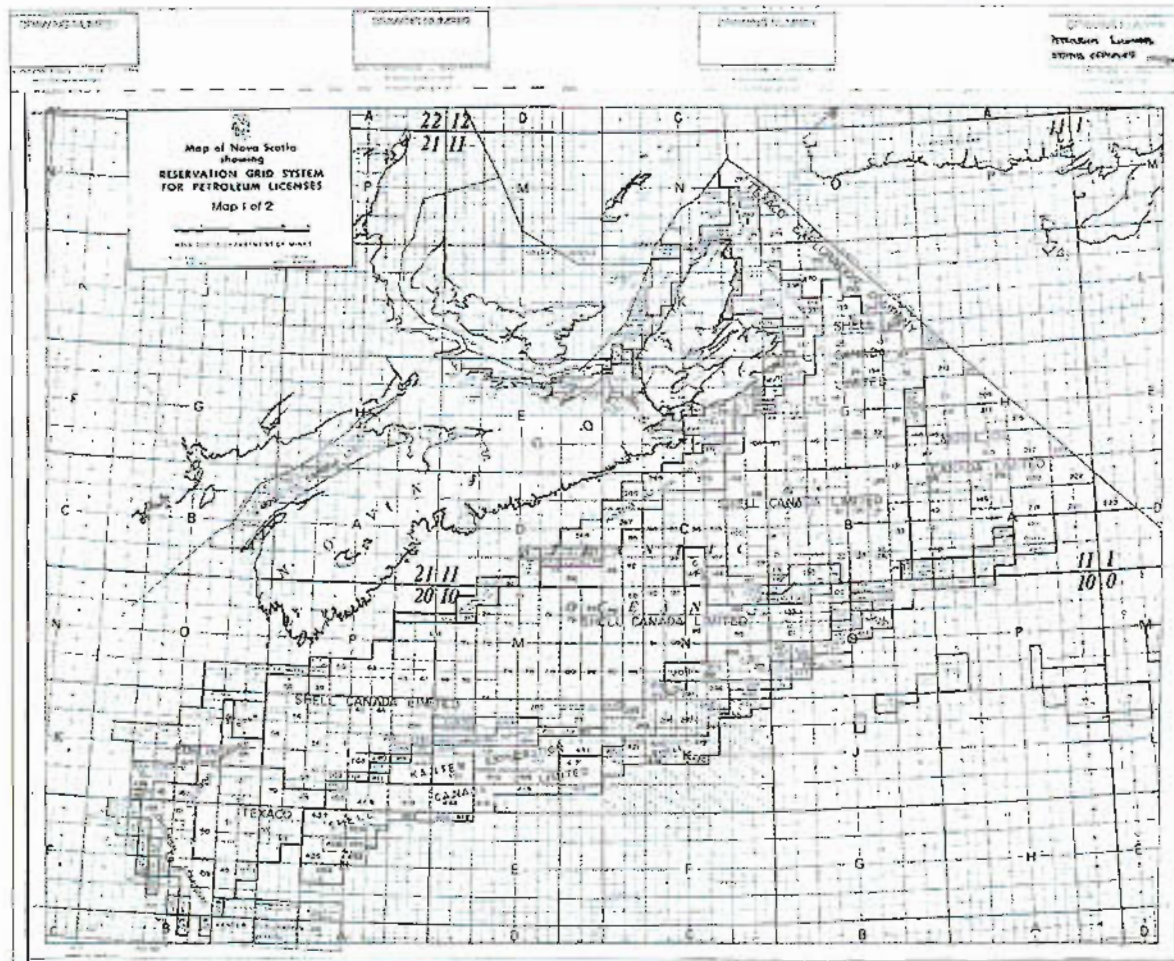
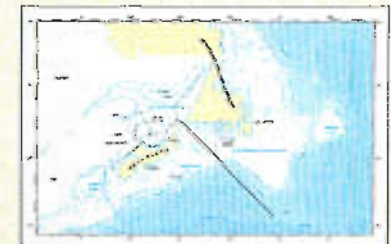


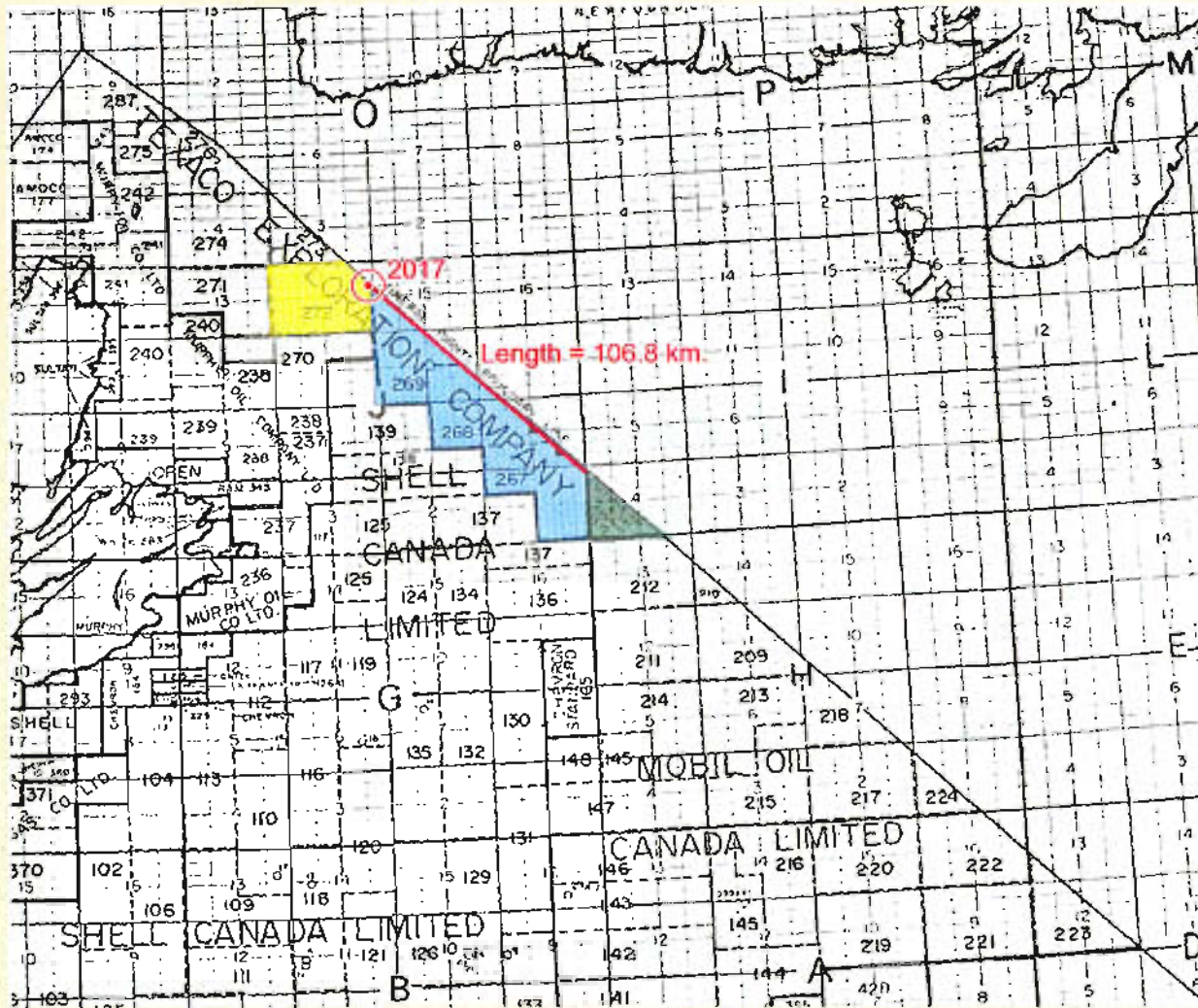
FIGURE 16

Implementation of the
1964 Agreement by
Nova Scotia:
Offshore Exploration
Permits 1965-1971



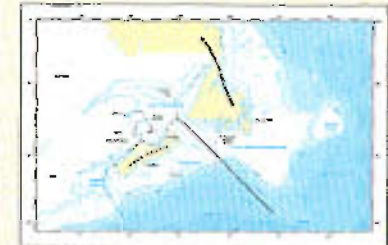
1964 Agreement
Boundary

"COMMON BOUNDARY" PROVISIONS



Permits containing
"common boundary"
provisions

- 272
- 267-269
- 372



1964 Agreement
Boundary

1967 MOBIL PERMIT

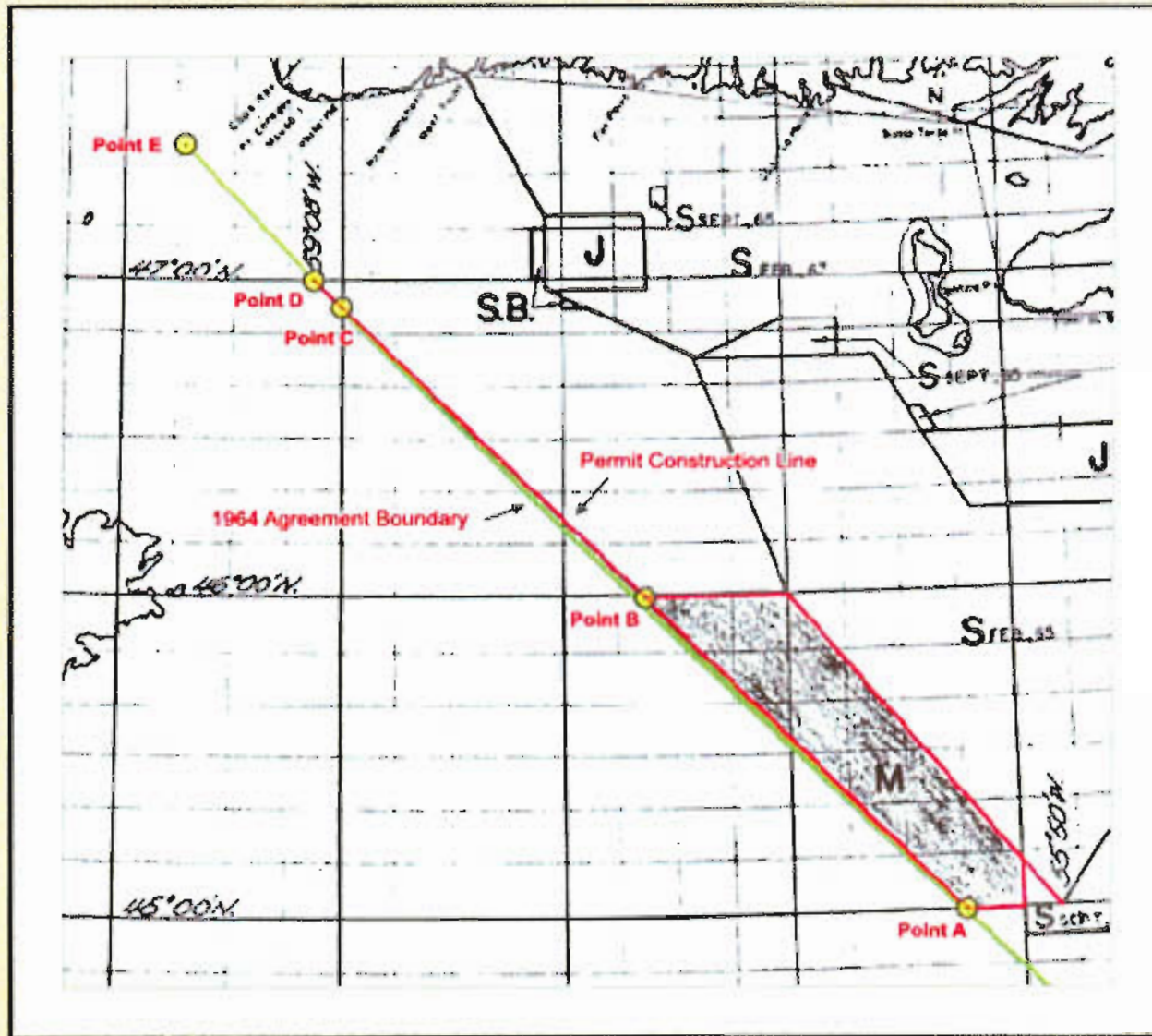


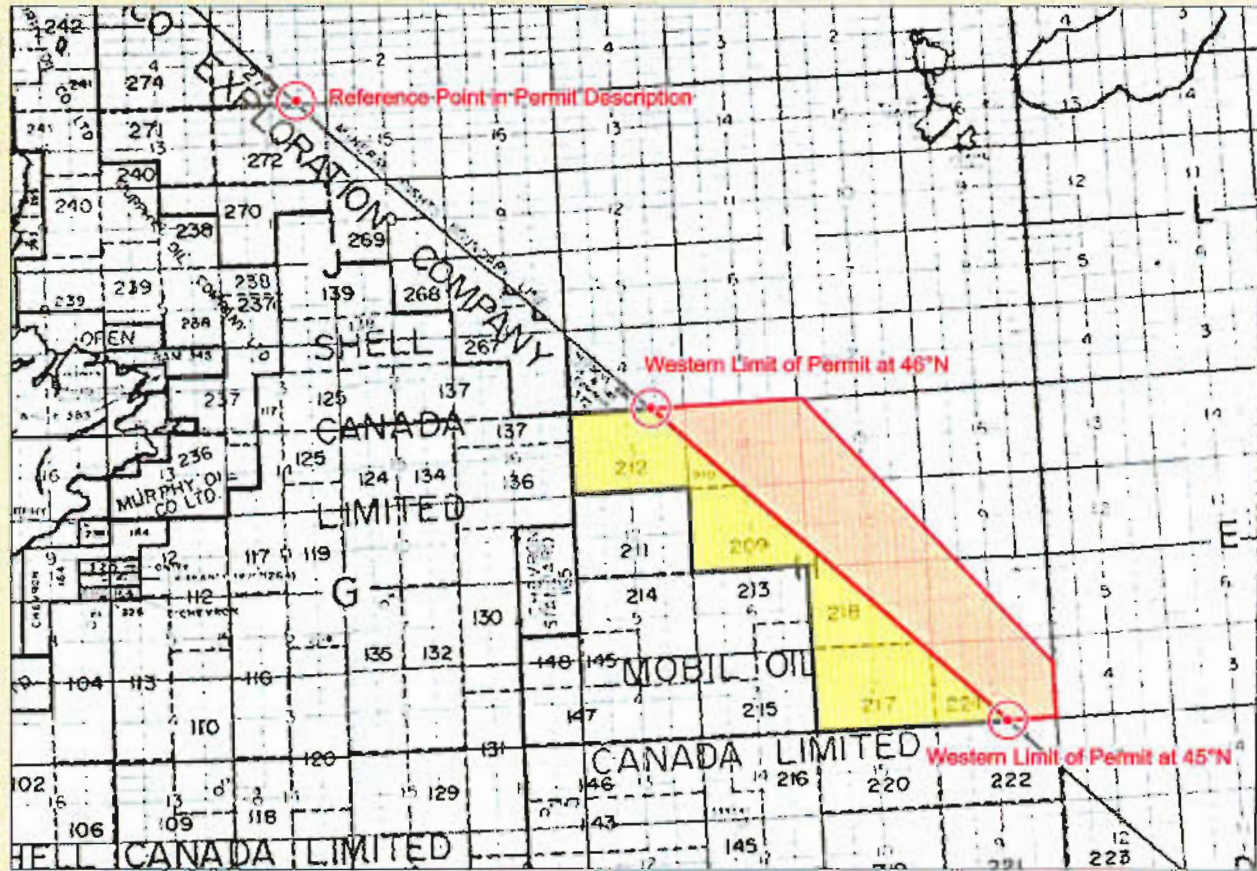
FIGURE A-5

Construction of the Mobil Oil Permit of September 15, 1967 in Conformity with the 1964 Agreement Boundary



1964 Agreement Boundary

NS & NFLD MOBIL PERMITS



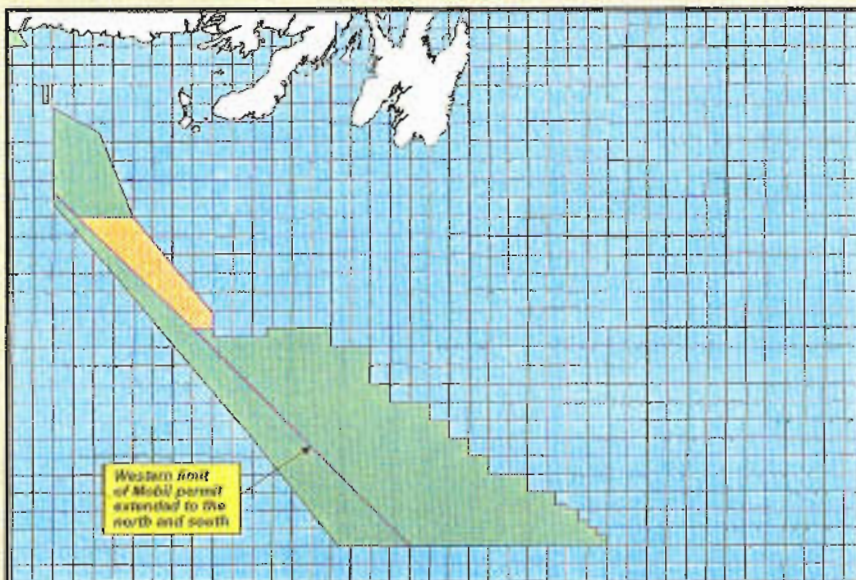
Nova Scotia and Newfoundland Mobil Permits Abutting the Boundary

- Mobil Permits-
Nova Scotia
- Mobil Permits-
Newfoundland

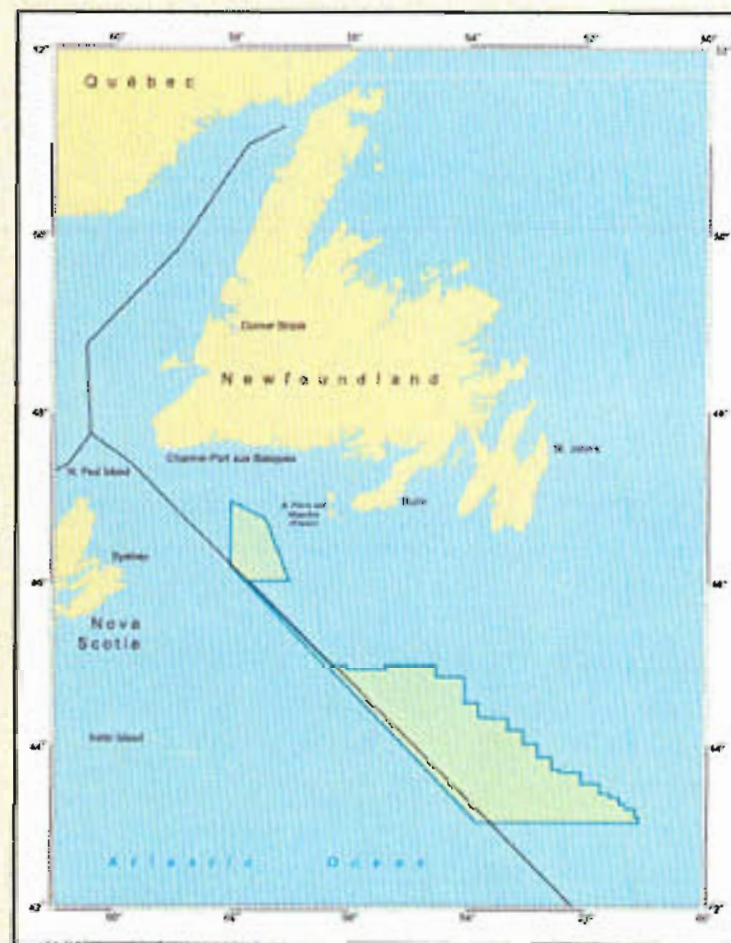


1964 Agreement
Boundary

CONFLICTING VERSIONS OF KATY PERMIT

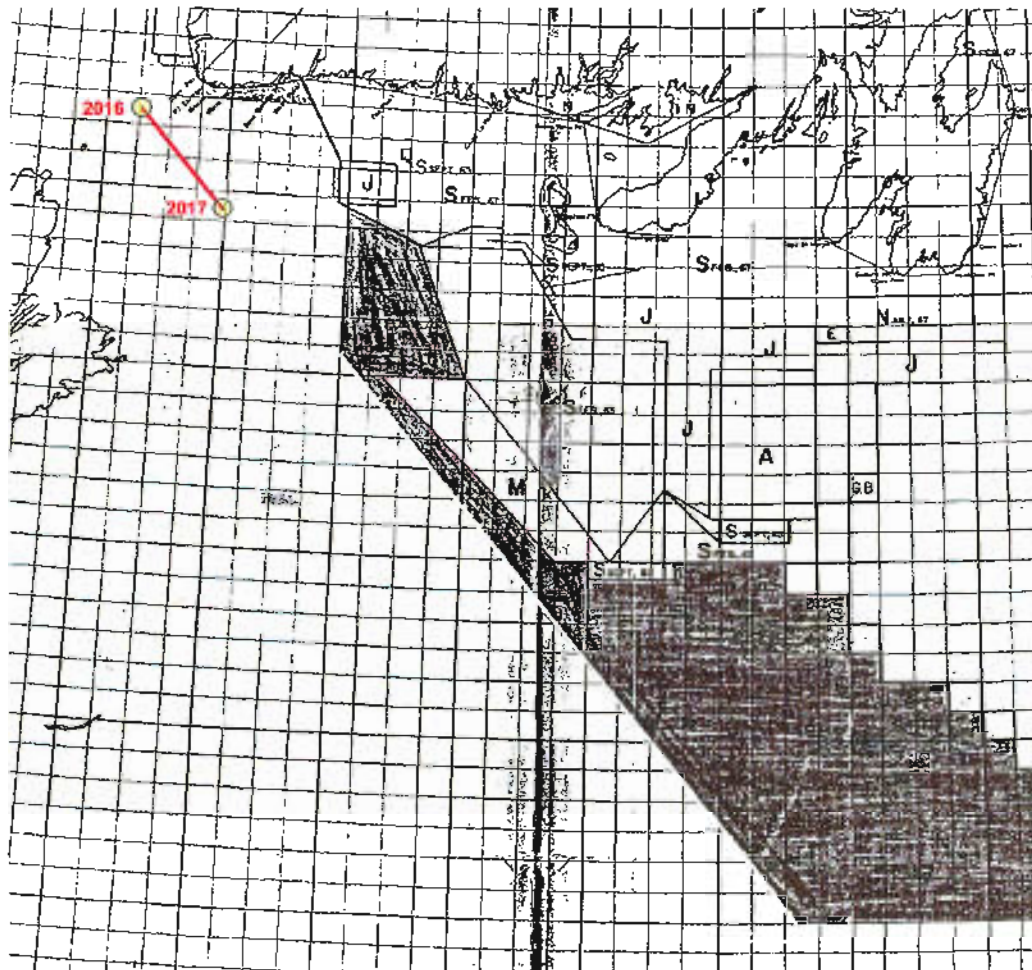


Newfoundland & Labrador



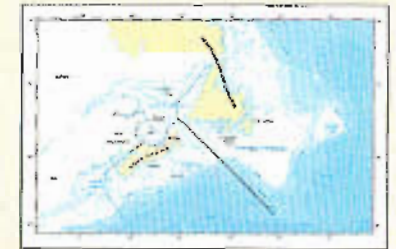
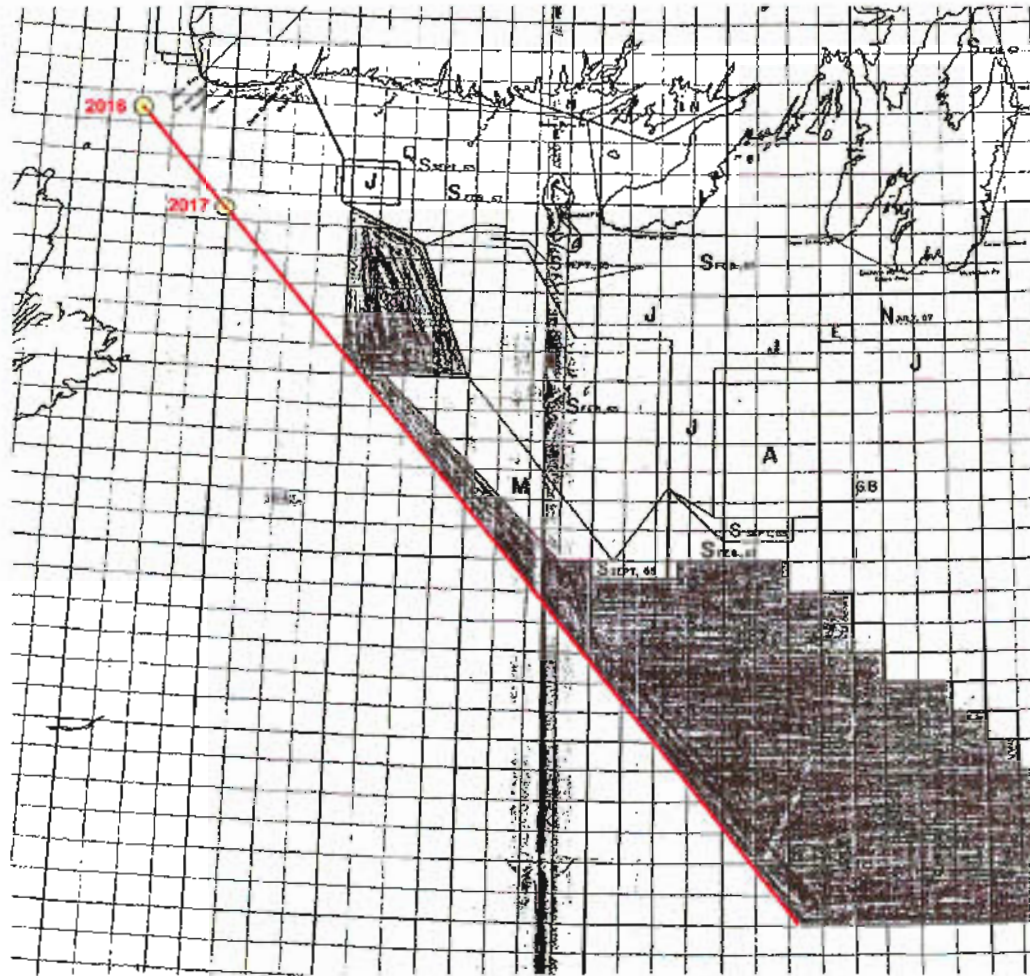
Nova Scotia

KATY PERMIT WITH POINTS 2016 & 2017



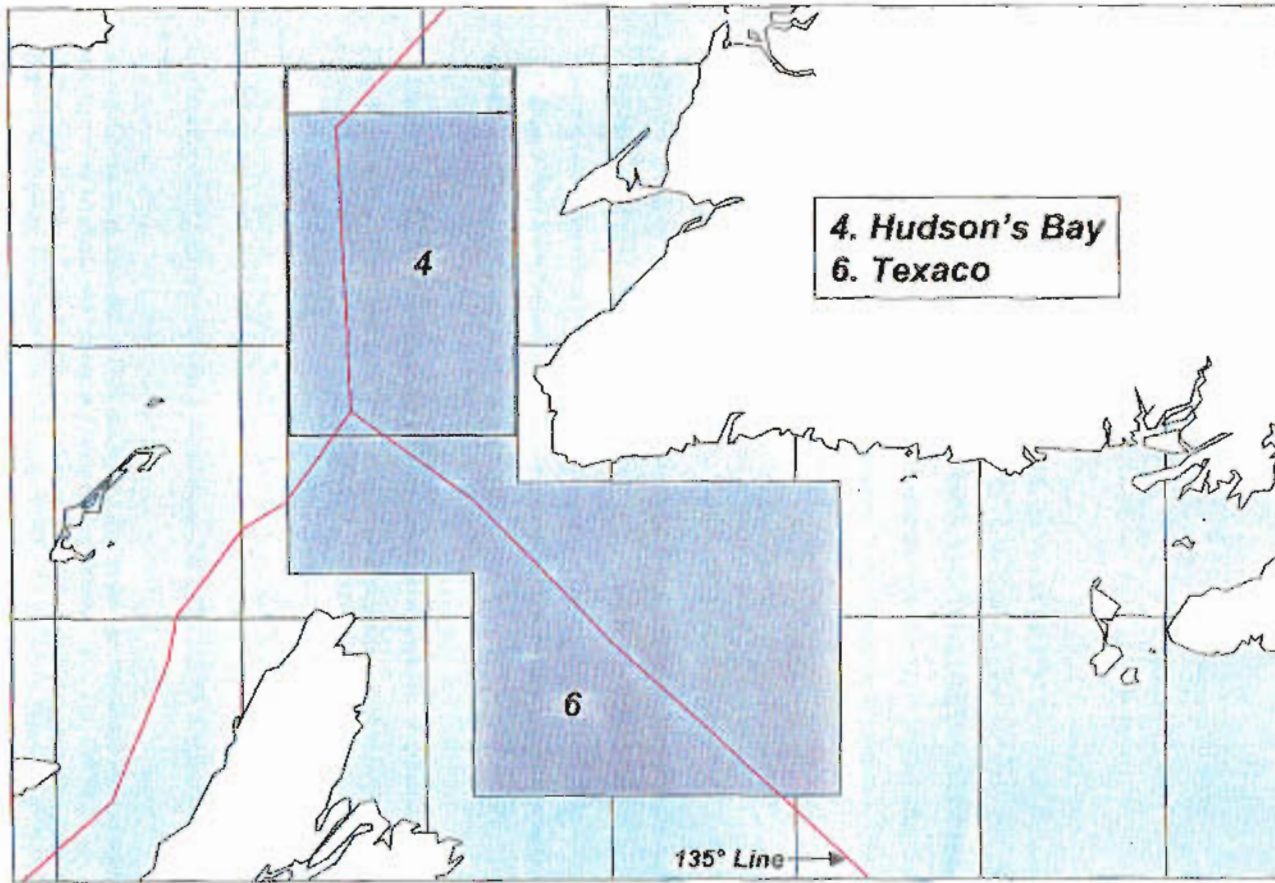
1964 Agreement Boundary

STRAIGHT-LINE EXTENSION: 2016 TO 2017



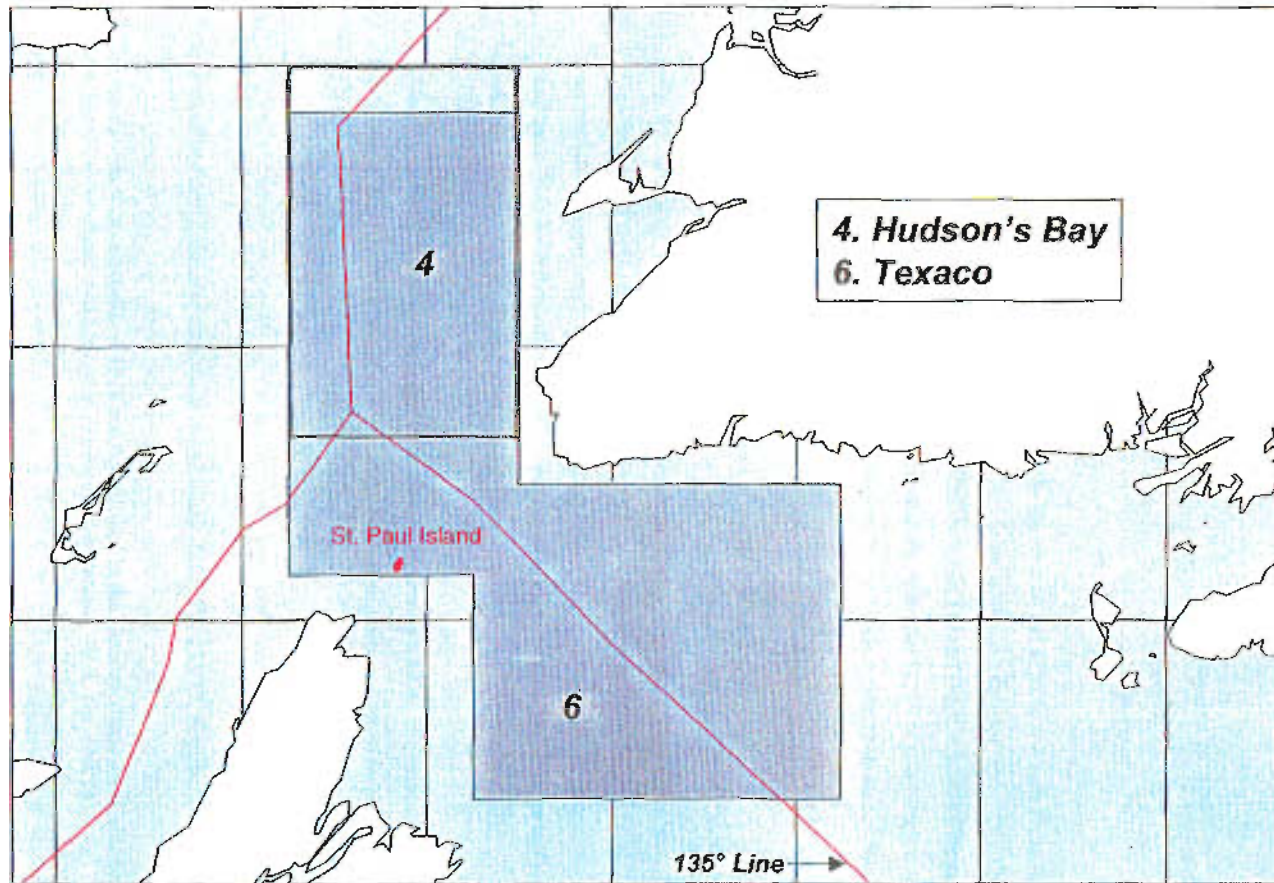
1964 Agreement
Boundary

NFLD PERMITS 4 AND 6



NFLD Figure 14

THE RETURN OF ST. PAUL ISLAND



NFLD Permits
4 and 6

LIMITS OF THE NFLD TEXACO PERMIT



INTERIM PERMIT No. 74-10

SCHEDULE

The area subject to this Interim Permit is the area bounded as follows: beginning at the point of intersection of the 47° 30' parallel of North Latitude with the 57° 45' meridian of West Longitude; thence running west along the said 47° 30' parallel of North Latitude to its intersection with the 58° 30' meridian of West Longitude; thence running north along the said 58° 30' meridian of West Longitude to its intersection with the 48° 30' parallel of North Latitude; thence running west along the said 48° 30' parallel of North Latitude to its intersection with the 60° 45' meridian of West Longitude; thence running south along the said 60° 45' meridian of West Longitude to its intersection with the 47° 10' parallel of North Latitude; thence running east along the said 47° 10' parallel of North Latitude to its intersection with the 59° 45' meridian of West Longitude; thence running south along the said 59° 45' meridian of West Longitude to its intersection with the 46° 30' parallel of North Latitude; thence running east along the said 46° 30' parallel of North Latitude to its intersection with the 57° 45' meridian of West Longitude; and thence running north along the said 57° 45' meridian of West Longitude to the point of beginning, excluding throughout those areas outside the jurisdiction of the Legislature of the Province of Newfoundland.



Source: Interim Permit of 12/12/74 N&L Supp. Doc. 50

Source: Interim Permit of 12/12/74 N&L Supp. Doc. 50

PS-R-11

LIMITS OF THE NFLD TEXACO PERMIT



“The area subject to this Interim Permit is the area bounded as follows... **excluding throughout those areas outside the jurisdiction of the Legislature of the Province of Newfoundland.**”



The area subject to this Interim Permit is the area bounded as follows: beginning at the point of intersection of the 47° 30' parallel of North Latitude with the 57° 45'

meridian of West Longitude; and thence running north along the said 57° 45' meridian of West Longitude to the point of beginning; **excluding throughout those areas outside the jurisdiction of the Legislature of the Province of Newfoundland.**

DETAIL FROM TEXACO PERMIT APPLICATION



GOVERNMENT OF NEWFOUNDLAND
DEPARTMENT OF MINES AND ENERGY
ENERGY RESOURCES DIVISION

74-16

Texaco File

1974

APPLICATION
FOR AN
OFFSHORE INTERIM PERMIT TO CONDUCT
EXPLORATORY OPERATIONS OTHER THAN DRILLING

Applicants are required to provide the Government of Newfoundland with the following information:

Data Pertaining to the Applicant

- (1) Operator (name, address)
Texaco Exploration Canada Ltd.,
600 - 5th Avenue S. W.
Calgary, Alberta T2C 1P3
- (2) Associates (name, address)
M11

NS Annex 159

Operational Data

- (1) Type of work (reflection seismic survey, sea-bottom survey, situ survey, etc.):
CDP Reflection Seismic
- (2) Geographical area (list latitudes and longitudes of work area and illustrate on a map of 1:2,000,000 or larger):
45°N Latitude. Between 54°00'W and 55°00'W Longitudes (see attached plot)
- (3) Date of commencement and duration
July 27 & 28, 1974 - 2 days
- (4) Proposed work program (give details of the program to be carried out and illustrate on a map of 1:2,000,000 or larger; attach additional sheets as necessary):
100 miles of 2400Z CDP Reflection Seismic

NS Annex 159



NS Annex 159

RELEVANT PERMITS RESPECT 1964 AGREEMENT

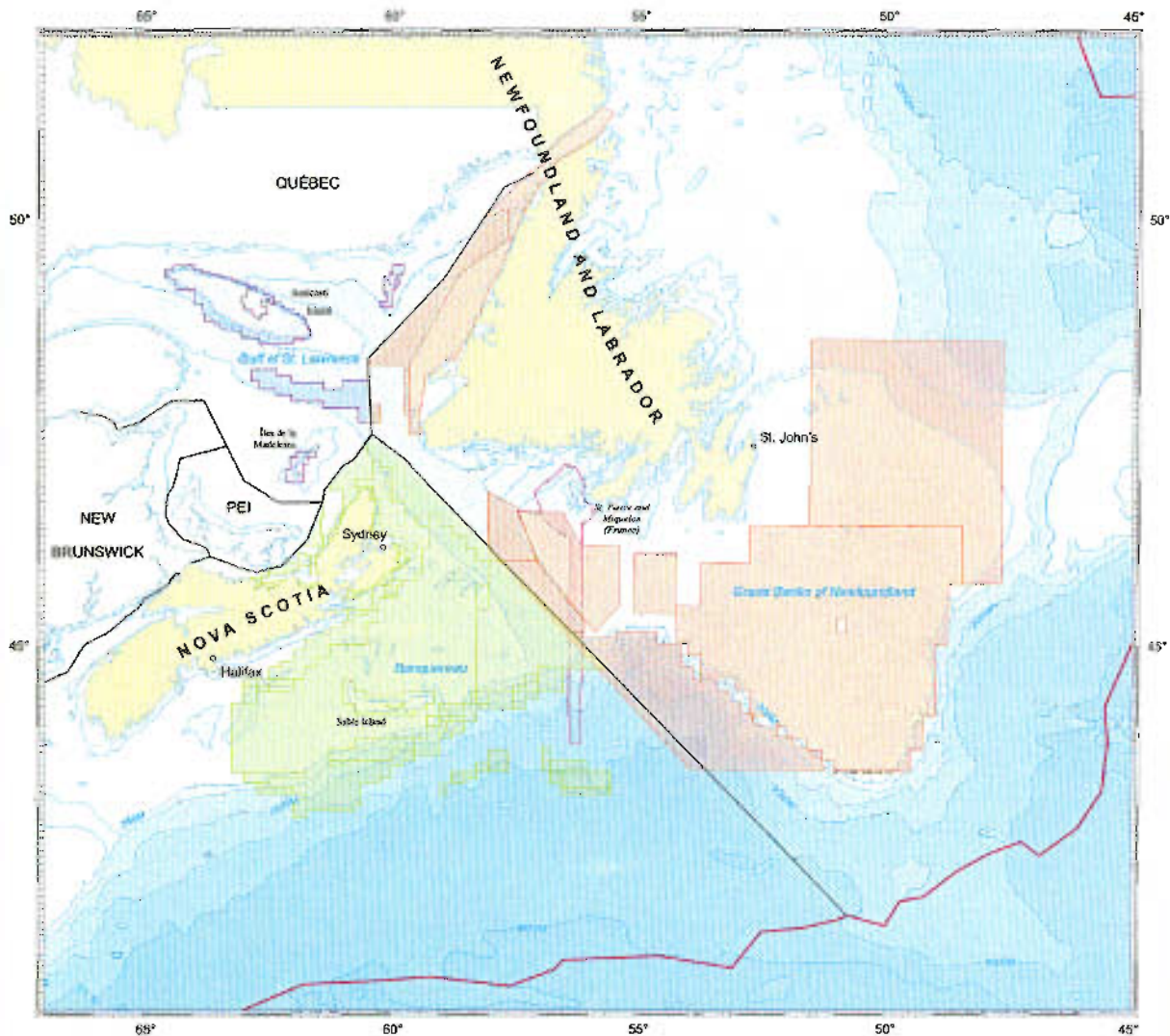
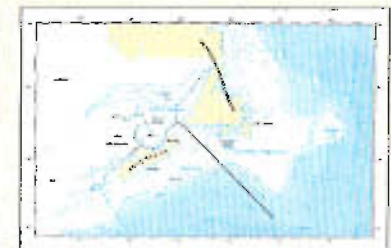


FIGURE 28

The East Coast
Provinces Applied and
Relied Upon the 1964
Agreement in Issuing
Oil and Gas Permits

Source: See Nova
Scotia Memorial,
Figure 15, 17, 18, 19, 21

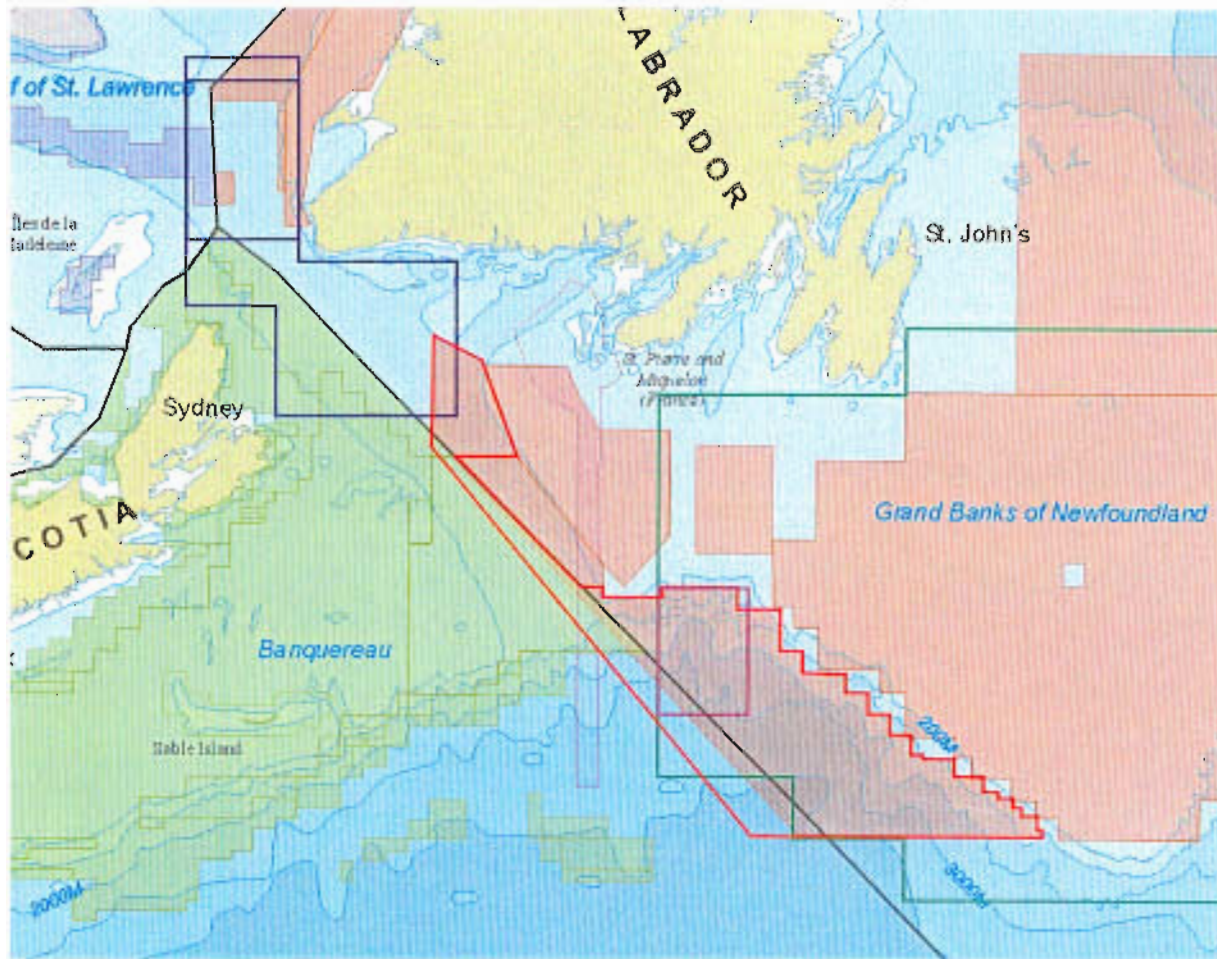


1964 Agreement
Boundary

THE CONDUCT OF THE PARTIES



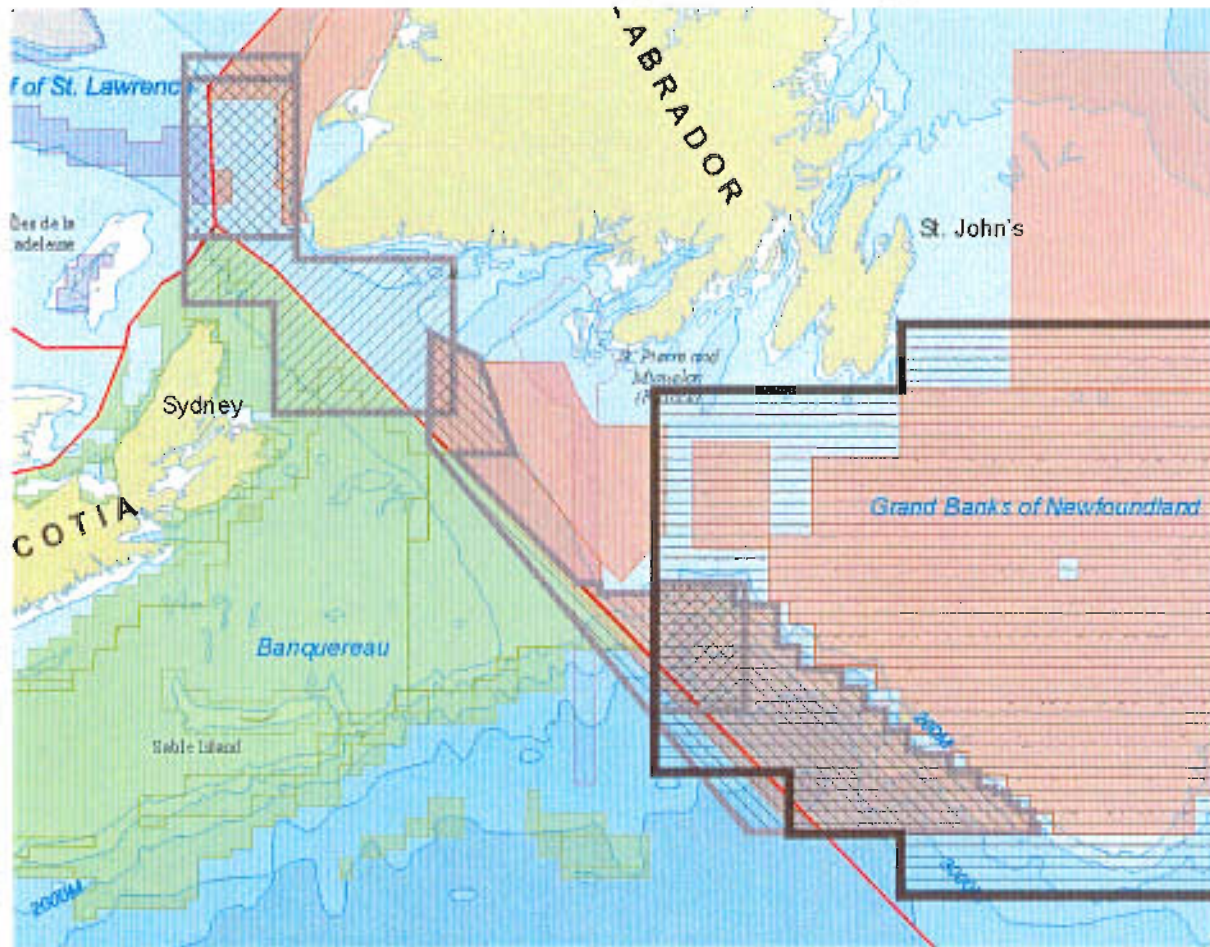
N&L Conduct Did Not Respect the Alleged 135° Line



Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES

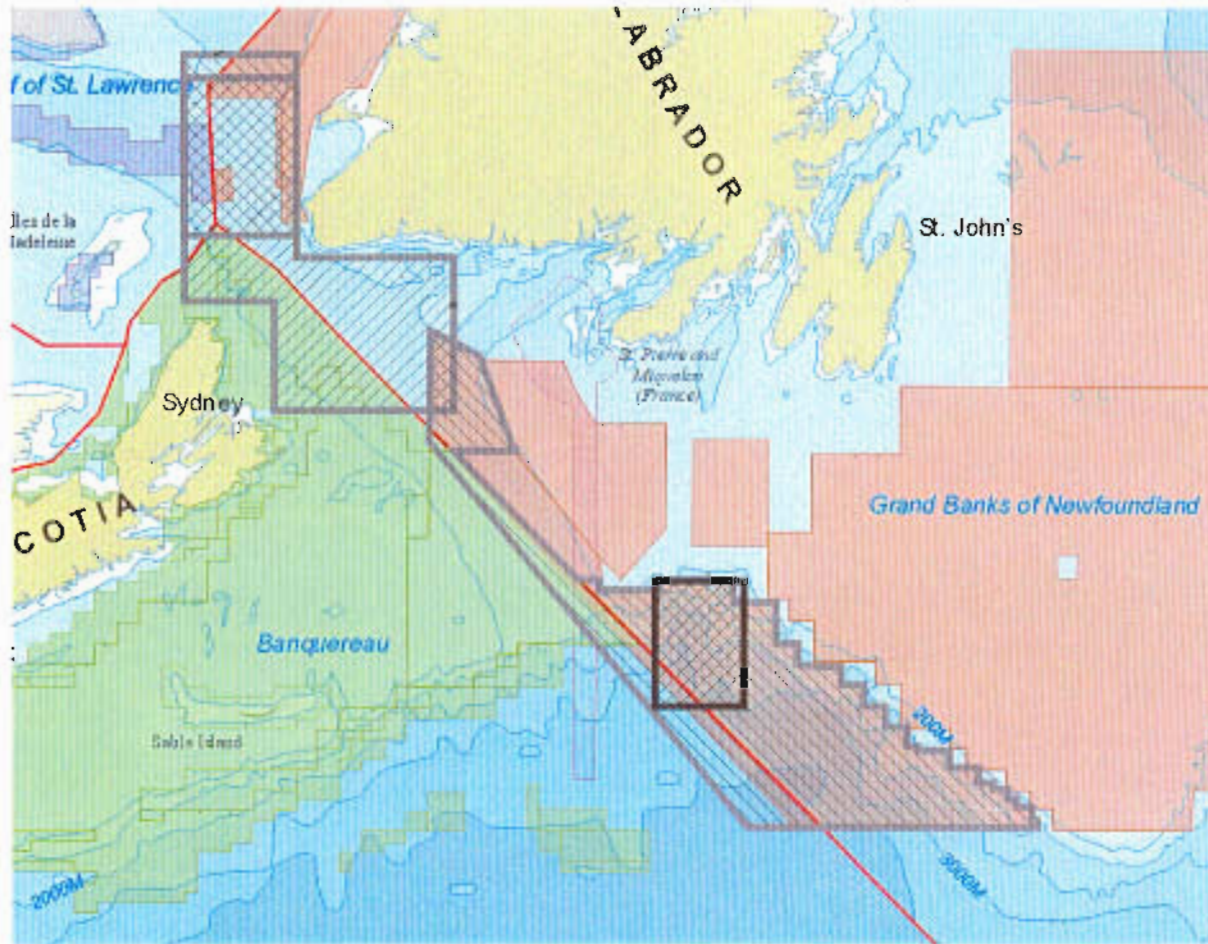
N&L Conduct Did Not Respect the Alleged 135° Line ?



Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES

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

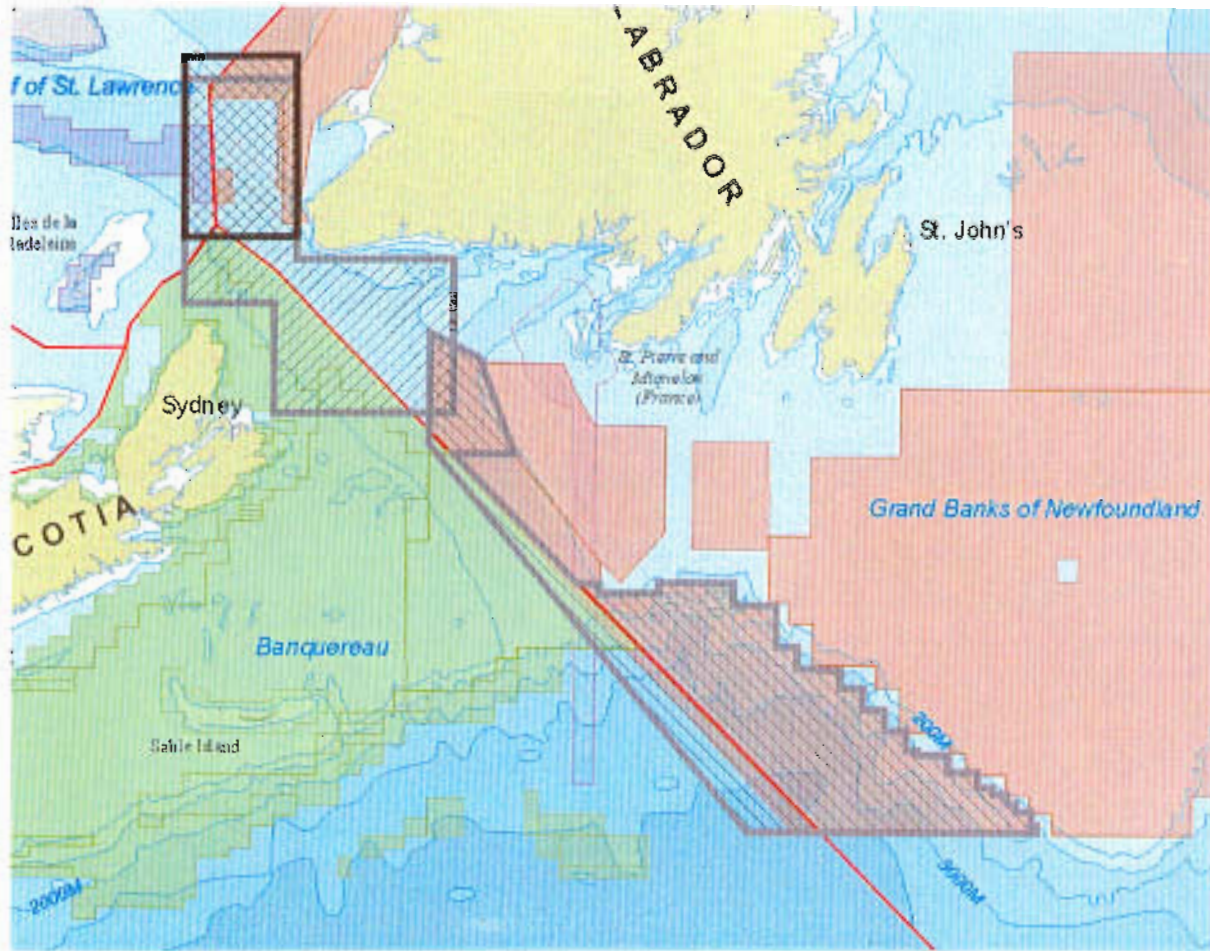


Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES



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

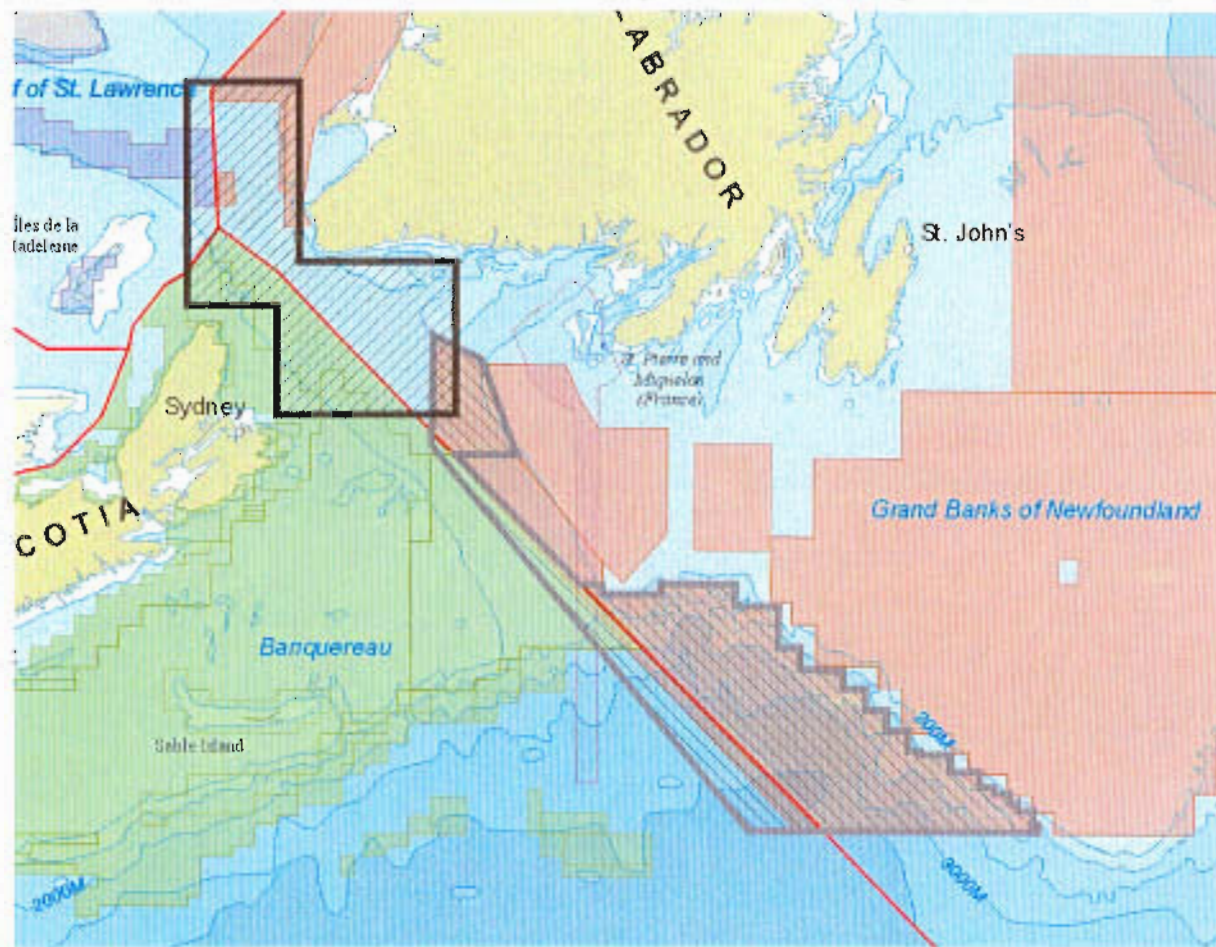


Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES



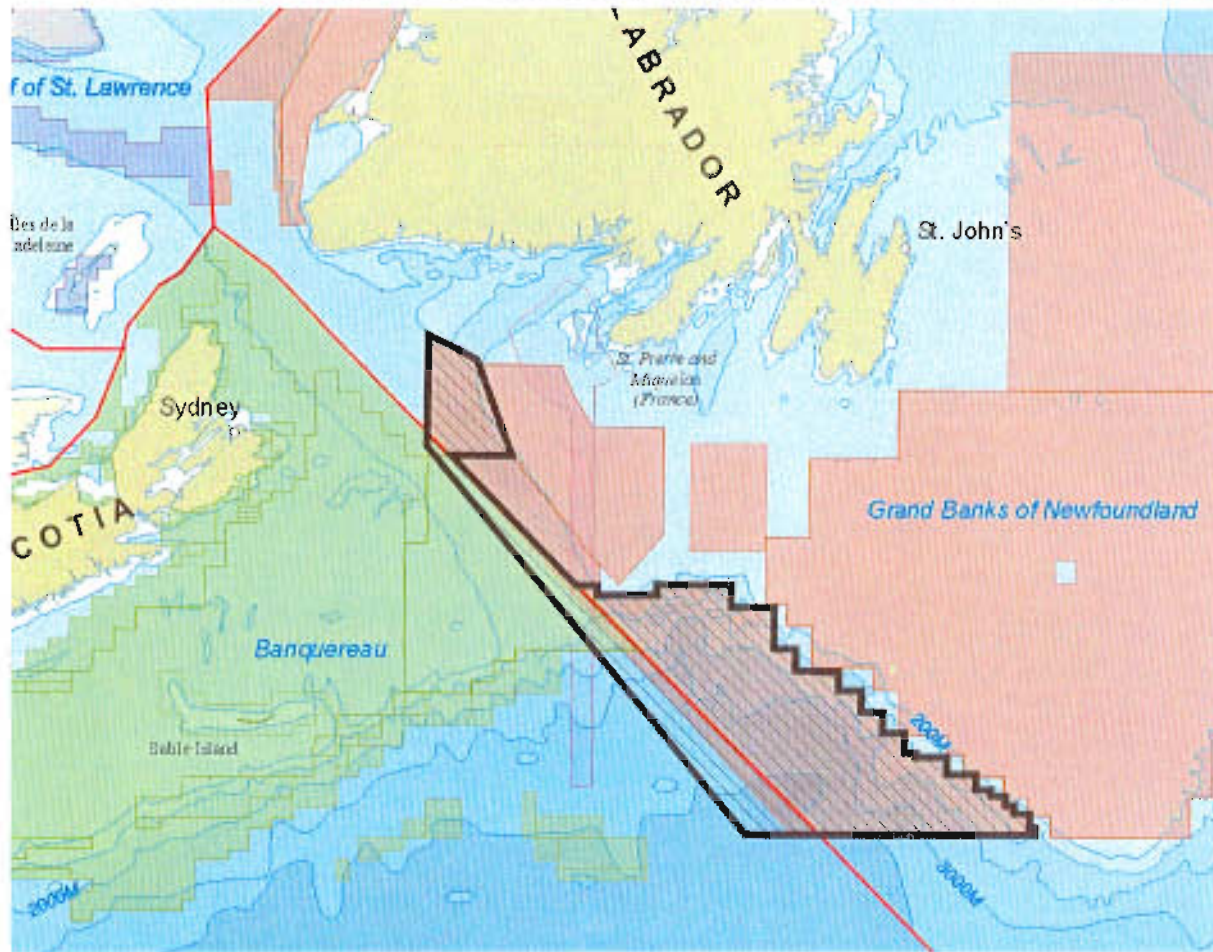
N&L Conduct Did Not Respect the Alleged 135° Line ?



Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES

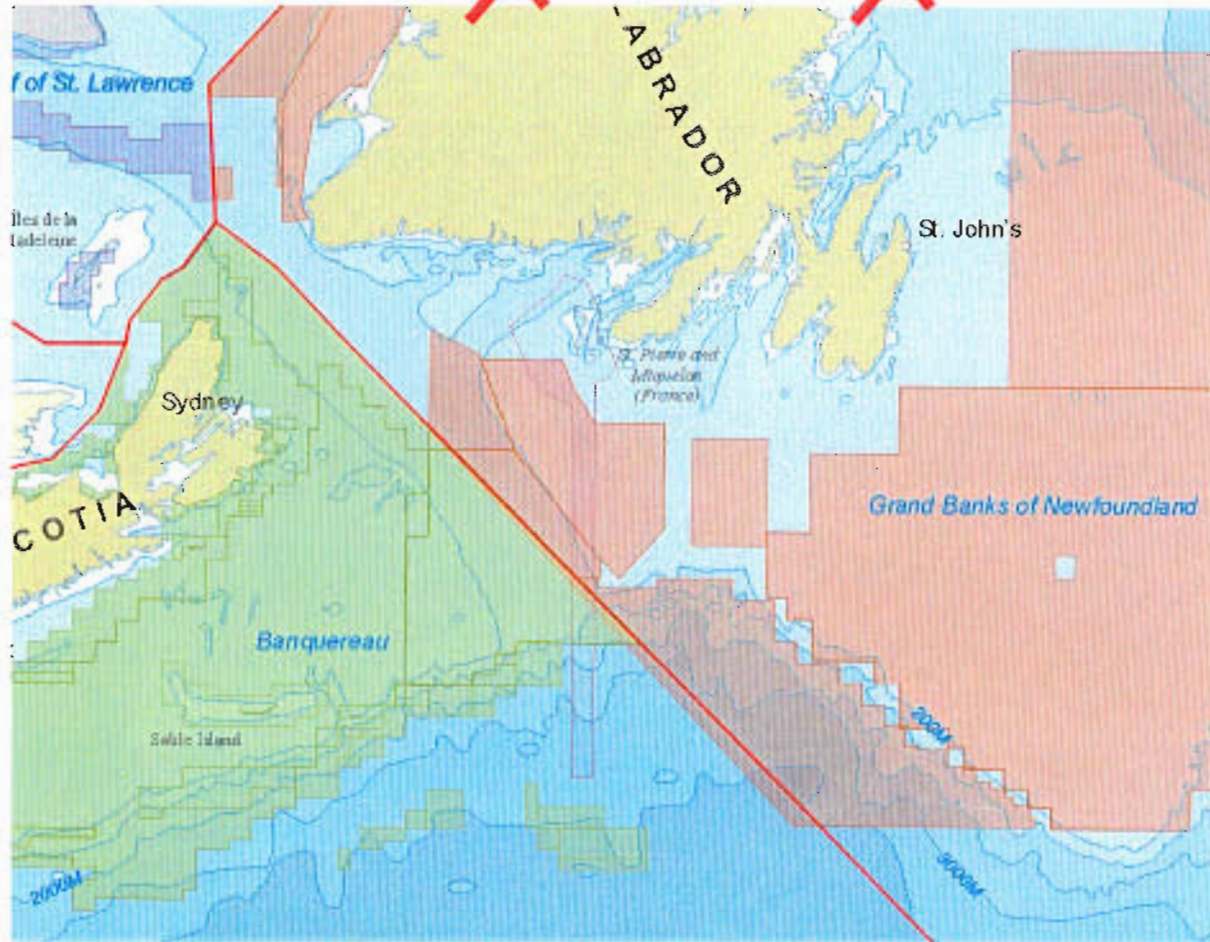
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Reconstruction of N&L Oral Presentation Figure 79

THE CONDUCT OF THE PARTIES

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



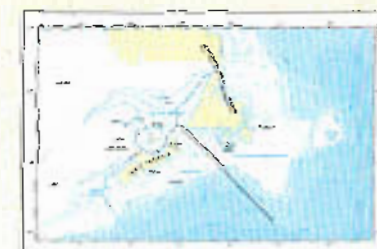
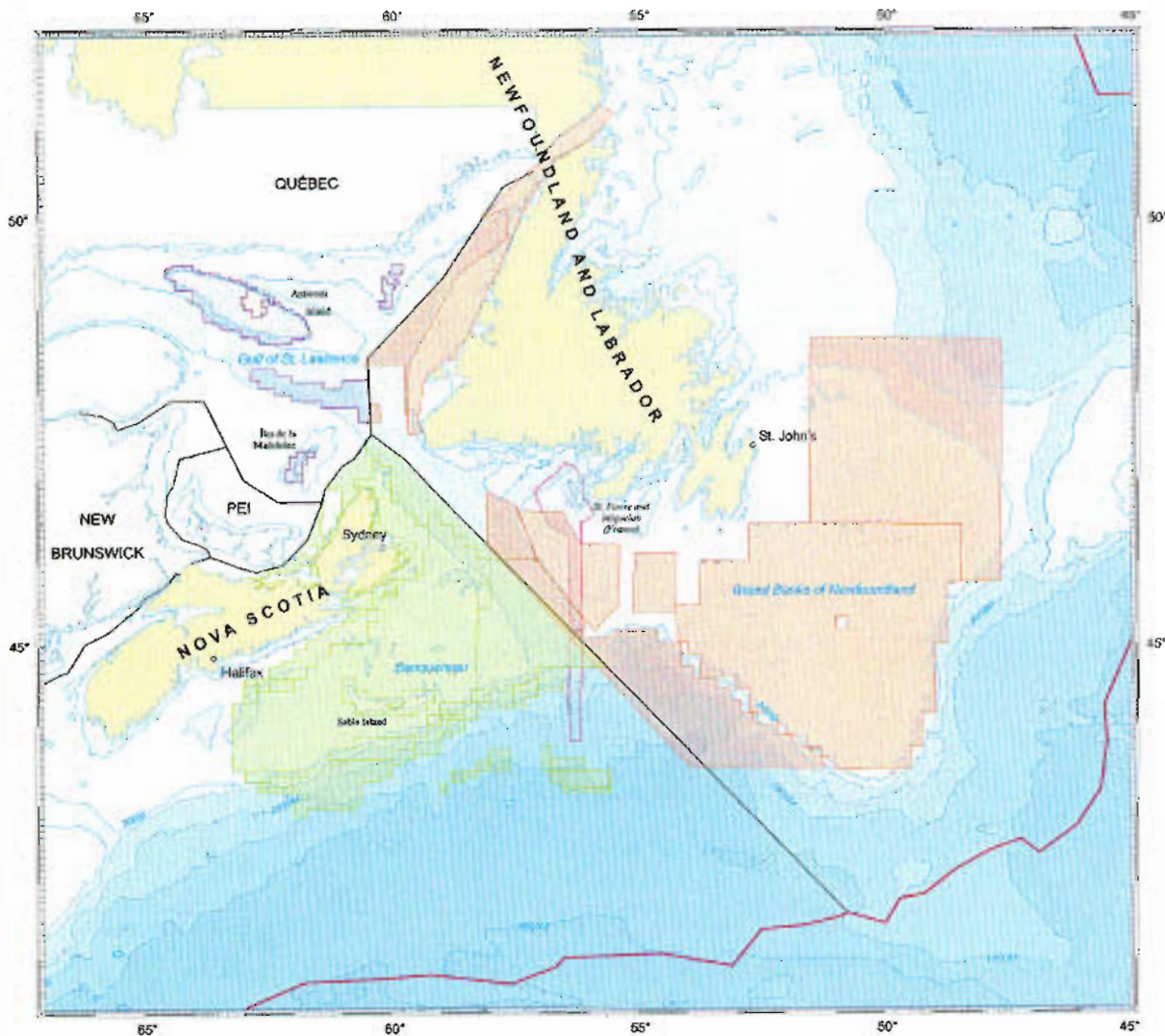
Reconstruction of N&L Oral Presentation Figure 79

RELEVANT PERMITS RESPECT 1964 AGREEMENT

FIGURE 28

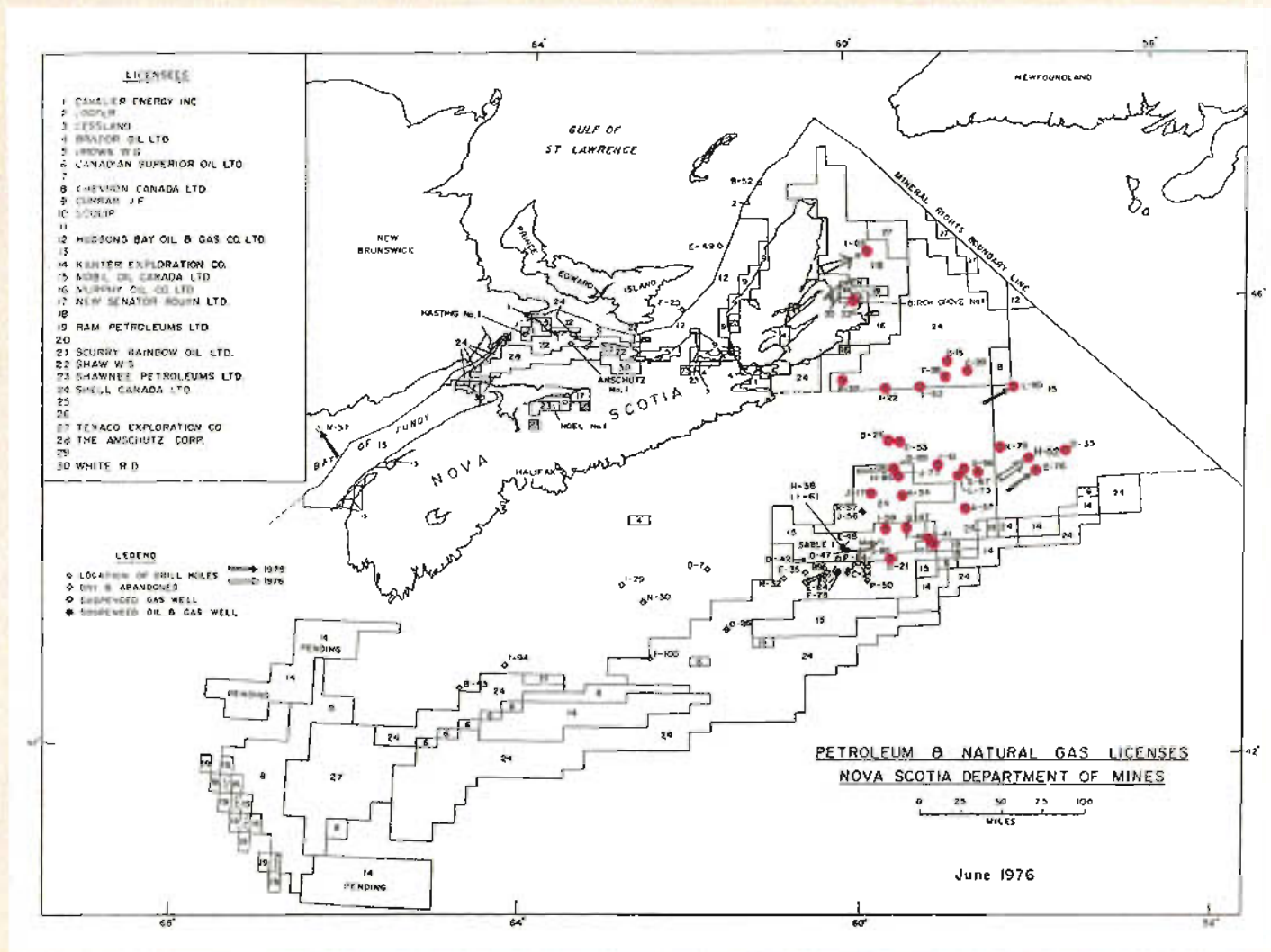
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Source: See Nova
Scotia Memorial,
Figure 15, 17, 18, 19, 21



1964 Agreement
Boundary

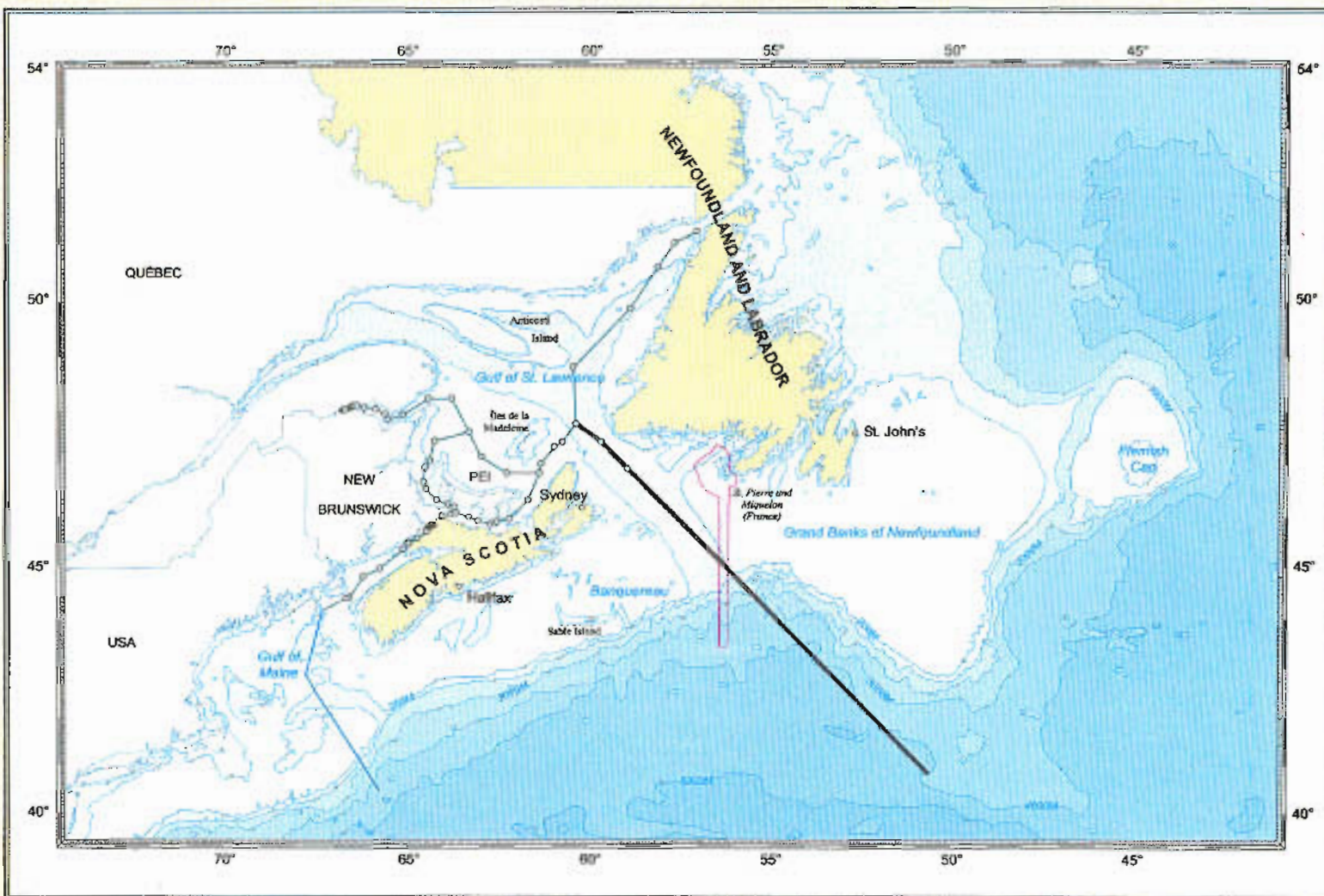
DRILL SITES: NOVA SCOTIA PERMITS



Source: NS Annex 168

PS-R-23

THE 1964 AGREEMENT BOUNDARY





The Position of Newfoundland

Canadian law, therefore, is the applicable law for the determination of the question before the Tribunal in Phase One.

Source: N&L M Para. 147

...[T]he applicable law must be the law that governs whether provinces have entered into a binding agreement – Canadian law.

Source: N&L CM Para. 96



Newfoundland's "Criteria" for Intent

- The degree of formality – which they see as most “decisive”
- The substance of the agreement
- The language of the agreement (precision and detail)
- The presence of a dispute resolution mechanism



Paragraph 164, Newfoundland Memorial

164. In the study on *Intergovernmental Agreements on Canadian Water Management*, **Stephen Kennett identifies the factors that determine whether the requisite intention exists.** He says:

Four broad parameters can be suggested which might be used by the courts to determine the legal character of non-constitutionalized agreements. These are the **degree of formality**, the **substance** (whether the parties intended to create legally binding rights and obligations – agreements might be characterized as a “commercial” or “political”), **the language** (whether “contractual” or “political”), and the **dispute resolution mechanism**.

The **greater the formality of an agreement**, the more likely it is to be characterized as having legal implications...



Newfoundland's Assertion

“...Stephen Kennett identifies the factors that determine whether the requisite intention exists.”

Source: N&L M Para. 164

Kennett's Statement

“Four broad parameters can be **suggested** which **might** be used by the courts to determine the legal character of non-constitutionalized agreements”

Kennett's Qualifier

An assessment of the legal characterization of non-constitutionalized agreements is difficult, since few agreements have been litigated **and the courts have not confronted the issue directly.**



Newfoundland's Other Authority

Neither of these questions has received a great deal of attention to date either in the legal literature or in case law.

Source: J.O. Saunders, Annex 169, p.32.

Despite the large number of such agreements, there has been relatively little litigation in the area, **and those cases which have been decided have not raised directly the issue of legal characterization.**

Source: J.O. Saunders, Annex 169, p.91.

It has been seen that many aspects of the legal status and enforceability of Canadian intergovernmental agreements generally, and agreements on water specifically, **have yet to be resolved.**

Source: J.O. Saunders, Annex 169, 120.

THE QUEEN (CANADA) v. THE QUEEN (P.E.I.)



“...[R]ights and obligations that would otherwise be unenforceable for lack of a forum are now to be recognized as enforceable. The right or liability may be thought of as an inchoate or imperfect one which is perfected by the creation of a forum in which it may be enforced.”

Le Dain, J.



“To say that the Standardization Agreement is not a legally enforceable contract **does not mean, however, that it is merely a scrap of paper,** for English law has never taken the view that undertakings to which it cannot give its aid all lack weight or meaning.”

Windeyer, J.

THE 1964 AGREEMENT BOUNDARY

