



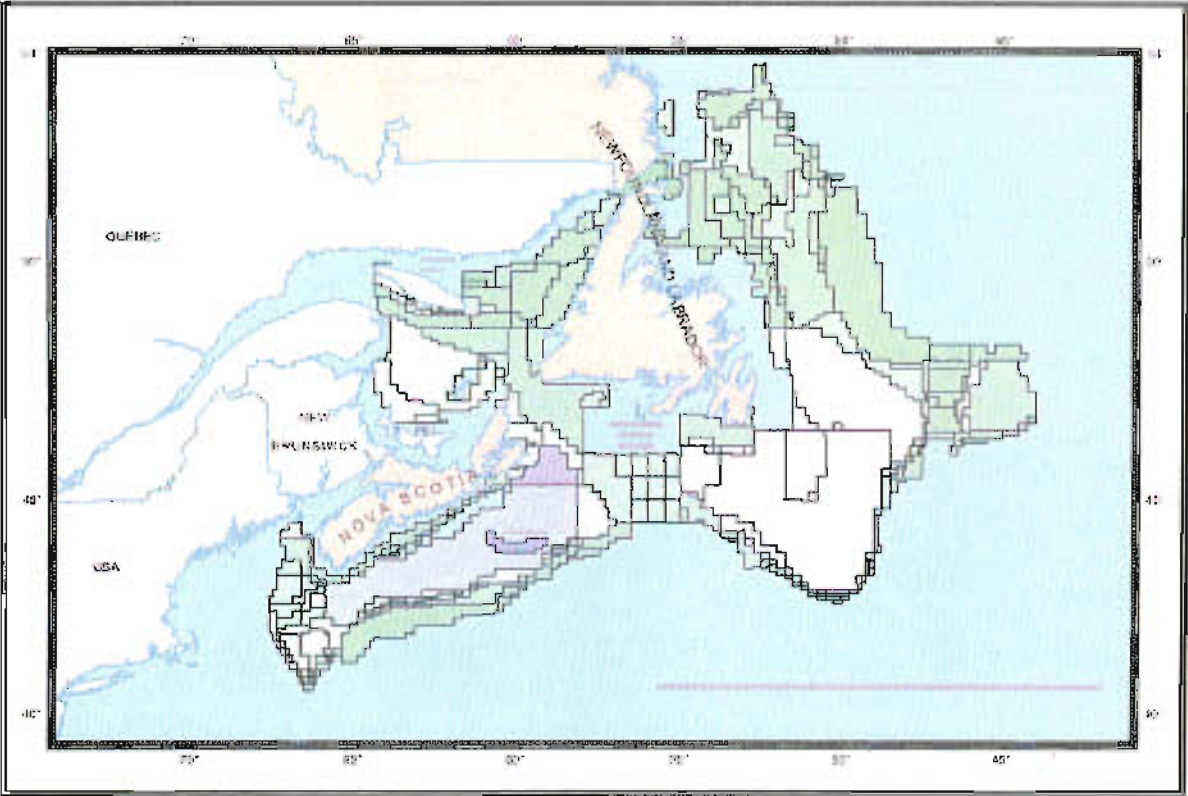
# THE SUBSEQUENT CONDUCT OF THE PARTIES

( PART II )

Phillip Saunders  
Counsel  
Province of Nova Scotia

March 13, 2001

# NOVA SCOTIA MEMORIAL FIGURE 20



NOVASCOTIA  
FIGURE 20

## Government of Canada Offshore Exploration Permits to 1970

The figure depicts offshore exploration permits located in the Gulf Coast by the Government of Canada as of 1970.

- Year of Permit Issue
- 1950
  - 1951
  - 1952
  - 1954
  - 1955
  - 1956
  - 1957
  - 1958
  - 1959
  - 1970



Source:  
 "Gulf Coast Chart 400"  
 Canada East Coast Offshore  
 Field Permits Map  
 Nova Scotia Service  
 Phoenix - Montreal

- 1958 -



## *Conference of Atlantic Premiers*

Then, as now, the issue revolved around the **issuance of permits** to conduct mining operations and to explore for oil and gas.



Annex 8

Last Summer, Dr. J. P. Nowlan, Deputy Minister of Mines, raised the question of a boundary line between the Provinces as it related to authority to grant mining licenses and leases. I wrote to him under date of August 26th, 1958, suggesting some of the legal

I am now advised by Dr. Nowlan that he has received an application for a license to search for petroleum in the area surrounding and including Sable Island and extending considerably more than three miles beyond the boundaries of Sable Island. This renews and emphasizes the questions raised by his earlier letter and adds the complications arising from the peculiar position of Sable Island.





## *Offshore Exploration Permits and Related Conduct*

- Québec, New Brunswick and Prince Edward Island
- Nova Scotia's Offshore Exploration Permits
- Newfoundland's Offshore Exploration Permits
- Impact on the Arguments presented by Nova Scotia and Newfoundland
  - Recognition and Implementation of the 1964 Agreement boundaries as binding - by ALL parties
  - Impossibility of Newfoundland's theory of a dead "Proposal"
  - Dismissal of Newfoundland's assertion of a "Preoccupation" with the Gulf
  - Application of the 135° Line in the 1960s and 1970s

## CONDUCT OF OTHER PARTIES



- New Brunswick
  - Application of the Agreed Boundary in legislation
- Prince Edward Island
  - Application of the Agreed Boundary in permit map
- Québec
  - Application in 1968 Map
  - Application in 1998 Map
  - Issuance of Permits up to the 1964 Agreement boundary

# NEW BRUNSWICK PETROLEUM GRID MAP

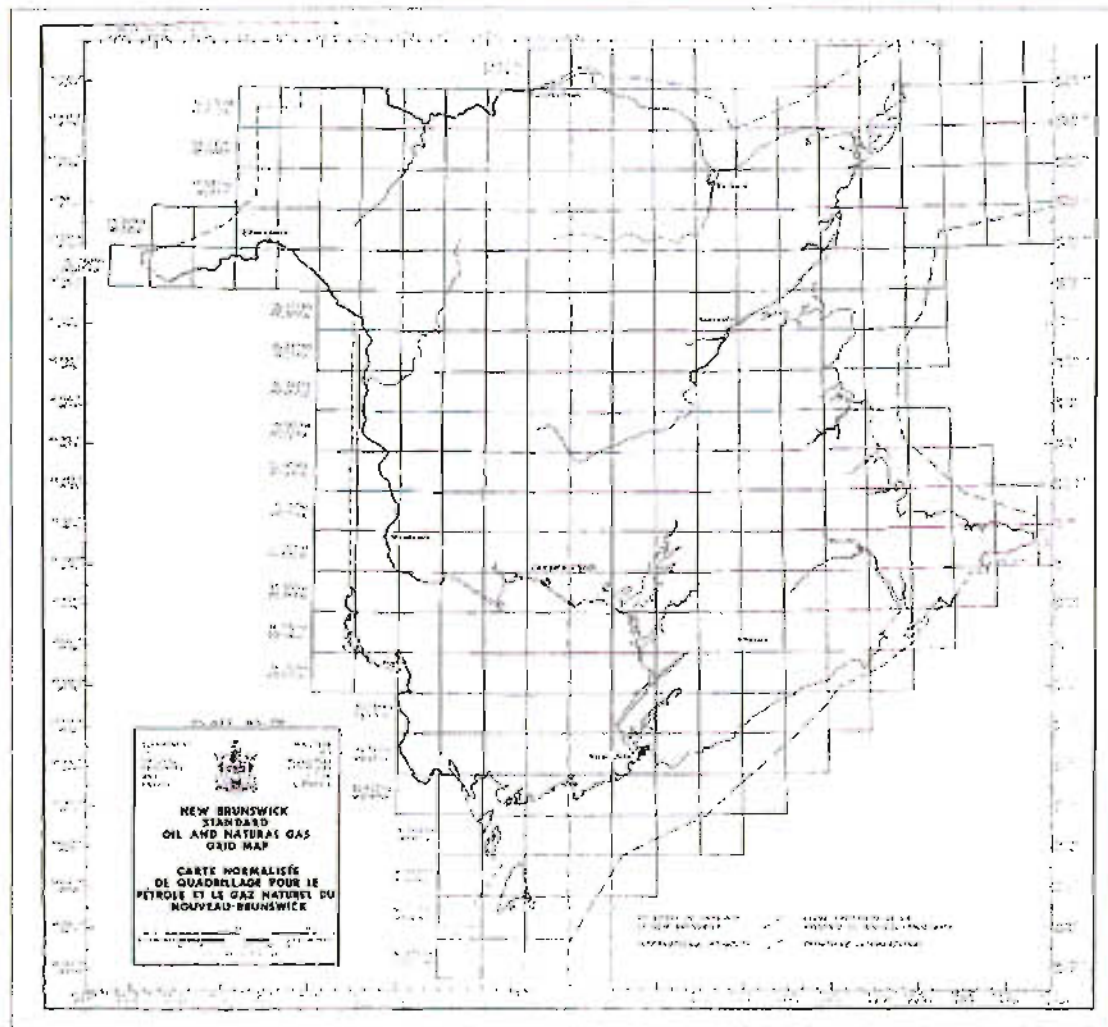
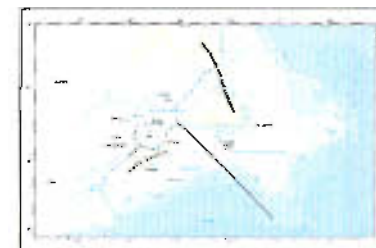


FIGURE 11

Implementation of  
the 1964 Agreement by  
**New Brunswick:**  
Standard Oil  
and Natural Gas  
Grid Map



1964 Agreement

# PRINCE EDWARD ISLAND PERMIT GRID MAP

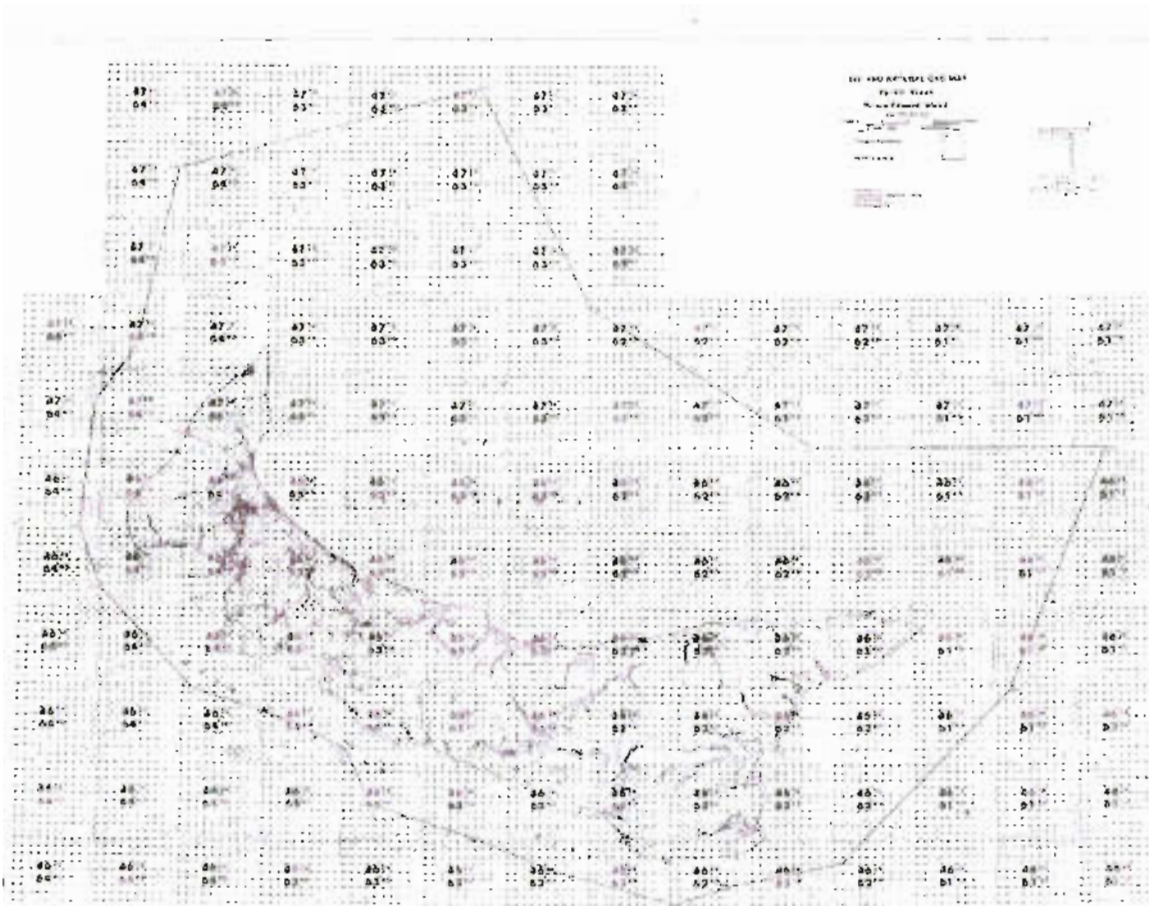


FIGURE 12

Implementation of the  
1964 Agreement by  
**Prince Edward Island:**  
Petroleum Exploration  
Permit Grid Map



1964 Agreement



# PEI OIL AND NATURAL GAS ACT



89

242. Insofar as Prince Edward Island is concerned, its oil and gas legislation references the fact that the limits of its offshore jurisdiction must be established by a future federal-provincial agreement. The Prince Edward Island *Oil and Natural Gas Act* contains a verbal definition of the offshore area within the province's jurisdiction which does not correspond to the Stanfield line. Section 2(p) of the Act defines "provincial lands" as follows:

(p) "provincial lands" means the land mass of Prince Edward Island and includes the seabed and subsoil off the shore of the land mass to the limits of Prince Edward Island sovereignty and to such limits as may be set by federal-provincial agreement; (emphasis added)<sup>73</sup>

243. Thus, the practice of other provinces, which in any event does not support Nova Scotia's contentions, is irrelevant.

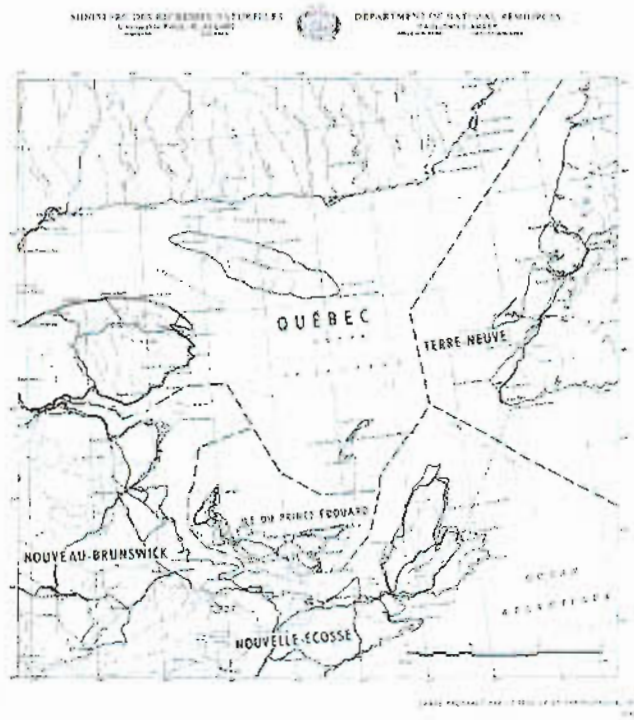


Annex 9

<sup>73</sup> *Oil and Natural Gas Act* R.S.P.E.I., 1988, c.O-5, Supplementary Schedules # 10



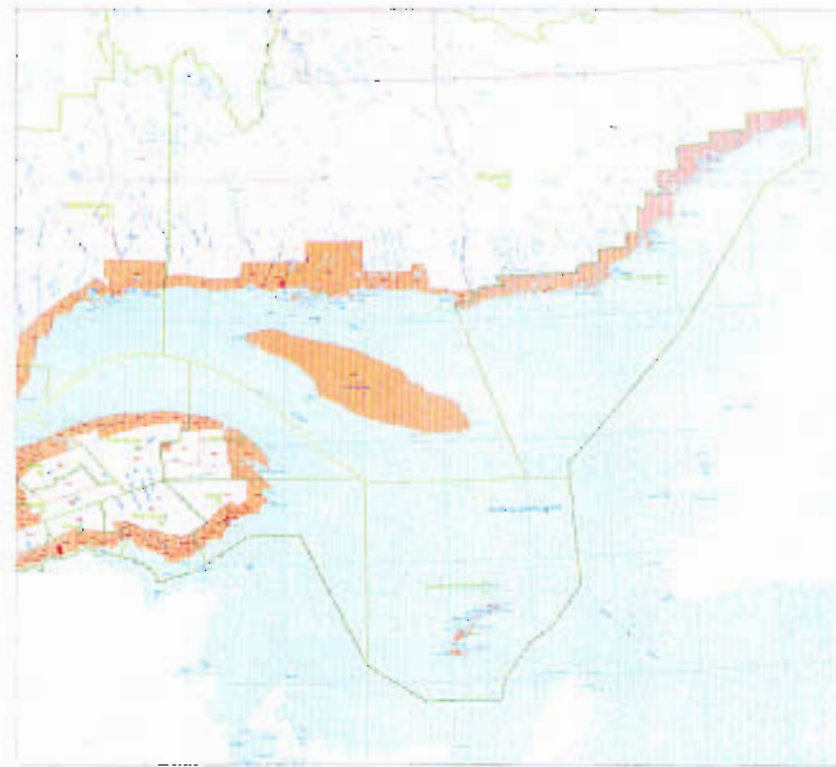
# QUÉBEC APPLICATION OF 1964 AGREEMENT BOUNDARY



Découpage des juridictions sous-marines interprovinciales dans le golfe St-Laurent

1968

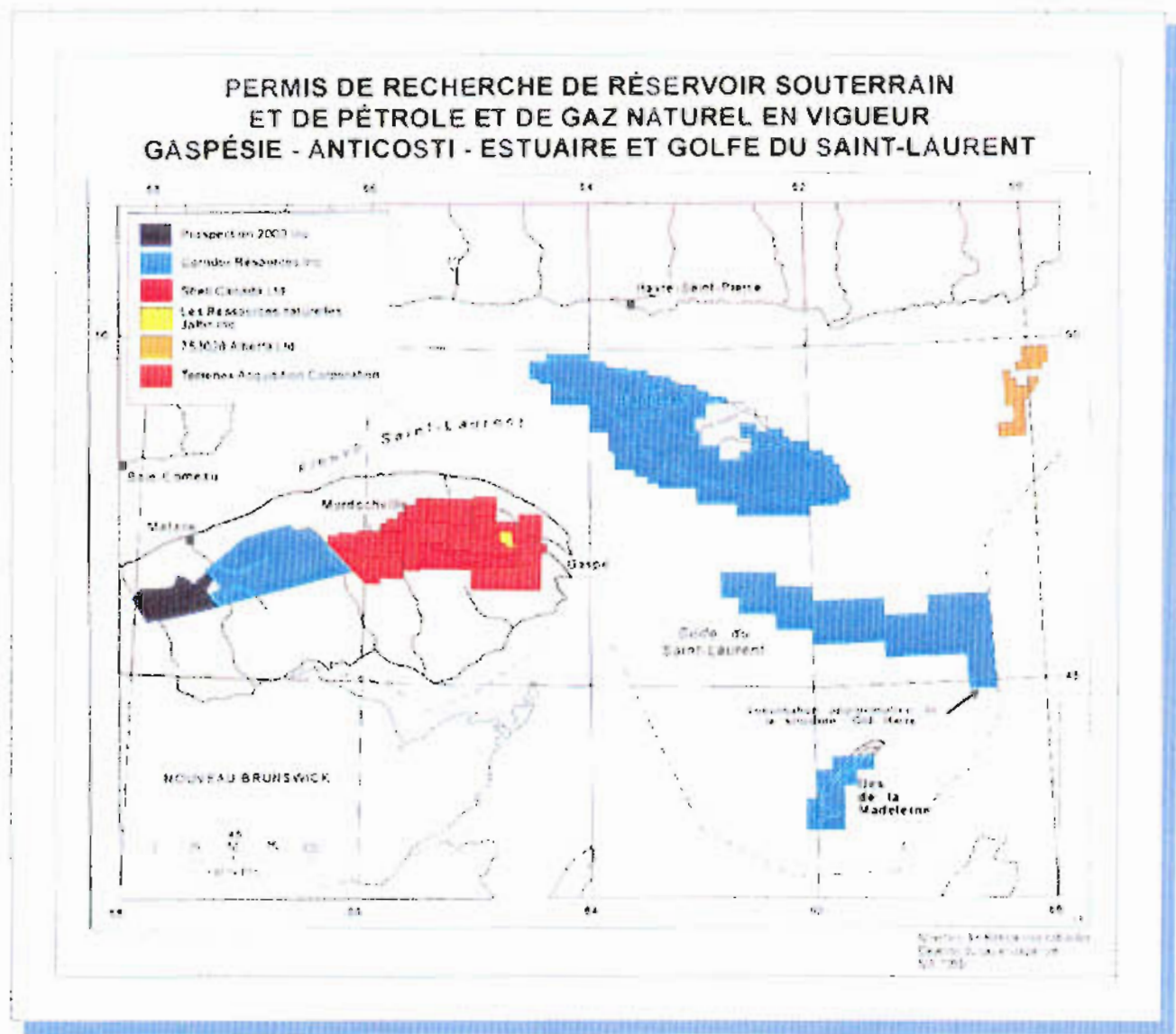
NS Figure 13



1998

NS Figure 14

# QUÉBEC APPLICATION OF 1964 AGREEMENT BOUNDARY



1999  
NS Figure 15

## CONDUCT OF OTHER PARTIES



- Summary
  - Scrupulous recognition and application of the agreed boundaries
  - Consistent conduct spanning more than 35 years
  - Application as part of an Interprovincial Agreement, with no requirement imposed under federal legislation



# NS PERMIT RESERVATION GRID SYSTEM

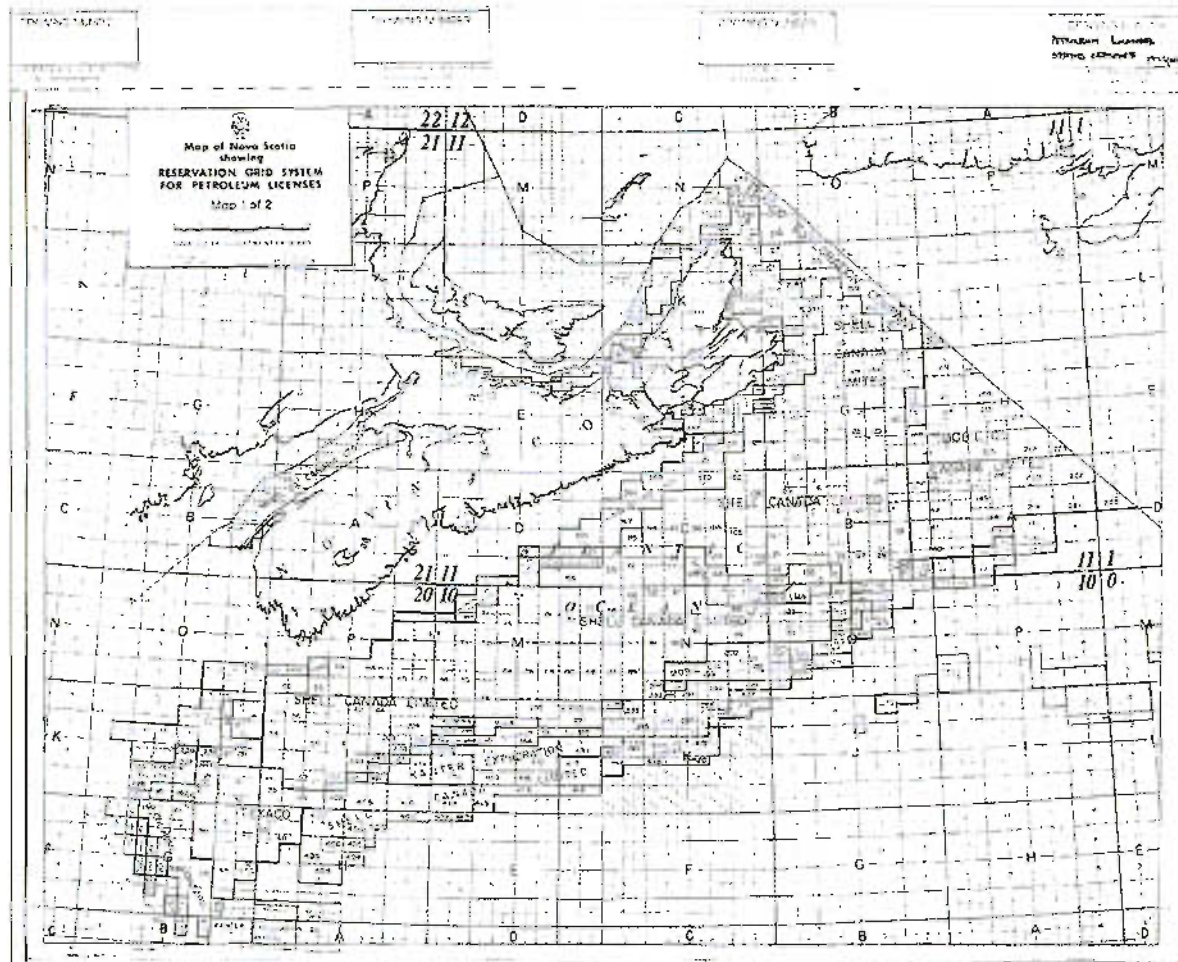
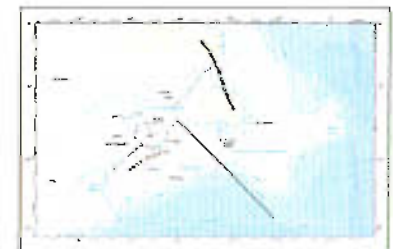


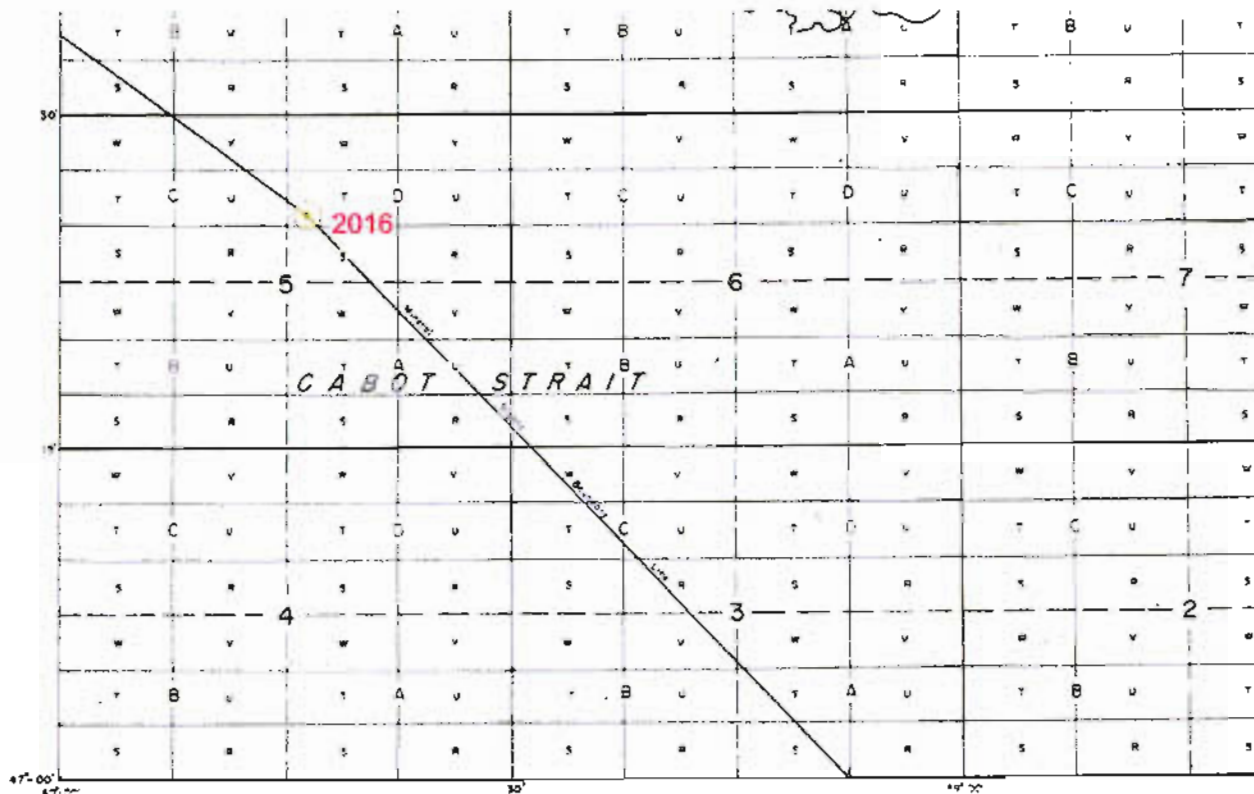
FIGURE 16

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

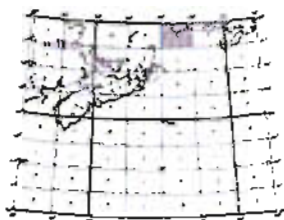


1964 Agreement  
Boundary

# MAP SHEET 110 WITH TURNING POINT 2016

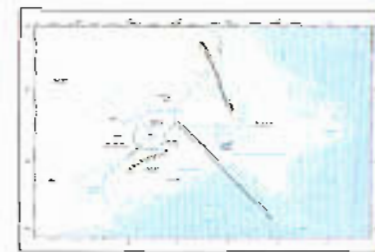


Map Sheet  
110 With  
Point 2016



INDEX MAP  
Showing  
GRID SYSTEM FOR PETROLEUM RESERVATIONS

SHEET 110



1964 Agreement  
Boundary



- **“Nova Scotia did not limit permits** in the outer area by reference to any boundary.”  
**Source:** NFLD CM para. 237
- **“Nova Scotia followed one practice** for permits issued inside the Gulf of St. Lawrence and the Cabot Strait area and its approaches, and a different practice for permits issued in the outer area.”  
**Source:** NFLD CM para. 237
- **“...bordering upon the common boundary line of Nova Scotia and the Province of Newfoundland.”**  
**Source:** Nova Scotia Permit 272-NF Supp. Doc. 54



# NOVA SCOTIA EXPLORATION PERMIT #372



Application No. *425*  
Date of Application *July 1, 1971*  
Date of Acceptance *July 1, 1971*  
Date of Execution

NO 372

## License to Explore for Petroleum

PROVINCE OF NOVA SCOTIA

I HEREBY do hereby grant unto the Petitioner and Special Licensee the

**PROVINCE OF NOVA SCOTIA**

of **HALIFAX** in the County of **HALIFAX**

to explore for petroleum in the County of **HALIFAX** in the Province of **NOVA SCOTIA**

and to produce therefrom for the purpose of sale or otherwise in accordance with the provisions of the Petroleum Act of the Province of Nova Scotia

and to do all things necessary or incidental thereto

in accordance with the terms and conditions of the Special License

**SURRENDERED**

The Special Licensee hereby surrenders the Special License granted by the Province of Nova Scotia to the Special Licensee and the Special Licensee hereby surrenders the Special License granted by the Province of Nova Scotia to the Special Licensee

Witness my hand and the Seal of the Province of Nova Scotia at Halifax this 1st day of July 1971

John A. McEwen  
Governor in Council



Source: NS Permit #372, NS Annex 76

# PERMIT #372: GRID REFERENCES



Source: NS Permit #372,  
NS Annex 76

Follows as a plan filed in the office of the Minister of Mines

Reservation #:

Reference Map(s):

ST
RSTUVW
RST W

11 I 4 A
11 I 4 B
11 I 4 C

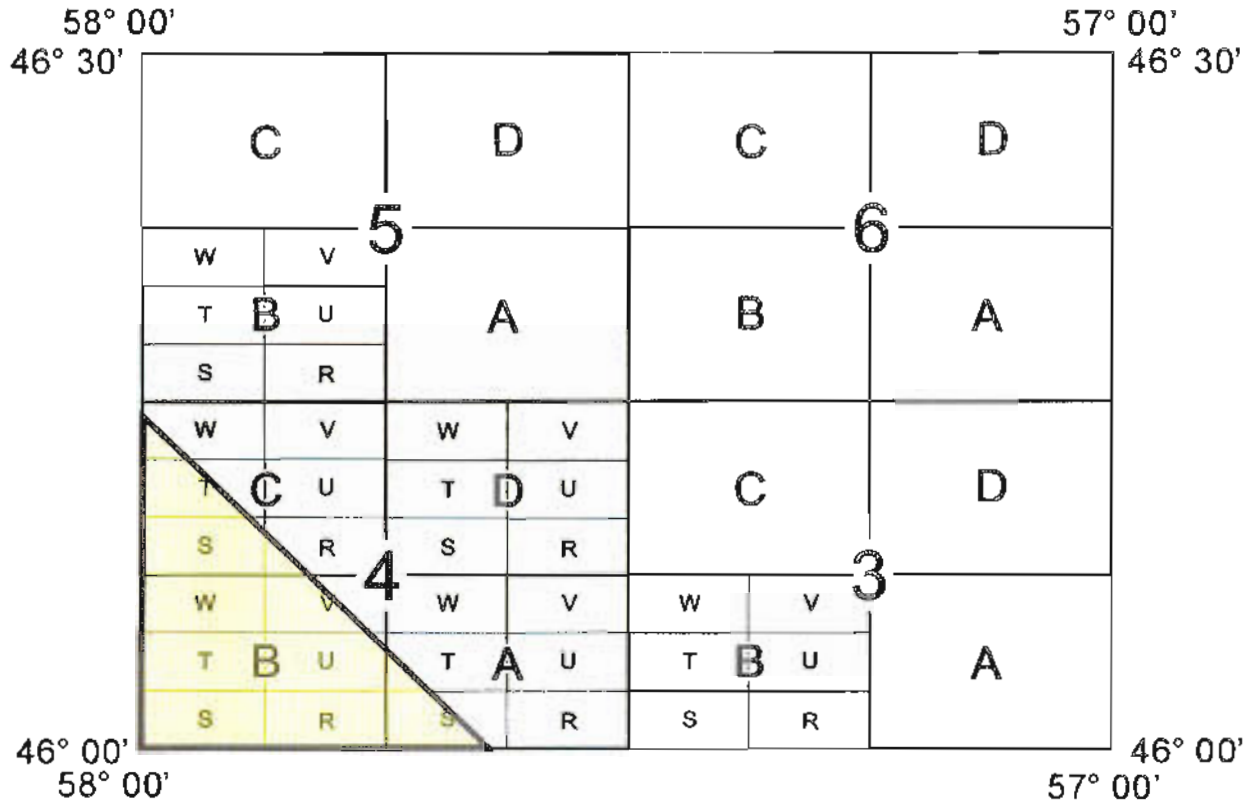
SURRENDERED

*July 21/70*

*also 10/25/70*

This License is granted subject to the rights of the owner or owners of the land covered by such license

# NOVA SCOTIA PERMIT 372



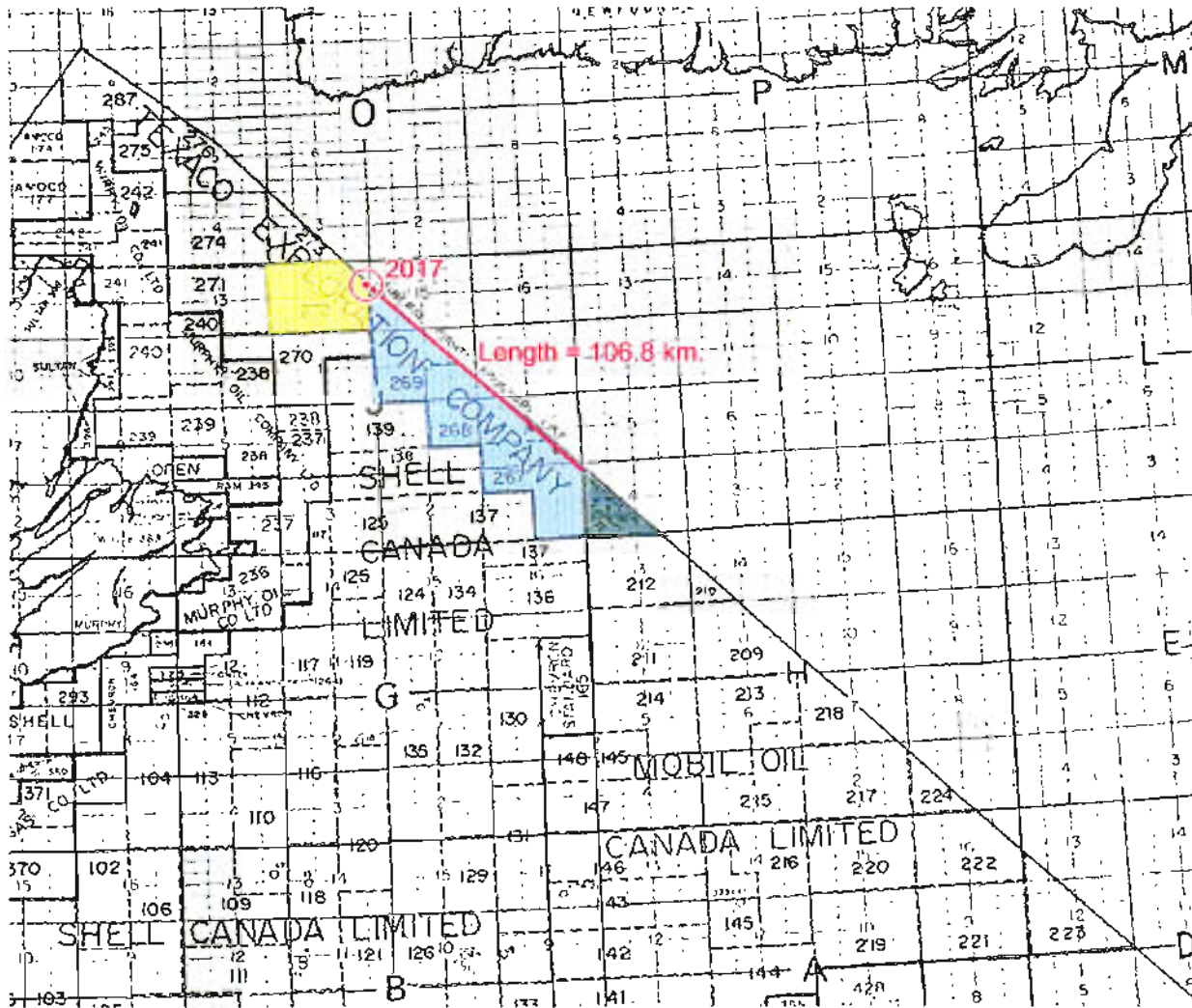
Permit 372  
Grids



1964 Agreement  
Boundary



# "COMMON BOUNDARY" PROVISIONS



Permits containing  
"common boundary"  
provisions

- 272
- 267-269
- 372

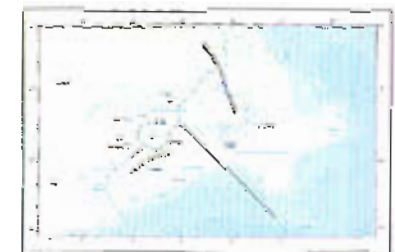
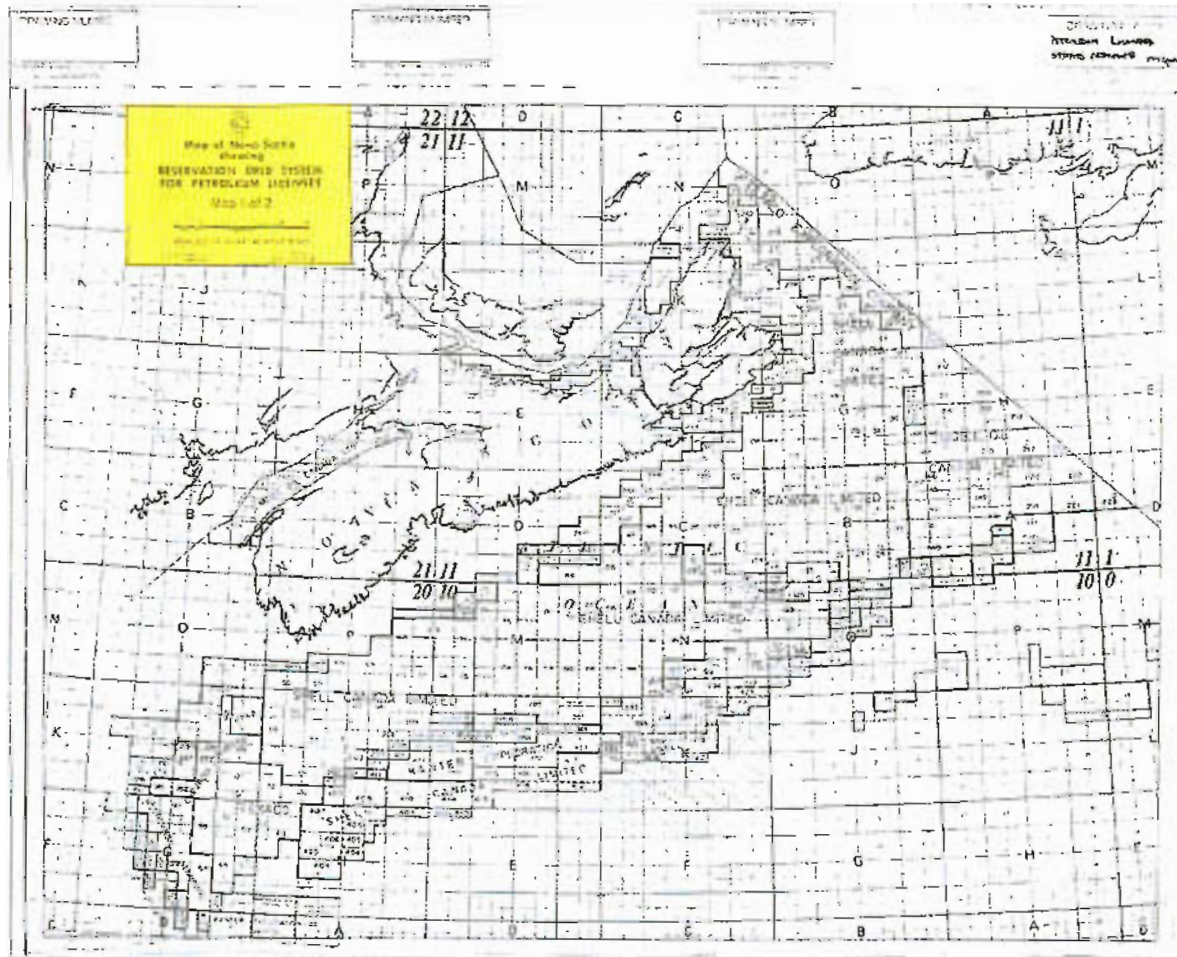


1964 Agreement  
Boundary

# NS PERMIT RESERVATION GRID SYSTEM

FIGURE 16

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



1964 Agreement  
Boundary

# THE HOPPER MEMORANDUM



OTZANA KLA 024,

970 23

MEMORANDUM TO THE ACTING DEPUTY MINISTER:

"Petroleum Exploration in Nova Scotia"  
Publication of Nova Scotia Department of Mines

Attached is a copy of a publication prepared by the Nova Scotia Department of Mines, entitled "Petroleum Exploration in Nova Scotia", which we received recently.

It is difficult to understand why this publication was prepared unless its main purpose is to foster the illusion that the Province really administers the areas off its coasts and supervises oil and gas activities thereon. It would of course be a convenient publication to send to companies making enquiries about exploration off Nova Scotia. Such enquiries are probably quite numerous, since the Province frequently has a full-page advertisement in the Economist, and perhaps in other periodicals, extolling the opportunities for oil and gas exploration off Nova Scotia.

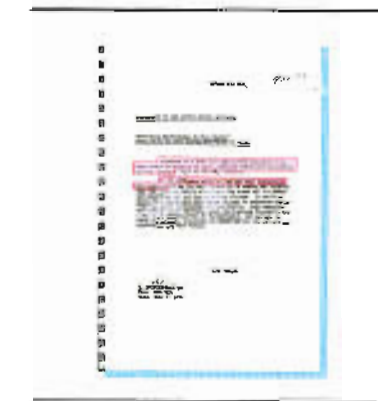
W.H. Hopper

T. THORNTON/pk  
File: PHO-PROV  
Date: June 5, 1974

Source: N&L Supp.  
Doc. 16



# THE HOPPER MEMORANDUM



Source: N&L Supp.  
Doc. 16

Attached is a copy of a publication prepared by the Nova Scotia Department of Mines, entitled "Petroleum Exploration in Nova Scotia", which we received recently.

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## NS EXPLORATION PERMITS 1965-1970s



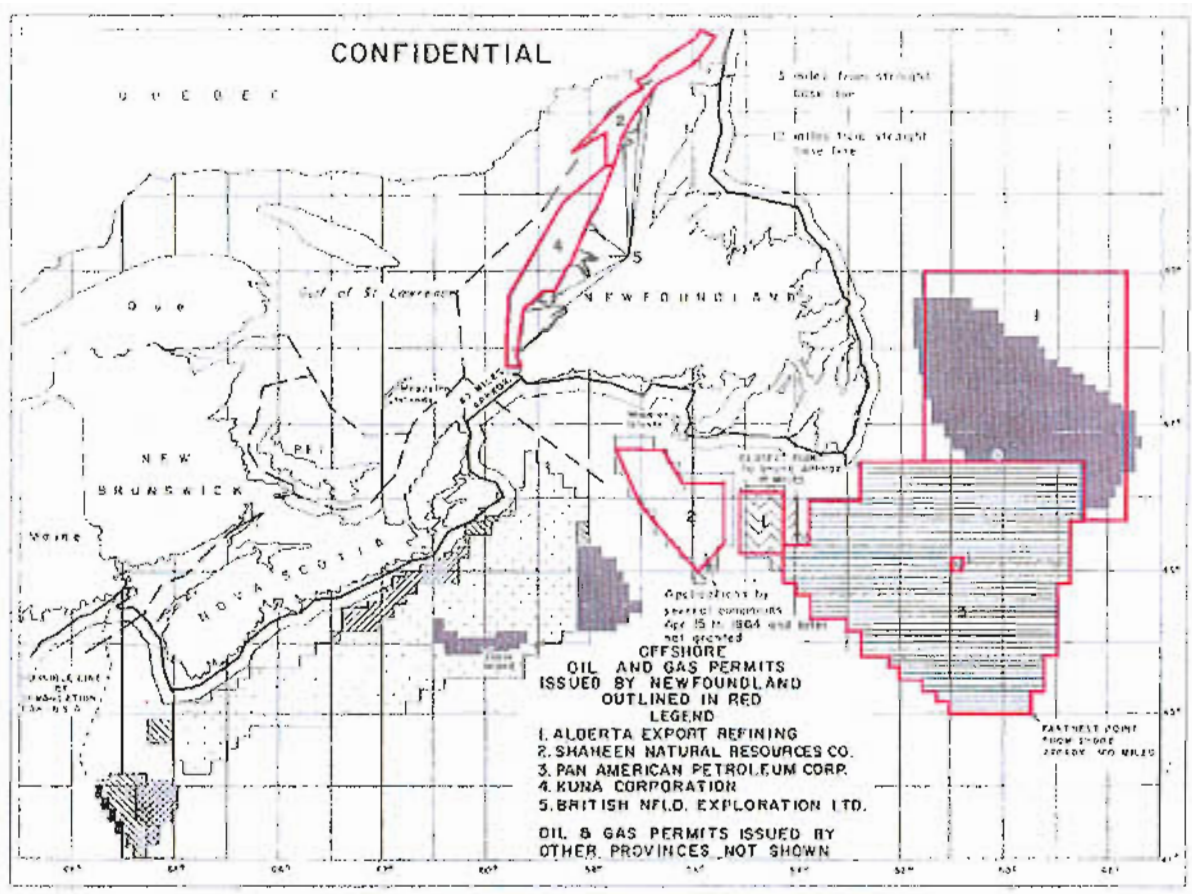
- All Nova Scotia Exploration Permits were issued so as to abut and not cross the *1964 Agreement* boundary
- The boundary used was clearly the *1964 Agreement* boundary, including The 135° Line
- The 1964 boundary was applied in a clear and open manner
- Newfoundland never objected to this practice

## NEWFOUNDLAND'S OFFSHORE PERMITS



- Introduction and background to Newfoundland Permits
- Approval of Interim Permits: 1965 - 1967
- New Interim permits issued in 1967 and 1971
  - Mobil Oil – 1967
  - Katy Industries (Gulf of St. Lawrence) – 1971
  - Katy Industries (St. Pierre Bank and South) – 1971

# NEWFOUNDLAND APPROVALS 1965-1967



— Newfoundland Approvals 1965-1967



1964 Agreement Boundary



# NEWFOUNDLAND PERMITS 1967-1971

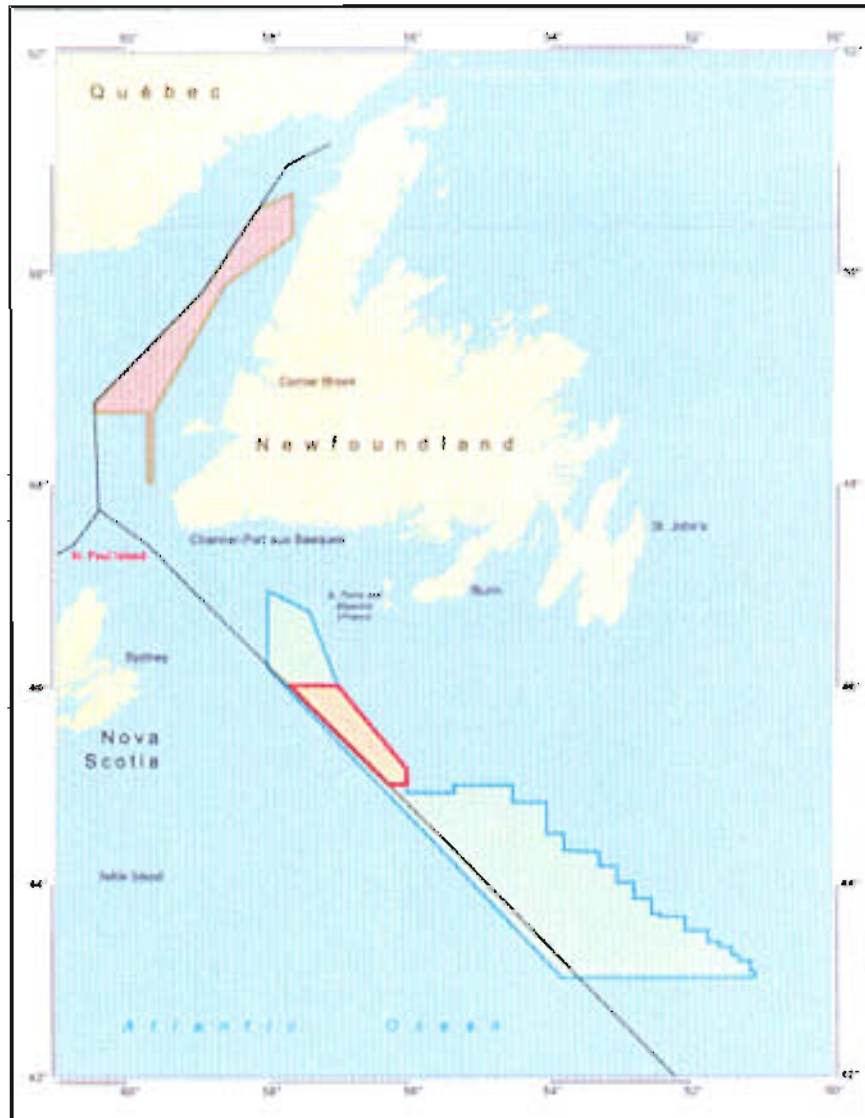




FIGURE A-4

Newfoundland and  
Labrador Exploration  
Permits Issued  
Along the 1964  
Agreement Boundary:  
1967 and 1971

-  Katy Industries Permit,  
Gulf of St. Lawrence,  
May 19, 1971
-  Katy Industries Permit,  
Grand Banks,  
May 19, 1971
-  Mobil Industries Permit,  
September 15, 1967
-  Provincial Boundaries  
as Established in the  
1964 Agreement

# 1967 MOBIL PERMIT

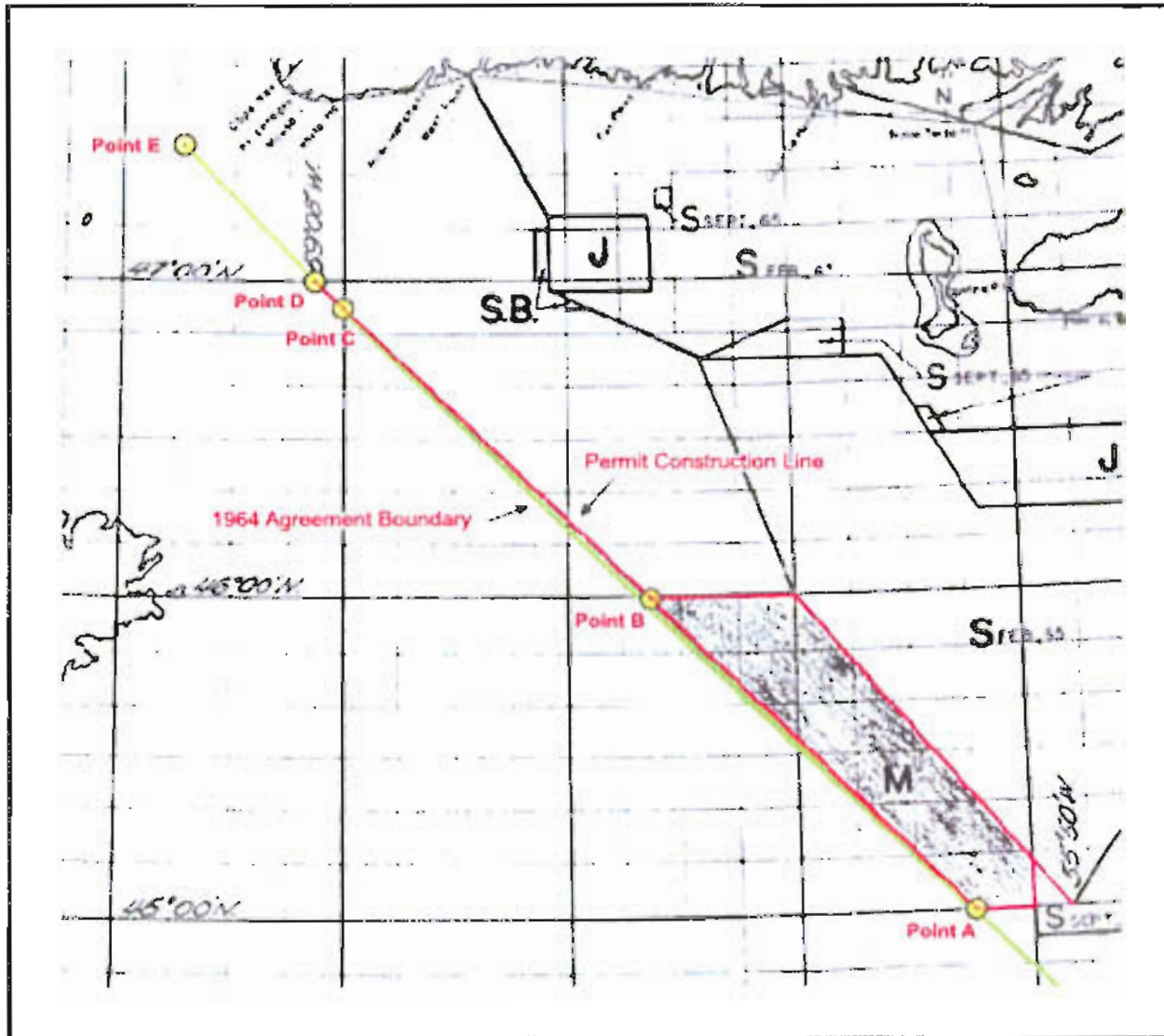


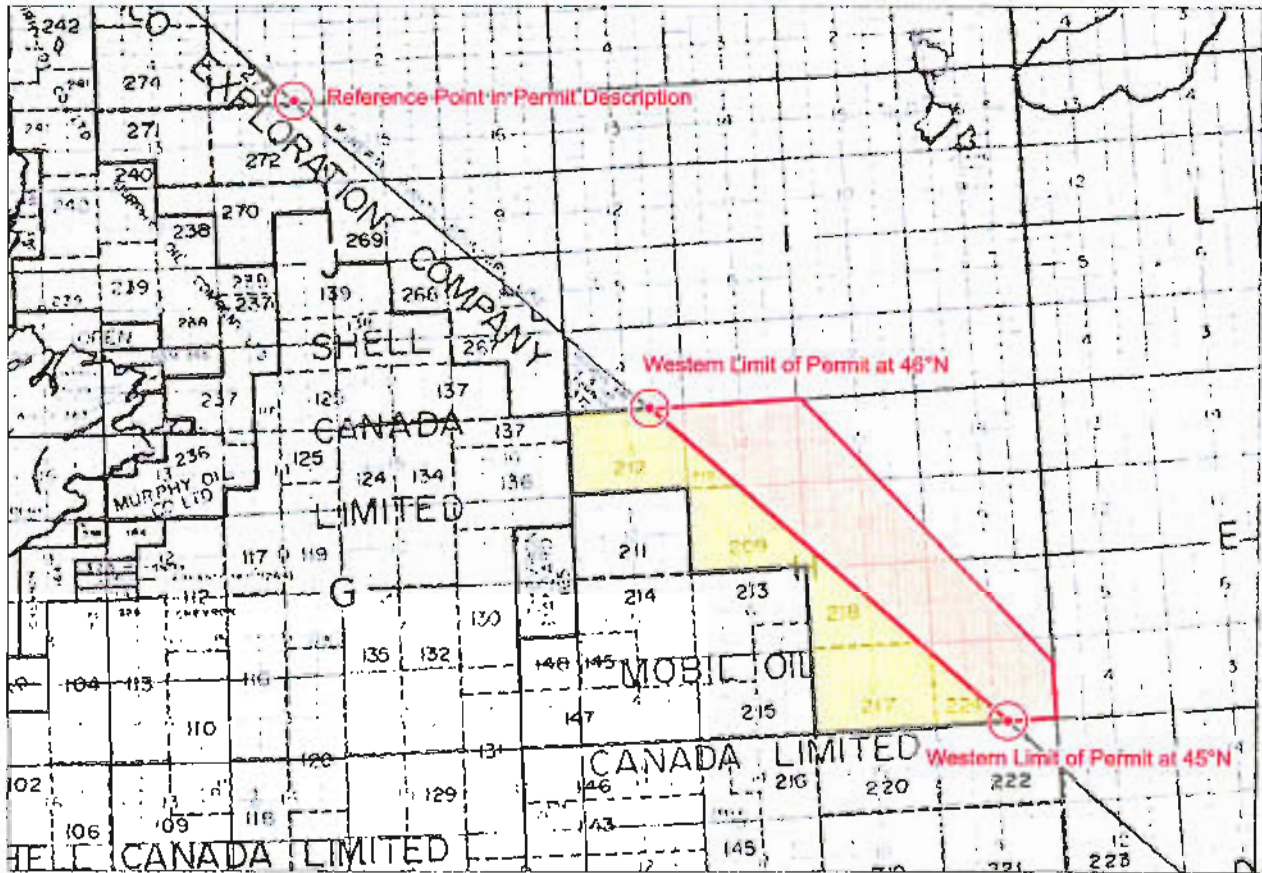
FIGURE A-5

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



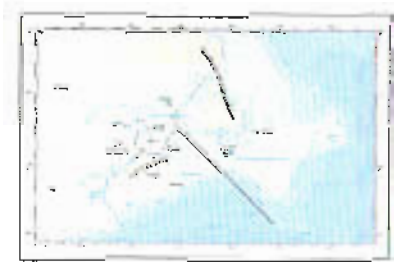
1964 Agreement Boundary

# NS & NFLD MOBIL PERMITS



## Nova Scotia and Newfoundland Mobil Permits Abutting the Boundary

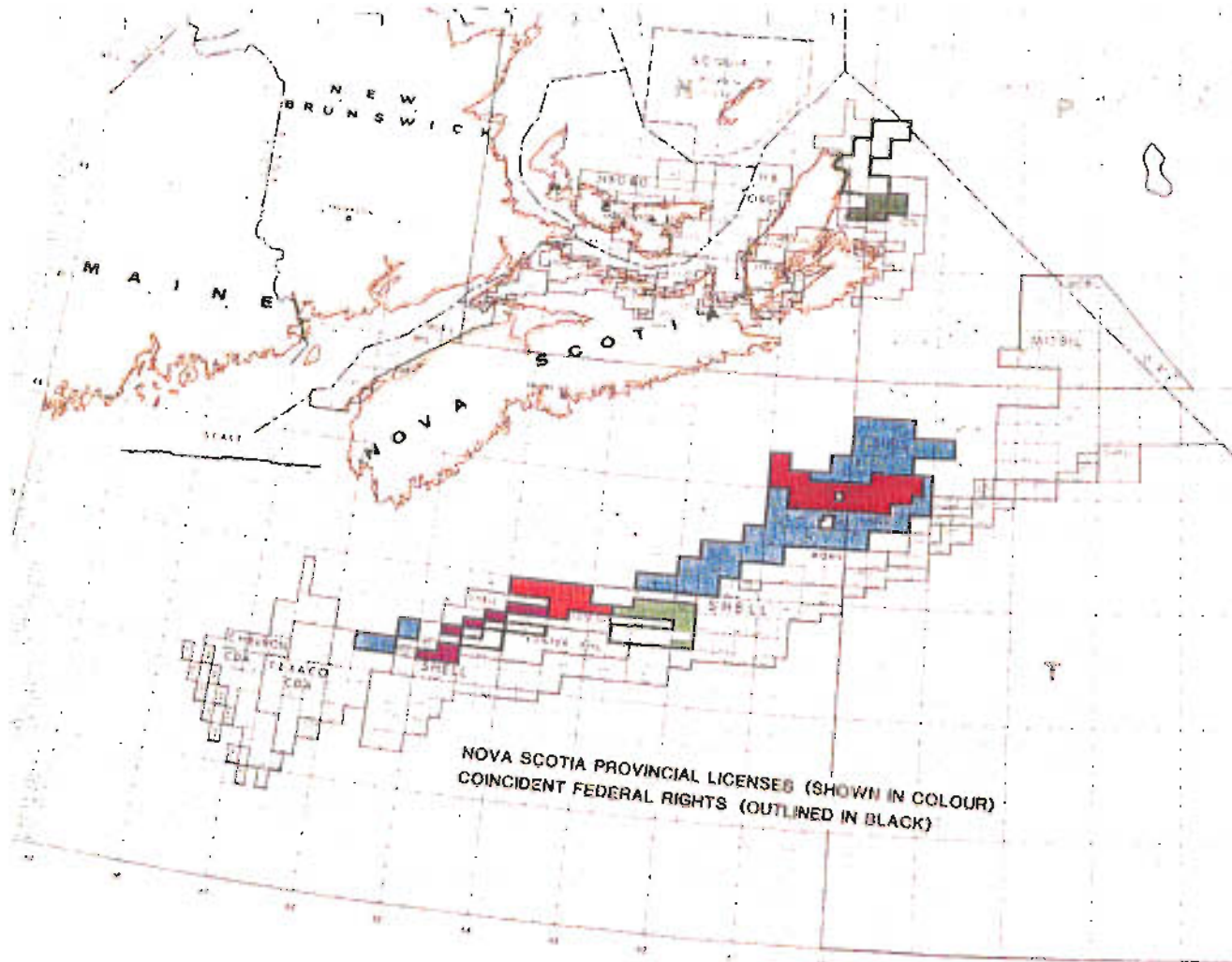
- Mobil Permits- Nova Scotia
- Mobil Permits- Newfoundland



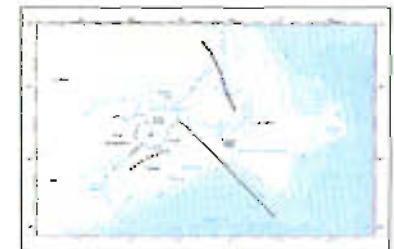
1964 Agreement Boundary



# 1979 PETRO CANADA PERMIT MAP



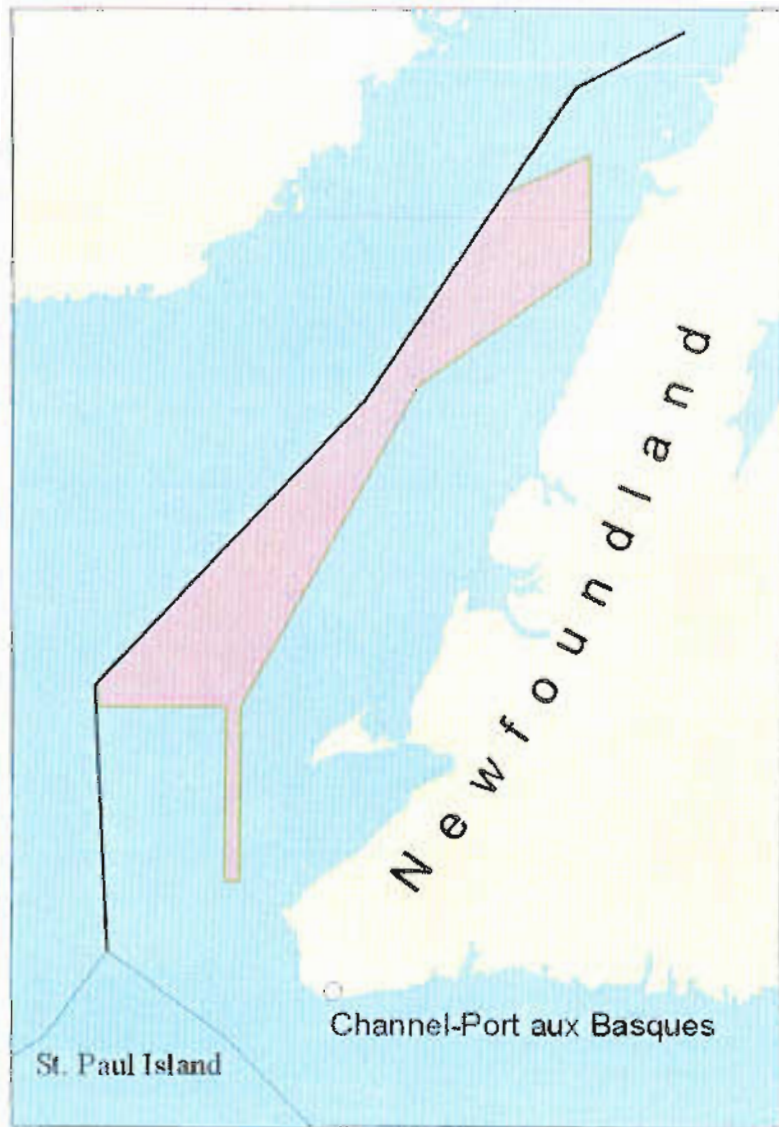
Petro Canada Published  
Map - 1979



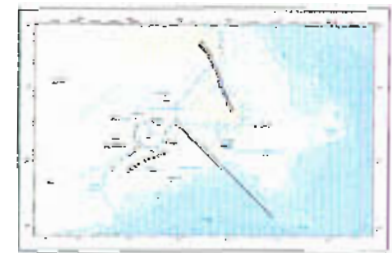
1964 Agreement  
Boundary



# KATY PERMIT: GULF OF ST. LAWRENCE



Katy Permit;  
Gulf of  
St. Lawrence

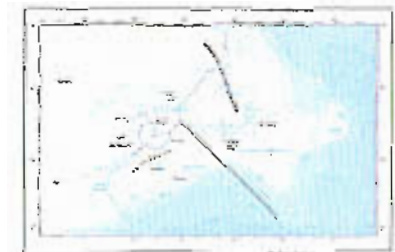
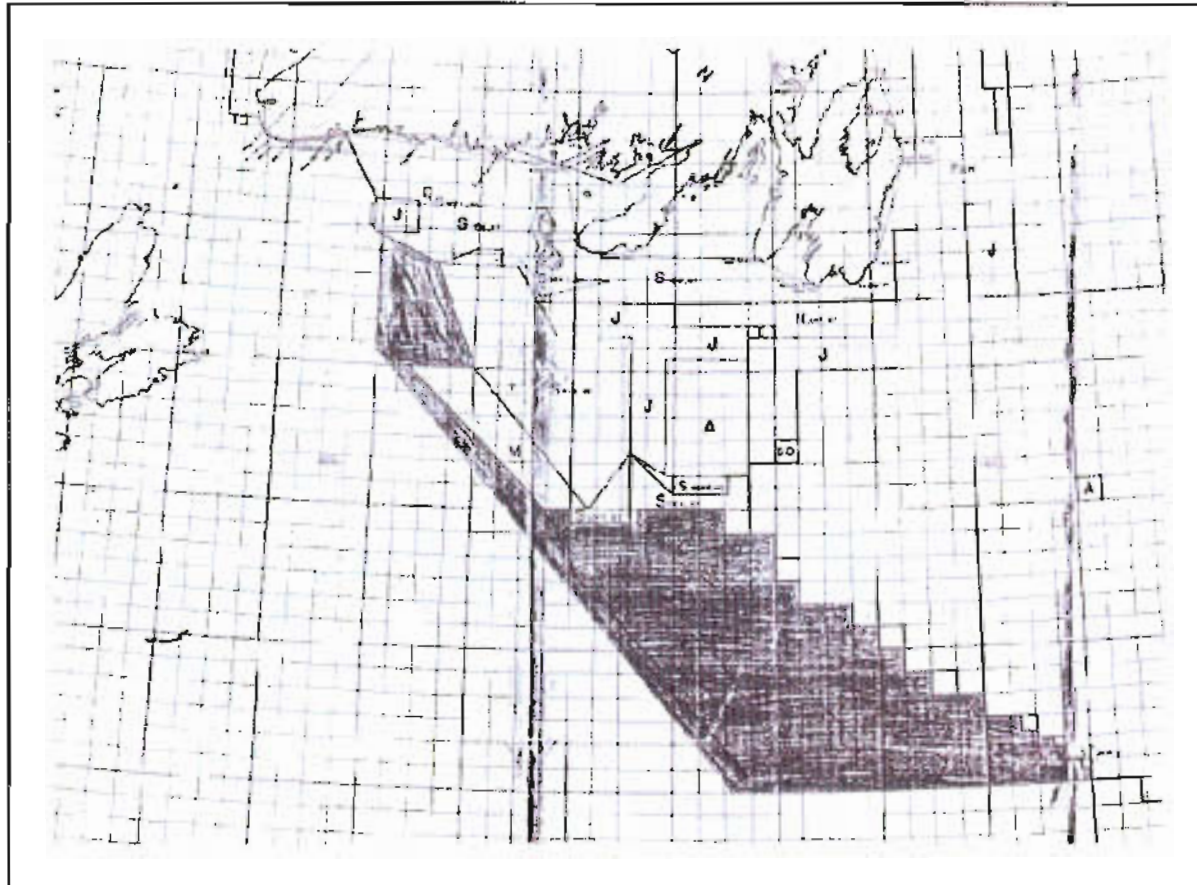


1964 Agreement  
Boundary

# KATY PERMIT 1971 - GRAND BANKS

FIGURE A-6

Newfoundland Permit  
Issued to Katy Industries  
to the South of St. Pierre,  
May 19, 1971



1964 Agreement  
Boundary

# THE KATY PERMIT - MERCATOR PROJECTION

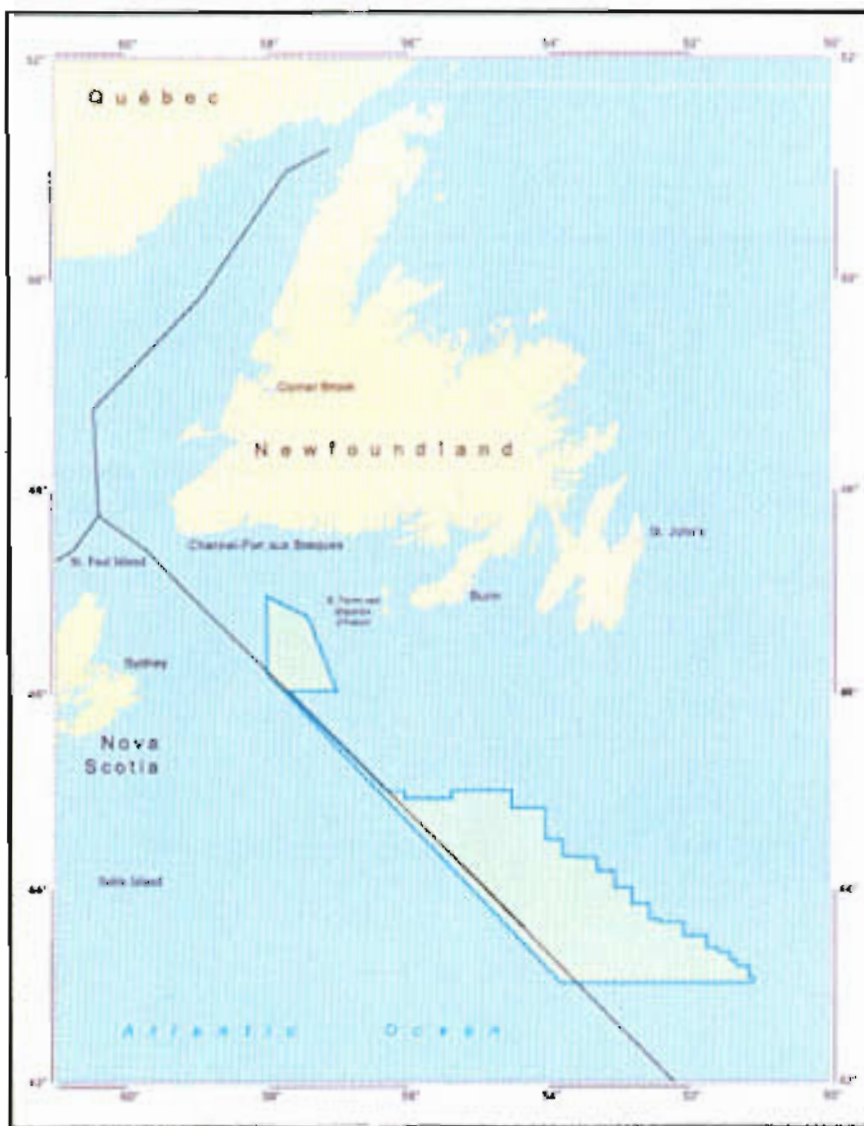




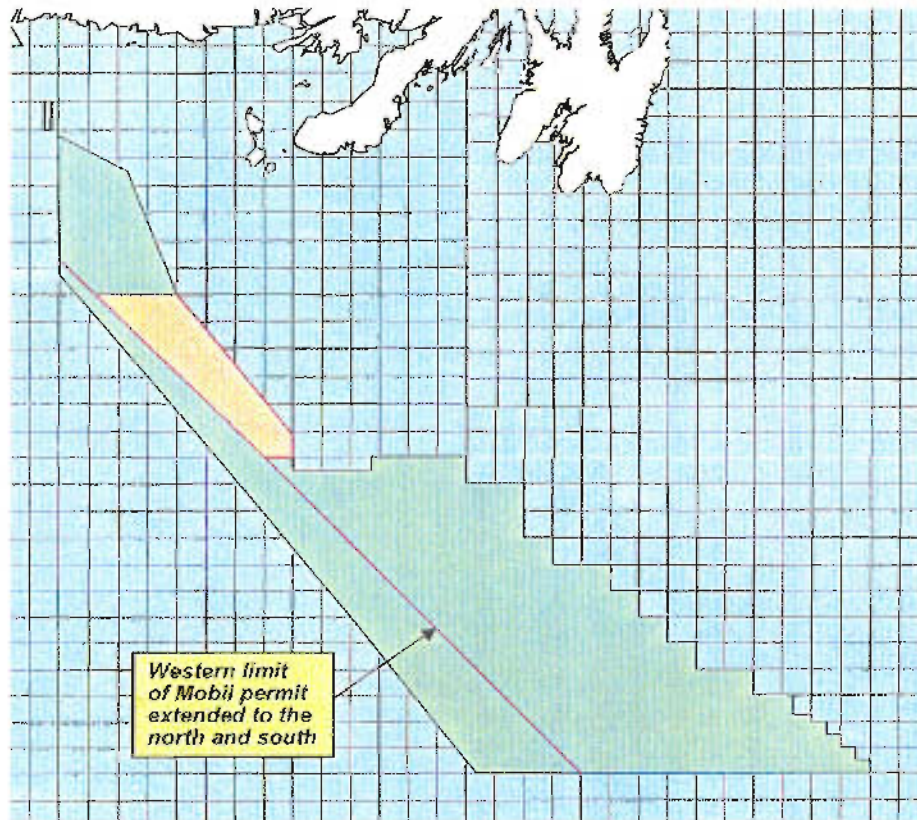
FIGURE A-8

The Katy Industries  
Permit of May 19, 1971  
As Applied to a Mercator  
Projection Chart

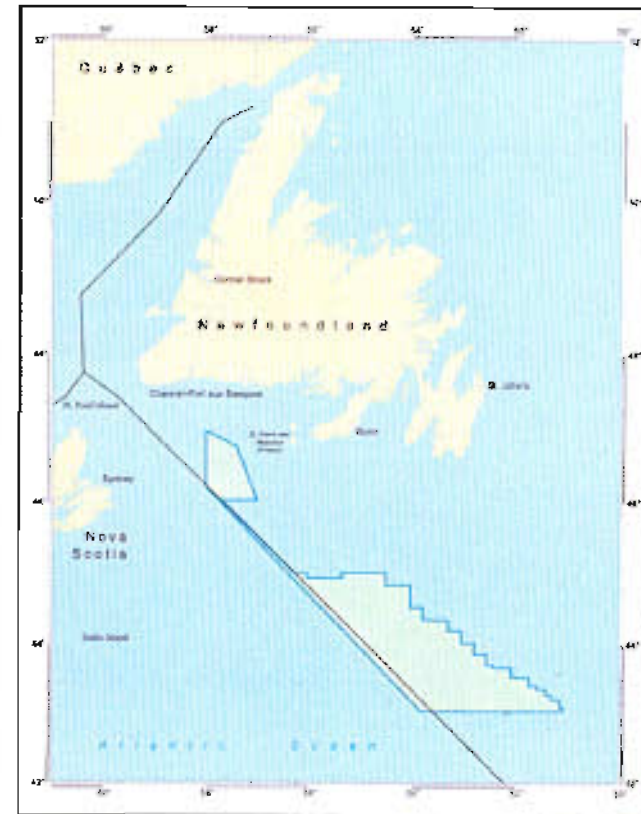
-  Katy Industries Permit,  
Grand Banks,  
May 19, 1971
-  Provincial Boundaries  
as Established in the  
1964 Agreement



# CONFLICTING VERSIONS OF KATY PERMIT



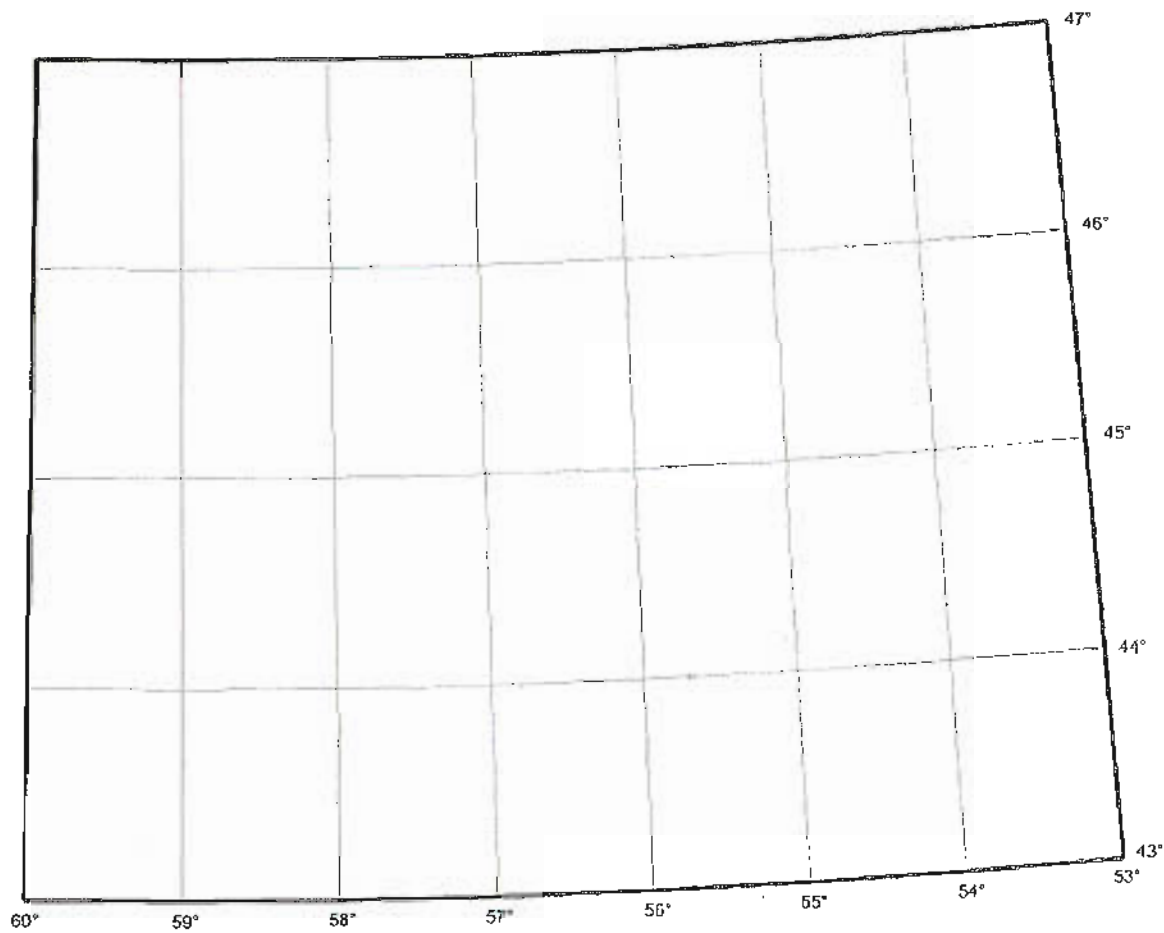
**Newfoundland & Labrador**



**Nova Scotia**

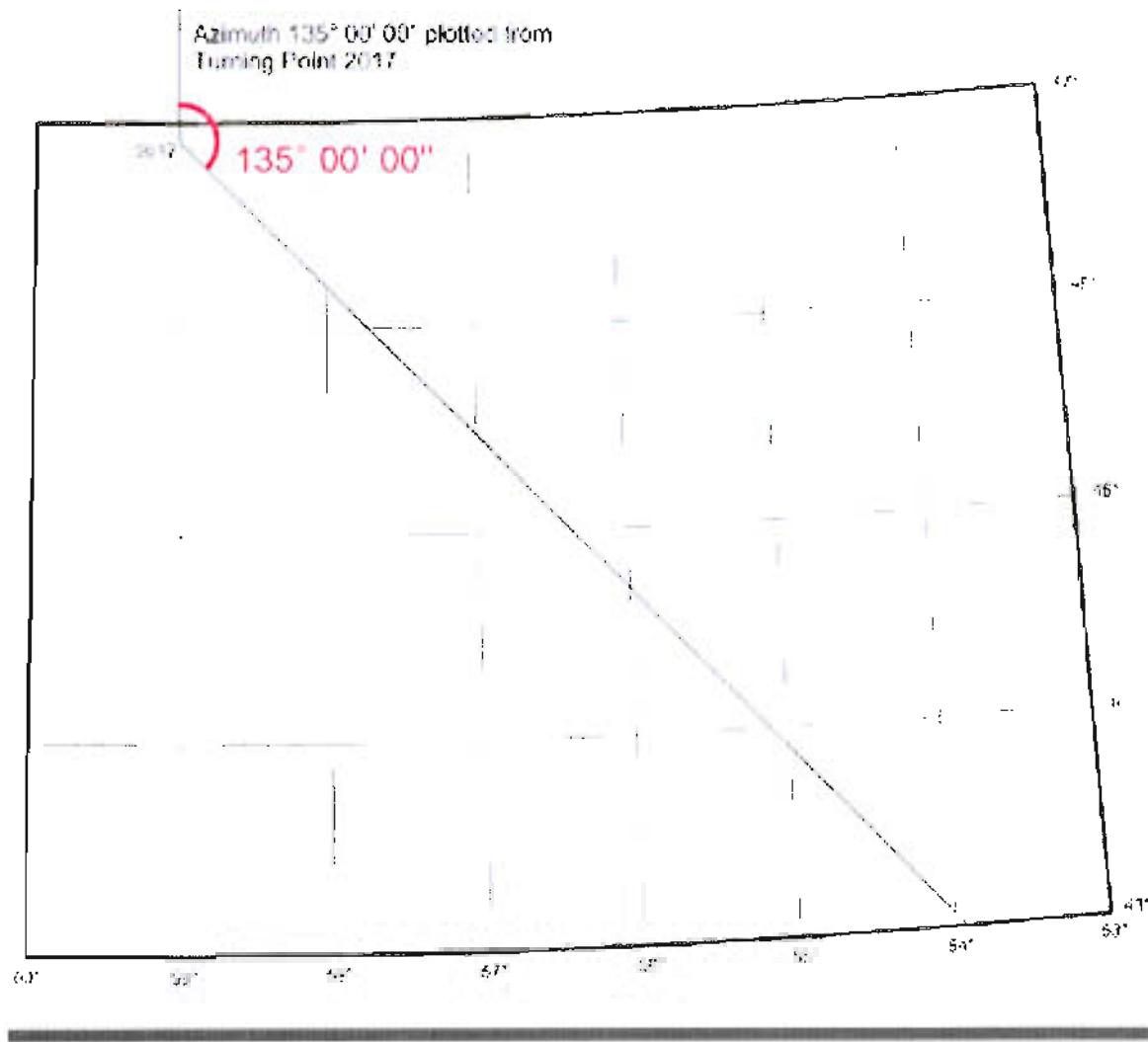


# CONIC PROJECTION



Conic Projection  
Chart

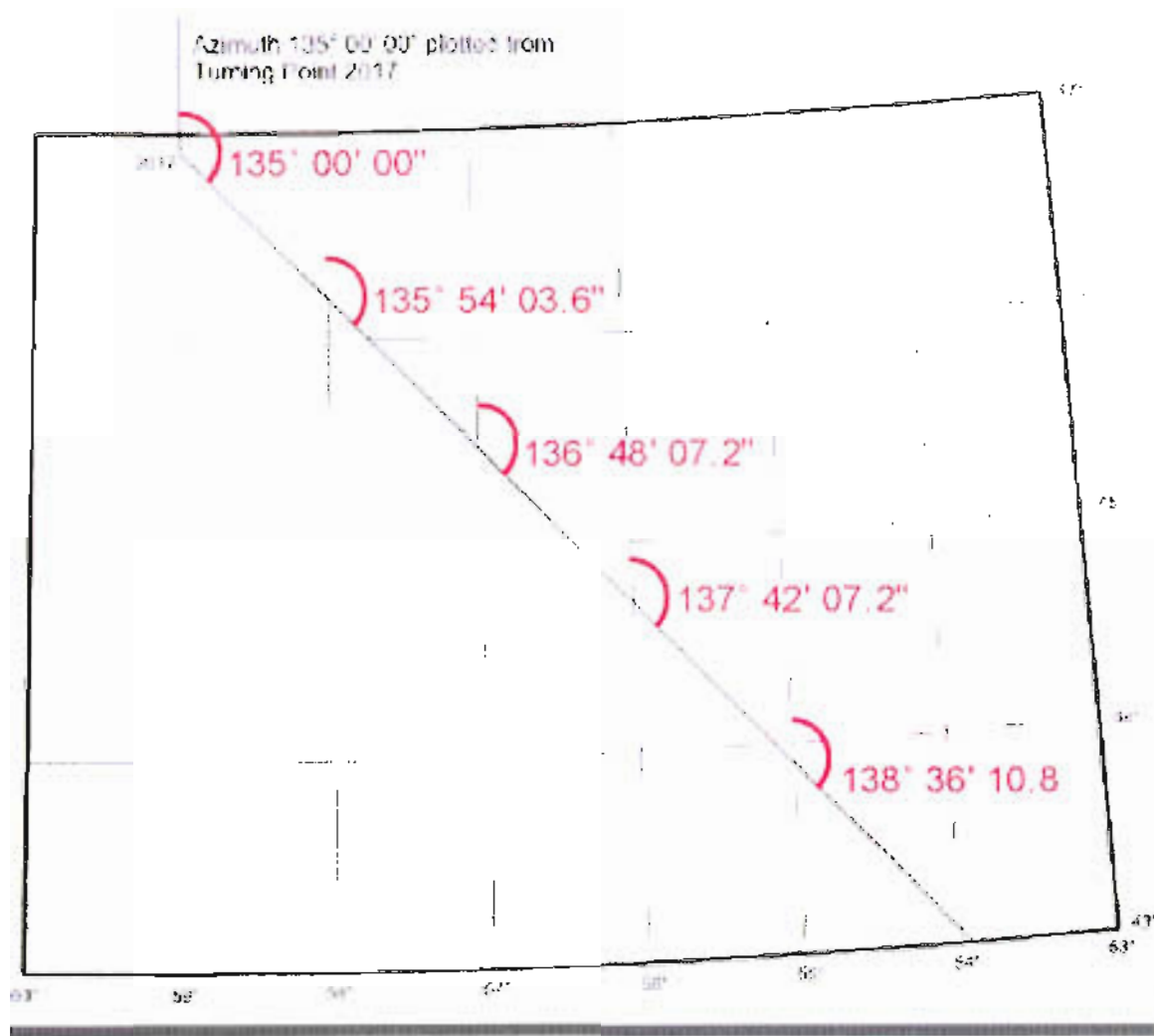
# 135° AZIMUTH ON CONIC PROJECTION



135° Azimuth  
On Conic  
Projection

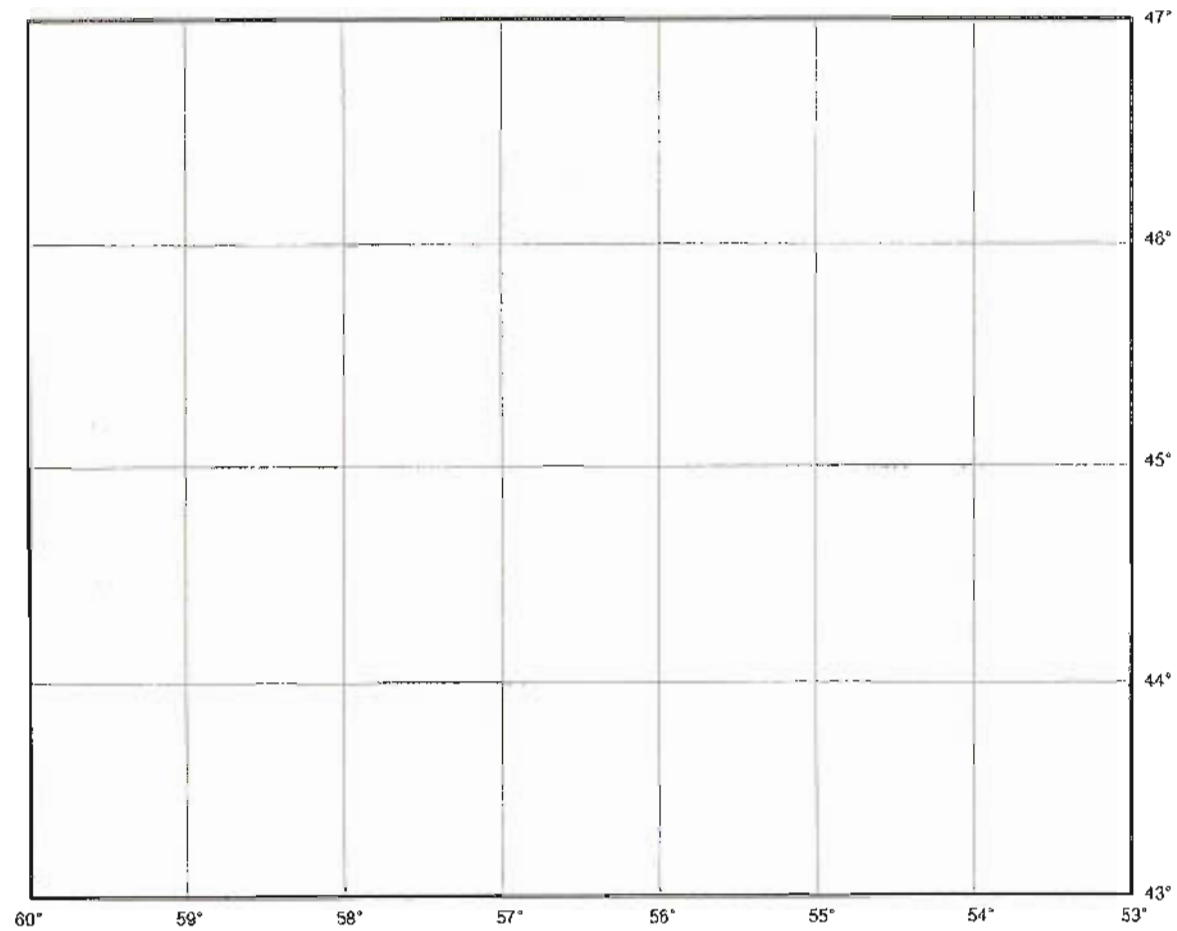
# STRAIGHT LINE ON CONIC PROJECTION

Results of a Straight  
Line Plotted on a Conic  
Projection



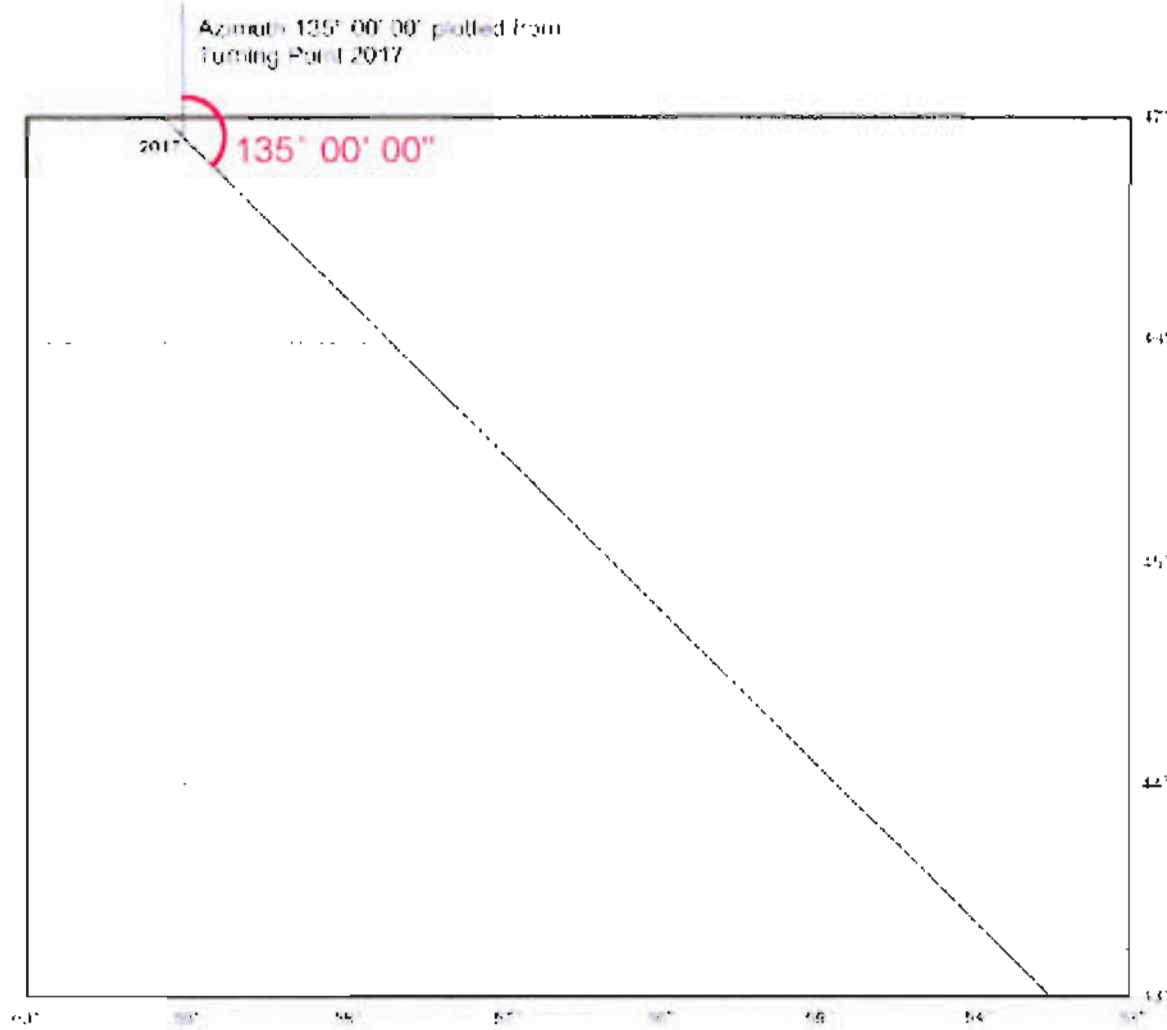
# MERCATOR PROJECTION CHART

Mercator Projection





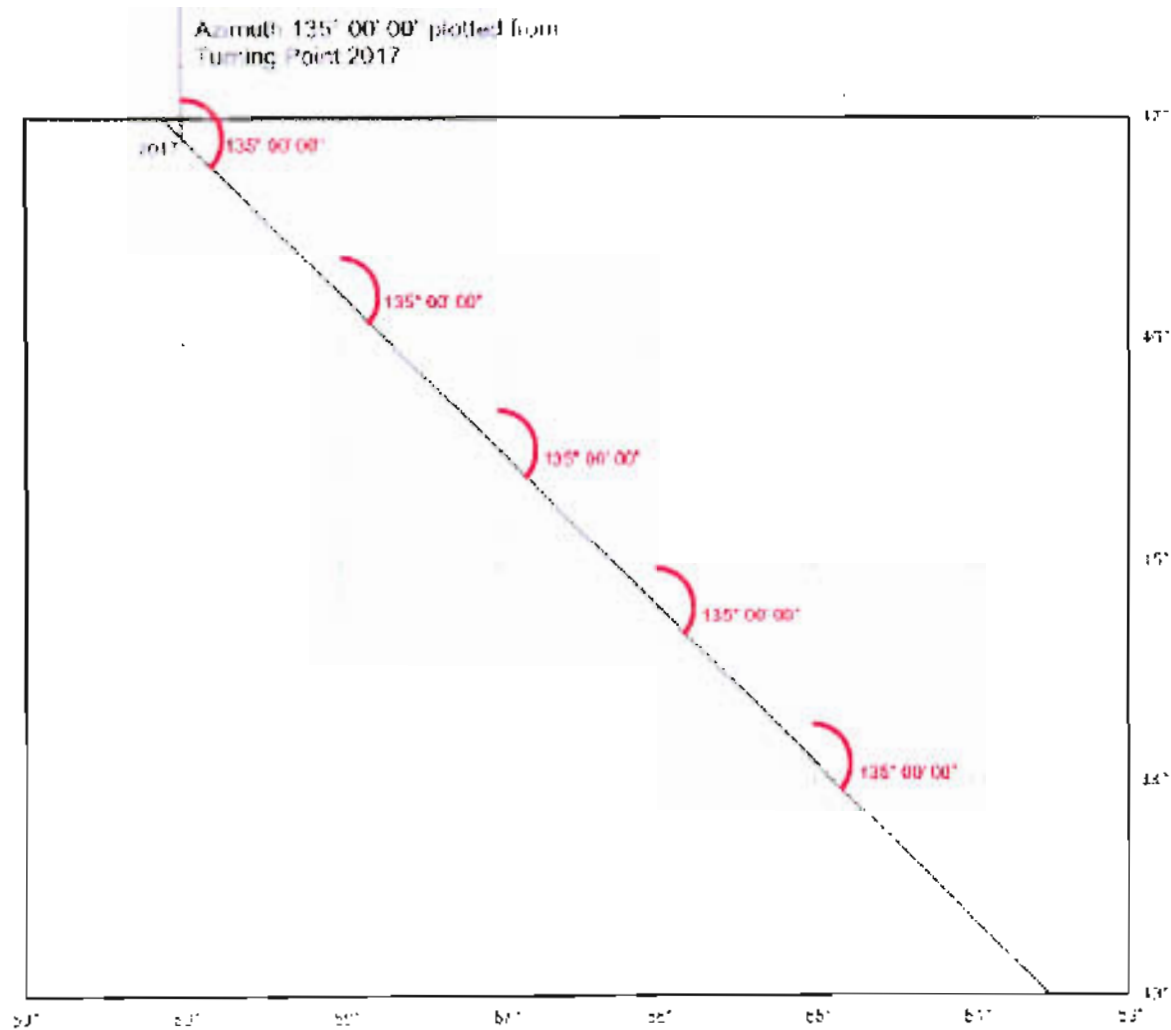
# 135° AZIMUTH ON MERCATOR PROJECTION



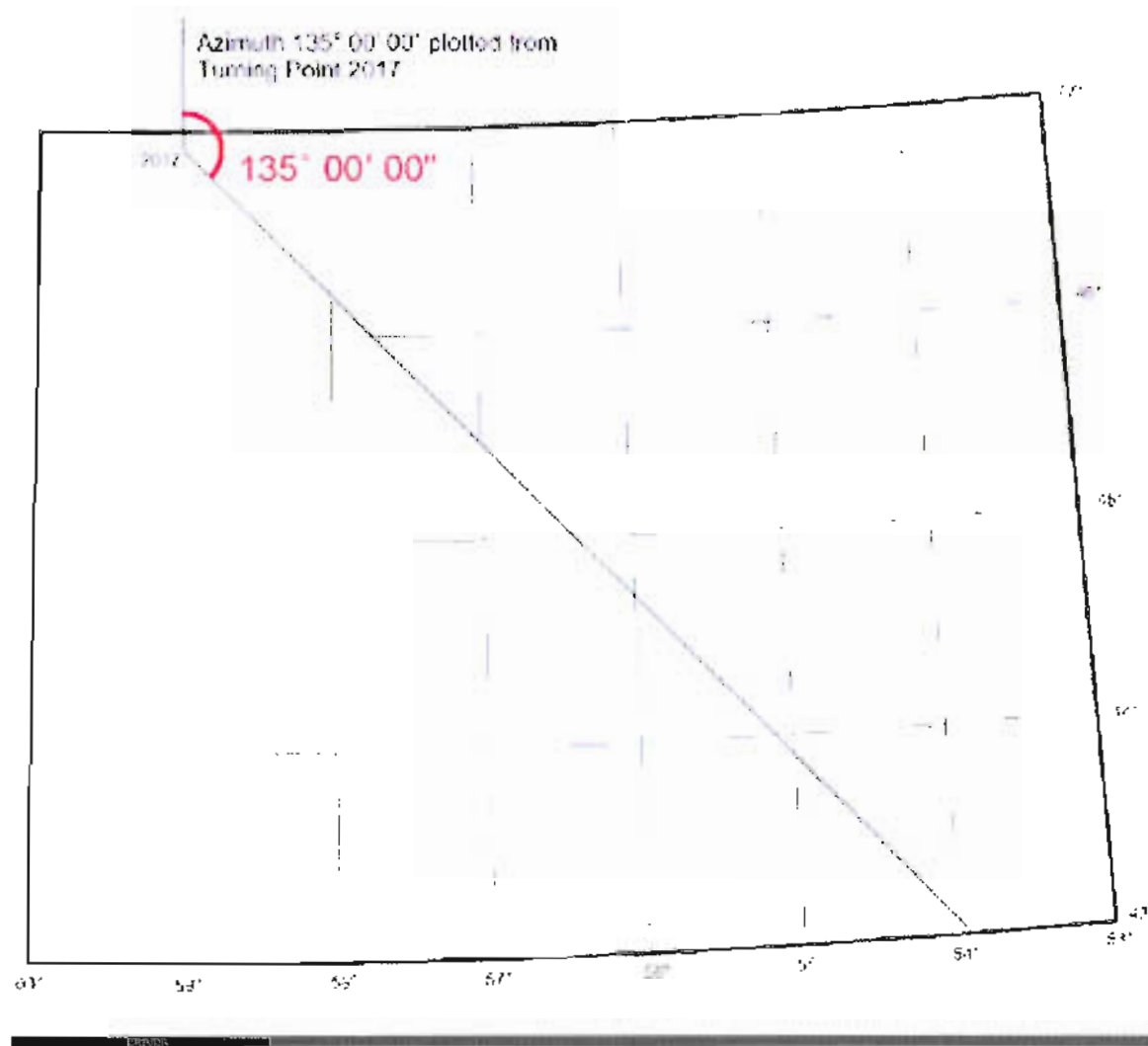
135° Azimuth  
On Mercator  
Projection

# 135° AZIMUTH ON MERCATOR PROJECTION

135° Azimuth  
On Mercator  
Projection

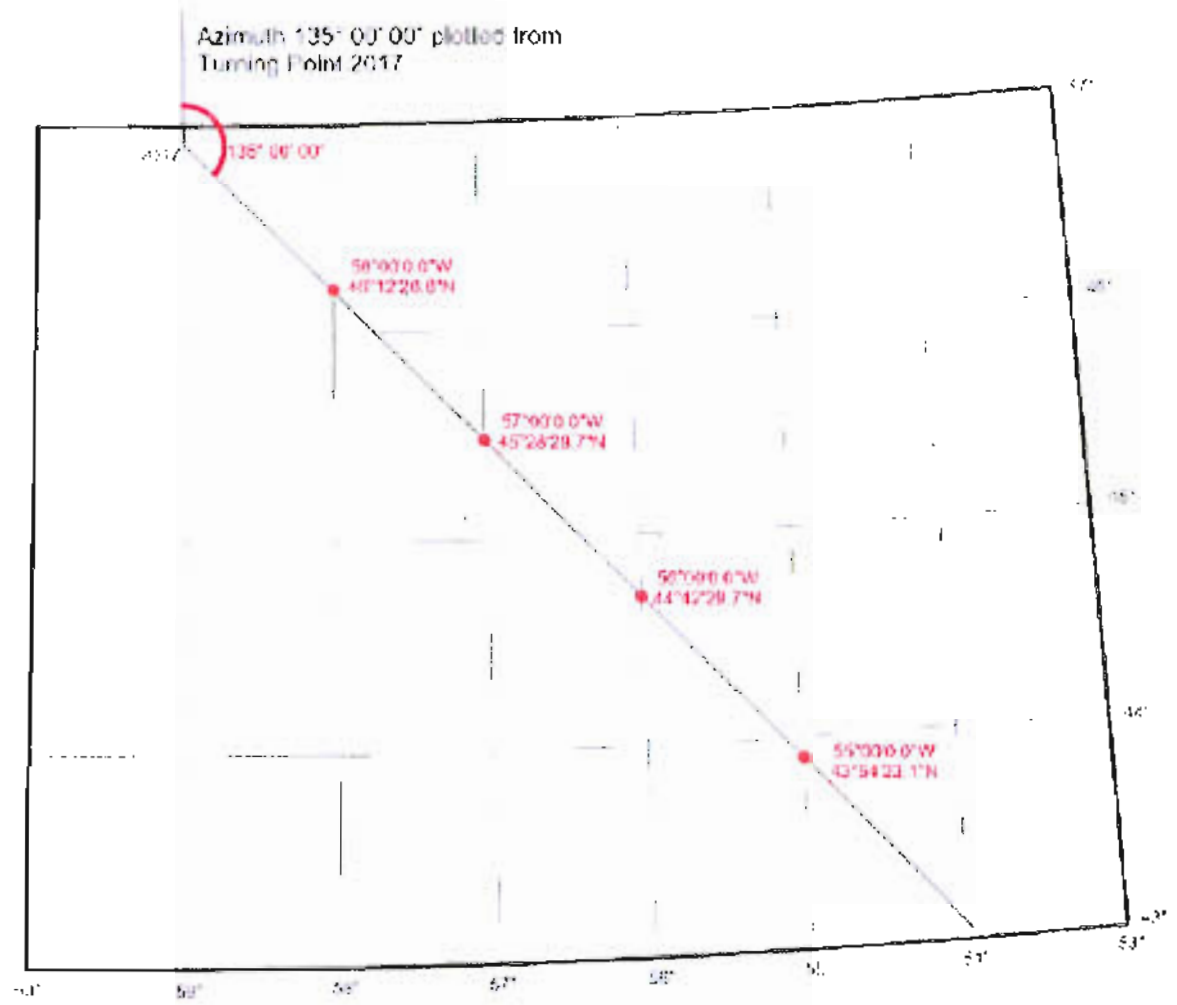


# 135° AZIMUTH ON CONIC PROJECTION



135° Azimuth  
On Conic  
Projection

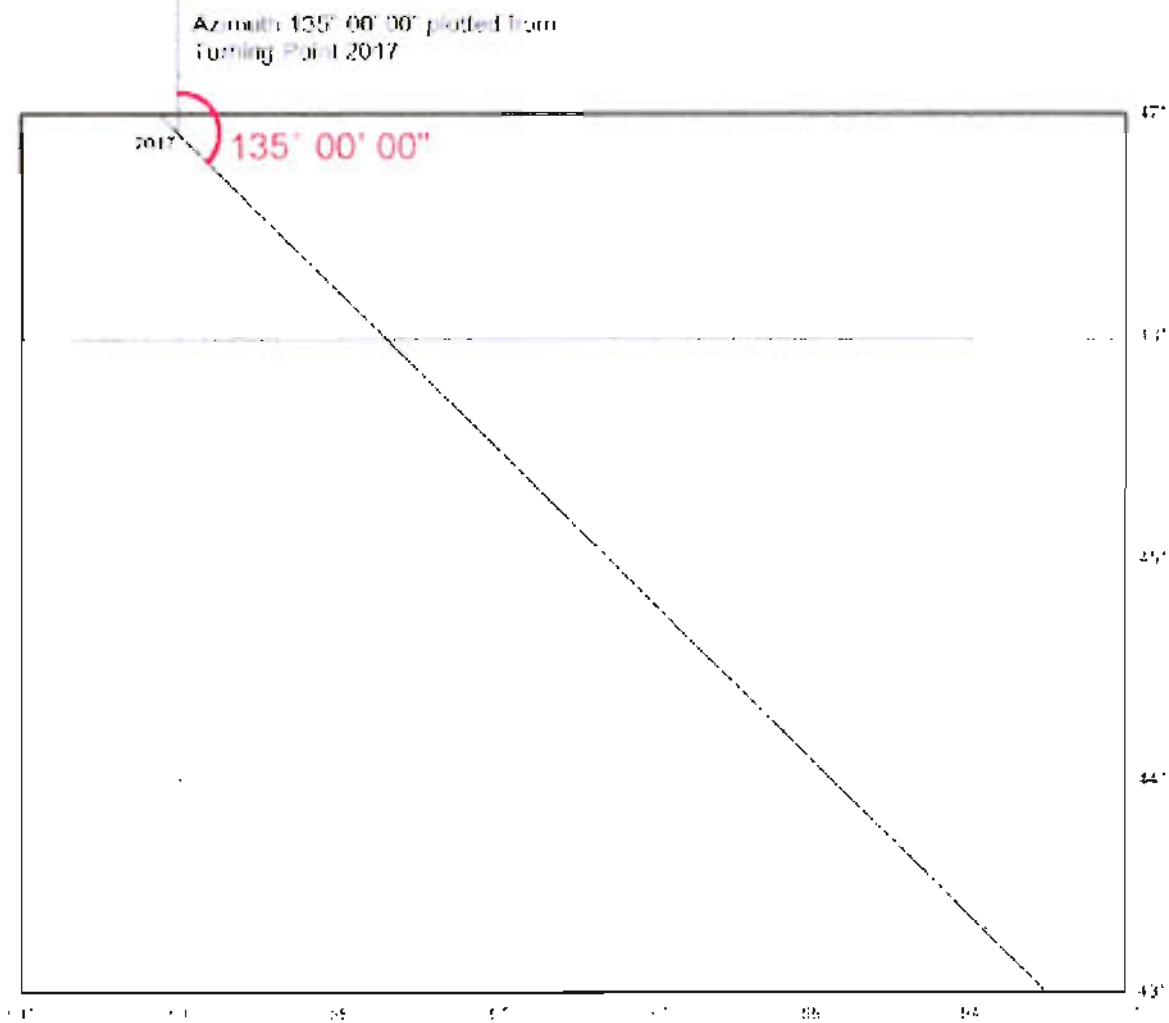
# COORDINATES ALONG THE AZIMUTH



Coordinates Along the Azimuth

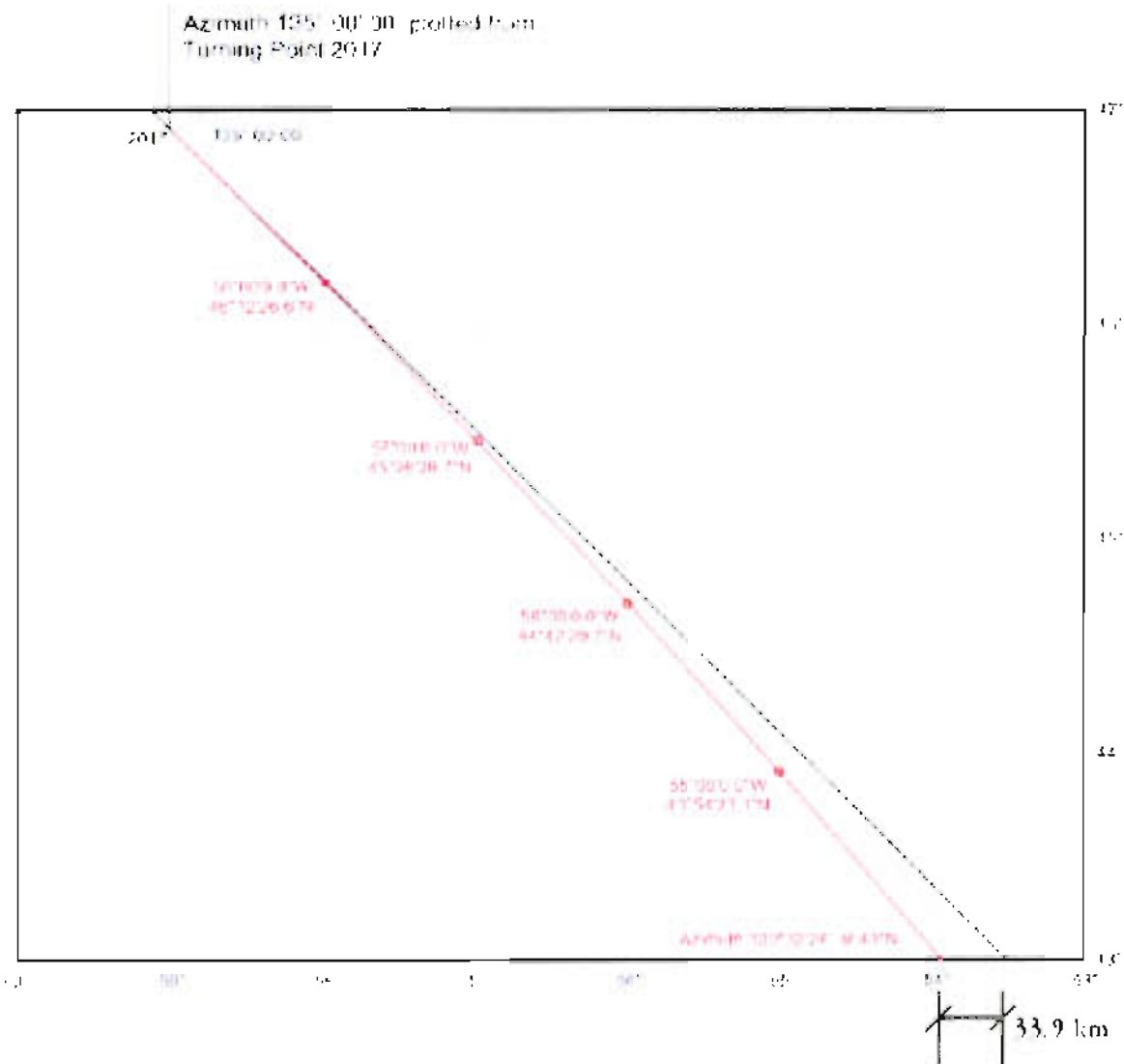


# 135° AZIMUTH TRANSFERRED TO MERCATOR

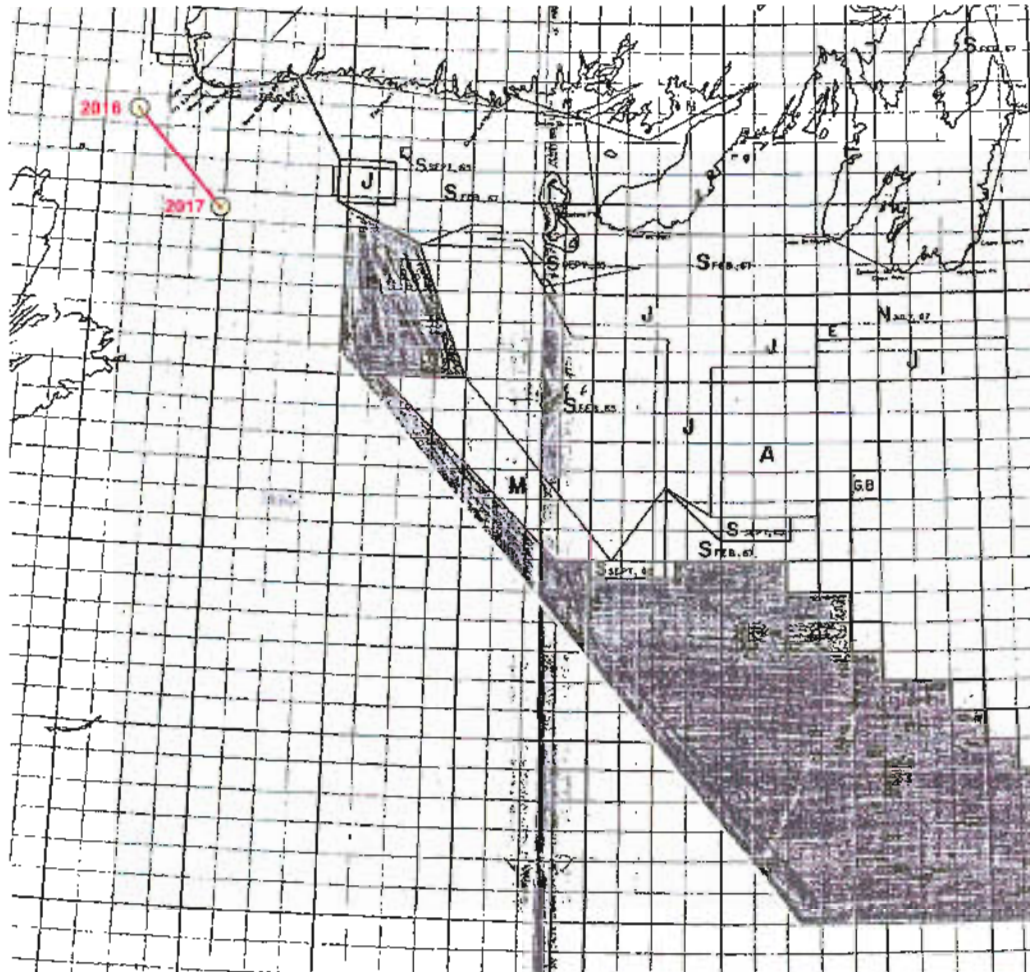


135° Azimuth  
Transferred  
to Mercator

# COORDINATE LINE TRANSFERRED TO MERCATOR



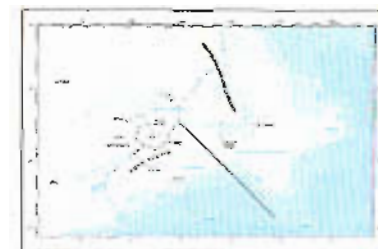
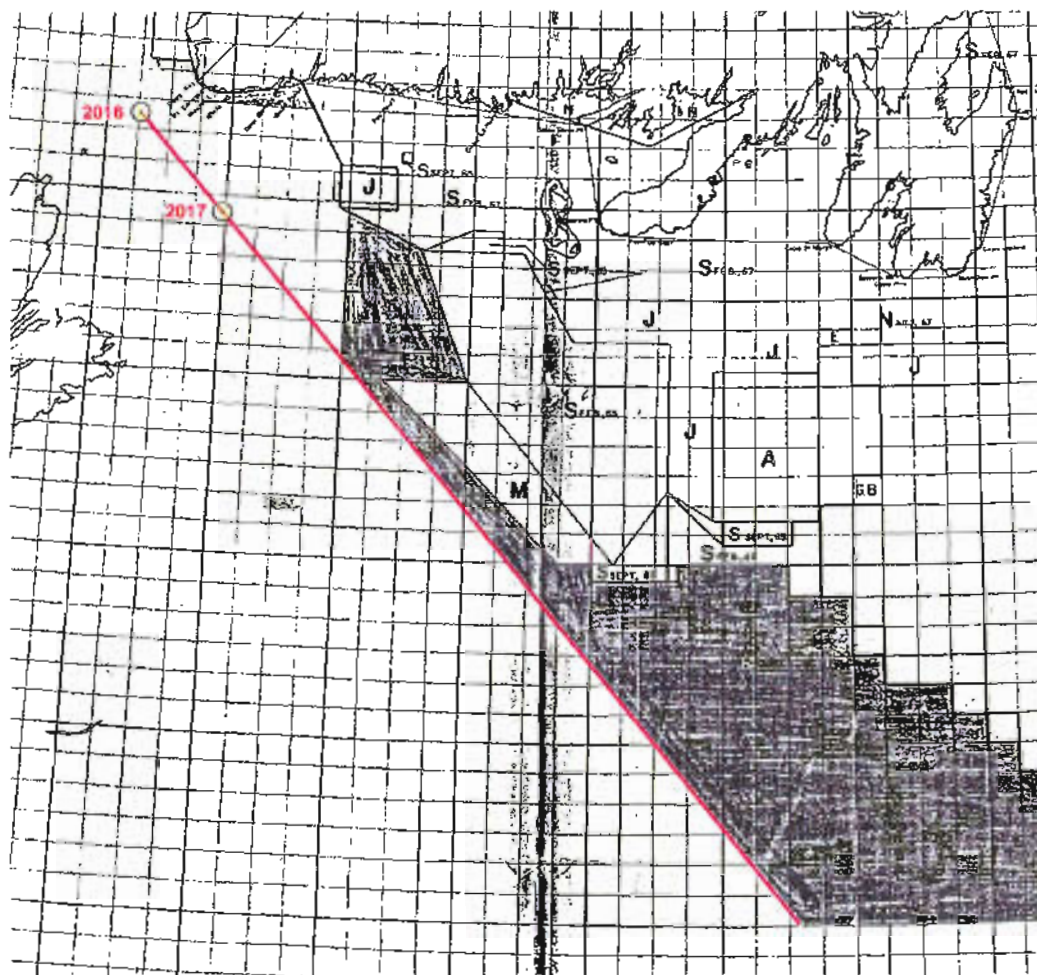
# KATY PERMIT WITH POINTS 2016 & 2017



1964 Agreement  
Boundary



# STRAIGHT-LINE EXTENSION: 2016 TO 2017



1964 Agreement  
Boundary

# THE KATY PERMIT - MERCATOR PROJECTION

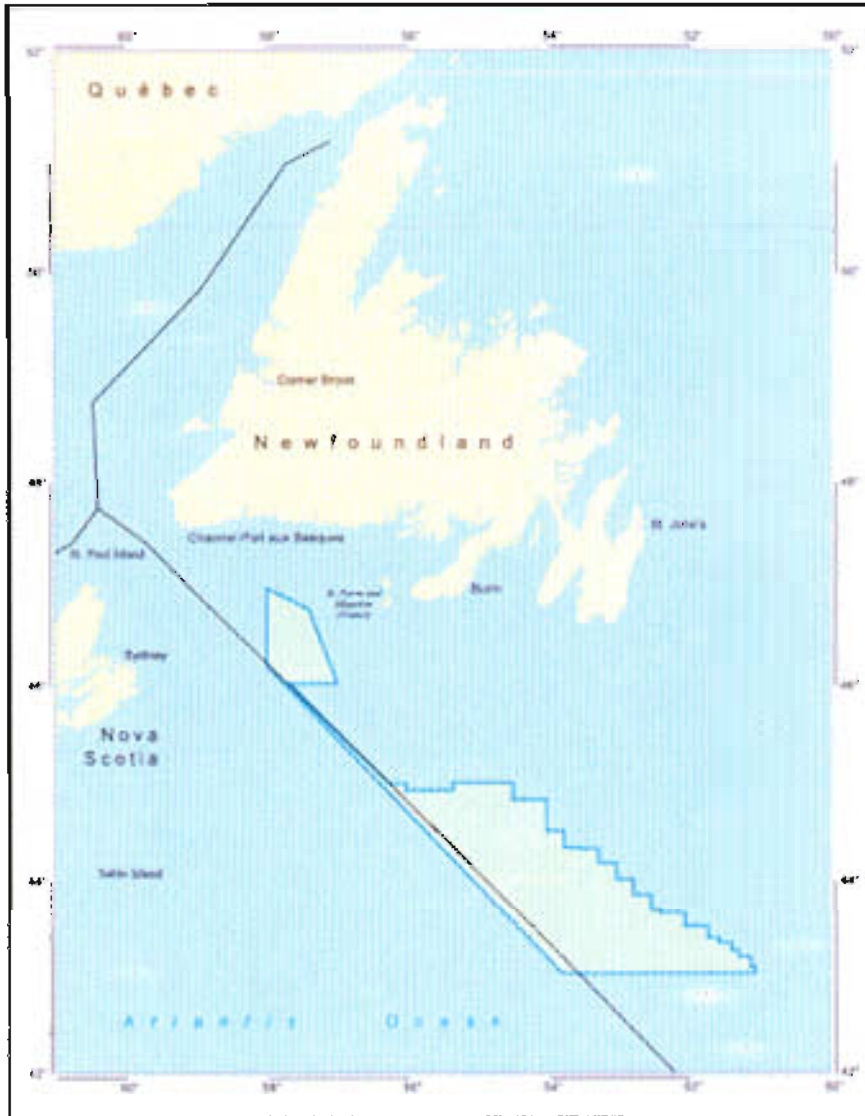




FIGURE A-8

The Katy Industries  
Permit of May 19, 1971  
As Applied to a Mercator  
Projection Chart

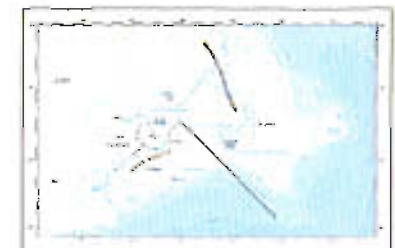
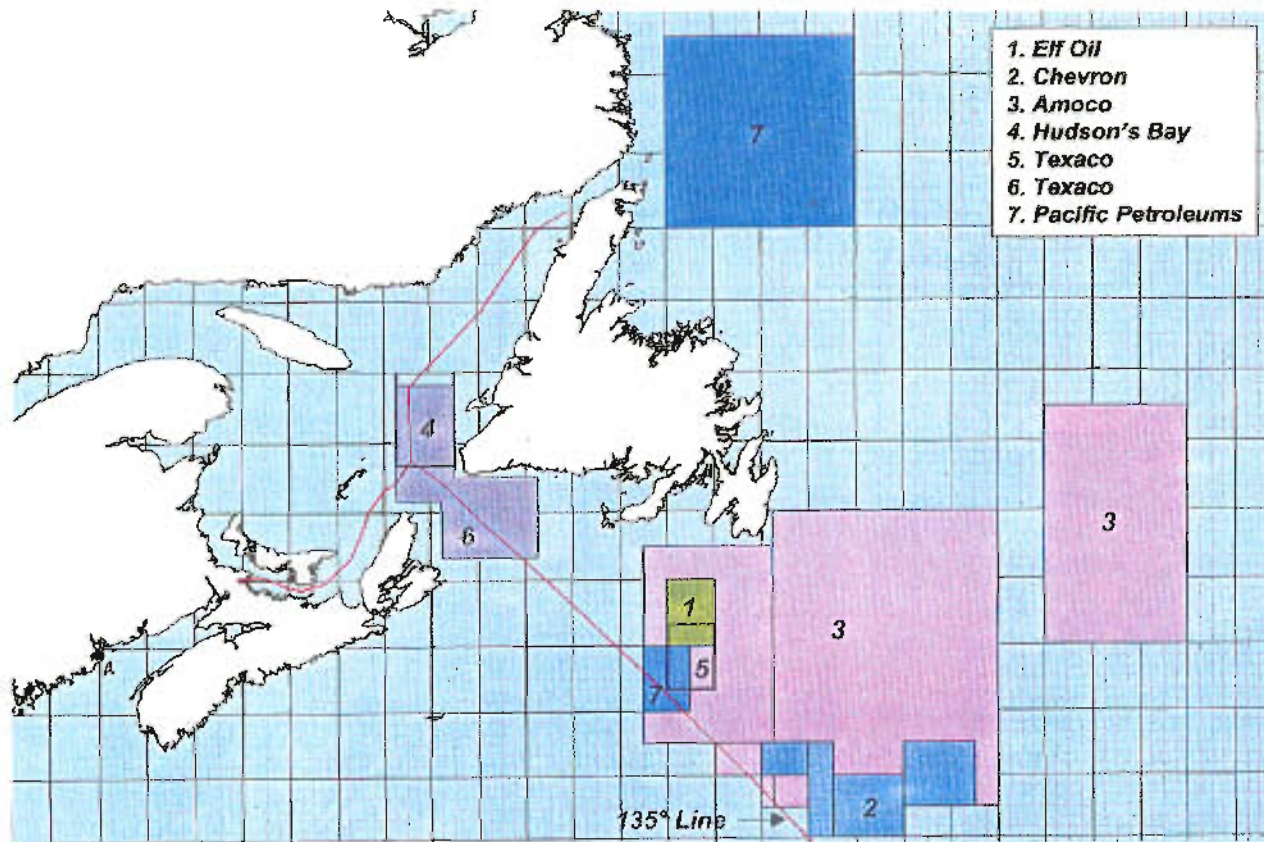
-  Katy Industries Permit, Grand Banks, May 19, 1971
-  Provincial Boundaries as Established in the 1964 Agreement

# NFLD INTERIM PERMITS 1973 - 1975



NFLD FIGURE 13

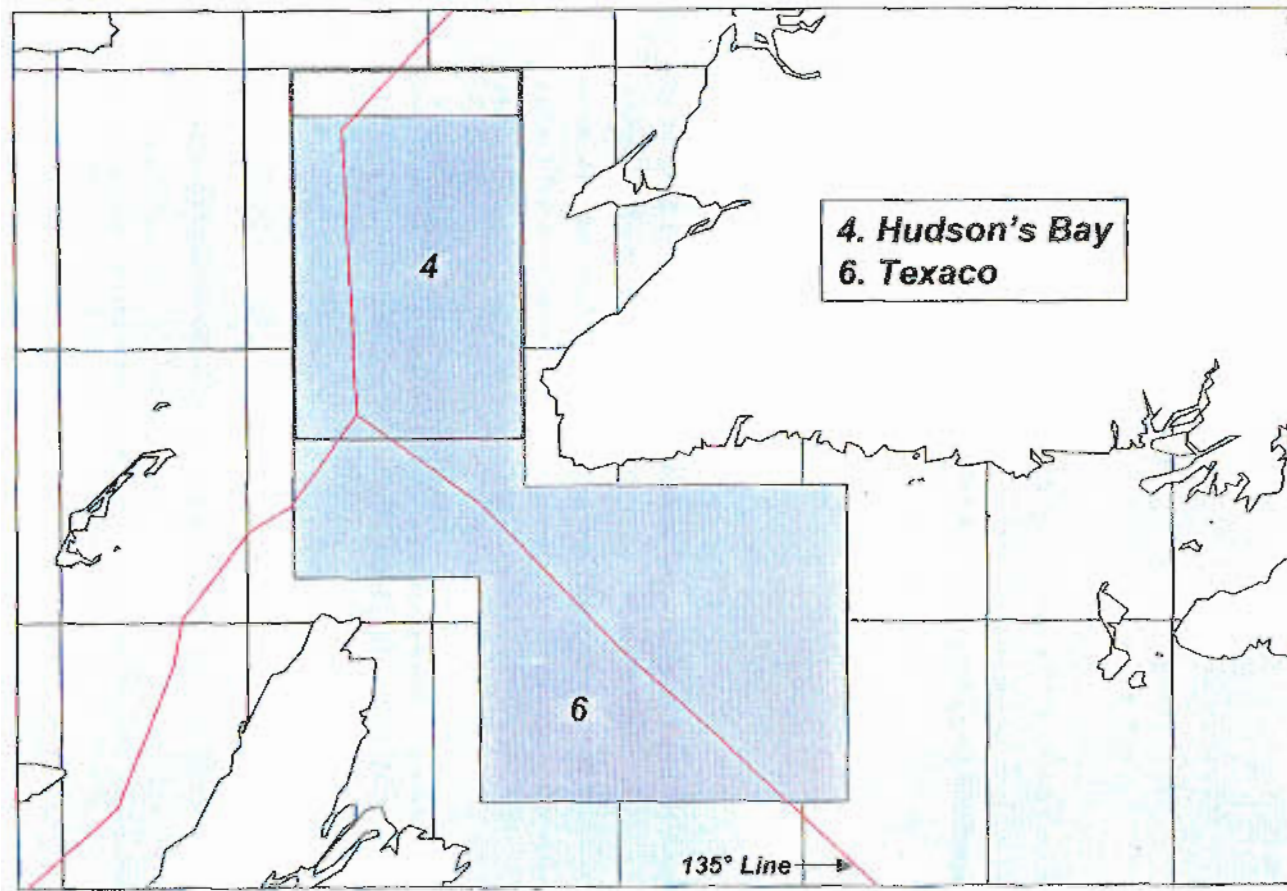
NFLD Interim  
Permits Issued from  
1973 to 1975



1964 Agreement  
Boundary



# NFLD PERMITS 4 AND 6

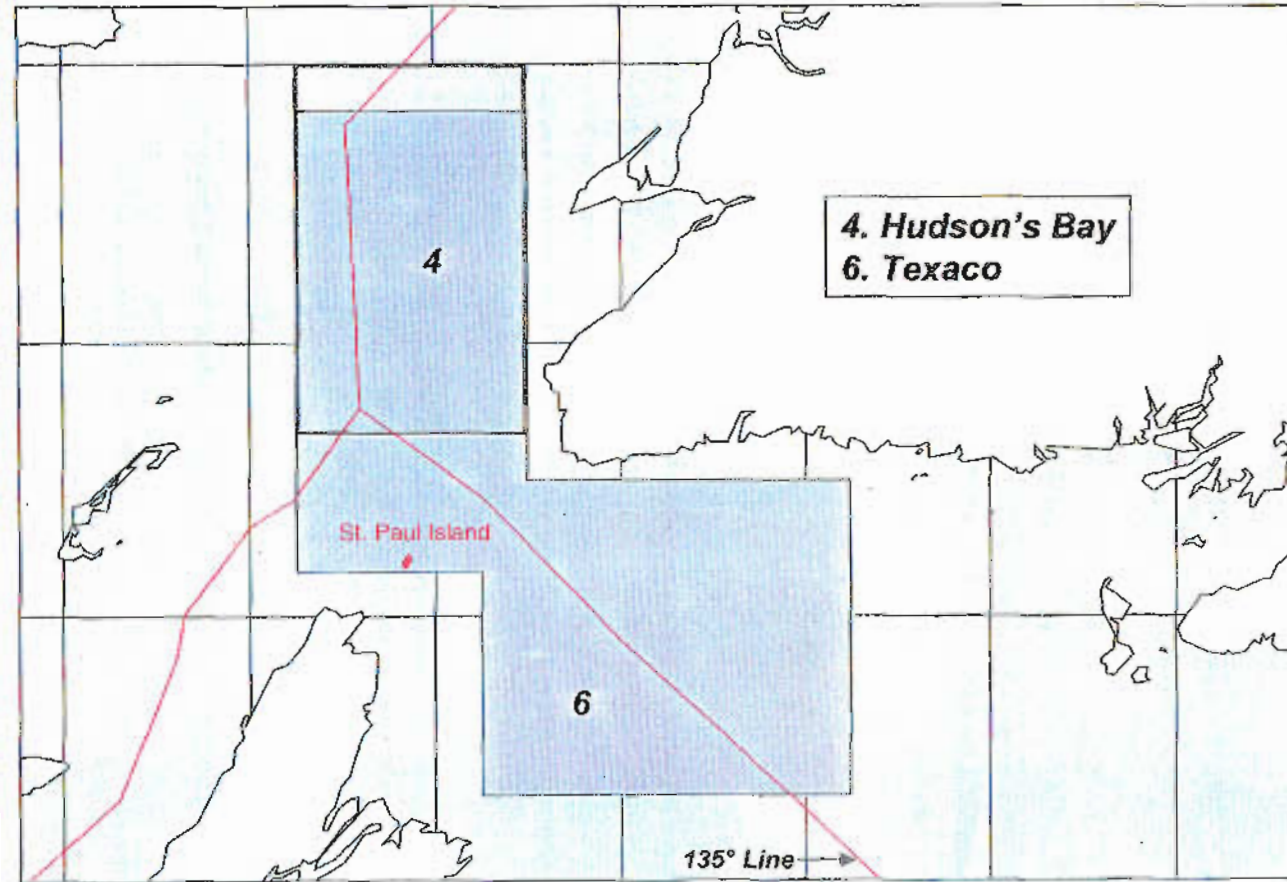


NFLD Figure 14



# THE RETURN OF ST. PAUL ISLAND

NFLD Permits  
4 and 6



# LIMITS OF THE NFLD TEXACO PERMIT



HERSHBORN PUBLIC No. 79-10

## SCHEDULE

The area subject to this Interim Permit is the area bounded as follows: beginning at the point of intersection of the  $47^{\circ} 30'$  parallel of North Latitude with the  $57^{\circ} 45'$  meridian of West Longitude; thence running west along the said  $47^{\circ} 30'$  parallel of North Latitude to its intersection with the  $59^{\circ} 30'$  meridian of West Longitude; thence running north along the said  $59^{\circ} 30'$  meridian of West Longitude to its intersection with the  $48^{\circ} 50'$  parallel of North Latitude; thence running west along the said  $48^{\circ} 50'$  parallel of North Latitude to its intersection with the  $60^{\circ} 45'$  meridian of West Longitude; thence running south along the said  $60^{\circ} 45'$  meridian of West Longitude to its intersection with the  $47^{\circ} 10'$  parallel of North Latitude; thence running east along the said  $47^{\circ} 10'$  parallel of North Latitude to its intersection with the  $59^{\circ} 45'$  meridian of West Longitude; thence running south along the said  $59^{\circ} 45'$  meridian of West Longitude to its intersection with the  $48^{\circ} 30'$  parallel of North Latitude; thence running east along the said  $48^{\circ} 30'$  parallel of North Latitude to its intersection with the  $57^{\circ} 45'$  meridian of West Longitude; and thence running north along the said  $57^{\circ} 45'$  meridian of West Longitude to the point of beginning; including throughout these areas outside the jurisdiction of the Legislature of the Province of Newfoundland.



## 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.**



### *In Newfoundland's Counter Memorial:*

“...Class B Interim Permits which entitled holders to **‘prospect and explore for petroleum’**. **Production rights were not granted.**”

Source: N&L CM Para. 224

### *In The Permits*

“...nothing contained herein is to be construed as giving the Interim Permittee production rights to **or any interest in petroleum found or existing within the area**”.

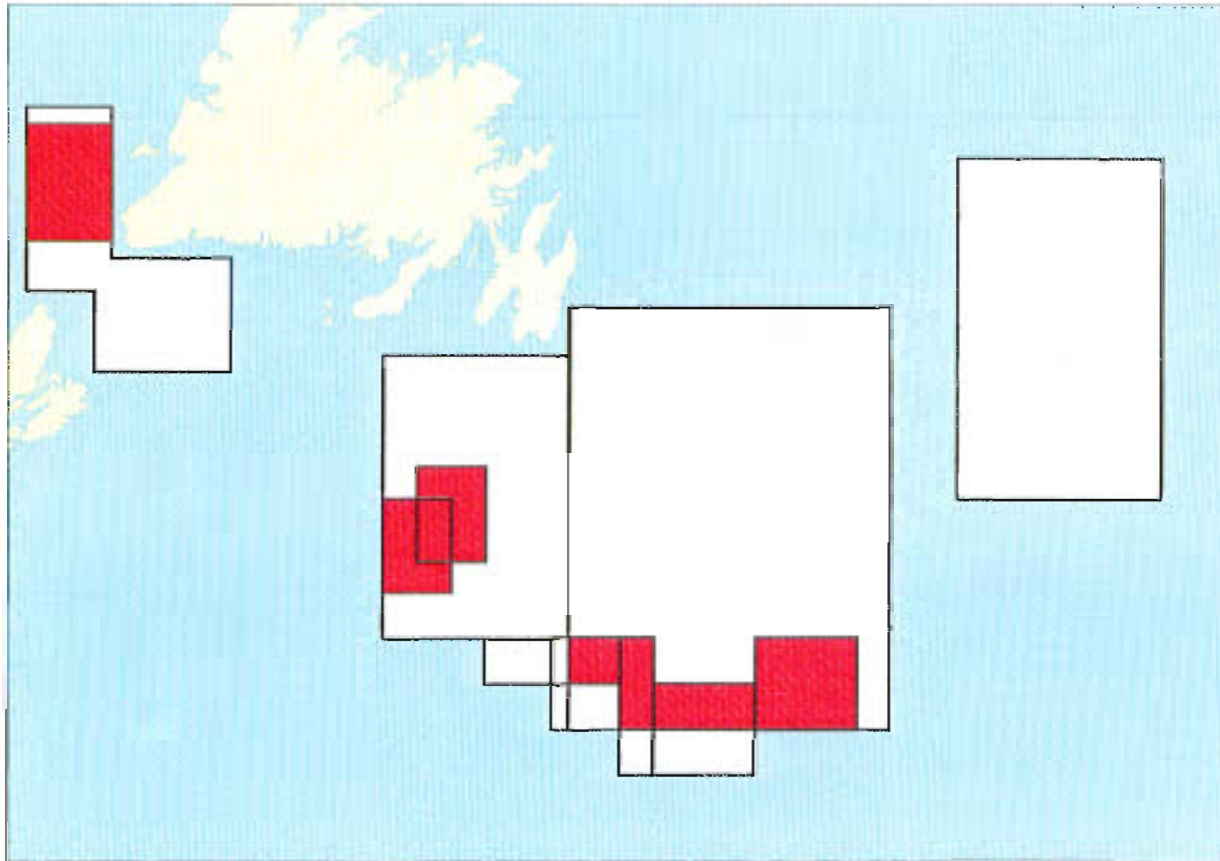
Source: N&L Supp. Doc. 48

“...prospect and explore for petroleum **by conducting a seismic survey...**

Source: N&L Supp. Doc. 48




# NFLD PERMIT OVERLAP: NON-EXCLUSIVE



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Overlapping N&L  
Permits: 1973-1975

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 Overlaps in  
Space & time



### *In Newfoundland's Counter Memorial:*

**“...Class B Interim Permits which entitled holders to ‘prospect and explore for petroleum’. Production rights were not granted.”**

**Source:** N&L CM Para. 224

### *In The Permits*

**“...nothing contained herein is to be construed as giving the Interim Permittee production rights to or any interest in petroleum found or existing within the area”.**

**Source:** N&L Supp. Doc. 48

**“...prospect and explore for petroleum by conducting a seismic survey...”**

**Source:** N&L Supp. Doc. 48



## *Statutory Provisions*

### **Newfoundland Petroleum and Natural Gas Act s.8 – 1966**

- 8(1) ...no person **shall drill or operate or undertake to drill or operate any well**, except in accordance with a subsisting licence, permit or lease...

**Source:** SN 1966 no. 2, Supp. Statutes # 6

### **Newfoundland s.8 - 1974**

- 8(1) ...no person shall undertake or commence **any operation relating to the exploration for or exploitation of petroleum** within the jurisdiction of the legislature, except in accordance with a subsisting licence, permit or lease.

**Source:** SN 1974 No. 93 N.S. **Annex 152**

### ***Nova Scotia Petroleum and Natural Gas Act s.3***

- 3 No person shall drill or operate or commence to drill or operate any well unless he has a licence or lease under this Act...

**Source:** SNS 1967c. 228 N.S. **Annex 151**



### *Newfoundland's Attitude To Seismic Permits*

“In most countries... companies carry on this seismic surveys **prior to even making an application for the right to drill and produce.** A number of companies may conduct separate seismic surveys over the same area and of course, only one company is awarded the right to drill and produce.

“Thus, in most countries, the carrying out of seismic surveys is considered to be a normal part of the process of determining (sic) whether a company is interested in an area, and is not considered to entitle a company to any special rights in the area in question. **This will also be the position of this Government.**”





## *Issuance of Seismic Permits By Newfoundland*

This amendment [1974] was aimed at regulating pre-drilling seismic surveys **and obtaining the information generated therefrom.** Pursuant to the amended Act, any company wishing to conduct, say, seismic operations on Newfoundland's continental margin **must first present a general program description** to the Department of Mines and Energy. **After review, an interim permit is issued** subject to the usual conditions...

# DETAIL FROM TEXACO PERMIT APPLICATION



GOVERNMENT OF NEWFOUNDLAND  
DEPARTMENT OF MINES AND PETROLEUM  
ENERGY RESOURCES DIVISION

72-16

*Process File*

1174

APPLICATION  
FOR AN  
OFFSHORE INTERIM EXEMPT TO CONDUCT  
EXPLORATORY OPERATIONS HINDER 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 - 6th Avenue S. W.,  
Calgary, Alberta Phone: 403-264-7141
- (2) Associated (name, address, financial interest in operation)  
Nil

Operational Data

- (1) Type of work (reflection seismic survey, sea-bottom survey, side survey, etc.):  
CSP Reflection Seismic
- (2) Geographical Area (list latitudes and longitudes of work area and illustrate on a map of 1:2,000,000 or larger):  
43°N latitude. Between 54°00'W and 54°00'W Longitudes (see attached plot)
- (3) Date of commencement and duration:  
July 27 & 28, 1976 - 2 days
- (4) Proposed work program (give details of the program to be conducted and illustrate on a map of 1:2,000,000 or larger; attach additional sheets as necessary):  
100 miles of 2400E CSP Reflection Seismic

*[Handwritten signature]*



NS Annex 159

# DETAIL FROM TEXACO PERMIT APPLICATION



NS Annex 159

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:

## DETAIL FROM TEXACO PERMIT APPLICATION



NS Annex 159

### Operational Data

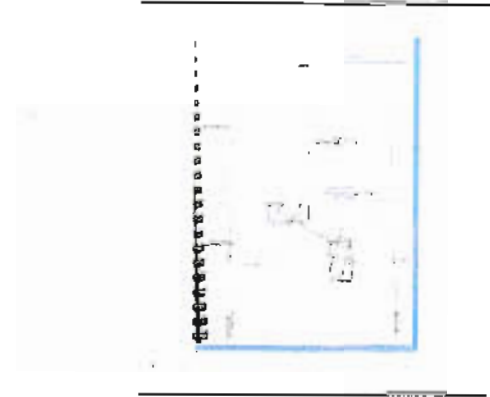
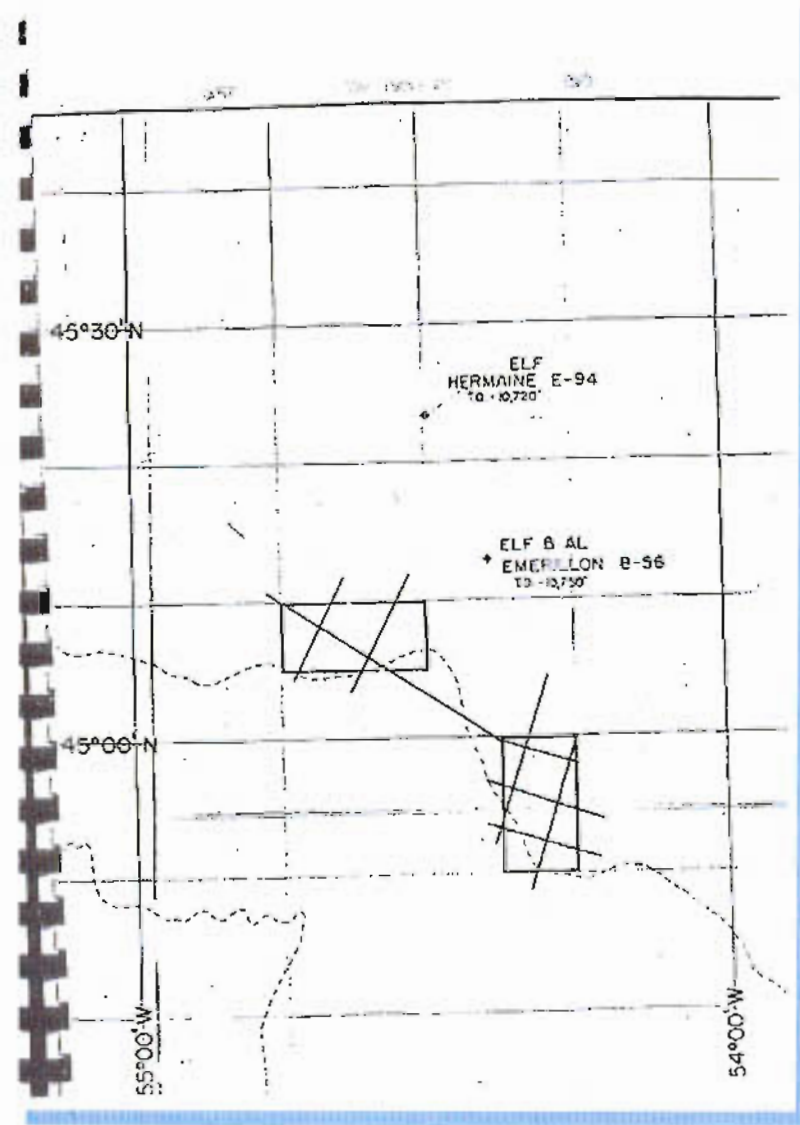
- (1) Type of work (reflection seismic survey, sea-bottom survey, site survey, etc.):

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 plat)



# PERMIT MAP



NS Annex 159



The permit behaviour of the parties is highly relevant

- “From 1964 until 1984, the issuance of permits by Newfoundland and Labrador was part of the province’s strategy **to assert exclusive jurisdiction over all of the offshore resources adjacent to its coasts.**”

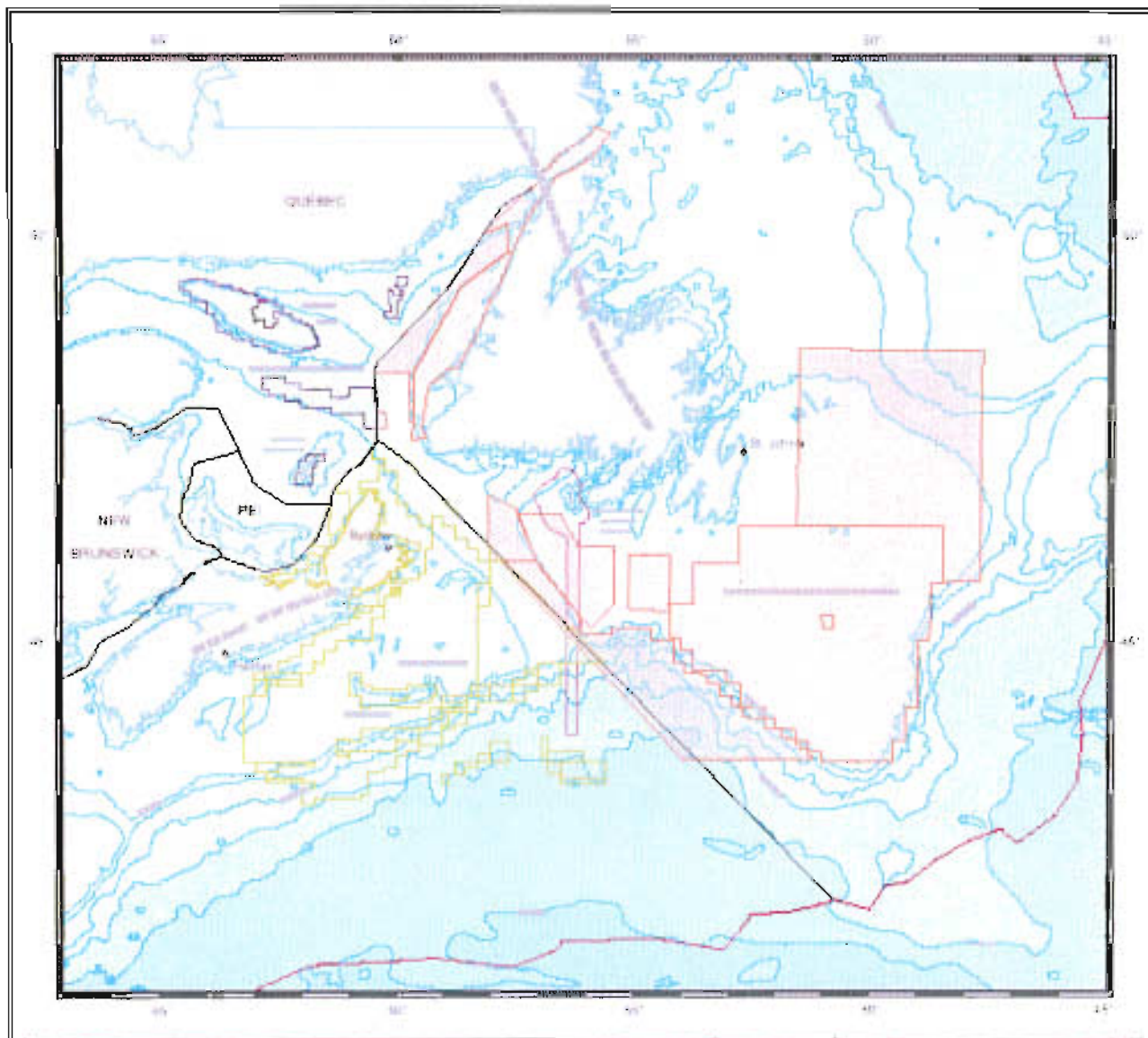
**Source:** NFLD CM para. 211

- The *1964 Agreement* boundary survived Federal “Rejection”
  - The parties continued to view themselves as bound by the Agreement
- The boundary was applied despite the failure to gain full ownership and jurisdiction

## SUMMARY AND CONCLUSIONS

- The supposed “preoccupation with the gulf” is not evident in the permit activities of Nova Scotia and Newfoundland
- The 135° line was applied by Nova Scotia and Newfoundland in their permit issuance
  - This practice preceded the alleged 1984 invention of the line by many years

# NOVA SCOTIA COUNTER-MEMORIAL FIG. 28



NOVA SCOTIA  
FIGURE 28

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

Nova Scotia and Quebec have issued permits respecting the economic zone boundary without discussion or agreement from Newfoundland. In fact, Newfoundland itself has issued permits in conformity with the economic zone 1984 to the present day.

- Horizontal Permits and COT for wells 40-401
- New Basin Permits
- Classic Permits
- Boundary Between Nova Scotia and Newfoundland and Labrador as Established in 1984 Agreement
- Outermost Outer Limit of Canadian Continental Shelf
- St. Pierre and Miquelon Boundary

