



A NEW LEGAL ERA IN THE NL OFFSHORE

Todd Stanley, QC
Counsel, St. John's

coxandpalmerlaw.com
@coxandpalmer

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Overview

Legal History of the Existing Developments
New Legal Issues for Future Developments
Where Does This Leave Us

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The Existing Developments

The 4 development projects in the NL offshore

- Hibernia - 1997
- Terra Nova - 2001
- White Rose - 2005
- Hebron - 2017

All 4 have and continue to undergo field and life extension projects

Hibernia



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Terra Nova



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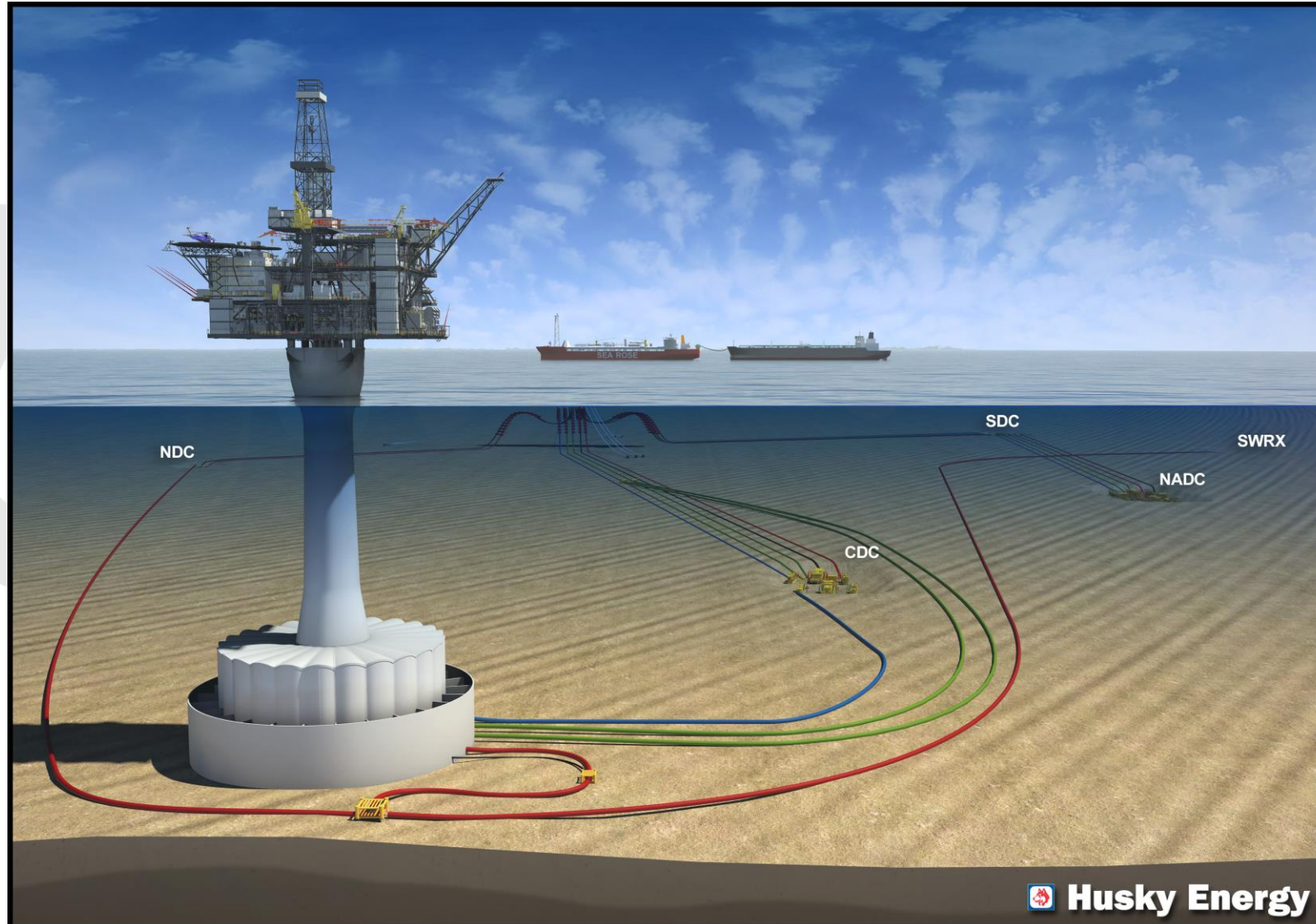
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White Rose



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Hebron



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The Existing Developments

All 4 Projects share both physical similarities, and similarities in the legal framework of their development:

- Licensing Structure
- History of Development
- Proponents
- Location
- Environmental Assessment
- Royalty Regime

Licensing Structure

- Based on the 1985 Atlantic Accord and 1987 Accord Acts (federal and provincial)
- Licensing is administrated by the Canada-Newfoundland and Labrador Offshore Petroleum Board (“CNLOPB”)
 - Joint management regime between Canada and NL
 - Similar structure in NS for the CNSOPB
- The Accord Act licensing structure has remained constant since 1987

History of Development

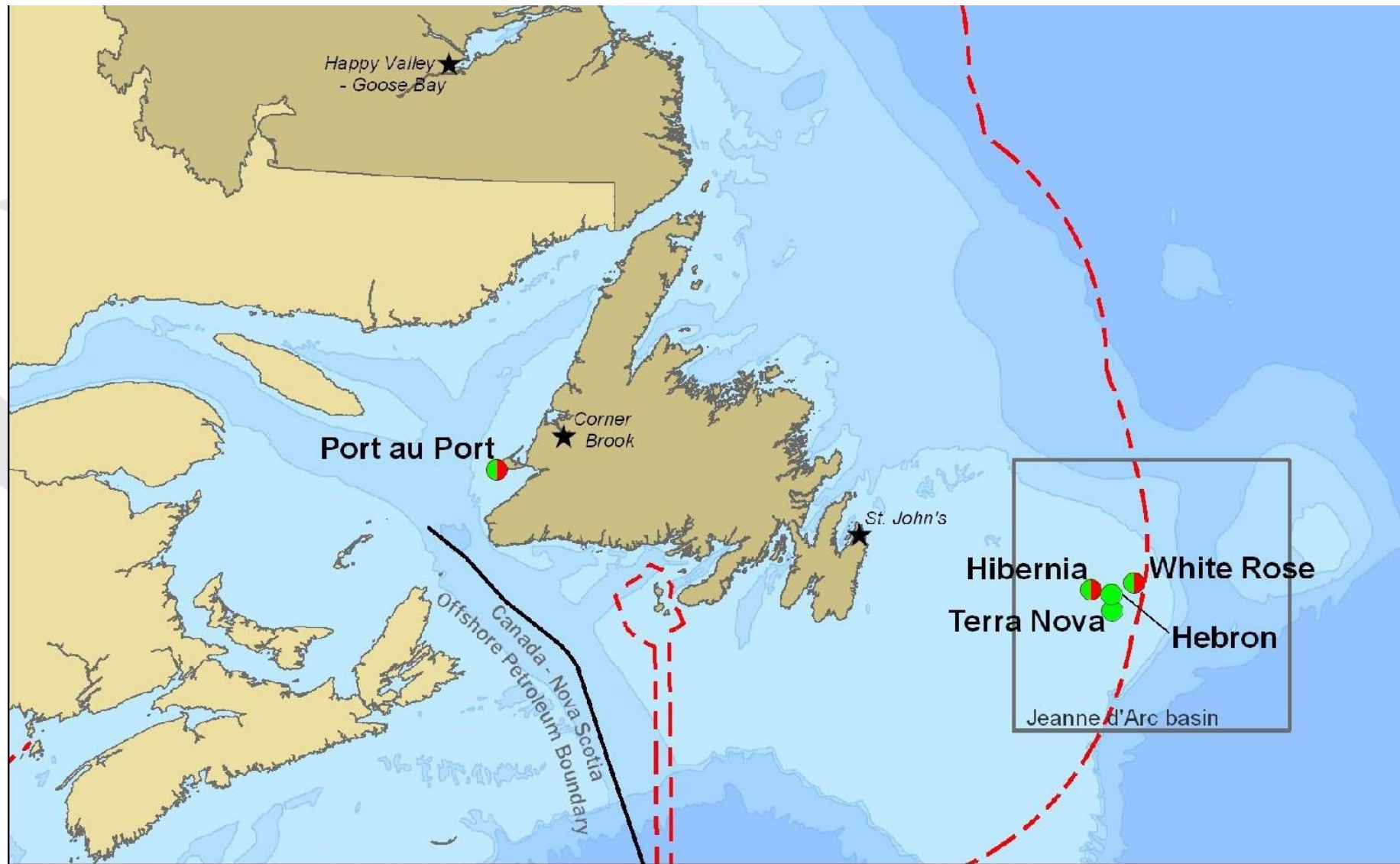
- The existing 4 Projects all originated from discoveries between 1979 and 1984
 - Hibernia and Hebron discovered in 1979
 - White Rose and Terra Nova in 1984
- This drilling activity originated from industry and public policy issues of the time, including the 1973 and 1979 energy crisis
- The extended development cycles were a result of market, licensing and technological forces

Parties

- The 4 Projects are dominated by 5 proponents who together own at least 85% of each:
 - Suncor
 - ExxonMobil
 - Chevron
 - Husky Energy
 - Equinor
- This concentration of ownership a legacy of the original exploration activity and licensing regime

Location

- The 4 Projects are concentrated on the Jeanne D'Arc Basin
 - Located with an area approximately 50km by 30km
- Share a number of similarities
 - Similar water depth of 80-130m
 - Similar distance from shore of 300-350 km
 - Similar transportation, weather, and ice issues



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HIBERNIA
80 metres

HEBRON
93 metres

TERRA NOVA
95 metres

WEST
WHITE ROSE
115 metres

SEA ROSE
120 metres

BAY DU NORD
1,170 metres



The Way Forward
—on oil and gas

OFFSHORE PLATFORMS WATER DEPTHS



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Environmental Assessment

- EA treatment has tracked the development of EA generally
 - Hibernia's EA pre-dated EA legislation
 - Terra Nova had an EA panel review
 - White Rose and Hebron had reviews conducted through the CNLOPB development project review process
 - Each had a unique structure due to time between reviews
- The process for all 4 Projects pre-dated CEAA 2012

Royalty Regime

- 4 Projects have different royalty structures
 - Hibernia – contractual (now multiple regimes)
 - Terra Nova – unique regulatory regime
 - White Rose – generic regime (now with variations)
 - Hebron – contractual + regulatory
- However, structurally all generally have the same regime
 - Basic Royalty
 - Incremental Royalty
 - Payout thresholds

Future Projects

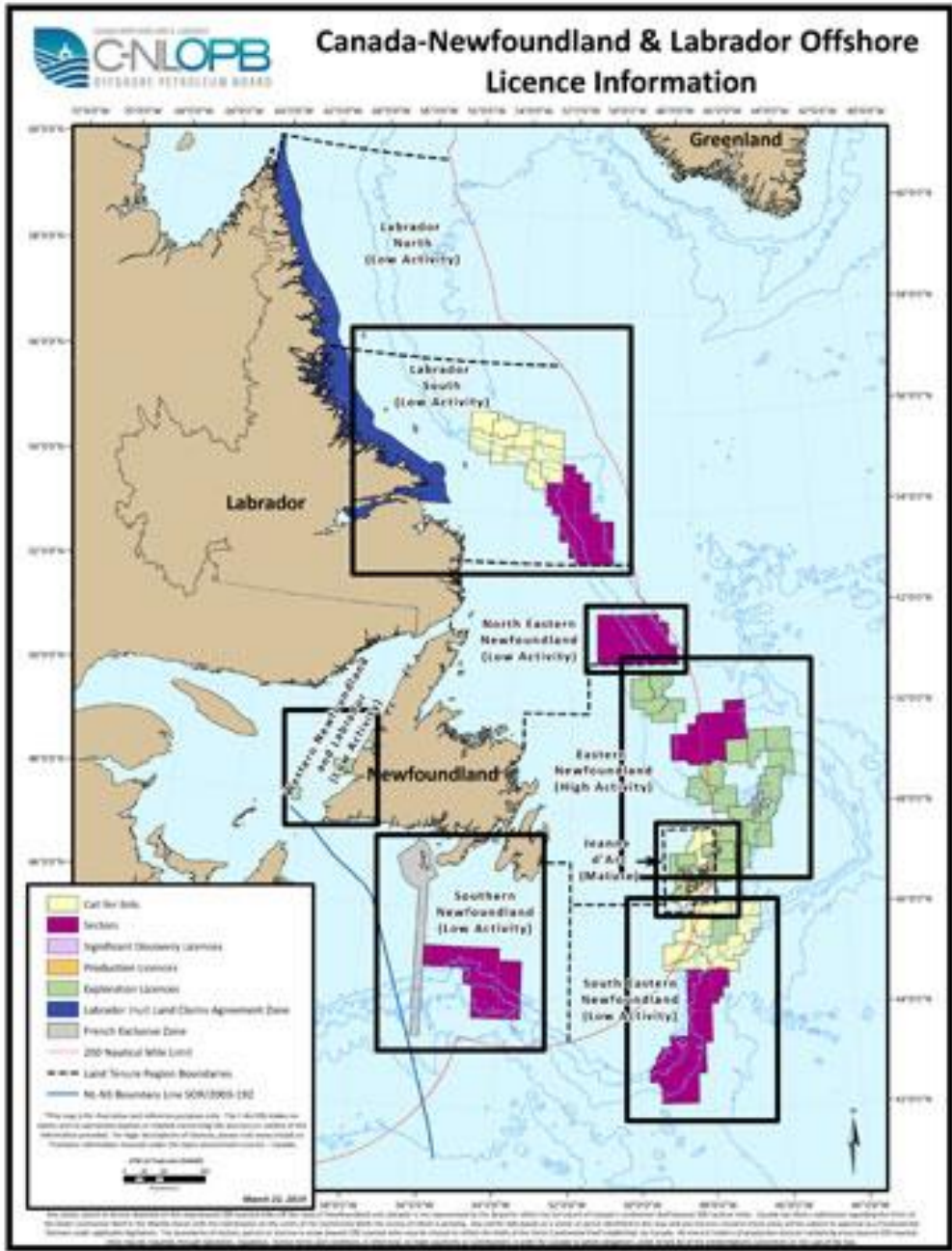
- There are currently no sanctioned new projects under development
- Interest in exploration has increased since 2013
- Equinor's Bay Du Nord Project is the closest
 - Environmental Assessment Project Description was filed 22 June 2018
 - Financial agreement with Province announced July 2018
 - Equinor expects a sanction decision by 2020
- It provides an example of the practical and legal differences between the current and future projects

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Bay Du Nord Project

- Located in Flemish Pass area east of the Grand Banks and Jeanne D'Arc Basin
- Equinor would be operator; interest also owned by Husky Energy
- Based on wells drilled since 2009, and SDL's issued in 2013 and 2017
- Proposed FPSO approach



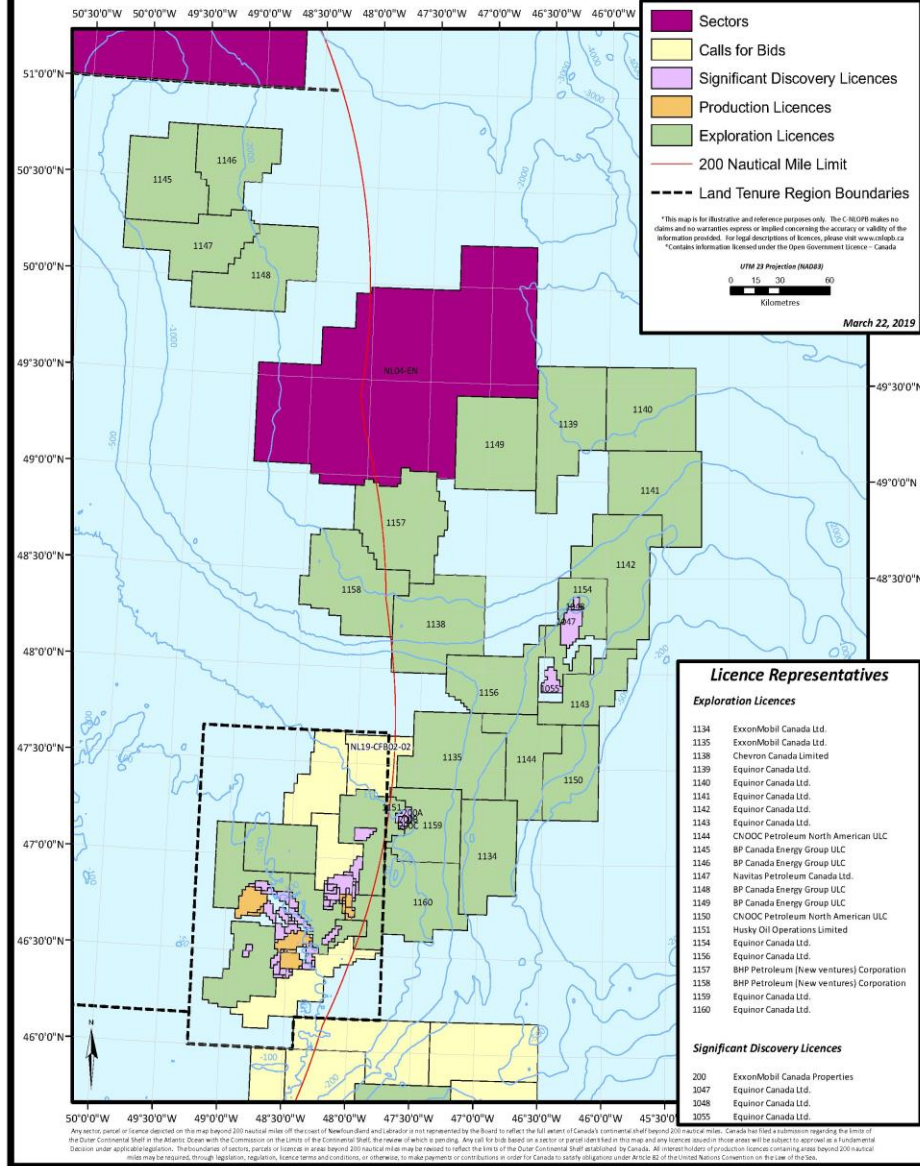
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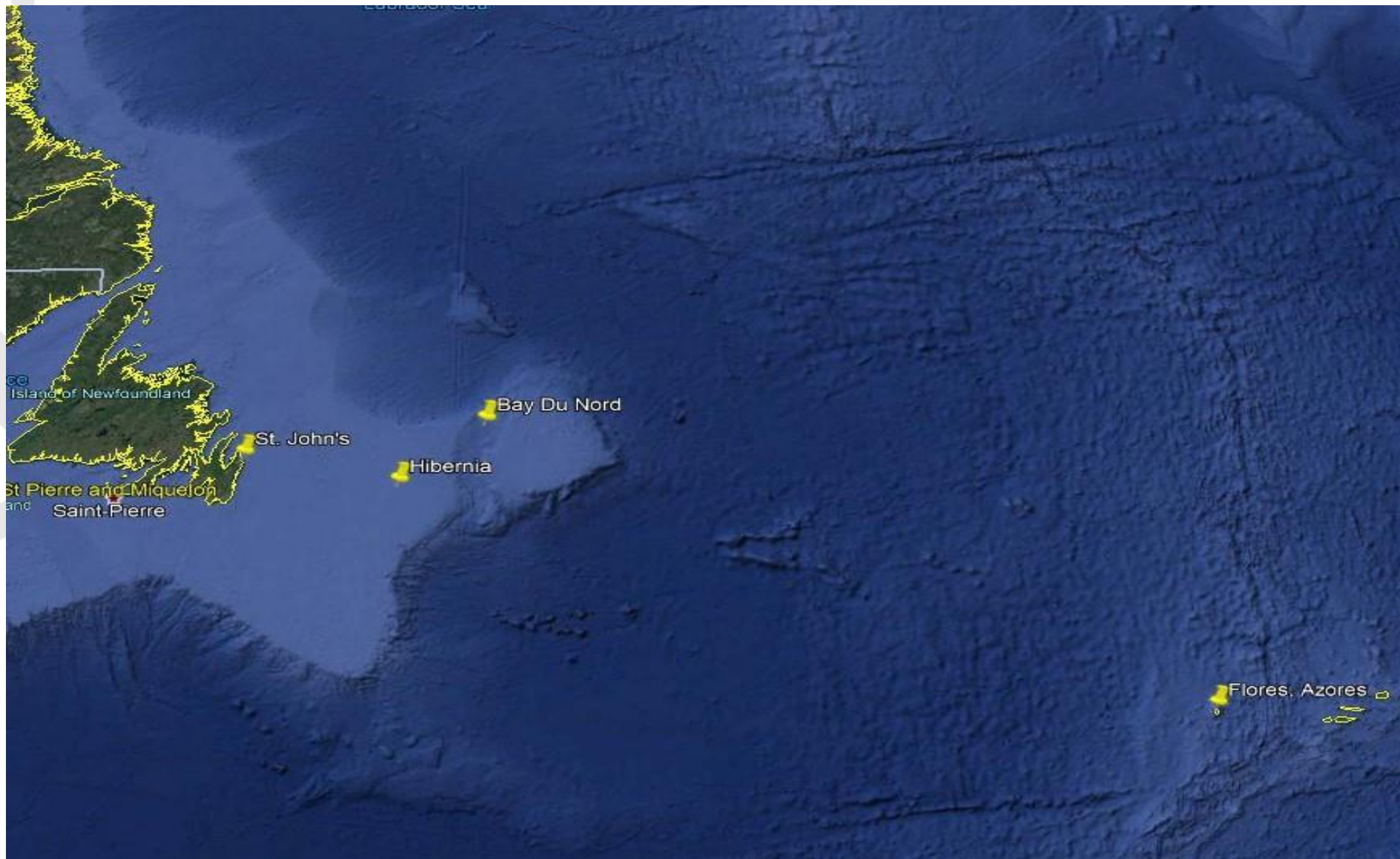
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Eastern Newfoundland Region: Licence Information



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Licensing Structure Issues

Future developments will benefit from established CNLOPB processes, but will have new issues:

- the introduction of marine protected areas and marine refuges
- the prospect of potential administrative reorganization at the CNLOPB
- changing public environment or petroleum regulation and development

History of Development

- New projects are expected to arise from exploration activity that has occurred since 2009, and activity that will be about to occur
 - Significant EL commitments since 2013
 - Province & Nalcor promoting exploration
 - *Nalcor continuing its seismic program*
 - *Province is promoting 100 new exploration wells by 2030*
 - Significant drilling programs in 2020 and 2021
- Development timeframes are hoped to collapse significantly
 - Bay du Nord would be discovery 2009, sanction 2020(?), production 2025

Parties

- Exploration activity has 8 new market entrants in the past 5 years
- This brings entirely new issues:
 - New operator roles for existing companies
 - New companies to NL offshore and to Canada
 - No experience with Accord Acts, CNLOPB, Government of NL or developed past practice
 - Broader legal issues dealing with new Canadian operations, not solely NL offshore

Location

- Based on current exploration, new projects will involve:
 - New development areas beyond Jeanne D'Arc Basin
 - Drilling in 1000m+ deep water
 - New distances (up to 500km offshore)
- New issues
 - More remote operations, from land and each other
 - Ice and iceberg risks are different in deeper water
 - Outside the 200nm EEZ

Environmental Assessment

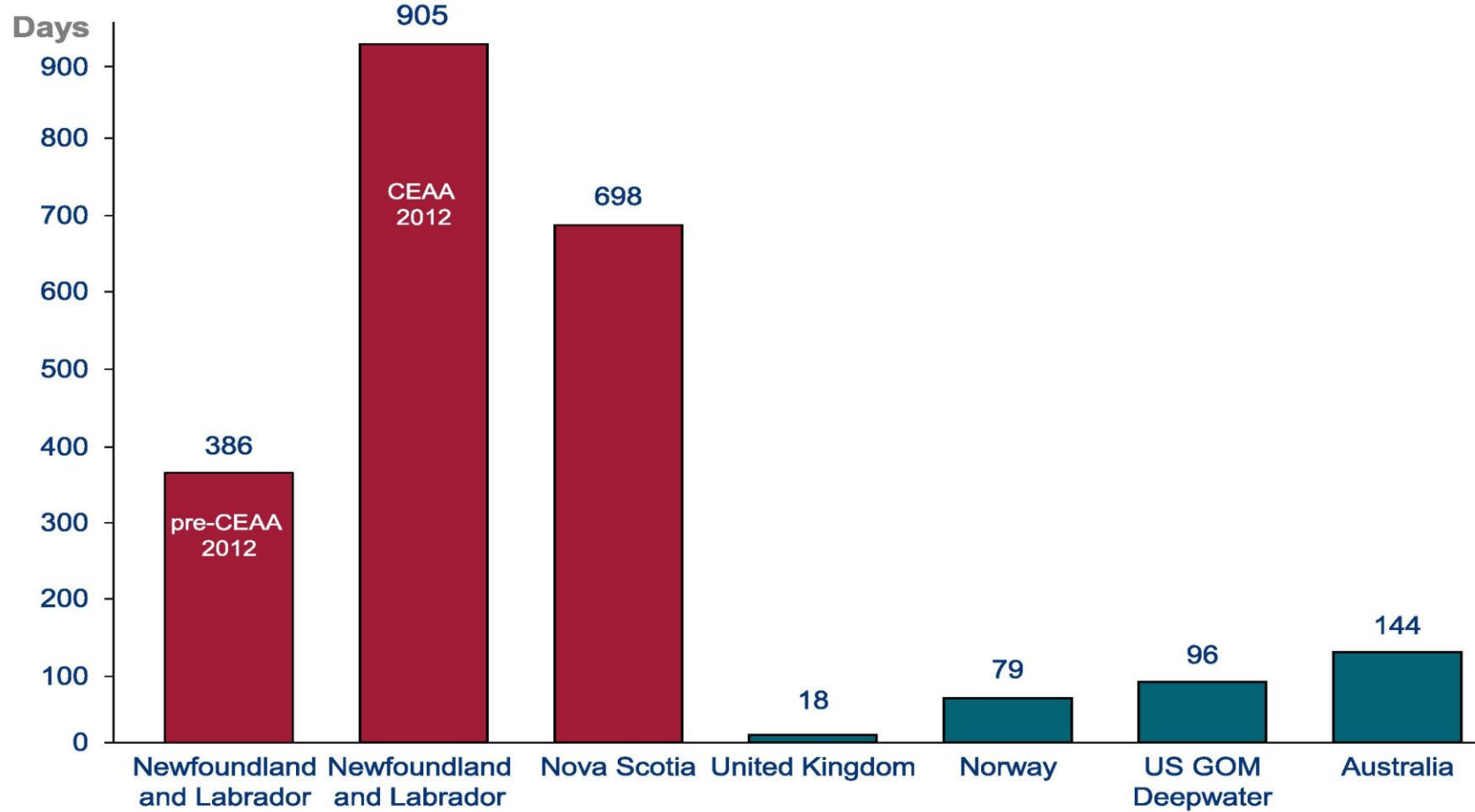
- The EA process that will govern future projects is an unknown
- CEAA 2012
 - Removed CNLOPB as responsible authority
 - Prescribed full EA for exploration projects (development projects would always be subject to full EA)
 - Formalized requirements for aboriginal consultation
 - Bay Du Nord will be 1st development project through process

Environmental Assessment – CEAA 2012

- The EL experience has been a far longer period for EA review than previously seen
- Exploration well EA process:
 - pre-CEAA 2012, 6-12 months with CNLOPB
 - CEAA 2012 taking 30+ months with CEA Agency
- This has been a significant concern of industry and NL, as it is far above requirements of any competing jurisdictions

Country comparison

Average timeframe for environmental approval (2000-2017)



Source: CEAA and Environmental and Exploration Approvals Timelines Study, Wood Mackenzie (April 2019)



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Environmental Assessment - Bill C-69

- Bill C-69 creates uncertainty as to both which EA regime will apply to future projects, and how that regime will operate
 - Current status as of 30 May Senate adopted 200+ amendments
 - Back to House of Commons to review proposed amendments
- Potential timeframe improvements, but significant new uncertainties in the scope of review and aboriginal consultation

- Specific concerns for the NL offshore include:
 - Mandatory panel review for all exploration and development projects
 - Reduction of role of CNLOPB
 - Federal ministerial discretion in area of shared jurisdiction
 - Potential for timeframes to extend beyond CEAA 2012

Environmental Assessment – Aboriginal Consultation

- Function of CEAA 2012 s.5 and general Crown duty to consult
- No cases or litigation establishing the existence or scope of a duty to consult on offshore development issues
 - Prior to CEAA 2012, consultation only with Labrador groups respecting potential land rights processes off Labrador
 - For context, NL does not recognize any established section 35 rights on the island of Newfoundland

- CEA Agency requirements on all EA's for consultation with indigenous groups in Atlantic Canada
 - Current required consultation list, developed since 2015, includes up to 40 indigenous groups
 - In addition to NL, groups in NS, PEI, NB and Quebec
 - Based on potential impact on fish of a petroleum spill
- No litigation by proponents or indigenous groups on horizon
- Expectation is obligation will be increased for development projects

Royalties

- NL introduced new generic royalty regime in 2017, through the *Offshore Oil Royalty Regulations* (“OORR”)
- Changes multiple aspects of royalty calculation
 - Changes multiple payout calculations into a single ratio
 - Former tiers of incremental royalty now a straight line progression
 - Overall maximum potential royalty increased over former regime
 - Eliminates recognition of time value of money on expenditures

- Establishes an administrative law regime
 - Previous regime used commercial arbitration for dispute resolution, traced to contractual roots
 - OORR relies upon judicial review of discretionary ministerial decisions
- Significant change in the approach and scope of industry to challenge decisions such as eligible cost disqualifications
- Potentially can have arbitration through contract, but NL has not shown signs of being willing to do so

Royalties - UNCLOS

- New issue for projects outside 200nm EEZ
- Most recent EL's issued straddle or are outside 200nm line
- Obligation is to pay the International Seabed Authority a royalty:
 - Commences at 1% in year 6 of production
 - Increases annually by 1% to 7% in year 12+
- Bay du Nord would be the first project in the world subject to this royalty

- There are currently significant uncertainties respecting:
 - How it will be administered by the ISA
 - How it will be calculated
 - *Most of the details respecting the royalty's operation have yet to be defined*
 - In Canada, who will pay
 - *Canada maintains it does not have access to the royalty stream*
 - *NL maintains UNCLOS is a federal responsibility*
 - *For Bay Du Nord, Equinor not taking a position*

Where are we now

- Current period of significant legal uncertainty because of multiple unknowns
 - The relevant EA process
 - Aboriginal consultation requirements
 - The UNCLOS royalty
- These will be resolved somewhat in the near future
 - by political process to determine the EA regime
 - by the 1st project beyond 200nm

- Once determined for the next project, particularly if beyond 200nm, they will likely be settled for all future projects
- In this way, the next new project will establish a number of physical and legal precedents similar to those originally set by Hibernia



Thank you
Questions/Comments

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