

# MORUs in Practice: Arrests and Collisions

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**METCALF & COMPANY**  
BARRISTERS AND SOLICITORS

# Agenda

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- Background: Increasing Use of MORUs in Atlantic Canada
- Case Studies
  - The Arrest of the “Falcon”
  - Collision (Allision) with Floating Platform “PLAT-I”
- Takeaways for other MORUs Worldwide

*“Life is demanding without understanding”*

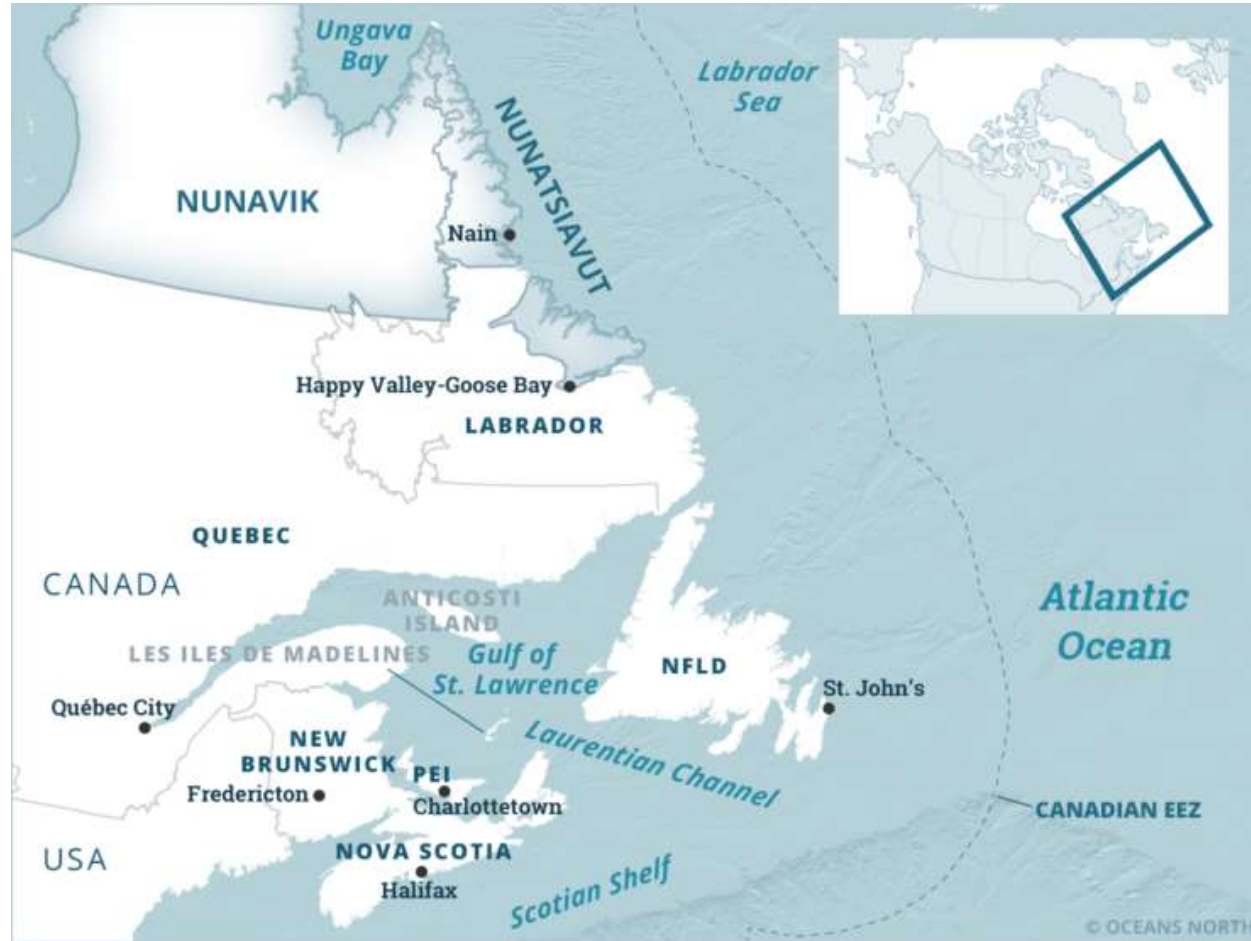


# Introduction

## **Metcalf & Company**

- Leading boutique law firm in the shipping, transportation, and insurance industries
- Acting for clients involved in the marine and aviation business, and increasingly, the renewable energies sector
- Representing and advising ship-owners and operators, ship financiers, shipbuilders and repairers, classification societies, ports, insurers, P&I clubs, businesses, municipalities and government agencies, amongst others
- Located in Halifax, Nova Scotia, Canada with work throughout Atlantic Canada and beyond

# Introduction



# Background: Increasing Use of MORUs in Atlantic Canada



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# Background: Increasing Use of MORUs in Atlantic Canada

## Failing Fundy tidal project leaves string of unpaid debts

Open Hydro's heavy lift barge and other equipment under 'arrest' in Saint John



c - CBC News - Posted: Sep 14, 2018 7:00 AM ADT | Last Updated: September 14, 2018.



Nova Scotia

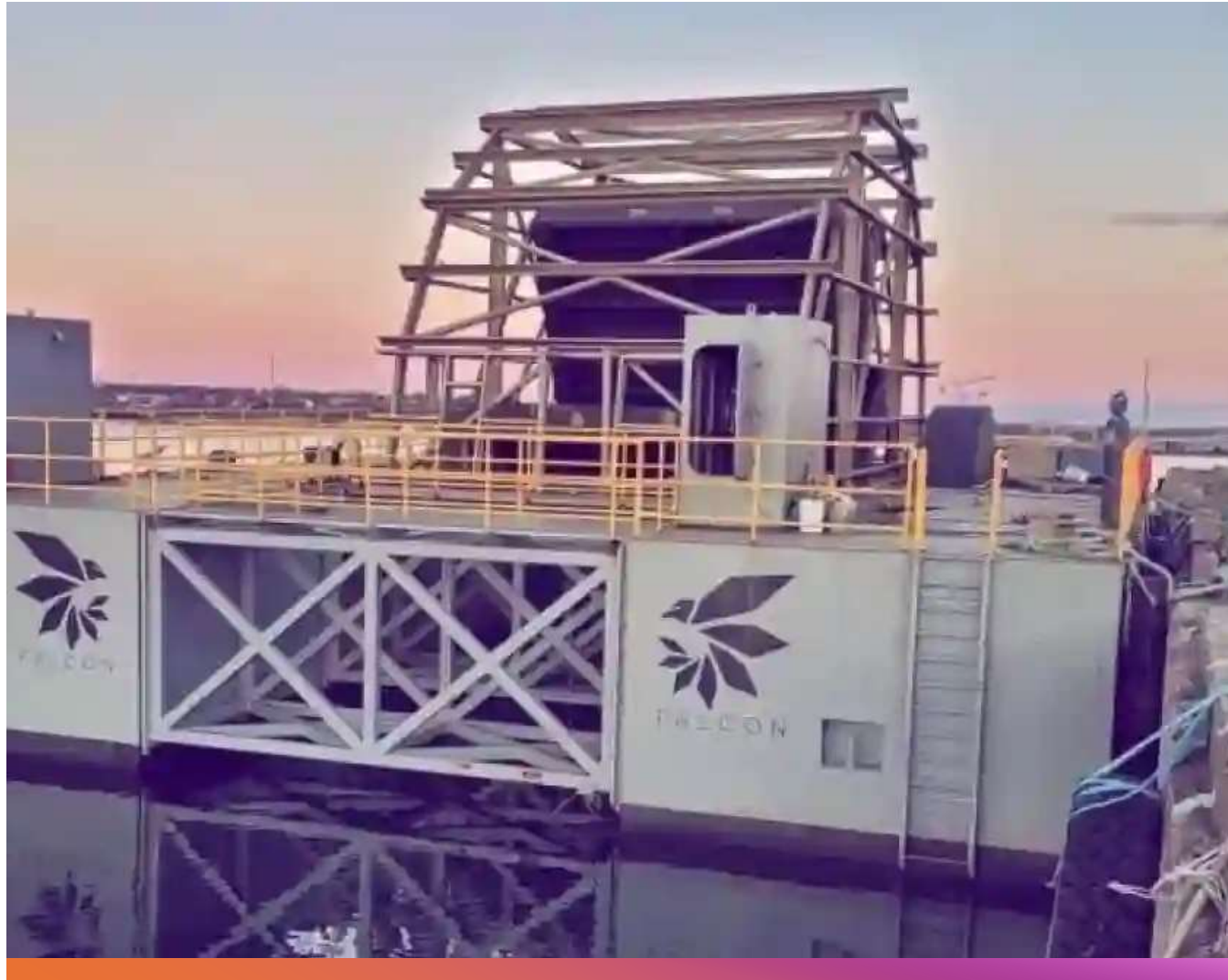
## Tidal power firm to place Canadian subsidiary into bankruptcy

Sustainable Marine Energy winds up N.S. project, blaming regulatory hurdles

The Canadian Press - Posted: May 12, 2023 1:34 PM ADT | Last Updated: May 12, 2023







## The Arrest of the “Falcon”

- Dispute over the construction costs of a tidal power barge pursuant to a shipbuilding contract
- Plaintiff shipyard claimed not paid in full for building and delivering vessel
- Defendant barge owners claimed shipyard paid in full, shipyard failed to fulfill contract


# The Arrest of the Falcon

- Barge arrested in the “normal” fashion
  - Plaintiff shipbuilder relied on Canadian maritime law and statutory right *in rem* against the Defendant Barge, including, without limitation, sections 22(1), 22(2)(m) and (n) of the *Federal Courts Act*, R.S.C., 1985, c. F-7
    - claim in respect of goods, materials or services supplied to a ship for operation or maintenance of the ship;
    - claim arising out of a contract relating to construction, repair or equipping of a ship
  - Statement of Claim and Affidavit to Lead Warrant filed with Federal Court of Canada (FCC)
  - FCC then issues Warrant, which gives local Sheriff authority to arrest ship until security/bail posted or claim disposed of

# The Arrest of the Falcon

- Key Legal Issue: Is the Falcon a “ship” capable of arrest?
  - Arguments against:
    - The Falcon is a “water wheel”, not a ship
    - The Falcon is not “used in navigation” – to be moored permanently as an electrical generation object
  - Arguments for:
    - The Falcon is “plainly and obviously” a ship
    - Designed to be, and is capable of, navigation
      - sufficiently tight, staunch and seaworthy in order to withstand the ordinary weather conditions expected at the worksite.
      - two rudders for navigation, steering gear and a navigation system, including automatic navigation
      - designed to be towed into its operating area and into any shipyard for repairs or maintenance
      - designed and built to navigate within its work-site; not fixed to seabed
      - rudders controlled by an Automatic Navigation Control System (“AUTONAV”) that is controlled remotely by operators
      - rudders are designed and built to be ballasted so that Barge is properly trimmed to control its power generation capability
      - equipped with navigation lights and a weather station and other equipment to monitor the sea-state, position and navigation of the Barge
      - space for personnel to attend on board regularly to conduct maintenance and/or repairs, including ballasting

# The Arrest of the Falcon

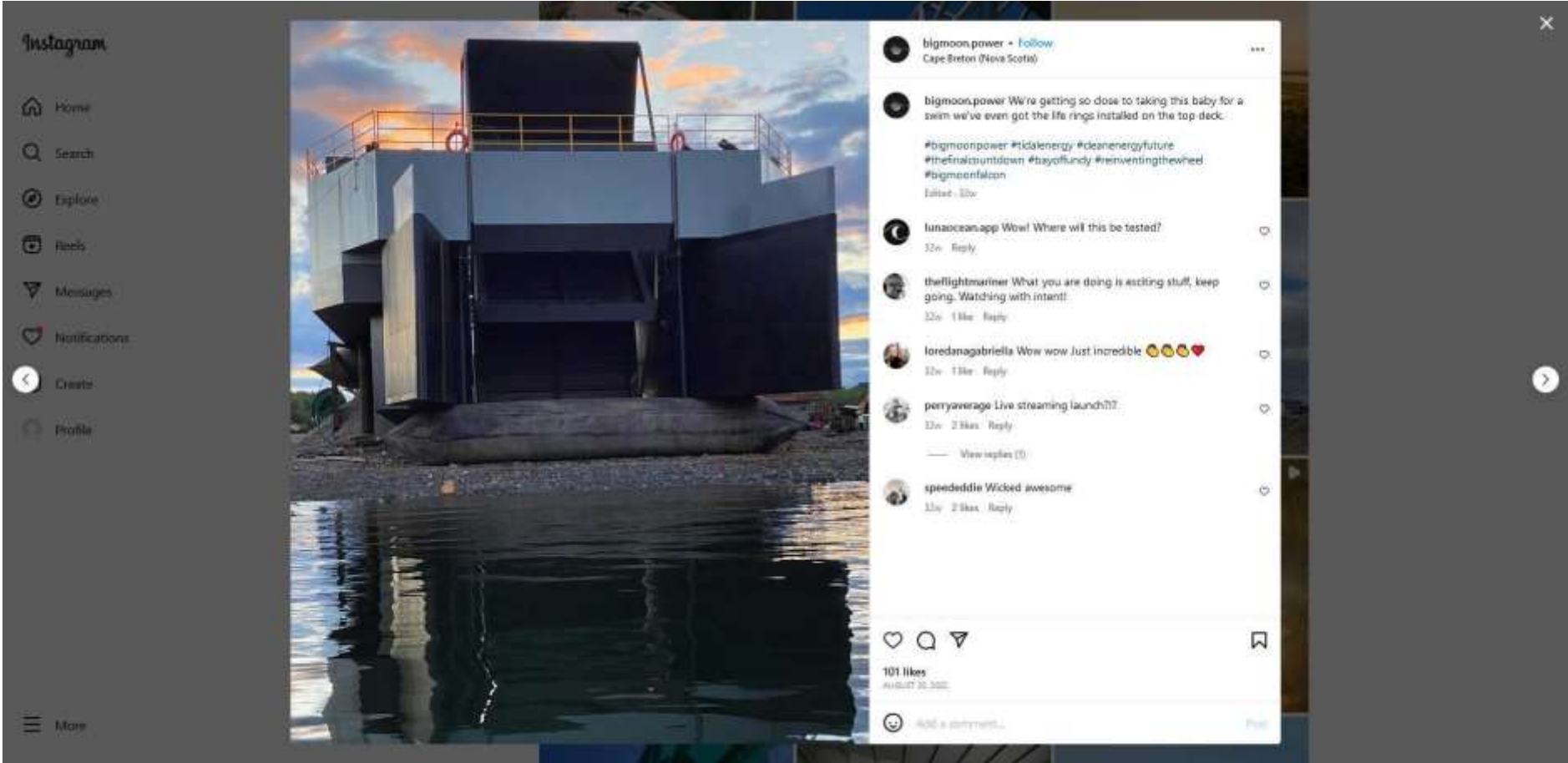


The image shows a large-scale construction project. A tall crane is lifting a large, rectangular, blue-painted metal structure from a barge or temporary platform in a body of water. The structure has a complex, multi-level design with various openings and platforms. The background shows a cloudy sky and a line of trees on the shore.

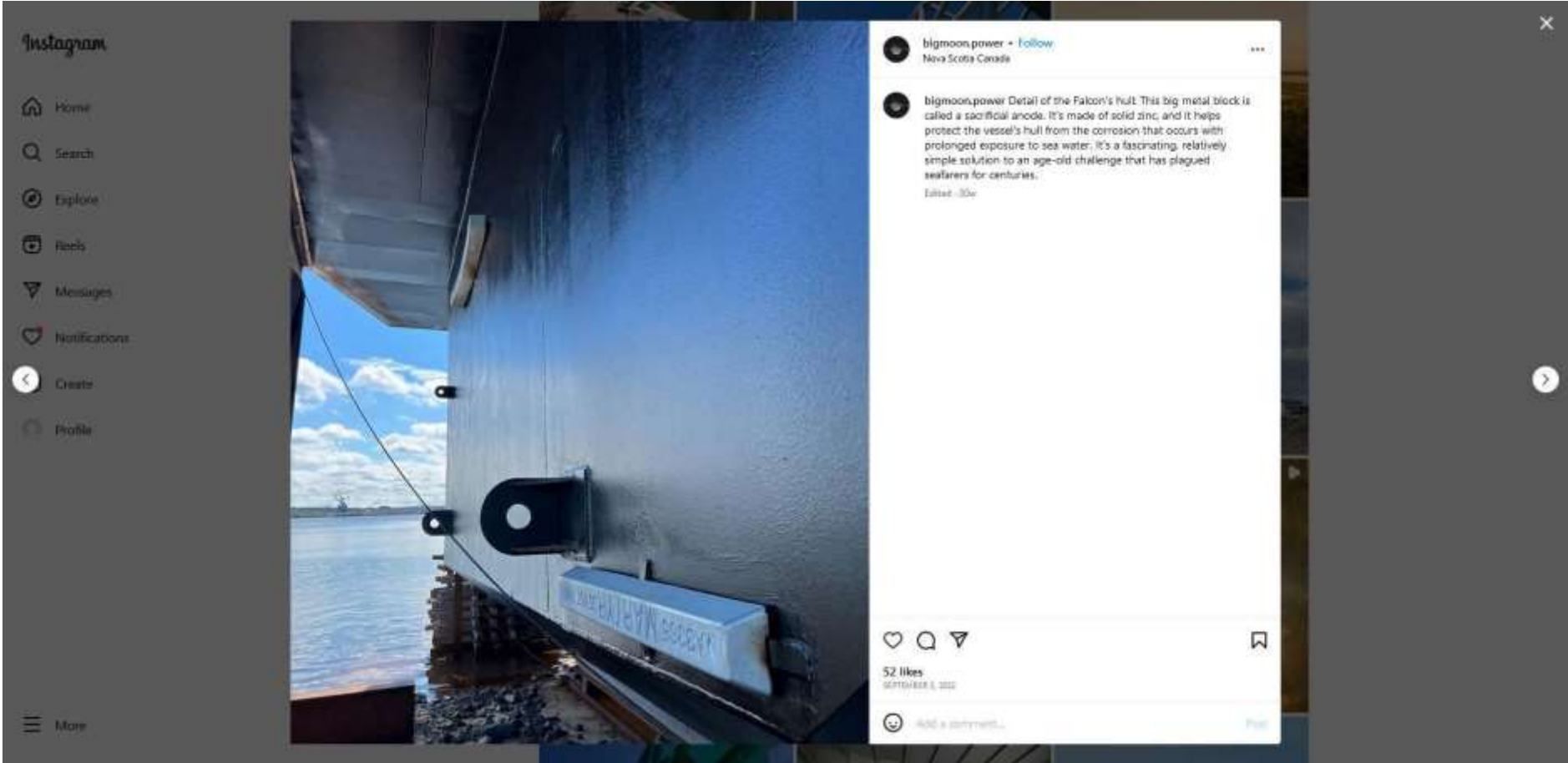
**Instagram Post Details:**

- Post by:** bigmoon.power • Follow
- Caption:** The Falcon. #bigmoonpower #tidalenergy
- Engagement:** 77 likes, JUN 22, 2022
- Comments:**
  - emilyannejenkins: 1 like, Reply
  - tiki.farms: Very impressive, 2 likes, Reply
  - lyndseylocke: Power to the people, 3 likes, Reply
  - View replies (1)
  - kcorky2: Very impressive and exciting, 3 likes, Reply
  - jenna\_blodgett: The Falcon!!!, 4 likes, Reply
  - blondedawny: 3 likes, Reply
  - perryaverage: Chills!, 3 likes, Reply
  - bendingthelight: 3 likes, Reply

# The Arrest of the Falcon

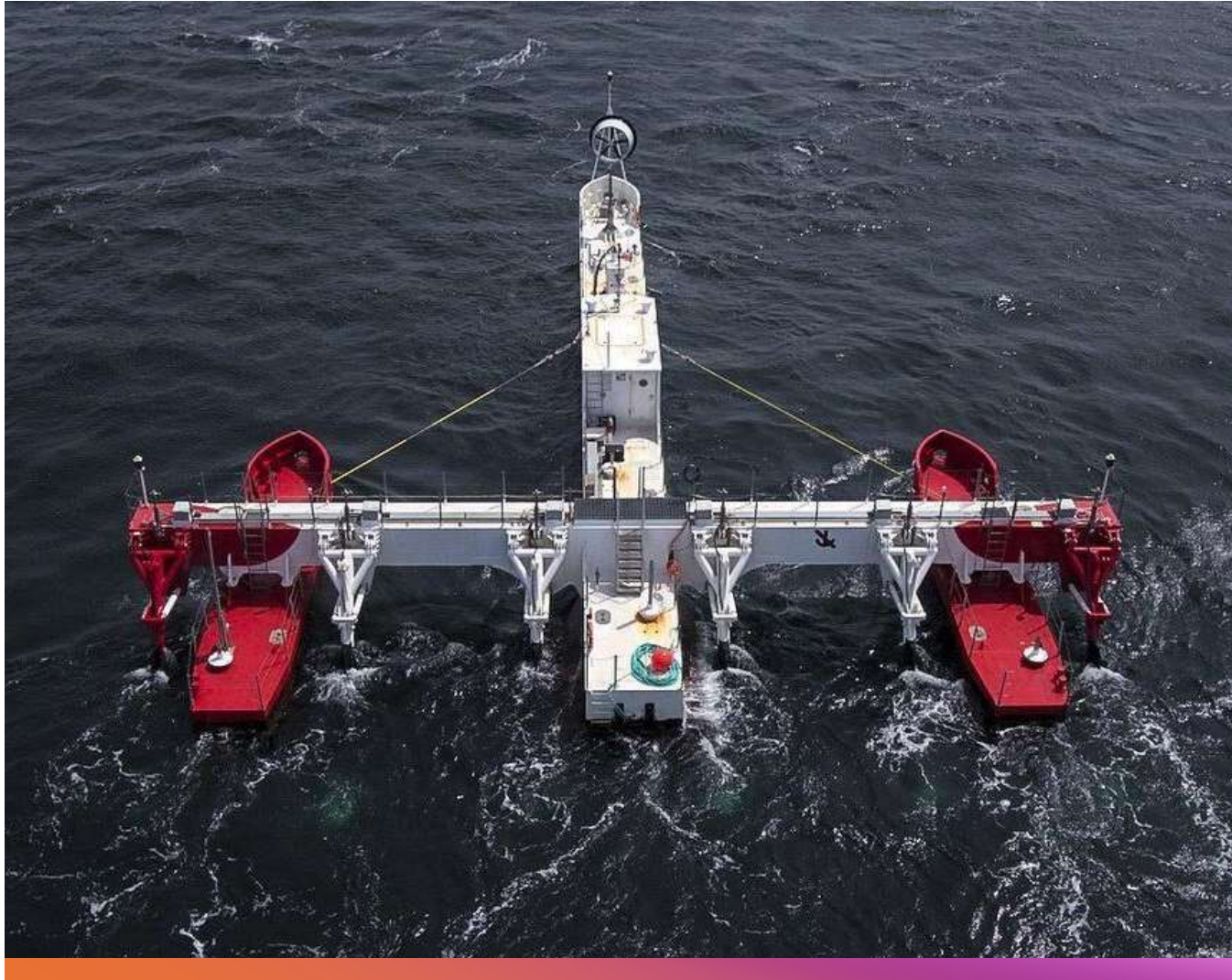


# The Arrest of the Falcon



# The Arrest of the Falcon

- Takeaways for other MORU's worldwide?
  - Key issue remains whether a particular given MORU can be seen as a ship capable of navigation
  - The Falcon is particularly “shippy” – barge-like, rudders, “AUTONAV” etc.
  - Other MORUs less-so – can they still be arrested?



## Collision (Allision) with Floating Platform “PLAT-I”

- Fishing vessel collided with tidal power generation platform; insurer sought repair costs from fishing vessel
- PLAT-I owners argued fishing vessel bore all responsibility for allision and resulting damages
- Fishing vessel attempted to rely on platform’s status as “vessel” to invoke shared liability under the COLREGS; argued platform failed to display required lights



# Collision (Allision) with Floating Platform “PLAT-I”

- Key Legal Issue: Is the PLAT-I a vessel for the purpose of COLREGS?
  - Designated a “work” under Canadian *Navigable Waters Protection Act* (NWPA) and therefore not a vessel
  - Lighting requirements only applied to “exploration or exploitation vessel”, further defined elsewhere as engaging in the production, conservation or processing of oil or gas – not the case here
  - Clearly not a vessel!!!

## Conclusions

- Application of maritime laws and admiralty procedure to MORUs will continue to be determined on a case-by-case basis
- That said, if a given MORU can be deemed a “ship” or a “vessel”, likely no reason maritime laws and admiralty procedure should not apply
- Look for “the Sign” that your MORU is or is not a ship!

