

27 April 2019

Sven Larsson
Oil and Gas Authority
AB1 Building
48 Huntly Street
Aberdeen
AB10 1SH
Email: Offshore.Exploration@ogauthority.co.uk

RE: CONSULTATION: Reporting and Disclosure of Information and Samples: Supplemental Guidance on the Disclosure of Certain Geophysical Survey Data (Created or Acquired under an Exploration Licence Pre-2018)

INTRODUCTION

The International Association of Geophysical Contractors (IAGC) appreciates the opportunity to provide comment on the United Kingdom, Oil and Gas Authority (OGA) proposed [supplemental] guidance on the disclosure of certain geophysical survey data (created or acquired under an exploration licence pre-2018). Due to the importance and potential material impacts from the disclosure of geophysical data, our members have consulted extensively with the OGA over the past four years. We agree with the OGA's intent that, in general, "there should be consistency in the periods after which disclosure of information relating to the geophysical surveys carried out under an exploration licence may be disclosed with those set out in the Disclosure Regulations¹", however, just as important are a stable, consistent, and predictable regulatory environment.

The UKCS is a symbolic and critical economic sector for the United Kingdom. After delivering decades of prosperity to the UK this mature basin now requires careful and appropriate policy, regulatory and fiscal support in order to maximize economic recovery. We welcome the attention the UK Government has given to the UKCS and share the goal of maximizing economic recovery. However, the greater technical challenge and financial risks of operating in the UKCS require a sophisticated understanding of the realities of operating in the UKCS and careful, considered reforms from Government, where appropriate and beneficial.

The IAGC welcomes guidance to clarify regulatory and legal requirements in the UK, given the recent passage of Disclosure Regulations¹, working in good faith to assist the OGA and UK Government's goal of,

¹ The Oil and Gas Authority (Offshore Petroleum) (Disclosure of Protected Material after Specified Period) Regulations 2018, enforced 13 August 2018.

“work[ing] with the industry and government to maximise the economic recovery of UK oil and gas”.

Unfortunately, the OGA has taken the opportunity of legal changes passed by duly elected officials in Parliament pertaining to post-2017 geophysical data disclosure, to propose retroactively, changes to widely known and accepted terms for disclosure of geophysical data, pre-2018.

Over the past 16 years, acquisition of data was made, through extensive exploration industry investment in the UK, with the mutual understanding by both the geophysical industry and the UK Government, under the terms of the *Agreement between the IAGC and the DTI for the Release of Speculative Seismic Data*, (“the 2003 Agreement”). It is extremely concerning that the OGA has published guidance without reference to the 2003 Agreement or terms therein, given the proposal seeks to completely change the clear terms of the 2003 Agreement, which set out the Government’s position on the disclosure of multi-client geophysical data. Furthermore, it is wrong, as a matter of law, for the OGA to state that the 1998 Model Clause disclosure periods of 3 and 5 years formerly applied as standard practice, as the draft guidance suggests. What did in fact apply were the clear terms of the 2003 Agreement which were recognized throughout the industry as standard and agreed by the Government.

The IAGC submits that it is wrong, both as a matter of principle and as a matter of law, for the Government to unilaterally depart from the terms of the 2003 Agreement, particularly given the huge investment which has been made by the IAGC membership in exploration for long-term development projects. In seeking to make arbitrary, retroactive changes to the clear and well-established regulatory regime, is to depart from legislative and regulatory best practice and serves to disrupt and reduce investment, whilst undermining the UK’s reputation as a stable, consistent regulatory environment. The OGA is severely disrupting the geophysical industry, interfering with the intellectual and other property of IAGC members and driving away any significant future investment in the industry. Barring significant changes to the proposed guidance governing pre-2018 disclosure of geophysical data, the OGA will find that its stated objective, “maximize[ing] the economic recovery of oil and gas²” will not be achieved. Exploration flourishes where the overall attractiveness of the geological play is confirmed and where energy and fiscal policies are supportive, and provide regulatory and fiscal certainty.

The proposed guidance, will have a significant and immediate negative revenue impact on the seismic contractors who have invested heavily in the UK Continental Shelf (UKCS) during the last 15 years. It will also

² Ambition and Priorities, OGA Website; <https://www.ogauthority.co.uk/about-us/ambition-priorities/> (accessed 7 April 2019).

immediately reduce the costs for oil companies they otherwise would have likely incurred, if and when significant volumes of data are disclosed. This is inherently unfair and anti-competitive.

ASSOCIATION

The IAGC is the international trade association for the geophysical and exploration industry, the cornerstone of the energy industry. Our membership includes onshore and offshore survey operators and acquisition companies, data process providers, exploration and production companies, equipment and software manufacturers, industry suppliers and service providers. The IAGC has more than 80 member companies in nearly 50 countries, comprised of a wide range of geophysical survey companies, equipment manufacturers, consultancies and providers of support services. The IAGC is further supported by a number of 'Industry Partners' which includes Exploration and Production companies.

The IAGC's mission is to optimize the business and regulatory climate, and enhance public understanding to support a strong, viable geophysical industry essential to discovering and delivering the world's energy resources. The IAGC's vision is to be the most credible and effective voice for promoting and ensuring a safe, environmentally responsible and competitive geophysical and exploration industry.

BACKGROUND & OVERVIEW

The OGA has taken an overly simplistic view of the geophysical industry, and demonstrated a lack of understanding of how the exploration market works under the multi-client business model for the geophysical and exploration industry. Disclosing legacy data for new analysis to create more investment, at most, could lead to initial, limited activity where immigrating companies or competitors may attempt to reprocess the data for market. The irreversible impacts on the industry will be felt for many years.

Through an estimated twenty-five meetings in the past two years alone, along with countless discussions stretching back nearly two decades, the energy exploration industry has consulted with the UK government to ensure a stable business environment exists for development of the UK Continental Shelf (UKCS). Based on the 2003 Agreement, the industry has invested hundreds of millions GBP, to inform the development of energy resources undiscovered by previous generations. The IAGC has always welcomed these discussions and approached these in good faith.

The IAGC recognizes that the 1998 Petroleum Act includes the terms by which exploration licences are granted along with License Model Clauses. However, those clauses were not originally intended for application to geophysical data, but rather the release of specified data (or reports of activity). The very proposal to disclose multi-client geophysical data and the OGA's publicly discussed intent to apply the model clauses to geophysical data has destabilized the geophysical industry in the UK. Retroactively changing the terms as proposed in the pre-2018 guidance will further the negative economic impact on the exploration industry now and disincentivizes exploration activity in the UK.

The IAGC members have experienced negative impacts to contracting for at least the past eighteen months, from delayed pre-funding to reduced interest in new multi-client surveys, given the OGA's move toward disclosing data. The IAGC members submit that the proposed guidance is unfair, one sided in favour of the operators, and will have a disproportionately negative impact on the geophysical industry, perhaps reflecting a lack of internal OGA understanding of our business models and operations. OGA's consultation document itself is misleading, not fairly representing what has been current industry—and government—practice under the terms of the 2003 Agreement, but rather only representing the model clauses.

THE MULTI-CLIENT BUSINESS MODEL

Geophysical surveys are conducted on either a multi-client or proprietary basis. Proprietary or exclusive surveys are acquired by a geophysical company for an individual client who owns the data, and they usually cover limited acreage. In contrast, multi-client surveys are acquired by the geophysical company for its own use and are generally collected over large acreage. The geophysical company owns the data which it then markets and licenses to as many clients as possible, making the survey less expensive on a per-unit-area basis than proprietary data and driving interest in the potential leasing acreage.

The multi-client data licensing business model has significant economic advantages for E&P companies, host governments and geophysical companies. The multi-client business model spreads the costs of data acquisition and processing over time and among multiple customers. Under the model, the geophysical company initiates and conducts projects of general industry interest at its own financial risk. Restricted non-transferrable data-user licenses are then sold to individual E&P companies for a fraction of the cost of acquiring and processing the data themselves, with no operation risks, allowing multiple E&P companies the opportunity to evaluate resource potential in particular area along geological trends that will facilitate higher exploration and development success rates.

The benefits to Host Governments, including the UK are: Lower barriers to entry for E&P companies thus promoting more active and competitive licensing rounds; Rapid and efficient development of reserves; Provide data to make decisions about operational matters; and Provide opportunity to create subsurface maps that can help in the stewardship of the natural resources.

The multi-client model is often considered the best way to source data more efficiently. Data is accessible quickly at a fraction of the cost, and a significant portion of the investment to explore the basin is covered by the geophysical industry, lowering economic hurdles to exploring and producing. Multi-client companies are willing to take on a share of investment cost where they can make a fair return. There is strong incentive for multi-client companies to apply new technology in mature basins (e.g. US GOM, Norway, UK), where the industry benefits from a history of deepwater discoveries with a legacy of geophysical advancements. Certainty in the confidentiality periods in place at the time of multi-client investment are an integral part of planning, specifically with regard to investment spend. Of particular importance is the confidentiality or exclusivity-term applied to field data (referred to in the OGA guidance as legacy or raw data), the initial data collected by geophysical companies forming the basis for all future derivatives, value added practices, and product marketing for the given survey area.

IAGC members are entitled to expect a reasonable return on their investment and recognition of their intellectual property value to acquire and process the geophysical data—or field data—critical to exploring the UK's offshore. Field data can continue to be licensed and reprocessed to attract further investment and interest in the lease area, and the reprocessing is a significant contributor to returning the seismic company's investment, especially in downturns. Often field data is available at a lumpsum once an oil company gains an equity/commercial interest in a block. This competitive market model is still valid for the multi-client and exploration industries. Most importantly, field data does not stimulate MER (Maximizing Economic Recovery) principles.

The OGA's proposed guidance, stating the current arrangement of disclosure of field data at 3 or 5 years is inaccurate and fails to recognize the clear provisions of the 2003 Agreement.

THE 2003 AGREEMENT

The impetus for reaching a mutual understanding on the disclosure terms governing multi-client data in 2003 was specifically due to the fact that existing UK regulations did not apply. The Department of Trade and

Industry (DTI), OGA's predecessor, consulted the IAGC on an agreeable set of terms for both the industry and the government. The 2003 Agreement was executed on 1 October 2003 (Exhibit A).

The exploration industry and UK government carried out surveys and regulatory duties, respectively, under the terms of the 2003 Agreement. From late 2003 until 2015 the government provided no indication that terms of geophysical data would change. In fact, as late as December 2015³ the OGA stated that the 2003 Agreement would continue to apply to any survey conducted before the OGA's purported notice to terminate the 2003 Agreement came into force and acknowledged in a meeting in January 2016 that the 2003 agreement would continue to apply to data acquired whilst the 2003 Agreement had been in force.

By mid-2016, the OGA began to reference⁴, for the first time, a default to terms of individual license agreements, analogous to what the draft guidance purports as the "current arrangements". By the end of 2016⁵, the OGA recanted its own admissions and claimed that the 2003 Agreement was not a binding agreement but rather "some high-level principles of how the signees consider such data should be managed." It is important to note the government was a signee, and that representation of how multi-client data was to be managed is determinative.

During this period, the IAGC repeatedly requested clarification on the legal analysis for the OGA's position that the 2003 Agreement was not binding but did not receive this in any detail. Finally, in December 2018, the OGA stated⁶ that it wanted to default to statutory minimum release periods of 3 or 5 years under the Model Clauses.

The IAGC sought legal advice from outside counsel and from a leading Queen's Counsel and this confirmed that the 2003 Agreement was a binding agreement, in force from 2003 and that data covered under the agreement was, and must still be, subject to the terms of that agreement. That document was agreed to by the UK government and the IAGC to improve the understanding of how speculative multi-client data – or 'spec' data—was treated. All parties used the 2003 Agreement as a governing document and it was referenced as the relevant guidelines by the Government until very recently⁷ and can still be found in existing government documents⁸.

³ Notice to Holders of Relevant Licenses attached to 15 December 2015 "termination" letter, OGA states in clause 6.2.

⁴ OGA Letter to Chris Drage (IAGC EAME Chair), dated 28 June 2016.

⁵ OGA Letter to IAGC, dated 4 November 2016.

⁶ OGA Letter to IAGC, 5 December 2018. Subject, "Exploration Licence Geophysical Data Release".

⁷ OGA website <https://www.ogauthority.co.uk/data-centre/access-to-information-and-samples/>, accessed October 2018.

⁸ see Guidelines for the Release of Proprietary Seismic Data UKCS, §1.2; "Speculative Seismic Data release is covered under a separate agreement between DECC and the International Association of Geophysical Contractors (IAGC)".

The OGA's position that the 2003 Agreement is not a binding legal agreement is untenable. This has resulted in a fundamental disagreement between the IAGC and OGA that needs resolution in order to provide certainty to the exploration industry in the UK. Further resolution or exploration of possible concessions from the geophysical industry seem unlikely without agreement on the application of the terms in the 2003 Agreement related to data collected prior to 2018. For some IAGC members, unilaterally changing the terms that had been agreed and applied by the government in the 2003 Agreement and since makes a significant and immediate commercial impact on their business.

The IAGC therefore submits that, as a matter of law, the 2003 Agreement governs the disclosure of data acquired from 2003 to the point where the new guidelines, following the new Energy Act, came into force in 2018.

LEGAL ANALYSIS

The proposed guidance deviates significantly from the previously agreed position of the government, namely the 2003 Agreement, and will cause the geophysical industry considerable disruption and economic harm.

As recently as February 2019 and October 2018, the industry requested that the OGA provide the legal basis upon which the release or disclosure of information related to geological surveys acquired prior to 2018 can be governed by the terms of the Model Clauses.

Pursuant to s.2 of the *Petroleum Act 1998*, the exclusive right to search for and extract petroleum in the United Kingdom is vested in the Crown. However, s.3 empowers the Secretary of State to grant licences to search for and extract petroleum upon such terms as the Secretary of State deems fit. Section 4(1) of the 1998 Act requires the Secretary of State to make regulations governing such licences. By s. 4(1)(e), the regulations are to prescribe model clauses which shall, unless the Secretary of State thinks fit to modify or exclude them, be incorporated into such licences. Schedule 1 to the 1998 Act lists the various sets of model clauses which can be incorporated into different types of licences when granted.

As we understand the OGA's powers, any Guidance which is published by the OGA must be limited to aiding the understanding and interpretation of the Regulations to which such guidance relates, terming the proposed guidance 'supplemental' does not remove this limitation.

While the current model clauses applicable to offshore exploration⁹ paragraph 14 of the Schedule provides that survey data can be disclosed after the expiry of a period of three years from the date when the data were supplied to the Minister, the 2003 Agreement is an agreement pursuant to which the Secretary of State undertook to modify or exclude the Model Clauses as provided for in s. 4(1)(e) of the 1998 Act. As such, it is not open to the OGA to retroactively apply the Model Clauses as if the 2003 Agreement had never been agreed.

Furthermore, there is a presumption against the retroactive operation of legislation. As such, the 2018 Regulations are presumed not to have / do not have retroactive effect¹⁰. Further, the OGA cannot effect a change to substantive rules (such as the 2018 Regulations) by issuing a guidance document¹¹, supplemental or otherwise.

The confidentiality of data acquired during the period when the 2003 Agreement was in force, prior to 2018, remains governed by the terms of the 2003 Agreement.

The fact that the terms of the 2003 Agreement were not set out in the licences themselves in place of the confidentiality provisions of the Model Clauses is not relevant. Section 4 of the 1998 Act does not require either the Model Clauses or any modification or exclusion of them to be set out in the licence. Thus, the 2003 Agreement ought to be enforceable notwithstanding that it is contained in a separate document. We do not believe it is a lawful exercise of the OGA's powers to extend the guidance to include pre-2018 data.

The position which the proposed guidance adopts flies in the face of the commercial reality in the industry for many years, custom and practice and a number of documents which make express reference to the 2003 Agreement. It regulated the relationship of the parties for more than a decade and the industry is entitled to expect that its rights and obligations would be governed by the 2003 agreement. The 2003 Agreement was relied on by both government and regulated entities, and in pattern and practice, that is what government held out, and represented. Finally, the wording of Clause 1 of the 2003 Agreement is sufficiently broad to cover data acquired before the agreement came into force.

⁹ Schedule to the *Offshore Exploration (Petroleum, and Gas Storage and Unloading) (Model Clauses) Regulations 2009* (the "2009 Regulations").

¹⁰ see *Wilson v First County Trust Ltd (No 2)* [2003] UKHL 40; [2004] 1 AC 816 at [186]-[192], per Lord Roger of Earlsferry).

¹¹ see, e.g., *R (on the application of English UK v Secretary of State for the Home Department* [2010] EWHC 1726 (Admin) at [64], per Foskett J

ECONOMIC IMPACTS

We welcome the UK Government's focus on the UKCS and share the goal of maximizing economic recovery. However, the greater technical challenge and financial risks of operating in the UKCS require a sophisticated understanding of the realities of operating in the UKCS and careful, considered reforms from Government, where appropriate and beneficial – particularly for the geophysical industry.

The market downturn has affected industry's acquisition as prices of vessels have dropped from an estimated high of GBP 268,000 per day in 2014 to GBP 92,000 per day now, and industry has lost estimated > GBP 5.8 billion in the three years since 2015¹². We believe the uncertainty sowed by the OGA over the same time period has only magnified the impacts of the downturn on the geophysical industry.

From 2003 – 2013, the seismic industry invested more than GBP 1.2 billion in new multi-client seismic acquisition and processing, all while the government and industry understood disclosure of data was governed by the terms in the 2003 Agreement. The following statistics illustrate industry investment while the 2003 Agreement was in force: 400,000-line km of Multi-client 2D (94%), compared to 25,000-line km of Proprietary 2D (6%) and 180,000 sq.km of Multi-client 3D (82%), compared to 40,000 sq.km of Proprietary 3D (18%).

On the UKCS, most license round applications are based on understanding gained from multi-client seismic data. The industry has invested in research & development, in particular in Broadband acquisition and processing technology in the North Sea more than anywhere globally – in-part due to a [previously] stable business environment and without concern that investments would be covered by confidentiality clauses that could provide ample opportunity to provide returns. Multi-client data acquired in the UKCS does not provide a return on investment as quickly as other regions, indicating a need for longer data confidentiality periods. Low commitment levels on new UKCS blocks means uplift payments for seismic licenses are later. E&P company pre-funding, before first acquisition, on new multi-client seismic is reducing. For the majority of seismic contractors combined, the funding received versus total investment cost has been on a significant decline: 2009 and prior = 70 percent, 2010 to 2012 = 48 percent, 2013 to 2015 = 20 percent.

The IAGC has previously highlighted the significant commercial impact the OGA's intended retroactive change to disclosure terms will have on its members. Our members have invested several billion pounds over many years in order to obtain the data, over which our members exercise proprietary rights. This substantial investment was made on the basis of the law and practice as it then stood and with the legitimate expectation

¹² Webinar presentation at Society of Exploration Geophysicists Conference, company reports; TGS – 7 June 2018.

by the investors that they would not be subjected to retroactive detriment, imposed, ultra vires, by a regulator who did not even exist at the time, without any basis in law.

Contrary to what the OGA have stated, our members are of the view that the OGA have failed during the consultation process to consider legitimate commercial concerns. In breach of the MER principles¹³, the proposed guidance will remove a significant part of the revenue streams from our members and instead provide free data access to others.

The IAGC maintains that the required balance of commercial impact against benefits is not achieved by the proposed guidance. The current position of exploration information in the UKCS is that data is available at a reasonable cost. The effect of the OGA's proposed guidance is to seek to impose a radical change in the rules by retroactively forcing the release of data for no consideration, after significant investment has already been made by the exploration industry in reliance of confidentiality periods that the OGA seeks to now make null and void. For what amounts to a very limited gain for those who will benefit from the free access to the data, this will severely damage the seismic and exploration industry in the UK which has, over many years, invested heavily in acquiring North Sea data to spur exploration investment on the UKCS. The knock-on effect on any potential future investment in the UK seismic market will be catastrophic.

FEEDBACK ON SPECIFIC GUIDANCE PROVISIONS

Below, we have provided brief, direct answers to the formal questions posed in the consultation; however, the IAGC consultation feedback is detailed throughout the consultation response, above.

Disclosure of Final Stack Data

1. The Exploration Licence clauses set disclosure timing at three (3) or five (5) years (depending generally on the date of grant of the licence) for final stack data. The Supplemental Pre-2018 Guidance states that final stack data will be disclosed ten (10) years after the completion of final processing (i.e. the Initial Disclosure Period in respect of Processed Information).

Q1A: Do you agree that this period is reasonable?

Answer: Answer: The IAGC does not agree that this period is reasonable.

¹³ MER UK Strategy Safeguard and the MER UK Guiding Principles; <https://www.ogauthority.co.uk/regulatory-framework/mer-uk-strategy/>.

Q1B: If you answered 'no' to Q1A, what longer period should the OGA consider? Please provide reasons for any alternative period proposed.

The OGA's proposed guidance, stating the current arrangement of disclosure of final stack data at 3 or 5 years is inaccurate and fails to recognize the clear provisions of the 2003 Agreement.

Disclosure of Field (Raw) Data

2. Similar to final stack data, the Exploration Licence clauses set disclosure timing at three (3) or five (5) years for field (raw) data. The Supplemental Pre-2018 Guidance states that field (raw) data will be disclosed fifteen (15) years after the completion of final processing (i.e. the Full Disclosure Period in respect of Original Information).

Q2A: Do you agree that this period is reasonable?

Answer: The IAGC does not agree that this period is reasonable.

Q2B: If you answered 'no' to Q2A, what longer period should the OGA consider? Please provide reasons for any alternative period proposed.

Answer: The OGA's proposed guidance, stating the current arrangement of disclosure of field data at 3 or 5 years is inaccurate and fails to recognize the clear provisions of the 2003 Agreement.

The proposed guidance, will have a significant and immediate negative revenue impact on the seismic contractors who have invested heavily in the UKCS during the last 15 years.

There is strong incentive for multi-client companies to apply new technology in mature basins (e.g. US GOM, Norway, UK), where the industry benefits from a history of deepwater discoveries with a legacy of geophysical advancements. Certainty in the confidentiality periods in place at the time of multi-client investment are an integral part of planning, specifically with regard to investment spend. Of particular importance is the confidentiality or exclusivity-term applied to field data (referred to in the OGA guidance as legacy or raw data), the initial data collected by geophysical companies forming the basis for all future derivatives, value added practices, and product marketing for the given survey area.

IAGC members are entitled to expect a reasonable return on their investment and recognition of their intellectual property value to acquire and process the geophysical data—or field data—critical to exploring the UK’s offshore. Field data can continue to be licensed and reprocessed to attract further investment and interest in the lease area, and the reprocessing is a significant contributor to returning the seismic company’s investment, especially in downturns. Often field data is available at a lumpsum once an oil company gains an equity/commercial interest in a block. This competitive market model is still valid for the multi-client and exploration industries. Most importantly, field data does not stimulate MER (Maximizing Economic Recovery) principles.

The 2003 Agreement was agreed to by the UK government and the IAGC to improve the understanding of how speculative multi-client data – or ‘spec’ data—was treated. All parties used the 2003 Agreement as a governing document and it was referenced as the relevant guidelines by the Government until very recently and can still be found in existing government documents.

Field data, acquired under the terms of the 2003 Agreement should not be subject to disclosure, see above.

Disclosure Protection Extension Period

3. It is proposed that for data that has been determined to have completed final processing in 2009 or earlier that an automatic disclosure protection period be applied for five (5) years from 2018.

Q3A: Do you agree that this period is reasonable?

Answer: The IAGC does not agree that this period is reasonable.

Q3B: If you answered ‘no’ to Q3A, what longer period should the OGA consider? Please provide reasons for any alternative period proposed.

Answer: Any guidance finalized by way of this consultation process shall apply to the recently enacted regulations and apply to data that has been determined to have completed final processing from that date and forward. Retroactive changes to data release are unlawful, see above.

Disclosure of Value Added Data

4. Value Added Data, being products created after the completion of final processing, have generally not been and will not be (under the Supplemental Pre-2018 Guidance) disclosed.

Q4A: Do you agree that allowing value added data products to be retained by the owner will provide them with an incentive to continue to improve the quality and usefulness of the datasets, as well as develop new processing technology and techniques?

Answer: Yes, the IAGC agrees that value added data products shall be retained by the owner.

Q4B: If you answered 'no' to Q3A, what longer period should the OGA consider? Please provide reasons for any alternative period proposed.

Any other comments

Q5: Do you have any further comments on the matters raised in this consultation?

Answer: The IAGC's detailed thoughts are provided throughout the submission on the disclosure guidance. However, two additional points of concern pertain to the following sections in the consultation:

4. The OGA is not bound by this guidance and where it departs from this guidance it will explain why. This guidance is not a substitute for any regulation or law and is not legal advice.

5. This guidance will be kept under review and may be revised as appropriate in the light of further experience and developing law and practice, and any change to the OGA's powers and responsibilities. If the OGA changes this guidance in a material way, it will publish a revised document.

While we understand regulations may be changed from time to time and the subsequent guidance be issued, these points relate heavily to our member's concerns relating to what certainty (or lack thereof) there is about future changes. Of particular note, the language states that a revised document will be produced - no mention of further consultations in light of any perceived need to update the guidance.

Separately, the table included in the proposed guidance (section 3, page 5); the IAGC is opposed to the OGA proposed controls on the commercial aspects of the geophysical market. Specifically, the IAGC is opposed to the restriction on uplift fees for "released data" and find this to be outside the remit of the OGA and this consultation. We note that the Regulations, quite properly, make no reference to commercial terms and in particular do not seek to impose any prescriptive commercial terms. We are therefore surprised that the draft guidance contains commercial terms and goes beyond the Regulations by seeking to deal with commercial

issues. We do not consider that it is appropriate for the Guidance to stray into the territory of such commercial terms which are entirely a matter for the relevant parties to agree among themselves. We therefore ask you to delete all references to commercial terms throughout the draft Guidance.

The geophysical industry continues to support the OGA's goal of enhancing and incentivizing exploration and production of the UKCS. The IAGC urges the OGA to seek the geophysical industry's input and support for advancing the OGA's mission, however, we cannot support unlawful and market disrupting proposals such as the pre-2018 guidance.

CONCLUSIONS

The IAGC appreciates the opportunity to provide feedback on the OGA's proposed guidance interpreting the regulations for the disclosure of multi-client geophysical data acquired prior to 2018. The industry remains concerned that the proposal to retroactively change how geophysical data may be disclosed will have the opposite effect as is stated by the OGA – ultimately leading to reduced investments on the UKCS. The guidance, as proposed, will create a major disruption in the market, reducing trust in the system, and may lead to an exploration exodus to more stable regions of the globe with negative repercussions on how the global energy industry views the stability of business conditions in the UKCS, thereby harming rather than helping MER potential.

Ultimately the uncertainty regarding the reliability of the regulator to provide consistent terms of engagement could lead to the discontinuation of multi-client activity offshore UK at a critical time in the UK's exploration and development efforts. Changing the terms of engagement for the industry would undercut the seismic market even further and such retroactive changes would be unlawful.

The IAGC reiterates that the OGA should recognize that the 2003 Agreement terms applied to geophysical data prior to the regulations of 2018 and, rather than deny the existence of the Agreement's terms through omission, the OGA should work with the industry on ways to truly enhance exploration and development of the UK's energy resources.

Deepwater settings will remain key to industry resource additions and to meeting global energy demand. We hope UKCS is a part of those discoveries and additions and that we continue to be a productive partner with you in this. We look forward to receiving feedback on this consultation submission.

Should you have any questions regarding the comment letter, please don't hesitate to contact Dustin Van Liew, IAGC's Director of Regulatory and Governmental Affairs, at dustin.vanliew@iagc.org.

Sincerely,



Nikki Martin
President
International Association of Geophysical Contractors

cc: Chris Drage - IAGC EAME Chair, Dustin Van Liew - IAGC Vice President of Regulatory & Governmental Affairs

EXHIBIT A



AGREEMENT BETWEEN THE IAGC AND THE DTI FOR THE RELEASE OF SPECULATIVE SEISMIC DATA

1. Spec Seismic is to be classified as “Released Data” upon the 10th anniversary following completion of original data processing, or from the date of the first DTI license round in the area following acquisition of the relevant survey, whichever is the later.
2. There will be a “right of appeal” for exceptional surveys on an individual basis which may not have reached profitability at the date for “release”.
3. Released spec data of 10 years and over, would be made available at a “low initial” license fee (to cover reproduction and administration costs) but, would require additional phased license fee payments.
4. The “low initial” license fee would not discriminate between size of licensee companies.
5. This “phased” license fee payment scheme is designed to encourage new entrants into the UKCS.

6. Phased payments could relate to any one or combination of the following:-

- i) acreage applications,
- ii) group memberships,
- iii) acquiring equity,
- iv) drilling,
- v) hydro-carbon discovery
- vi) production.

These items would be subject to individual contractors negotiations.

7. a) The Released Data only applies to streamer acquisition, (not seabed and multi-component data.
- b) Only the original post stack time migrated data would be subject to the release mechanism.
- c) The owners of these data would retain the exclusive rights for provision of all enhanced, reprocessed, value added products and field data under the under the terms and conditions of their individual license agreements.
8. Ownership of and all rights to these data and all derivatives will continue to reside at all times with the geophysical contractor.
9. All released data must be licensed directly from the respective owner and will be subject to the terms and conditions of the individual owners data license agreement
10. a) Contractors would place the details of these “Released Data” onto the DEAL website.
- b) Contractors would also continue advertising and promoting data availability as normal.

11. The DTI and the IAGC hereby agree that the release mechanism concerning spec data shall be reviewed on an annual basis and that no changes or modifications to the release mechanism as specified above, will be implemented without full consultation.

Signed for and on behalf of the IAGC:-

Name: Jim H Sommerville

Position: Chair IAGC EAME Chapter

Date: 23 Sept 03

Signed for and on behalf of the DTI:-

Name: S Toole

Position: Dir OGLED DTI

Date: 1 Oct 2003