

25 August 2017

The Oil and Gas Authority
21 Bloomsbury Street
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Sent via e-mail: informationandsamples@ogauthority.co.uk

Re: Consultation, Proposed Regulations for the Retention and Disclosure of Information and Samples

To Whom It May Concern,

This letter provides the comments of the International Association of Geophysical Contractors (“IAGC”). We appreciate the consideration of the Oil & Gas Authority (OGA) regarding the comments set forth below on the “Consultation, Proposed Regulations for the Retention and Disclosure of Information and Samples (“Consultation”).

I. THE ASSOCIATION

IAGC is the international trade association representing the industry that provides geophysical services (geophysical data acquisition, processing and interpretation, geophysical information ownership and licensing, and associated services and product providers) to the oil and natural gas industry. IAGC member companies play an integral role in the successful exploration and development of offshore hydrocarbon resources through the acquisition and processing of geophysical data.

II. OVERVIEW

On 24 February 2014, Sir Ian Wood published the UKCS Maximising Recovery Review Final Report (“the Wood Review”), following which, government introduced the Energy Act 2016 (“the Act”) which brought into law recommendations from the Wood Review. The Act contains a number of provisions in relation to the retention by industry, reporting to the OGA and subsequent disclosure by the OGA of petroleum-related information and samples.

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The purpose of this consultation, as expressed by OGA, is to seek views on the proposals for two sets of regulations relating to the retention, and to the public disclosure by the OGA, of petroleum-related information and samples pursuant to the Act, specifically:

- (i) regulations that will set out what information and samples industry will be required to retain, how and for how long
- (ii) regulations that will set out which information and samples the OGA will disclose publicly, and the time period after which disclosure can take place.

As stated in the Consultation, OGA intends for the regulations to complete the Wood Review recommendations on transparency, **while minimising burden on industry** (*emphasis added*).

III. BACKGROUND

Creation of the OGA, was formed in April 2015, initially as an executive agency of the Department of Energy and Climate Change, now the Department for Business, Energy and Industrial Strategy (BEIS). In October 2016, the OGA became a government company, limited by shares under the Companies Act 2006, with the Secretary of State for BEIS as the sole shareholder. The OGA's role is to regulate, influence and promote the UK oil and gas industry in order to achieve the principal objective of maximising the economic recovery of the UK's oil and gas resources.

The Wood Review's two key recommendations for maximising economic recovery from the UK Continental Shelf (MER UK) included the new body taking steps to facilitate implementation of MER UK – one of the aims of these recommended powers was to “ensure greater access to the timely and transparent data necessary for a competitive market”.

The Energy Act 2016 (“the Act”) includes a number of provisions in relation to the retention (by industry), reporting (to the OGA) and subsequent disclosure (by the OGA) of information and samples.

The consultation is to seek industry's views on the OGA's proposals for the two sets of regulations relating to the retention by industry, and the public disclosure by the OGA, of petroleum-related information and samples, specifically:

- **Part 1** contains the proposals for regulations that will set out what information and samples should be **retained** by industry, how and for how long (under section 28 of the Act)
- **Part 2** contains the proposals for regulations that will set out when specified information and samples can be **disclosed** by the OGA (under section 66 of the Act).

IV. COMMENTS

A. General Retention:

Retention requirements for industry and subsequent public disclosure by the OGA of information and samples that have been reported to it are designed to support maximising the economic recovery of petroleum from the UKCS through greater access to the timely and transparent data necessary for a competitive market, as recommended by the Wood Review.

Q1. Do you agree with the OGA's intention for the regulations to apply to both existing information and samples held at the date the regulations come into force as well as any new information and samples created after that date?

IAGC generally agrees with the proposal regarding retention of data, however, the requirements are relatively more onerous than current requirements and IAGC requests OGA to provide further clarity and specificity on the proposal. More specifically, the consultation purports to, "*setting out clearly identifiable retention obligations...*" and further states, "*it is the OGA's intention that the requirement to retain important information and samples does not place undue burden on industry*". IAGC contends that too often the Consultation uses 'any', 'all', 'each' and 'every' to describe the information that industry must retain, we request the retention sections be revised and clarified.

Paragraph 17, referenced below, is particularly concerning and ambiguous as to the details and specific retention requirements, since any given IAGC member company may have a unique structure for how, and in what form, data is currently retained. We request the OGA include text, in the final Consultation document, that allows flexibility for company specific retention policies so that IAGC members are not obligated "to create information and samples" (*at paragraph 16*).

The OGA intends for the regulations to apply not only to any new petroleum-related information or samples which are created after the coming into force date of the regulations, but also to any petroleum-related information or samples that were created beforehand and are held at the time of the coming into force of the regulations.

We support the OGA's desire to simplify and bring consistency to the regulations that govern the retention of information and samples going forward, however, we do not agree with retrospective application of regulations made under the Energy Act 2016, unless it is perfectly clear that non-compliance relating to retention of information and samples acquired before the commencement date of these regulations is exempt from sanctions. Additionally, any existing information and samples should be released based

upon a voluntary basis and take into account ownership and licensing agreements in place at the time regulations are finalized.

a. Specific Retention:

The OGA proposes that any raw data (and associated reports); any navigation data (and associated reports); any processed data (and associated reports); and any reprocessed data (and associated reports) arising from geophysical surveys that measure the physical properties of strata and/or the rock types of which they are comprised in order to map, image or model the subsurface are required to be retained. IAGC provides the following general responses on specific data retention while referencing detailed responses attached.

Q7. Do you agree with the proposal that all geophysical survey information, as set out above, should be required to be retained? Please answer yes or no.
If your answer is no please provide detail of what you think should not be required to be retained and why.

The requirement to retain “all geophysical survey information” is far too wide in our view, given the multiplicity of measurements that are collected on the vessel, it is not practical. Further, processed and reprocessed intermediate and final products that can be created at the press of a button argue against retention of “all” information. Derivatives that can be easily re-produced, internal test products, for example, should not be part of the retention.

For the regulations to meet the OGA's objective of “...setting out clearly identifiable regulations that minimise the burden place on industry...”, OGA needs to clarify which information is of importance, i.e. focus on key stages of processing, a defined final field data set, for example.

The OGA proposes that:

- i. any computerised model which provides a spatial representation of the distribution of sediments and rocks in the subsurface is required to be retained
- ii. any computerised model that simulates the flow of fluids (liquid or gas) in reservoirs is required to be retained
- iii. any report from a study into the sub-surface; geology of the strata; structure of the reservoir; the chemistry of the petroleum; how the petroleum may behave in the reservoir, or how it may be trapped and migrated from source is required to be retained.

Q11. Do you agree with the proposal above that models and reports of the sub-surface strata and petroleum in licence areas should be required to be retained?
Please answer yes or no.

If your answer is no please provide detail of what you think should not be required to be retained and why.

We agree with the principle of the proposal, however, the requirement to retain “any computerised model...” and “any report” is far too wide, generalized, and vague to act as practical prescriptions for retention. IAGC requests that the OGA be much more specific.

Computerized models interpretative proprietary information are outside the scope of the regulations, and therefore should not be included. However, it is possible that for all data and samples that are required to be retained, there is also a requirement to retain information about the origins of the data and the agreements, and further IAGC would want to confirm if the data can be disclosed at a later time.

If the purpose of the retention requirement for computerised models and reports is their eventual reporting under a section 34 notice, and their subsequent publication, the OGA must consider its right to disclose information which has proprietary content, such as commercial seismic information or other third-party content to which copyright and IPR (intellectual property rights) may be attached and which would prevent disclosure. The OGA must take into consideration ownership, license agreements, along with data ownership of a limited time and for internal use.

We welcome the OGA’s views on this point and further discussion with industry as to the intent of this section.

B. General Disclosure

The OGA’s proposals for the public disclosure of information and samples by the OGA are designed to support MER UK by maximising the transparent and timely access to information and samples from the UKCS for industry – making information and samples publically available as soon as is reasonable.

In general, IAGC supports the proposed disclosure of information and samples as outlined in the Consultation, however, there must be clear, concise, and specific disclosure requirements so as to not unduly burden geophysical operators and be consistent with Section 66 of the Energy Act of 2016, specifically 5(a)(c).¹

¹ (5) *In determining the time to be specified in respect of protected material in regulations under subsection (1), the Secretary of State must have regard to the following factors—*

(a) whether the specified time will allow owners of protected material a reasonable period of time to satisfy the main purpose for which they acquired or created the material;

(c) any potential risk that the specified time may discourage persons from acquiring or creating petroleum-related information or petroleum related samples (as defined in section 27);

IAGC agrees the proposed disclosure regulations do not apply to seismic data acquired or created prior to the regulations coming into force. The scope of the disclosure proposals state *"it is the OGA's intention that where this "trigger point" for any particular piece of information occurs after the regulations come into force, the new regulations will apply"* (Paragraph 108 of the Consultation).

The "trigger point" for commercial seismic surveys is proposed to be the date of completion of processing the data. The OGA proposes to not disclose this data for a minimum of either 10 or 15 years (depending on the type of data) after the date of completion of processing (Paragraph 136 of the Consultation). The consultation also states the OGA proposes these time periods apply where *"the end of year of acquisition of the data is **after** the coming into force date of the regulations"* [emphasis added] (Paragraph 137 of the Consultation). Again, as stated above, the Consultation only applies to data acquired after the finalization of the regulations – even if data were collected within the same calendar year as the regulations being finalized.

IAGC notes, the industry is currently consulting on potential disclosure guidelines with OGA and intends to reach agreement for how OGA handles disclosure of geophysical data going forward. We urge the OGA to consider those guidelines, once agreed to, as the Consultation process moves forward.

a. Specific Disclosure - Proprietary Surveys:

The OGA proposes that regulations set out that proprietary geophysical survey information (geophysical survey information where the survey was carried out for the purposes of getting petroleum under the licence in which the information was acquired) is able to be disclosed three years after the end of year of acquisition of the raw data. IAGC provides the following general responses on specific proprietary data disclosure while referencing detailed responses attached.

Q34. Do you agree that three years following the end of the year of acquisition is an appropriate balancing of the factors required to be taken into account for proprietary geophysical survey information? Please answer yes or no. Please explain your answer.

To ensure sufficient time to benefit from the investment in proprietary geophysical survey information, OGA should consider 3 years after completion of the initial processing product. This 'start point' is consistent with the commercial seismic survey definition.

However, the OGA should consider, the sooner data is released the less competitive advantage the owner will have – this element will be considered when investments are being made on the MER UK.

Q35. Are there any other factors for geophysical survey information that you think need to be taken into account?

It is important that the regulations also recognize the value of intellectual property invested by relevant persons in their creation, and ensure that this value is appropriately protected, as otherwise a significant risk would emerge that relevant persons would become discouraged from acquiring the information in the first place, and in the future.

Disclosure should be in standard industry formats, SEG-Y for example and not apply to reprocessing of that data, only applying to key stages of initial processing – not every stage.

b. Specific Disclosure – Commercial Surveys:

The OGA has proposed that, commercial geophysical survey information (geophysical survey information where the survey was carried out for the purposes of selling the information or associated reports), regulations set out that the information may be disclosed after the time periods set out below:

- i. for the original processed data, associated processing reports (otherwise known as post-stack information) and stacking velocities providing context to the post stack information; 10 years after the completion date of processing
- ii. for raw data (otherwise known as field data) and any other intermediate processed and derived data (otherwise known as pre-stack) information, including pre-and post-migration gathers, 15 years after the date of completion of processing

IAGC provides the following general responses on specific commercial data disclosure while referencing detailed responses attached.

Q37. Do you agree that 10 years after the end of year of acquisition for “post stack”, and 15 years after the end of the year of acquisition for “pre-stack” commercial geophysical survey information is an appropriate balancing of the factors required to be taken into account? Please answer yes or no. Please explain your answer.

In general, IAGC agrees with the proposed timelines for disclosure, however, it is important to recognize, as in clause 135, that the OGA considers that the risk of the information being publicly disclosed may discourage persons from creating the information in the first place. Further, data types need to be defined, limited to a practical level and match the current standard deliverable list.

IAGC seeks clarification between the apparent discrepancy between Consultation paragraphs 136 and 138 (disclosure based on processing completion) and the question posed above (Q37) asking for disclosure based on acquisition timing. Following further clarification from OGA, IAGC can provide a more reasoned response.

Exceptions should be made to the general disclosure proposals to take account of the following: surveys in frontier areas and other specified geographical areas; reprocessed data; commercial return; and Intellectual property (such as technology patents), and advocates the disclosure of specified 'standard' products only.

Q38. Are there any other factors for commercial geophysical survey information that you think need to be taken into account?

While we support the OGA's goal of maximising the transparent and timely access to geophysical information, it is important that the regulations also recognise the value of intellectual property invested by relevant persons in their creation, and ensure that this value is appropriately protected, as otherwise a significant risk would emerge that relevant persons would become discouraged from acquiring the information.

Exceptions to the disclosure period must include & take into account the following:

- Frontier areas.
- Geographical areas.
- Re-processed data.
- Commercial return.
- Intellectual property such as technology patents etc.

Standard deliverables only.

c. Summary, Disclosure of Geophysical Survey Information

The OGA proposes that the regulations should set out that the following high-level geophysical survey information may be disclosed immediately after the OGA has obtained that information:

- i. the licence(s) the survey was acquired under
- ii. the licensee name(s)
- iii. the contractor name(s)
- iv. start date and end date of acquisition of the data
- v. the type of survey (i.e. whether it was a 2D, 3D, 4D or ocean bottom seismic, gravity, induced polarisation, magnetic, gravity gradiometric or electromagnetic survey)
- vi. the location and spatial extent of the survey.

Q40. Do you agree that the ability to disclose the above summary geophysical survey information immediately is an appropriate balance of the factors?

Please answer yes or no.

Please explain your answer.

IAGC, in general, does not agree that disclosure of this geophysical survey information is an appropriate balance of the factors. The above stated information may provide commercially sensitive information and could impair survey planning.

IAGC is open to discussing the possibility that this information be provided to OGA towards the end of acquisition, however, there exists concern among our members of the potential negative impacts associated with releasing this information.

V. INTELLECTUAL PROPERTY ISSUES

There are a number of complex intellectual property issues arising from the Consultation. The Consultation raises concerns which we would like to elevate for OGA's consideration and be included discussions moving forward. Such concerns include, but are not limited to the possible infringement of database rights and confidential information, as follows:

A. Database Rights²

Members of the IAGC have clearly made a 'substantial investment' in 'obtaining, verifying or presenting' the contents of a 'database' and are therefore entitled to database rights, as a matter of law. There is no registration requirement, as the right arises automatically upon creation of the database. Such database rights allow the owner to prevent third parties from extracting or re-utilising the contents of the database without the owner's consent.

B. Confidential Information³

² A person who makes a 'substantial investment' in 'obtaining, verifying or presenting' the contents of a 'database' (which is broadly defined for these purposes) will, in many cases, be entitled to database rights. It is likely that a contractor who spent substantial amounts of time and money collating seismic data would be entitled to database rights covering the resulting collection of information. There is no registration requirement, as the right arises automatically upon creation of the database. The database right allows the owner to prevent third parties from extracting or re-utilising the contents of the database without the owner's consent. In general terms, remedies for infringement include injunction and damages, which can be obtained through private law claims in the courts.

³ As long as the seismic data remains confidential, the contractors may protect their rights through an action for breach of confidence. Even if some of the underlying information itself is in the public domain (for example, the sea bed is theoretically open to everyone), rights in confidential information may nevertheless subsist in a collection of information taken from public sources, as long as the information does not exist in that precise form in the public domain; collections of seismic data and analyses of such data may readily be protected as confidential information. As with database rights, generally, actions for breach confidence may be pursued as private law claims in the courts.

Seismic data and any analyses of such data are “Confidential Information” and the IAGC members are entitled to protect their rights through an action for breach of confidence.

Any proposals by the OGA must respect such intellectual property rights.

VI. CONCLUSION

IAGC agrees with OGA and reiterates the Consultation does not apply to the disclosure of existing seismic data and relates only to future data acquired after any proposed regulations come into force. IAGC appreciates the opportunity to submit this response to the Consultation and commit to continued engagement with the OGA, pursuant to Principle D of the Government’s Consultation Principles⁴ which states that consultations are only part of a process of engagement.

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
International Association of Geophysical Contractors
President

⁴ The Principles and further guidance as to their implementation can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf.