

EXECUTIVE COUNCIL

PUBLIC

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List of Documents:	Appendix A Offshore Environmental Legislation – Final Policy Report

1. Recommendations

Honourable Members are recommended to approve:

- (a) Final Policy Report attached as Appendix A
- (b) Action to Director of Mineral Resources to instruct Pinsent Masons to commence drafting

2. Additional Budgetary Implications

None

3. Executive Summary

- 3.1 The current Offshore Minerals Ordinance 1994 requires updating to strengthen the regulation of the environmental impacts of the oil industry. This paper seeks approval of the final policy following on from a public consultation process, in order to take that to Executive Council for approval to commence the drafting of the proposed legislation.

- 3.2 Legal firm Pinsent Mason were engaged as consultants to carry out the policy work (Lot 1) and the drafting of the new legislation (Lot 2). They have provided a Final Policy Report (Appendix A) which details the final policy recommendations and takes the responses from the consultation into account.
- 3.3 DMR's former Head of Environmental & Safety Policy produced a draft report detailing the consultation responses as they applied to each of the policy objectives. A number of recommendations relating to changes to the original proposals arose from the consultation:
- That the proposed requirement for Environment Plans be changed to only cover those activities which:
 - Require a compulsory EIA under OMO; or
 - An EIA has been requested by the Governor; or
 - An activity falling under a) but for which an exemption has been granted by virtue of the activity being covered by a previous EIA.
 - That the statutory time periods for approvals of Environment Plans be removed
 - That inspectors be required to give reasonable notice prior to carrying out inspections (save for certain situations of imminent environmental risk)
 - That the requirement for external verification be withdrawn, but internal audit plans and arrangements be a stipulated requirement of Environment Plan contents (including arrangements to give FIG notice of timing and scope of internal audits)
 - That the Governor be allowed to grant an extension to an Environment Plan if a review has been submitted but not yet determined by FIG.
 - That an OPEP be required at the same stage as an Environment Plan
 - That guidance be prescriptive regarding the expected ecological knowledge and experience of consultants and reviewers (for operators and FIG alike)
 - That a fixed fee be set for OPEP reviews
- 3.4 The current EIA legislation was the subject of comment by a number of consultees, which highlights the importance of the proposed legislative changes. The consultation also highlighted a number of issues requiring further investigation or work but which are outside the remit of the proposed legislation. These issues, which have the potential to significantly affect the effectiveness of the proposed legislation, are:
- Current policy should be changed to make seismic surveys subject to EIAs
 - New Wildlife Ordinance with appropriate definitions of protected areas was noted as crucial for the legislation proposed to be effective
 - A number of consultees felt that there was too great a disparity between the regulation of offshore hydrocarbons and other activities and industries (offshore and onshore)
- 3.5 Agreement on the proposed final policy is sought from Executive Council. Pinsent Masons will be instructed to commence drafting the legislation.

4. Background

- 4.1 Executive Council paper 70-13 approved a policy decision to adopt a goal-based environmental regime for the regulation of Oil & Gas activities. Following that decision, work carried out by the Department of Mineral Resources identified a number of legislative gaps and priorities and it was agreed to engage a consultant to develop those gaps into a more detailed policy proposal.
- 4.2 Paper 155-15 approved the release of a Tender Document for the engagement of suitable consultants to carry out the policy development (Lot 1) and consequent drafting of the new regulations and required amendments to the Offshore Minerals Ordinance (Lot 2). Law firm Pinsent Masons was the successful bidder for both lots and commenced work in early 2016.
- 4.3 The DMR Head of Environmental & Safety Policy gave a presentation on the proposed legislation to the Department of Business, Energy and Industrial Strategy (BEIS), the environmental regulator for the UK Oil & Gas Industry. This presentation aimed to give BEIS (and ultimately, the Foreign & Commonwealth Office) assurance that legislation being proposed will allow the oil and gas industry to be regulated to a standard equivalent to, or higher than, that of the UK industry. Following the presentation, BEIS were provided with a draft copy of the consultation document for comment. Comments and questions have been addressed by the Department. No material concerns were expressed by BEIS and they requested that they be updated when the legislation reach the drafting stage.
- 4.4 A preliminary round of stakeholder consultation was held in June 2016, and a presentation on the proposals given to the Offshore Hydrocarbons Forum in October. A final policy/consultation document was prepared and the formal public consultation process commenced in September 2017.
- 4.5 The proposed legislation is consistent with recommendations being made by the Sweetbriar Advisory review and is fundamental in fulfilling the following Island Plan Objective:
 - Economic Development (Hydrocarbons): *“Create a robust legislative framework to facilitate and regulate hydrocarbons development, including high standards of safety, emergency preparedness and environmental protection”*

5. Options and Reasons for Recommending Relevant Option

- 5.1 A number of policy principles were approved by previous ExCo papers, falling in to four main areas of focus.
 - Introduction of a "goal-setting" regulatory regime for offshore activities licensed under the Offshore Minerals Ordinance 1994;
 - Introduction of a requirement for an Oil Pollution and Emergency Plan to be prepared and submitted for offshore activities licensed under the Offshore Minerals Ordinance 1994;

- Introduction of emergency intervention powers to enable directions to be given to operators in relation to the control and management of an ongoing emergency situation;
- Introduction of a regime to implement the "Polluter Pays" principle in relation to offshore oil and gas activities, in line with the EU Environmental Liability Directive.

5.2 The Final Policy Report (Appendix A) lays out the detailed policy objectives proposed, in line with the earlier consultation report and with amendments following the public consultation.

6. Resource Implications

6.1 Financial Implications

This has already been budgeted for at a fixed rate contract as Lot 2 of the wider project so there are no additional costs.

There are long term financial implications associated with possible human resource implications, but those are contingent on the level of future oil and gas activity and therefore cannot be quantified at this stage.

Certain approvals, as explained within the Final Policy Report, will be subject to application fees and subsistence fees, allowing for cost recovery in respect of certain regulatory activities.

6.2 Human Resource Implications

The legislation proposed in this paper does not place any immediate human resource implications on FIG. It is further felt that when human resource implications do become clear, the regulatory capacity to enforce the legislation can be tailored to the level of industry activity without placing an undue burden on Government.

6.3 Other Resource Implications

None

7. Legal Implications

7.1 Ultimately, draft amendments to the Offshore Minerals Ordinance and relevant regulations will be put before Executive Council and Legislative Assembly.

8. Environmental & Sustainability Implications

8.1 Drafting this legislation in itself does not carry environmental implications; the effect of the new legislation once in place will be improved environmental protection. Detailed environmental benefits are described throughout the attached Draft Final Report.

9. Significant Risks

9.1 There are no significant risks at this stage. No fundamental objections have been expressed.

10. Consultation

10.1 A preliminary round of stakeholder consultation was held in June 2016, and a presentation on the proposals given to the Offshore Hydrocarbons Forum in October. The formal public consultation process commenced in September 2017, and responses were considered in a draft consultation report that fed in to the Final Policy Report.

11. Communication

11.1 Approval to commence drafting will be relayed to the Pinsent Masons project team by the Director of Mineral Resources.



Pinsent Masons

FALKLAND ISLANDS GOVERNMENT

OFFSHORE ENVIRONMENTAL POLICY ADVICE AND LEGISLATIVE DRAFTING

FINAL REPORT

1. BACKGROUND

- 1.1 Pinsent Masons LLP and Gaffney, Cline & Associates (the "**Project Team**") have been engaged by the Falkland Islands Government ("**FIG**") to provide advice on offshore environmental policy and legislative drafting to ensure that the environment and the seas around the Falkland Islands are protected, as operators seek to undertake oil and gas exploration and production in Falkland Islands' waters.
- 1.2 FIG is seeking to establish a modern environmental regulatory regime governing the offshore hydrocarbons industry in the waters around the Falkland Islands. The proposed regime is required to provide regulatory powers that are appropriate to the Falkland Islands' constitutional obligations and ensure that the environmental risks associated with offshore oil and gas exploration and production activities are appropriately regulated and managed, taking into account the logistical and operational challenges inherent in operating in the South Atlantic.
- 1.3 Following a review of existing environmental legislation for the offshore hydrocarbons industry, FIG has identified and confirmed a number of policy objectives to underpin the development of an appropriate regulatory regime. These fall into four areas of focus:-
- Introduction of a "goal-setting" regulatory regime for offshore activities licensed under the Offshore Minerals Ordinance 1994;
 - Introduction of a requirement for an Oil Pollution and Emergency Plan to be prepared and submitted for offshore activities licensed under the Offshore Minerals Ordinance 1994;
 - Introduction of emergency intervention powers to enable directions to be given to operators in relation to the control and management of an on-going emergency situation;
 - Introduction of a regime to implement the "Polluter Pays" principle in relation to offshore oil and gas activities, in line with the EU Environmental Liability Directive.
- 1.4 FIG's policy objectives are set out in full in section 2 below.
- 1.5 FIG has sought the views of the oil and gas industry and other interested stakeholders on a set of policy proposals to achieve FIG's specific policy objectives in each of the above areas.
- 1.6 This report details the final policy recommendations which take the responses from the above consultation into account.
- 1.7 The consultation highlighted a number of issues requiring further investigation or work but which are outside the remit of the proposed legislation. These issues, which have the potential to significantly affect the effectiveness of the proposed legislation, are:-
- Current policy should be changed to make seismic surveys subject to EIAs

- The current EIA legislation is not considered fit for purpose by a number of consultees, which is what this proposed policy and legislation seeks to address
- New Wildlife Ordinance with appropriate definitions of protected areas was noted as crucial for the legislation proposed in this report to be effective
- A number of consultees felt that there was too great a disparity between the regulation of offshore hydrocarbons and other activities and industries (offshore and onshore)

2. KEY POLICY OBJECTIVES

2.1 FIG has already identified key policy objectives in relation to the proposed offshore oil and gas environmental regulatory regime, as follows:-

2.1.1 Introduction of a "goal-setting" regulatory regime

- Environmental assurance plan.** FIG intends to implement a "goal-setting" environmental assurance plan (to be known as the Environmental Case) for activities that are licensed under the Offshore Minerals Ordinance 1994. The hallmark of a "goal-setting" regime is that performance is measured against determined quantifiable standards based on environmental impacts and risks.
- Integration of the proposed Environmental Case regime with the existing Environmental Impact Assessment (EIA) regime.** FIG wishes to integrate the proposed Environmental Case regime with the existing EIA regime in the Falkland Islands, using the EIA element as a means of initial assessment of possible impacts and risks associated with a project or installation.
- Reporting.** It will be necessary to have a requirement for regular reporting of performance and immediate reporting of incidents of non-compliance in the context of the Environmental Case regime.
- Audit, review and reporting procedures.** The Environmental Case should set performance standards, and describe management, audit, review and reporting procedures, in order to ensure that performance standards specified in the Environmental Case are met.
- Regulatory Enforcement Powers.** A range of suitable regulation and enforcement powers will be needed, allowing FIG to address instances of non-compliance with the Environmental Case regime, or to avert or limit environmental damage.
- Investigations and Inspections.** FIG will need powers allowing for inspectors to carry out investigations and inspections of offshore oil and gas installations activities, and to carry out such tests or request such information as may be required to facilitate such investigations.
- Recovery of Costs.** It is intended that FIG should have powers and/or mechanisms allowing it to recover the costs of inspections and investigations.

2.1.2 Introduction of a requirement for an Oil Pollution and Emergency Plan (OPEP) to be prepared and submitted for offshore activities

- Requirement for OPEP.** FIG intends to introduce a requirement for an OPEP to be put in place prior to undertaking offshore oil and gas activities, in line with the full provisions of the UK Oil Pollution Preparedness, Response, and Co-Operation Convention 1998.

2.1.3 **Introduction of emergency intervention powers to enable directions to be given in relation to the control and management of an ongoing emergency situation**

- (a) **Power of Intervention.** FIG intends to put in place powers of intervention equivalent to those granted by the UK Offshore Installations (Emergency Pollution Control) Regulations 2002.

2.1.4 **Introduction of a regime to implement the "Polluter Pays" principle in the offshore area**

- (a) **EU Environmental Liability Directive and EU Safety Directive.** FIG intends to amend the Offshore Minerals Ordinance 1994 to bring it into line with the requirements of the EU Environmental Liability Directive 2004/35/EC including the provisions in the UK Environmental Damage (Prevention and Remediation) Regulations 2009 which implement the EU Offshore Safety Directive 2013/30/EU.

3. **OVERVIEW OF CURRENT POSITION**

3.1 **Oil and Gas Exploration and Production Licensing**

3.2 It is unlawful to explore for or exploit any mineral in Controlled Waters in the Falkland Islands or in the seabed or subsoil thereof unless this is done under and in accordance with a licence granted under the Offshore Minerals Ordinance 1994.

3.3 In this context "explore" means to search for or explore for any mineral and includes:-

3.3.1 field observations, geological and geophysical investigations and the use of remote sensing techniques;

3.3.2 the obtaining of any sample; and

3.3.3 any other operation which may be authorised by an exploration licence and which is not, in relation to any mineral, the exploitation of that mineral.

3.4 An Exploration Licence (essentially a survey licence) authorises the holder to search for a mineral or minerals in accordance with its terms but does not authorise the holder to bore for any mineral in the course of exploration or to get any mineral in the course of exploration, unless the contrary is stated in the Exploration Licence. An Exploration Licence cannot authorise the getting of any mineral in any greater quantity or for any purpose other than is incidental to exploration for that mineral.

3.5 "Exploit" means in relation to any mineral to do anything which under the Offshore Minerals Ordinance can only lawfully be done under the authority of and in accordance with the conditions of a production licence.

3.6 A Production Licence authorises the holder to search and bore for and get a mineral or minerals in accordance with its terms.

3.7 **Environmental Impact Assessment (EIA)**

3.8 The Offshore Minerals Ordinance 1994 (as amended) sets out existing EIA requirements.

3.9 An EIA may be required in relation to an application for an authority, dispensation, exemption, licence or permission which the Governor has the power to grant under the Offshore Minerals Ordinance 1994 or which is required under model conditions or other conditions imposed when granting the consent, and which is an application for:-

3.9.1 an activity (including exploration for or exploitation of minerals and the abandonment or proposed abandonment of an offshore installation);

- 3.9.2 a process (including the liquefaction of gas and the refining of petroleum); or
- 3.9.3 works (including the enlargement or alteration of an offshore installation or the enlargement or alteration of its capacity or capability).
- 3.10 Operations undertaken under Exploration Licences and Production Licences may therefore be required to be the subject of an EIA, along with certain other operations associated with oil and gas exploration and production.
- 3.11 An application for permission to drill a Regulated Well in Controlled Waters is required to be accompanied by an Environmental Impact Statement (EIS). In this context a Regulated Well means a Well that would be drilled for the purposes or in connection with (i) exploring for petroleum, (ii) establishing the existence of petroleum in a particular location, (iii) appraising the quantity, characteristics or quality of the petroleum in a particular location, or extracting petroleum. It does not include a Test Well.
- 3.12 Applications in relation to other activities, processes and works as described above only require an EIA if they are likely to result in significant effects on the environment. The Governor is required to consider in relation to an application of the type described above whether the environment might be significantly affected if the application were to be granted. If the Governor considers that it might, he must require the application to be accompanied by an EIS.
- 3.13 The legislation provides for the Governor to determine whether or not an EIS should be required to accompany an application, but in practice the Department of Mineral Resources considers the application with input from other relevant FIG departments, and may instruct an independent review, before making a final recommendation to the Mineral Resources Committee (MRC) and Executive Council, who will in turn make a recommendation to the Governor.
- 3.14 The legislation also provides for operators to request an exemption from the need for EIA (EIA Screening), on the basis that the project is not likely to result in significant effects on the environment. The Governor may request additional information from the applicant when considering whether to grant an EIA Screening exemption on this basis.
- 3.15 The Governor is required to take into account specific factors in considering whether the environment may be significantly affected in relation to an application, including:-
- 3.15.1 **Project Characteristics:** Size, cumulative effect, use of natural resources, production of waste, pollution and nuisances, and the risk of accidents.
- 3.15.2 **Location:** The environmental sensitivity of areas likely to be affected, with particular regard to existing land use; the relative abundance, quality and regenerative capacity of natural resources in that area; and the absorption capacity of the natural environment, paying particular attention to wetlands, coastal zones, populated areas, landscapes or areas of historical, cultural, architectural or archaeological significance (including the sites of marine wrecks), populated areas, National Parks, National Nature Reserves, Important Bird and Plant Areas, international environmental sites, and sites that are protected under other legislation or in some other way.
- 3.15.3 **Potential impact:** The extent, magnitude and complexity; probability; and the duration, frequency, and reversibility of the impact.
- 3.16 If the Governor requests further information from the applicant this is referred to in this consultation report as EIA Scoping.
- 3.17 The Governor is able to impose conditions when approving an application incorporating an EIS.
- 3.18 An applicant undertaking an EIS is currently required to agree with the Governor the date when public consultation will begin, and if agreement cannot be reached the Governor will direct a date when the process should begin. On the date when the consultation begins the Governor is

required to arrange for a notice to be issued in the Gazette, indicating that the EIS has been published and describing the consultation process. The required consultation period is 42 days.

- 3.19 During the consultation period, the applicant is required to make paper and electronic copies of the EIS available, and to advertise publication of the application in accordance with the Offshore Minerals Ordinance 1994 and inform the public about their right to make representations and as to the consultation process and closing date.
- 3.20 During the consultation period anyone wishing to do so may make written representations to the Governor about the contents of the EIS and the applicant's proposals to protect the environment from adverse effects. The Governor must pass these to applicants as soon as possible after they are received. The applicant may then make written representations to the Governor in response to the responses received during consultation.
- 3.21 **Environmental Permitting / Licensing**
- 3.22 Although there are requirements in relation to EIA, there is no requirement for operators to hold a permit specifically controlling environmental impacts, or to have an Environmental Case approved.
- 3.23 Environmental impacts are, to a certain extent, controlled instead through compliance with conditions and model conditions in Exploration Licences and Production Licences and with relevant Petroleum Operations Notices (PONs). As such, the Environmental Case regime proposed in this consultation document would represent an entirely new regime in the context of offshore oil and gas exploration and production in Controlled Waters.
- 3.24 By way of example, conditions under Exploration Licences and Production Licences include:-
- 3.24.1 requirement to comply with PON 8 in relation to oily water discharges;
 - 3.24.2 requirement to comply with PON 10 in relation to the use of Non-Aqueous Drilling Fluids; and
 - 3.24.3 requirement to limit discharge of chemicals to those approved under the UK Offshore Chemical Notification Scheme.
- 3.25 There is no requirement to undertake specific risk assessments or monitoring of operations.
- 3.26 The Governor is also able under licence conditions to instruct operators to take any measures required to prevent the escape of petroleum into the sea and has the power to undertake works not undertaken by an operator and to recover the cost of doing so.
- 3.27 It is currently proposed to retain the existing licensing conditions and requirements for compliance with the PONs, with some of these also likely to be matters covered by the Environmental Case and regulated in accordance with it. This may, for instance, mean that some installations are required to comply with tighter requirements than the PONs, but it is intended that the PONs remain as the minimum standards applicable and capable of being enforced through both the Exploration and Production Licensing Regime and the Environmental Case Regime.
- 3.28 New regulation and enforcement powers would be needed to support the Environmental Case regime and relevant measures are proposed in this consultation document.
- 3.29 **Oil Pollution Emergency Plan**
- 3.30 There is currently no statutory requirement for an operator to put in place an OPEP prior to undertaking offshore oil and gas exploration and production activities in Falkland Islands waters. However, there are similar measures imposed through conditions in Exploration Licences and Production Licences, referred to as contingency plans, which require operators to have a plan for dealing with major incidents of the type covered by the OPEP regime. The new OPEP regime proposed in this consultation document would replace the existing contingency planning regime, updating it in line with best practice based on the current UK position.

3.31 New regulation and enforcement powers would be needed to support the OPEP regime and relevant measures are proposed in this consultation document.

3.32 **Intervention Powers**

3.33 There are currently no powers enabling FIG to stop offshore oil and gas operations in the event of a serious pollution event or risk thereof, though there are such powers under the safety regime, and it is expected that in many cases these would take precedence.

3.34 Intervention powers are therefore needed to enable FIG to give directions to an operator for the management of an ongoing emergency situation involving pollution of the environment.

3.35 **Polluter Pays**

3.36 The Offshore Minerals Ordinance 1994 imposes strict liability on operators for the following, but only where caused by an oil spill (specifically hydrocarbons in the form of formation oil, as opposed to fuel or diesel from the installation itself):-

3.36.1 damage to the environment of Controlled Waters or of the Falkland Islands or their dependent or associated ecosystems arising from exploration or exploitation of minerals in the Controlled Waters, including payment if there has been no restoration to the original state of the environment;

3.36.2 loss or impairment of an established use of the ecosystem (more specifically the conservation and rational use of living resources, tourism, navigation and aviation) arising directly out of damage as described above;

3.36.3 loss of or damage to property of a third party, personal injury or loss of life of a third party arising directly out of damage as described above; and

3.36.4 reimbursement of reasonable costs by whomsoever incurred in relation to necessary response action, including prevention, containment and clean-up and removal measures and actions taken to restore the environment to its original state where exploration for or exploitation of minerals undertaken in the Controlled Waters result in or threaten to result in damage to the environment of the Controlled Waters or of the Falkland Islands or their dependent or associated ecosystems.

3.37 The Governor has the power to impose licence conditions requiring holders of Exploration Licences and Production Licences to have adequate insurance in place to meet any liability or compensation arising out of environmental damage resulting from oil spills. In this context the minimum level is set at \$250 million per incident, in line with OPOL.

3.38 There are also offences under the Offshore Minerals Ordinance 1994 in relation to the discharge of oil or mixtures thereof.

3.39 However, these do not include the full range of powers that FIG needs to ensure that the Polluter Pays principle is fully implemented in relation to offshore oil and gas activities in Falkland Islands waters. The regime proposed to fully implement and establish the Polluter Pays principle in line with the EU and UK position is therefore intended to sit alongside and supplement FIG's existing powers in relation to environmental protection, and the proposed new powers of enforcement pursuant to the proposed Environmental Case and OPEP regimes.

4. **POLICY RECOMMENDATIONS FOR ENVIRONMENTAL CASE REGIME**

4.1 **Overview**

4.2 As indicated above, FIG intends to adopt a "goal-setting" approach to regulation of the hydrocarbon industry in Controlled Waters.

- 4.3 A 'goal-setting' approach involves the operator setting out its own proposals for minimising the risks associated with operating an installation or activity, rather than FIG specifying minimum standards and prescribing conditions for operators to comply with. FIG then assesses the operator's proposals and can either approve them as proposed, or with some changes, or may refuse to approve the proposals on the basis that they do not achieve the requisite degree of environmental protection. Once an operator's proposals are approved by FIG, the operator is bound to deliver the proposals it has set out, with the performance standards specified therein being enforceable in a similar way to the way in which permit conditions operate in a more prescriptive regime.
- 4.4 This type of regime was adopted by Australia under the Australian Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009. The Australian regime has been used for reference and as a benchmark when developing the proposed Environmental Case regime for the Falkland Islands, as described below.
- 4.5 Under the proposals set out in this consultation document, the objective of a "goal setting" regime would be achieved by requiring operators to submit, and have approved by the Governor and/or Regulator, an "Environmental Case" before they may undertake offshore oil and gas Exploration or Production in Falkland Islands waters.
- 4.6 It is proposed that the Environmental Case would consist of two parts:-
- 4.6.1 **Part 1 - Environmental Impact Assessment (EIA):** It is proposed that Part 1 of the Environmental Case would consist of a full EIA as reported in an EIS, in line with the existing EIA regime applying under the Offshore Minerals Ordinance 1994. It is proposed that the EIS would be prepared by the applicant and would be required to be approved by Governor, in line with the current process.
- 4.6.2 **Part 2 – Environmental Plan:** It is proposed that Part 2 of the Environmental Case would consist of an "Environmental Plan", which would be prepared by the applicant and approved by FIG. The Environmental Plan would set out performance standards for the control of the significant environmental aspects of the operation of the installation, together with associated performance outcomes, monitoring and reporting requirements, implementation plan and environmental management system (EMS) and verification arrangements.
- 4.7 It is proposed that the operator would be required to implement relevant mitigation measures in the EIS when undertaking activities associated with oil and gas exploration and production and would have to comply with the Environmental Plan throughout the lifetime of the installation or the period of undertaking the activities.
- 4.8 **The Regulating Body**
- 4.9 It is proposed that the Regulating Body would have the power to enforce compliance with both Parts of the Environmental Case, and specifically that operations remain aligned with the scope and measures proposed for managing risks in the EIA, and that risks are managed, reported and verified as set out in the Environment Plan.
- 4.10 A range of enforcement powers are proposed to support the proposed Environmental Case regime, including the power for FIG to serve Enforcement and Prohibition Notices, impose fixed penalty fines on operators for failing to comply with such notices, and in serious cases to prosecute operators for failures to comply with the Environmental Case.
- 4.11 It is proposed that executive regulatory powers under this legislation will rest with the Governor in Executive Council. The Department of Mineral Resources (with assistance from other Government departments as required) will be the administrative and "day-to-day" regulating body. This approach mirrors that which is already in place under the Offshore Minerals Ordinance 1994. For the purposes of simplicity, the term "FIG" is used throughout this document to represent the Regulating Body comprising all of the above.

4.12 **Scope of Environmental Case regime**

4.13 It is proposed that an operator would be required to have an approved Environmental Case in place in order to undertake any activity which requires an application for a "Relevant Consent" under the existing Offshore Minerals Ordinance 1994.

4.14 An application for a "Relevant Consent" is proposed to be defined consistently with the applications for which an EIA may be required, namely as any application for an authority, dispensation, exemption, licence or permission which the Governor has the power to grant under the Offshore Minerals Ordinance 1994 or which is required under model conditions or other conditions imposed when granting the consent, and which is an application for:-

4.14.1 an activity (including exploration for or exploitation of minerals and the abandonment or proposed abandonment of an offshore installation);

4.14.2 a process (including the liquefaction of gas and the refining of petroleum); or

4.14.3 works (including the enlargement or alteration of an offshore installation or the enlargement or alteration of its capacity or capability).

4.15 The Environmental Case will therefore cover all activities carried out under such licences, including surveys, drilling (even where no production) and production.

4.16 **Environmental Case Application and Approval Process**

4.17 It is proposed that the Environmental Case regime would build on the existing EIA Screening process under the Offshore Minerals Ordinance 1994. The legislation provides for the Governor to determine applications for approval of an application incorporating EIA, but in practice an Officer within the Mineral Resources Department (DMR) considers the application, and may instruct an independent review, before making a final recommendation to the Mineral Resources Committee (MRC) and the Executive Council, who will in turn make a recommendation to the Governor.

4.18 An application for permission to drill a Regulated Well in Controlled Waters is required to be accompanied by an EIA. In this context a Regulated Well means a Well that would be drilled for the purposes or in connection with (i) exploring for petroleum, (ii) establishing the existence of petroleum in a particular location, (iii) appraising the quantity, characteristics or quality of the petroleum in a particular location, or extracting petroleum under the terms of a production licence. The expression "Regulated Well" does not include a Test Well.

4.19 Applications in relation to other activities, processes and works as described above only require an EIA if they are likely to result in significant effects on the environment. The Governor is required to consider in relation to an application of the type described above whether the environment might be significantly affected if the application were to be granted. If the Governor considers that it might, he must require the application to be accompanied by an EIA.

4.20 The legislation also provides for operators to request an exemption from the need for an EIA (EIA Screening), on the basis that the project is not likely to result in significant effects on the environment or that it is already covered by an extant EIA. The Governor may request additional information from the applicant when considering whether to grant an EIA Screening exemption on this basis. Should the Governor grant an exemption for an EIA on the ground that the activity is already covered, then an approved Environmental Plan will still be required.

4.21 If the Governor requests further information from the applicant in connection to an application for which EIA may be required, or for which an exemption has been sought, this is referred to in this report as EIA Scoping. It is proposed that the applicant would produce an EIA Scoping Report, which would either demonstrate that no EIA is needed and that an exemption can be applied, or alternatively that an EIA is required for the project.

- 4.22 It is proposed that the outcome of EIA Screening would determine the application requirements and approval process for putting in place an approved Environmental Case in relation to a proposed activity, as follows:-
- 4.23 **EIA required.** If EIA Screening indicates that an EIA is required in relation to a proposed activity the applicant will enter into a proposed two-part application and approval process:-
- 4.23.1 **Part 1 - EIA:** The applicant would be required, as is currently the case, to undertake an EIA in relation to a proposed activity and to submit an EIS reporting its findings to the Governor for approval when seeking consent for the relevant activity. The approval of the EIS for a project represents the first stage in the Environmental Case approval process and is expected to give operators confidence to continue to develop in further detail their specific proposals for managing the potential environmental risks associated with the project. It is proposed that the existing approval process for applications requiring an EIA or EIA Screening or Scoping would remain in place, subject to such amendments as may be necessary to align with the proposed regime set out in this document.
- 4.23.2 **Part 2 – Environmental Plan:** The applicant would be required to prepare an Environmental Plan, in accordance with specific requirements, described below and submit this to FIG for approval prior to undertaking the proposed activity.

Once the applicant has an approved Environmental Plan this completes the approval of the overall Environmental Case for the proposed activity, and the applicant can proceed to undertake the activities, in accordance with their Environmental Plan, subject to having the required OPEP approval in place.

- 4.24 **EIA may be required.** Where EIA Screening indicates that that further work is needed to determine whether the proposed activity requires an EIA, and the Governor makes a request for further information under the existing EIA regime, it is proposed that the applicant would undertake EIA Scoping, as described above.
- 4.25 If EIA Scoping indicated that the proposed activity did not require an EIA it is proposed that the EIA Scoping Report confirming this would be submitted to the Governor for his consideration in connection with an application for a consent for the relevant activity or for an exemption from the requirement for an EIA to be undertaken in relation to an application. Once exemption from an EIA is granted, an Environmental Plan is no longer required except as outlined in paragraph 4.20 above.
- 4.26 If EIA Scoping indicated that the proposed activity required an EIA the application would enter into the two-stage application and approval process as described above.
- 4.27 **No EIA required.** If EIA Screening indicated that the proposed activity did not require an EIA it is proposed that the EIA Screening Report confirming this would be submitted to the Governor for their approval in relation to an application for a consent for the relevant activity or for an exemption from the requirement for an EIA to be undertaken in relation to an application. Once exemption from an EIA is granted, an Environmental Plan is no longer required except as outlined in paragraph 4.20 above.
- 4.28 The flow chart in Annex B shows the application process from EIA screening onwards.
- 4.29 **Responsibility for compliance with Environmental Case**
- 4.30 It is proposed that the party responsible for compliance with the Environmental Case (the "Responsible Person") should be the Licence Operator under the Exploration and/or Production Licence associated with the relevant activity and/or installation.
- 4.31 The Licence Operator will already carry the financial liabilities associated with the installation, including in particular any decommissioning liabilities, and as such it is considered that this entity being the Responsible Person under the Environmental Case is consistent with the commercial allocation of liability risk in relation to the installation and activities carried out therefrom. It is

accepted that in many cases it is the management system of the Installation Operator which will directly control environmental risks. However, in such cases it is expected that this will be undertaken on behalf of the Licence Operator under relevant legally binding agreements, complemented by appropriate interface between relevant management systems and assurance arrangements put in place by the Licence Operator.

4.32 The Licence Operator is also the entity which is most likely to be undertaking and seeking approval of the EIA in relation to an installation and/or activity under the existing EIA regime. It is therefore likely to have a greater awareness of the environmental sensitivities in and around the Falkland Islands than the Installation Operator, which is likely to be brought in at a later stage in the process to oversee day-to-day operations at the installation and/or in relation to the relevant activity. It is therefore expected that the Licence Operator will have a better understanding of the potential risks and be in a better position to assess and commit to compliance with the Environmental Case.

4.33 In cases where surveys are being undertaken, and EIA is required, and both the developer / prospective operator and the survey contractor hold Exploration Licences it is proposed that the developer / prospective operator will be required to hold the Environmental Case, rather than the survey contractor undertaking the work on their behalf.

4.34 **Environmental Case Approval Process**

Part 1 - EIA

4.35 It is proposed that the process for approval of an application requiring EIA and an EIS will remain the same as currently under the Offshore Minerals Ordinance 1994, as described above.

Consultation

4.36 It is proposed that consultation requirements should remain the same as currently applicable in relation to EIA.

4.37 An applicant undertaking EIA is required to agree with the Governor the date when public consultation will begin, and if agreement cannot be reached the Governor will impose a commencement date. On the date when the consultation begins the Governor (in practice normally the Department of Mineral Resources on his behalf) is required to arrange for a notice to be issued in the Gazette, indicating that the EIS has been published and describing the consultation process. The required consultation period is 42 days.

4.38 During the consultation period, the applicant is required to make paper and electronic copies of the EIS available, and to advertise publication of the application in accordance with the Offshore Minerals Ordinance 1994 and inform the public about their right to make representations and as to the consultation process and closing date.

4.39 During the consultation period anyone wishing to do so may make representations to the Governor about the contents of the EIS and the applicant's proposals to protect the environment from adverse effects. The Governor must pass these to applicants as soon as possible after they are received. The applicant may then make written representations to the Governor in response to the responses received during consultation.

4.40 Consultation is not required in relation to EIA Scoping or EIA Screening and although formal consultation with stakeholders should be encouraged, it is not proposed that formal public consultation will be required to be undertaken, in line with the current position under the Offshore Minerals Ordinance 1994.

Part 2 – Environmental Plan

- 4.41 It is proposed that the applicant would be required to submit an Environmental Plan to FIG, which complies with the requirements set out below. It is proposed that a fee will be payable as set out below.
- 4.42 It is proposed that FIG will then give notice to the applicant that either:-
- 4.42.1 it considers that the draft Environmental Plan includes the information which it is required to, as set out below, and that it will proceed to determine whether it approves the Environmental Plan (i.e. that it considers the application for approval to be "Duly Made"), or
 - 4.42.2 that it does not consider that the draft Environmental Plan includes the information which it is required to, as set out below and that it requires the applicant to provide further information before it can consider the application for approval to be "Duly Made".
- 4.43 When FIG notifies that the applicant that the application is considered Duly Made, FIG shall provide the applicant with an estimate of the time required by FIG to consider and approve the application.
- 4.44 Once FIG has determined an application as Duly Made it must as soon as practicable publish information about the application on its website, including:-
- 4.44.1 the name of the Responsible Person;
 - 4.44.2 a description of the activity to which the Environmental Plan relates;
 - 4.44.3 the location of the activity;
 - 4.44.4 (in respect of applications for activities where an EIA has been required) a link or other reference to the place where the approved EIS is published;
 - 4.44.5 details of the Responsible Person's nominated liaison person for the activity; and
 - 4.44.6 the date when the application for approval of the Environmental Plan was determined as Duly Made.
- 4.45 It is proposed that FIG would have the power to request additional information from the applicant at any stage after an application for approval of an Environmental Plan is made, in order to assist it in the determination process.
- 4.46 After determining an application as Duly Made it is proposed that FIG would consider the application and then notify the applicant that:-
- 4.46.1 it considers that the Environmental Plan meets the approval criteria as set out below and is therefore approved by FIG. It is proposed that the notification of approval would both be allocated a document number and would also attach the approved Environmental Plan, to ensure clarity in the event that a number of versions have been submitted during the determination process; or
 - 4.46.2 it is unable to determine whether the Environmental Plan meets the approval criteria as set out below within the previously advised estimated period for consideration of the application. It is proposed that FIG would be required to provide the applicant with a (non-binding) estimated timescale for considering the Environmental Plan and determining whether or not to approve it. FIG and the operator could then agree an extended period for determining the application. It is expected that this approach would be adopted in relation to particularly complex or controversial proposals; or

4.46.3 it does not consider that the Environmental Plan meets the approval criteria as set out below and the applicant needs to update the Environmental Plan. It is proposed that FIG would be required to provide reasons for their decision to reject the Environmental Plan in their notice of rejection and would set a date by when the applicant must resubmit an updated Environmental Plan, or else it will be rejected or subject only to partial approval if appropriate (see 4.48.3(c) below).

4.47 Where an updated Environmental Plan has been submitted it is proposed that FIG will notify the applicant that:-

4.47.1 it approves the Environmental Plan as described above;

4.47.2 it requires more time to consider the application for approval of the Environmental Plan, as described above; or

4.47.3 it still does not consider that the Environmental Plan meets the approval criteria as set out below and:-

(a) the applicant is required to update the Environmental Plan to meet the approval criteria. It is proposed that FIG would be required to provide reasons for their decision to reject the Environmental Plan in their notice of rejection, and would set a date by when the applicant must resubmit an updated Environmental Plan or else a formal rejection will be issued and a new application and application fee would be required to pursue the application further;

(b) the application for approval of the Environmental Plan is rejected and a new application and application fee would be required to pursue the application further; or

(c) the Environmental Plan is approved only in relation to a particular stage of the activity or subject to specific conditions and/or limitations applying to the activity (whether on a temporary or permanent basis).

4.48 Where an Environmental Plan has been approved (in full or in part) it is proposed that the Responsible Person would have 10 working days to submit a summary of the approved Environmental Plan to FIG for approval. It is proposed that the approved summary would be published on FIG's website, along with a copy of the relevant decision notice.

Single Stage Submission

4.49 It is expected that applicants will normally elect to utilise the two-stage process set out above, enabling them to obtain a level of comfort as to whether their project will be allowed to proceed at the EIA stage of the process, prior to undertaking further work and committing further funds in developing more detailed proposals for the proposed activity.

4.50 However, it is proposed to also allow the flexibility for an applicant to submit both the EIA part of the Environmental Case for approval and their draft Environmental Plan for approval at the same time.

Consultation

4.51 It is proposed that applicants should be required to consult with Interested Parties during preparation of their Environmental Plan, so as to allow them to make an informed assessment of potential impacts of the activity on relevant stakeholders at a stage in the project where appropriate mitigation can be considered and put in place to manage such risks.

4.52 It is proposed that applicants would be required to allow each Interested Party a reasonable time to consider and comment on their Environmental Plan, and that a minimum period of 28 days would apply unless a longer period is directed by FIG when approving the EIA element of the Environmental Case.

- 4.53 It is proposed that the Interested Parties to be consulted in Environmental Plan applications would be set out in legislation, and would include:-
- 4.53.1 relevant FIG departments with subject matter expertise within the appropriate disciplines and any person or organisation working on their behalf;
 - 4.53.2 any person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the Environmental Plan; and
 - 4.53.3 any other person that the applicant or FIG considers relevant.
- 4.54 It is proposed that applicants would be required to provide a report on the consultation process and any changes to proposals for operating the installation or activity in light of such consultation.
- 4.55 **Approval Criteria for Environmental Case**
- Part 1 - EIA*
- 4.56 It is proposed that the criteria for approval of the EIS element of an application incorporating an EIA, or for undertaking EIA Scoping or EIA Screening under the Offshore Minerals Ordinance 1994 will remain in place, but with some changes as set out below.
- 4.57 The Governor is currently required to take account of an EIS when determining an application in respect of which an EIS has been required and whether or not to impose conditions. He is also required to take account of any representations made by technical experts to which an EIS has been sent for review, representations from the public submitted during the consultation period, and any additional evidence provided by an applicant following a request from the Governor.
- 4.58 The Governor may currently impose conditions when granting an application in order to eliminate or reduce significant adverse effects on the environment, (if possible) to remedy those effects, and to offset them.
- 4.59 The Governor is currently required to take into account the following specific factors in considering whether the environment may be significantly affected in relation to an application, or in relation to an application for an exemption from the requirement for an EIA (including EIA Screening or Scoping):-
- 4.59.1 **Project Characteristics:** Size, cumulative effect, use of natural resources, production of waste, pollution and nuisances, and the risk of accidents.
 - 4.59.2 **Location:** The environmental sensitivity of areas likely to be affected, with particular regard to existing land use; the relative abundance, quality and regenerative capacity of natural resources in that area; and the absorption capacity of the natural environment, paying particular attention to wetlands, coastal zones, populated areas, landscapes or areas of historical, cultural, architectural or archaeological significance (including the sites of marine wrecks), populated areas, National Parks, National Nature Reserves, Important Bird and Plant Areas, international environmental sites, and sites that are protected under other legislation or in some other way.
 - 4.59.3 **Potential impact:** The extent, magnitude and complexity; probability; and the duration, frequency, and reversibility of the impact.
- 4.60 It is proposed that the Offshore Minerals Ordinance 1994 would be amended to provide that the Governor must not grant an application requiring an EIA unless the EIS submitted:-
- 4.60.1 is appropriate for the nature and scale of the activity;

- 4.60.2 identifies control measures which:-
- (a) demonstrate that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable;
 - (b) demonstrate that the environmental impacts and risks of the activity will be of an acceptable level. It is proposed that for management of impacts and risks to be of an "acceptable level" in this context, they will have to as a minimum be managed so as to be compliant with any existing legislation and binding guidance (such as PONs) applicable to the activities and to be in accordance with good industry practice.

Part 2 – Environmental Plan

- 4.61 The criteria proposed for approval of an Environmental Plan are as follows:-
- 4.61.1 it is appropriate for the nature and scale of the activity;
 - 4.61.2 it demonstrates how the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable in accordance with the mitigation measures and residual impacts set out in the EIS;
 - 4.61.3 it demonstrates how the environmental impacts and risks of the activity will be managed to an acceptable level;
 - 4.61.4 it provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria;
 - 4.61.5 it includes an appropriate implementation plan and monitoring, recording and reporting arrangements; and
 - 4.61.6 it demonstrates that the applicant has carried out the required consultation and that the Environmental Plan has appropriately taken account of consultation responses.
- 4.62 It is proposed that if an Environment Plan met with the criteria above, as would be defined in legislation and supported by appropriate guidance, FIG would be required to approve the Environment Plan and to give notice to the applicant of its decision to do so.
- 4.63 **Financial Assurance**
- 4.64 The Governor has the power under the Offshore Minerals Ordinance 1994 (as amended) to require through licence conditions that holders of Exploration Licences and Production Licences have adequate insurance in place to meet any liability or compensation arising out of environmental damage resulting from oil spills or to be a party to such insurances. In this context the minimum level is set at \$250 million per incident, in line with OPOL.
- 4.65 It is proposed to extend the obligation to cover other forms of pollution from installations requiring an Environmental Case. If this option were chosen the party responsible for compliance with the Environmental Case would be required to demonstrate that it has the financial resources in place to meet the worse case risks associated with the installation or activity. The application for approval of the Environmental Case would be required to be accompanied by evidence that sufficient financial resources are in place to meet the combined costs of delivering an approved OPEP, well control, remediation and compensation in the event of an incident. It is proposed that such evidence could include evidence of suitable policies of insurance.
- 4.66 **Application Fees**
- 4.67 A fee is currently payable in relation to applications for consents in relation to activities with which an EIS is required to be submitted.

- 4.68 It is proposed that a fee will also be payable to FIG for the consideration of an application for an Environmental Case, and that this should be sufficient to cover the cost of FIG in determining the application.
- 4.69 It is proposed that the fee will depend on the nature and complexity application and will be specified in a charging scheme to complement the proposed Environmental Case regime.
- 4.70 It is proposed that the fee will be payable in two stages at the point of making an application for EIA approval and at the point of making an application for approval of an Environmental Plan.
- 4.71 **Subsistence Fees**
- 4.72 It is proposed that the subsistence fees in relation to an Environmental Case would vary according to the risks associated with the installation, and therefore the level of regulation it requires, and would be sufficient to cover the cost of:-
- 4.72.1 ongoing monitoring and inspection of Environmental Case installations; and
- 4.72.2 enforcement activity relating to Environmental Case installations.
- 4.73 It is proposed that the fee will depend on the nature and complexity of the installation and/or activity and will be specified in a charging scheme maintained by FIG to complement the proposed Environmental Case regime. It is proposed that the charging scheme will be the subject of separate consultation.
- 4.74 It is proposed that subsistence fees would be calculated on an annual basis and payable annually by Responsible Persons.
- 4.75 It is proposed that the introduction of Subsistence Fees be subject to separate approval by Executive Council following appropriate consultation with operators.
- 4.76 **Content of Environmental Case**
- Part 1 - EIA*
- 4.77 It is proposed that the existing EIA requirements in Falkland Islands would provide the basis for the contents of the EIA part of the Environmental Case will continue to be as required by the Offshore Minerals Ordinance 1994 (as amended) and include:-
- 4.77.1 Project description: including location, design and size, and to the extent relevant land and seabed requirements during construction and operation; main characteristics of production processes including the nature and quantity of materials used, and an estimate of the type and quantity of the expected residues and emissions resulting from operation of the project;
- 4.77.2 Measures to protect the environment: measures to eliminate, reduce, remedy, and/or offset significant adverse impacts on the environment resulting from the proposed activity;
- 4.77.3 Requirement for data: data required to identify and assess the main effects that the project is likely to have on the environment;
- 4.77.4 Environmental Effects: aspects of the environment likely to be significantly affected by the project, including: human population, fauna, flora, soil and seabed, fresh or seawater, aquifers, air, climatic factors, landscape and seascape, tangible property, architectural and archaeological heritage; and the interactions between any of those factors;
- 4.77.5 Effects on the environment arising from: the existence of the project itself, emission of pollutants, creation of nuisances, and the elimination of waste;

- 4.77.6 Forecasting Methods: details of the forecasting methods used to assess the effects on the environment of the project to which it relates;
 - 4.77.7 Remediation: measures envisaged upon termination of the project to eliminate, reduce, remedy, or offset significant adverse impacts on the environment associated with the project to ensure that impacts are as low as reasonably practicable;
 - 4.77.8 Alternatives: an outline of the main alternatives that were studied by the applicant and the main reasons for the applicant's choice demonstrating how the environmental effects have been reduced to as low as reasonably practicable;
 - 4.77.9 Non-technical summary: a layman's summary; and
 - 4.77.10 Difficulties encountered: difficulties, including technical issues and lack of know-how, encountered by the applicant in compiling the required information.
- 4.78 It is further proposed that the Offshore Minerals Ordinance would be amended to require EIS to also identify control measures which:-
- 4.78.1 demonstrate that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and
 - 4.78.2 demonstrate that the residual environmental impacts and risks of the activity will be of an acceptable level.

Environmental Plan

- 4.79 It is proposed that the Environmental Plan required for a proposed activity will reflect the environmental risks associated with the activity.
- 4.80 It is proposed that an Environmental Plan would be required to:-
- 4.80.1 describe the requirements, including legislative requirements, applicable to the activity and the environmental management of it; and
 - 4.80.2 demonstrate how those requirements will be met.
- 4.81 In particular it is proposed that the Environmental Plan will be required to:-
- 4.81.1 set environmental performance standards for the control measures identified in the EIS;
 - 4.81.2 set out the environmental performance outcomes against which the performance of the Responsible Person in protecting the environment is to be measured;
 - 4.81.3 include measurement criteria that the Responsible Person will use to determine whether each environmental performance outcome and environmental performance standard is being met;
 - 4.81.4 state when the Responsible Person will report to FIG in relation to their environmental performance for the activity (to be no less than 1 year);
 - 4.81.5 identify against each performance standard, performance levels which if not met, become reportable;
 - 4.81.6 contain a description of the environmental management system for the activity, including specific measures to be used to ensure that, for the duration of the activity:-
 - (a) the environmental impacts and risks of the activity continue to be identified and reduced to a level that is as low as reasonably practicable;

- (b) control measures detailed in the Environmental Plan are effective in reducing the environmental impacts and risks of the activity to as low as reasonably practicable and an acceptable level; and
 - (c) environmental performance outcomes and standards set out in the Environmental Plan are being met.
- 4.81.7 establish a clear chain of command, setting out the roles and responsibilities of personnel in relation to the implementation, management and review of the Environmental Case, including during emergencies or potential emergencies;
- 4.81.8 include measures to ensure that each employee or contractor working on, or in connection with, the activity is aware of his or her responsibilities in relation to the Environmental Case, including during emergencies or potential emergencies, and has the appropriate competencies and training;
- 4.81.9 provide for sufficient monitoring, recording, audit, management of non-compliance and review of the Responsible Person's environmental performance to ensure that the environmental performance outcomes and standards in the Environmental Case are being met;
- 4.81.10 provide for sufficient monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise), such that the record can be used to assess whether the environmental performance outcomes and standards in the Environmental Plan are being met; and
- 4.81.11 provide for ongoing verification of plan implementation appropriate to the level of risk. It is proposed that in general, environmental aspects which are subject to performance standards should undergo third party verification whilst for other aspects self-verification may be used.
- 4.82 It is proposed that the Environmental Case regime would be complemented by guidance, and Annex A sets out the key matters that are expected to be covered by such guidance in relation to environmental performance outcomes, environmental performance standards and measurement criteria.
- 4.83 In cases of very low impact activities, it is proposed that minimum standards will be used to ensure that operators adhere to good practice without imposing additional costs associated with necessarily having to set completely bespoke performance standards in relation to all environmental aspects.
- 4.84 In cases of very low impact activities and in relation to specific environmental aspects where the residual risks are judged to be broadly acceptable with industry standard controls in place,) it is expected that a number of the above requirements may not apply. For such activities, the requirements in terms of the content of the Environmental Plan could be satisfied by an operator by:-
- 4.84.1 demonstrating adherence to good industry practice;
 - 4.84.2 setting out minimum standards to be applied in relation to any emissions from the installation and/or in relation to any other environmental aspects requiring control; and
 - 4.84.3 having an environmental management system in place.
- 4.85 **Enforcement of the Environmental Case**
- 4.86 As indicated above, it is proposed that the Environmental Case should be required to ensure that environmental risks are appropriately defined, assessed and reduced to an acceptable level and as low as reasonably practicable and is intended to provide assurance that the risks will be suitably managed and reported.

- 4.87 This is achieved through robust environmental assessment, to demonstrate that specific control measures proposed for the proposed activity will be effective in reducing impacts to an acceptable level and as low as reasonably practicable. It is therefore proposed that the Environmental Plan would build on the work done at the EIA stage, to evaluate in more detail the specific environmental impacts and risks associated with the proposed activity.
- 4.88 It is proposed that the Environmental Plan would set out a suite of "control measures" in the form of systems, procedures, items of equipment and persons that will be used to reduce environmental impacts and risks associated with a proposed activity. It is proposed that control measures will relate to the physical features of an activity or installation (e.g. an emissions or discharge point or allowed parameters for an emission or discharge) or to the management of the activity or installation (eg management plans or reporting requirements).
- 4.89 It is proposed that the Environmental Plan will include environmental performance outcomes in relation to any control measure identified as needed to reduce an impact or risk to as low as reasonably practicable. It is proposed that they would represent a measurable level of performance required in relation to the management of particular environmental risks associated with an activity, to ensure that they are managed to an acceptable level.

Recordable Events

- 4.90 The environmental performance outcomes will set the level at which an environmental performance outcome is breached, resulting in a "Recordable Event". They will also provide the basis for environmental performance reporting by the Responsible Person.
- 4.91 It is proposed that Responsible Persons would be required to report all Recordable Events as soon as reasonably practicable and thereafter in their regular reporting.
- 4.92 A Recordable Event would not of itself prompt enforcement action, but it is proposed that FIG would be able to take enforcement action against an operator in relation to numerous and repeated or ongoing Recordable Event where FIG felt this was necessary to bring the installation or activity back into regular compliance with their Environmental Plan. It is proposed that such enforcement action would be taken in accordance with an enforcement policy maintained by FIG to complement the proposed Environmental Case regime.

Reportable Events

- 4.93 It is proposed that the Environmental Plan would be required to set out a non-exhaustive list of the types of event which would have the potential to cause moderate or significant environmental damage if they were to occur, to be referred to as "Reportable Events". However, the Environmental Plan must also provide for any event or incident which has caused or would have the potential to cause moderate or significant environmental damage to be treated as a Reportable Event by the Responsible Person. These would include breach of any thresholds set in relation to emissions or other control measures as thresholds for reportable events.
- 4.94 It is proposed that Reportable Events will be required to be notified to FIG as soon as practicable, and in any event no later than 2 hours after the relevant event or after the Responsible Person becomes aware of the relevant event.
- 4.95 It is proposed that a Reportable Event may result in enforcement action against the operator, such as service of an Enforcement Notice or Prohibition Notice, in accordance with an enforcement policy maintained by FIG to complement the proposed Environmental Case regime. It is proposed that the approach taken will draw on existing guidance (eg PONs) where appropriate.

4.96 **Enforcement Notices**

4.97 It is proposed that FIG would have the power to serve, or for an inspector authorised on their behalf to serve, an Enforcement Notice on the Responsible Person, or on the Operator of the relevant installation or activity if the Responsible Person cannot be contacted, where it is of the opinion that:-

4.97.1 a Responsible Person or any person acting on their behalf has contravened or is contravening their Environmental Case or is likely to contravene it (see below under *Offences* for a proposed list of such contraventions); and

4.97.2 a Responsible Person has failed to comply with a notice from FIG requiring it to submit a variation to the Environmental Case.

4.98 It is proposed that an Enforcement Notice would be required to specify the matters constituting or likely to cause the contravention or release or discharge, the steps that must be taken to remedy or prevent the contravention and the period within which the steps must be taken. It is proposed that the steps that may be specified would include steps to remedy pollution caused by the contravention, release or discharge.

4.99 It is proposed that a Responsible Person would have a right of appeal against an Enforcement Notice served by FIG, on the grounds that there has been no contravention or that the steps specified in the notice are not needed to remedy the alleged contravention. It is proposed that an Enforcement Notice would not be suspended in the event of an operator appealing against it, since this would undermine the ability of FIG to protect the environment. This is consistent with other modern consenting regimes applying a high degree of environmental protection. In practice it is expected that FIG would set out a code of practice for enforcement, which might clarify the approach it would take in such cases.

4.100 **Prohibition Notices**

4.101 It is proposed to provide power for FIG, if it is of the opinion that the operation of an offshore installation involves an imminent risk of serious pollution as a consequence of any discharge or release of oil, to serve, or for an inspector authorised on its behalf to serve, a Prohibition Notice on the Responsible Person, or on the Operator of the relevant installation or activity if the Responsible Person cannot be contacted.

4.102 It is proposed that a Prohibition Notice would be capable of being served even if the risk does not relate to a contravention of an Environmental Case, and that it would be able to relate to aspects of the operation of an offshore installation whether or not regulated by the provisions of an Environmental Case (eg in relation to a risk not identified in the Environmental Case).

4.103 It is proposed that a Prohibition Notice would be required to specify the risk involved in the operation of the offshore installation, the steps that must be taken to remove it, and that it may also specify the period within which such steps may be taken, and that it may direct that any Environmental Case shall until the notice is withdrawn, cease to have effect, or imposing conditions applying to any part of the installation to which the direction applies.

4.104 **Offences**

4.105 It is proposed that would be an offence for a Responsible Person:-

4.105.1 not to have an approved Environmental Case prior to undertaking an activity for which a Relevant Consent is required;

4.105.2 to cause, knowingly permit or fail to prevent a reportable incident taking place;

4.105.3 to contravene an Environmental Case. It is proposed that contraventions of the Environmental Case would constitute:-

- (a) failure to fully implement mitigation and other relevant measures specified in an EIS in accordance with the proposals in the EIS and/or Environmental Plan;
- (b) repeated recordable incidents where the Responsible Person is failing to bring the installation back into regular compliance and FIG considers that it is necessary to serve an Enforcement Notice in order to bring the installation or activity back into compliance with the Environmental Plan;
- (c) Reportable Events under the Environmental Plan;
- (d) a release or discharge from a location or to an environmental receptor that is not authorised under the Environmental Case has occurred or is occurring or is likely to occur;
- (e) failure to comply with performance standards set in relation to control measures under Environmental Plan;
- (f) to deliberately, negligently or repeatedly fail to supply any information required to be supplied by an Environmental Case, including reporting and other information requirements;
- (g) to fail to supply any information required by FIG; and
- (h) failure to apply for the approval of FIG for a material change in operation.

4.105.4 to release any oil or chemical or allow a release of oil or any chemical to continue. Definitions will make clear that this refers only to releases which exceed discharge thresholds within the Environmental Plan;

4.105.5 to fail to comply with the terms of an Enforcement Notice or Prohibition Notice;

4.105.6 to wilfully obstruct an inspector appointed by FIG;

4.105.7 without reasonable excuse to fail to comply with a requirement imposed by an inspector or preventing another person with so complying; and

4.105.8 knowingly or recklessly making a statement which he knows to be false or misleading in a material particular for certain specific purposes.

4.106 It is proposed that there would be certain limited defences against the offences above, namely where the person charged with an offence of carrying out a relevant activity other than under and in accordance with an Environmental Case can show that the contravention arose as a result of something which could not reasonably have been prevented by them, or which was due to something done as a matter of urgency for the purpose of securing the safety of any person.

4.107 It is proposed that there would also be scope for director and company officer liability where an offence has been committed with their consent and connivance or is attributable to their neglect.

4.108 It is proposed that the penalty would be up to an unlimited fine.

4.109 **Fixed Penalty Notices**

4.110 It is proposed that FIG would have the power to issue fixed penalty notices in relation to certain contraventions of an Environmental Case. It is proposed that guidance and enforcement policy would provide that fixed penalty notices are intended to be used where there is no evidence of negligence or deliberate action on the part of the Responsible Person and where there is no actual or potential environmental harm resulting from the action which is the subject of enforcement

action. This would enable FIG to deliver a message to a Responsible Person about its management of performance, with a financial penalty, without having to resort to prosecution, where appropriate.

4.111 It is proposed that a fixed penalty notice would be capable of being served in relation to any of the following contraventions of an Environmental Case:-

4.111.1 failure to comply with control measures under Environmental Plan;

4.111.2 to fail to supply any information required to be supplied by an Environmental Case, including reporting and other information requirements; and

4.111.3 to fail to supply any information required by FIG under the proposed Environmental Case regime.

4.112 It is proposed that Fixed Penalty Notices be set at level 6 on the Standard Scale (currently £10,000)

4.113 It is proposed that a right of appeal against a fixed penalty notice would apply.

4.114 **Investigations and Inspections**

4.115 It is proposed that FIG would have the power to appoint inspectors to investigate whether the Environmental Case regime is being complied with or to monitor any discharge or release of oil. Inspectors will give reasonable notice before carry out any inspection. It is proposed that the inspectors would have a wide range of powers, including the power:-

4.115.1 at any reasonable time (or, in a situation which in his opinion may give rise to an imminent risk of significant environmental damage) to board any offshore installation;

4.115.2 to take with them any other person authorised by FIG and any equipment or materials they think they may require;

4.115.3 to make such examination or investigation as considered necessary (including examining or investigating the offshore installation or the maintenance or monitoring of apparatus on the offshore installation);

4.115.4 to give a direction requiring that any part of the offshore installation be left undisturbed for as long as reasonably necessary for the purposes of any examination or investigation;

4.115.5 take such measurements and photographs and make such recordings as considered necessary for the purpose of any examination or investigation;

4.115.6 take samples of any articles or substances found on the offshore installation or to take samples of the atmosphere, land, seabed (including subsoil), or water in the vicinity of offshore installations;

4.115.7 in the case of any article or substances found on any offshore installation to cause it to be dismantled or subjected to any process or test (but not to damage or destroy it unless in the circumstances that is necessary);

4.115.8 in the case of any article or substance found on any offshore installation to take possession of and detain it for as long as necessary to examine it, ensure it is not tampered with before the examination is complete and to ensure that it is available for use as evidence in any proceedings relating to an offence under the proposed Environmental Case regime;

4.115.9 require any person the inspector has reasonable cause to believe is able to give any information in relation to any examination or investigation to attend an interview and sign a declaration of truth as to the answers given during that interview;

- 4.115.10 require the production of and inspect and take copies of any records which are required to be kept under any permit and any records which the inspector considers it necessary to see for the purposes of any examination or investigation under the proposed Environmental Case regime; and
- 4.115.11 require any person to afford them such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable them to exercise any of the powers conferred on them under the proposed Environmental Case regime, including transport to and accommodation on the relevant installation.
- 4.116 It is proposed that answers given would be admissible as evidence in the criminal courts, with an exemption for documents which are subject to legal professional privilege and could be withheld from a court on that basis.
- 4.117 It is proposed that FIG would have the power to carry out routine inspections of installations and activities, in accordance with an Inspection Plan and driven by the relevant Environmental Plans being regulated in relation to Falkland Islands waters from time to time.
- 4.118 It is proposed that there should be an obligation on FIG to investigate an allegation of a non-compliance by a member of the public.
- 4.119 **Cost Recovery**
- 4.120 It is proposed that FIG would be able to obtain cost recovery from a Responsible Person in the event that it had to undertake any action or works itself to ensure that the steps specified in an Enforcement Notice or Prohibition Notice were undertaken, in circumstances where the Responsible Person has failed to take the steps specified in the Enforcement Notice within the relevant timescales and FIG considers that it is necessary to undertake the actions or works to secure the steps in the Enforcement Notice or Prohibition Notice.
- 4.121 It is proposed that the reasonable costs and expenses of FIG in taking the steps would be recoverable as a debt from the Responsible Person.
- 4.122 **Withdrawal of approval of Environmental Case**
- 4.123 It is proposed that FIG would have the power to withdraw its approval of an Environmental Case where it considers it appropriate to do so, in accordance with its enforcement policy, based on persistent, deliberate or negligent non-compliance with an Environmental Plan, a significant threat of environmental harm or damage, and in other situations where FIG considers it necessary to ensure compliance with the legislation providing for the Environmental Case regime.
- 4.124 In the event that approval of the Environmental Case was withdrawn, it is proposed that the activities would no longer be authorised and the operator would have to cease operations or else it would be committing a criminal offence as outlined above and be subject to enforcement action. It is proposed that this would include provisions for enabling FIG to bring charges against directors of the entity which is the Responsible Person where the offence was committed with their consent and connivance.
- 4.125 **Monitoring, Reporting and Verification under Environmental Case**
- 4.126 It is proposed that arrangements for monitoring and reporting of implementation of and performance against the Environmental Case should be set out within the Environmental Plan. It is proposed that this would include:-
- 4.126.1 monitoring of any mitigation measures undertaken to be implemented under the EIA and monitoring of compliance with environmental performance standards and environmental performance outcomes set out in the Environmental Plan;

- 4.126.2 regular reporting of emissions and other potential environmental impacts against Performance Standards would be required, at a frequency which is appropriate for the level of risk posed by the activity and/or installation. It is proposed that this would be subject to a maximum reporting interval of 1 year. For Environmental Cases in relation to Non-Production Installations (NPIs) this may include monitoring at the end and/or after completion of the activity (or well), within a specified time limit after completion of the well. It is proposed that guidance would be provided to support the Environmental Case regime, which would set out general and any specific requirements against each type of potential environmental impact;
- 4.126.3 provisions for verification that the arrangements described in the Environmental Plan would be required to be implemented and reported to FIG. It is proposed that guidance to support the Environmental Case regime would set out commitments set according to the level of risk. It is proposed that self-verification is acceptable through implementation of overarching internal audit plans and schedules. The results of audits and consequent remedial work will be a stipulated reporting requirement. Arrangements to provide FIG with notice of timing and scope of internal audits will be covered in guidance.
- 4.126.4 threshold levels which would trigger Recordable Events and Reportable Events. Such events would be required to be notified to FIG as soon as practicable and declare whether it is considered that there is potential for harm to the environment as a result of the event;
- 4.126.5 Reportable Events would be subject to monthly reporting on progress in relation to prevention and/or remediation measures taken in relation to the incident (or more frequently if directed by FIG) until FIG indicates that it considers that they are closed out; and
- 4.126.6 Environmental Case records would be stored by the Responsible Person for a proposed period of at least 10 years.

4.127 **Changes to Installations / Activities**

- 4.128 In the event of a proposed change to the operation of an installation or the activity, it is proposed that the Responsible Person would be required to give notice to FIG of the proposed change, provide such information as may be requested by FIG to enable it to consider whether or not to approve the proposed change and what (if any) variation of the Environmental Plan is likely to be required.
- 4.129 If a change is a material change in operation of the installation or activity, it is proposed that FIG would be required to consider whether an additional EIA or addendum to the existing EIA is required in relation to the proposed change. FIG would have the power to require information from the Responsible Person, or for the Responsible Person to undertake an EIA Screening process to confirm if an EIA is required.
- 4.130 In this context it is proposed that the definition of material change should be a change in the nature or functioning or an extension of an offshore installation and/or activity which (a) may have significant negative effects on the environment, or (b) in itself would require an Exploration or Production Licence. It is proposed that such changes would be subject to public consultation following the same process as applied during the initial consultation on the EIA / EIS element of the Environmental Case.
- 4.131 It is proposed that if a change is a material change requiring a further EIA to be undertaken the variation to the Environmental Case would follow the same procedure as a new application requiring an EIA to be undertaken, and if the EIA part was approved in relation to the proposed new activity or change an updated Environmental Plan would be prepared by the Responsible Person and submitted for approval.

- 4.132 If a material change did not require a further EIA to be undertaken but did necessitate a change to the Environmental Plan, it is proposed that the variation would follow the same procedure as an application for approval of an Environmental Plan following EIA approval.
- 4.133 If a change is not a material change, but does necessitate a change to the EIA or Environmental Plan, it is proposed that FIG would be required to provide the Responsible Person with a (non-binding) estimated timescale for determining the application for variation. It is expected that such variations are likely to relate to administrative matters such as updating plans and procedures referred to in the Environmental Case, or for change of operator.
- 4.134 It is proposed that the Responsible Person would not be allowed to implement a proposed change until it has been approved by FIG. It is proposed that FIG would be obliged to follow the relevant appropriate approval route as set out above, and to give notice to the Responsible Person either (i) approving the proposed change and accepting out any varied terms of the Environmental Plan, or (ii) rejecting the proposed change, and giving the reasons for doing so in accordance with the process set out above.
- 4.135 It is proposed that the Responsible Person would be under a legal obligation to submit an application for a variation to the Environment Case before or as soon as practicable after the occurrence of:-
- 4.135.1 any significant new environmental impact or risk, or a significant increase in an existing environmental impact or risk; or
 - 4.135.2 a series of new or increased environmental impacts or risks, amount to a significant new or increased environmental impact or risk,
- in either case which is not provided for in the Environment Case approved for the relevant activity.
- 4.136 It is proposed that FIG would also have the power to require a Responsible Person to vary an Environmental Plan, particularly if this was required to accommodate a situation where material new information concerning environmental sensitivities comes to light, or a change to a categorisation of risk on a particular issue, or of what would constitute as low as reasonably practicable.
- 4.137 It is proposed that FIG would be required to serve a Variation Notice on the Responsible Person setting out the matters requiring to be addressed by the variation and the proposed date by which the variation must be implemented, and the basis on which the variation to the Environmental Case be submitted to FIG for approval.
- 4.138 It is proposed that a Responsible Person would have a right of appeal against a Variation Notice served by FIG, on the grounds that the steps specified are not required to address the risks identified in the Variation Notice.
- 4.139 It is proposed that if an operator refused to vary its Environmental Plan as requested it would be exposed to enforcement action by FIG, as detailed above under the section on Enforcement Notices. Failure to comply with an Enforcement Notice is a criminal offence, as set out above.
- 4.140 **Change in Responsible Person**
- 4.141 It is proposed that where the identity of the Responsible Person is to change the outgoing Responsible Person will be required to apply to FIG for approval of the proposed change in line with the proposed procedure for a non-material variation above. It is proposed that the agreement of the proposed incoming Responsible Person to the notification would be required to be documented as part of the application, and that certain information about the proposed Responsible Person would be required to be provided.
- 4.142 In particular, it is proposed that this would include information to demonstrate that the proposed incoming Responsible Person demonstrate that it has the financial resources in place to meet the worst case risks associated with the installation or activity.

- 4.143 It is therefore proposed that the application for change of operator would be required to be accompanied by evidence that sufficient financial resources are in place to meet the combined costs of well control, remediation and compensation in the event of an incident. It is proposed that such evidence could include evidence of suitable policies of insurance.
- 4.144 It is proposed that if the change in Responsible Person will not result in a change in the manner in which the environmental impacts and risks associated with the relevant activities are managed, FIG would simply record the change of Responsible Person and notify the Responsible Person it has done so. It is proposed that the Responsible Person could specify the date on which it wishes the change to take place. It is expected that this simple procedure could be useful in the context intra-group transfers of the Environmental Case.
- 4.145 It is proposed that if FIG believes there is a risk that a change in the Responsible Person is likely to result in a change in the manner in which the environmental impacts and risks associated with the relevant activities are managed, the new Responsible Person would be required to submit a proposed varied Environmental Plan for approval in line with the relevant variation procedure, as set out above. It is proposed that this must be done in advance of the incoming Responsible Person taking over operations, or afterwards, as long as the Responsible Person will not be permitted to make any changes to the operation of the installation or activity until the variation application has been determined.
- 4.146 During any licence transfer (or other change that may lead to a new Responsible Person) it will be part of due diligence to ensure that any incoming party would be approved/agreed as part of that process. The Responsible Person cannot change operations or activities unless such a change is approved through a variation application. An incoming Responsible Person would need to undertake due diligence to determine whether the proposed environmental management system differs from that of the outgoing Responsible Person and, if so, whether it is likely that there will be a material change necessitating a variation in the Environmental Plan.
- 4.147 **Review and Expiry of Environmental Case**
- 4.148 It is proposed that the Environmental Plan element of an Environmental Case should be required to be reviewed within every five years after its first approval, and that an Environmental Plan would be required to be re-submitted for approval before the expiry of five years after the date of submission of the previous Environmental Plan, in accordance with the relevant variation procedure as described above.
- 4.149 It is proposed that where a party has submitted an amended Environmental Plan at least six months before it is due to expire, the Governor will have the power to grant an extension of the existing Environmental Plan until an approval decision is made. In granting an extension the Governor will be required to take into account the environmental risk, results of any inspection or audit, compliance to performance standards and outcomes, and the changes likely to be required to be made to the original Environmental Plan. The Governor may conclude that it would not be in the public interest for the Environmental Plan to continue to apply.
- 4.150 It is proposed that where a party fails to submit an amended Environmental Plan within the five year review period, the Environmental Case in respect of which the amendment or adequate description should have been submitted ceases to be approved on the date by which the amended Environmental Plan was required to be submitted to FIG for approval.
- 4.151 It is proposed that the Responsible Person would be required to notify FIG in advance of ceasing operations, whether temporarily or at the end of operations, and would be required to submit for approval a revised Environmental Plan setting out how the environmental risks associated with the installation or activity would be managed in line with the Environmental Case regime during either temporary cessation of operations or final cessation and decommissioning.
- 4.152 It is proposed that a Responsible Person would not be allowed to commence works in relation to temporary cessation of operations or final cessation and decommissioning until a revised Environmental Plan to control these activities had been approved by FIG. It is proposed that such

approval would follow the relevant variation procedure above, and it is expected that in relation to final cessation and decommissioning a new EIA would be required.

4.153 **Guidance to support Environmental Case regime**

4.154 It is proposed that the Environmental Case regime would be supported by appropriate technical guidance and that the NOPSEMA Environmental Plan Guidance would provide a suitable starting point for this.

4.155 **Impact on Industry**

4.156 It is acknowledged that the proposed Environment Case regime would involve significant additional work for operators over and above the current EIA requirements applicable in the Falkland Islands. Whilst work involved for the EIA part of the Environmental case submission will be broadly the same as required for the current EIA/EIS submission, the Environmental Plan part of the proposed Environmental Case regime is new.

4.157 However, operators acting in accordance with good industry practice will already have an environmental management plan and associated EMS in place in relation to their installation(s), irrespective of regulatory requirements. It is noted that activities subject to a Safety Case also have a regulatory requirement for an EMS. Furthermore, activities under a Production Licence would in any event, in the many jurisdictions, including if operating on the UKCS, be required to prepare a number of permit applications (including for chemicals and oil discharge, PPC permits, consents to vent etc). All of these matters would be addressed by the proposed Environmental Case regime, under a single Environmental Plan.

4.158 It is anticipated that the aspects of producing an Environmental Plan that are most likely to lead to an additional burden on operators are the requirement for performance standards, linked to performance outcomes.

4.159 The concept of performance standards is likely to be familiar to operators of Production Licences because these are already required for Safety and Environmental Critical Elements under Safety Case legislation. Indeed, those Performance Standards which relate to environmental aspects associated with spills may already be covered (although it is noted that Safety Case requirements will be on the Installation Operator, whilst the EC Responsible Person will be the Licence Operator).

4.160 Overall, whilst it is expected that there will be an additional burden compared to present requirements in the Falkland Islands, this has to be seen in the context of the light touch regulatory approach currently applicable in Falkland Islands, and the more onerous requirements already applicable in most other jurisdictions.

5. **POLICY RECOMMENDATIONS FOR AN OIL POLLUTION EMERGENCY PLAN (OPEP)**

5.1 **Overview**

5.2 FIG intends to establish a requirement for an Oil Pollution Emergency Plan (OPEP), in line with the regime established under the UK Oil Pollution Preparedness, Response, and Co-Operation Regulations 1998 (as amended).

5.3 An OPEP is an operational document required to facilitate the response to an oil pollution incident. As such, it must enable all users, including external stakeholders, to promptly gather the key information required to identify and implement the most effective response strategy.

5.4 It is proposed that prior to or at the point of making an application for Environmental Plan under the Environmental Case regime, operators would be required to submit their OPEP for approval. It is proposed that an OPEP would be required to be approved by FIG in relation to the following infrastructure within Controlled Waters:-

5.4.1 every Offshore Installation and its Connected Infrastructure in Offshore Waters; and

5.4.2 every Oil Handling Facility which:-

- (a) is a pipeline; or
- (b) would be an Offshore Installation were it in Offshore Waters.

a "**Relevant Installation**".

5.5 It is proposed that Licence Operators in relation to Relevant Installations would be responsible for having an OPEP or a set of OPEPs to cover oil pollution risks associated with their installation or operations. It is proposed that it would be up to the Licence Operator for a Relevant Installation to determine how to structure its oil spill response documentation. It is proposed that the Licence Operator would be responsible for submitting an OPEP or set of OPEPs to FIG for approval at the same time as making an application for approval of an Environmental Plan and would be required to secure approval of the OPEP before commencing operations.

5.6 It is therefore proposed that Licence Operators would be required to have appropriate approved OPEPs in place covering the risks relating to the following operations:-

5.6.1 Operations associated with a Production Installation ("**Production Operations**"), including single installations, subsea tie-backs, field multiple installations, pipelines and floating storage units;

5.6.2 Temporary operations, including NPIs, exploration drilling or well intervention which are not covered by an existing Production Installation/Field OPEP ("**Temporary Operations**"); and

5.6.3 Suspended Wells

5.7 It is proposed that Licence Operators will be able to put in place different types of OPEP, relating to the different levels of incident response that are required in relation to the activities described above. Two main types of OPEP proposed are:-

5.7.1 **Offshore OPEP:** An OPEP which details the response arrangements for a Production Installation and/or a field which are within the capability of an Offshore Installation. There are four sub-categories of Offshore OPEP:-

- (a) Production Installation / Field OPEP (which can also act as an OPEP for a suspended well);
- (b) NPI OPEP; or
- (c) Temporary Operations OPEP: An OPEP which acts as an addendum to a Production Installation / Field OPEP, containing the information pertaining to the temporary operations which is not in the associated NPI OPEP.

5.7.2 **Onshore OPEP:** An OPEP which details the response arrangements which are beyond the capability of an Offshore Installation to which an Offshore OPEP applies. It is proposed that an Onshore OPEP would be used in conjunction with an Offshore OPEP, and together these OPEPs would address the risks associated with a Production Installation and/or a field, a Non-Production Installation and/or a suspended well. Where there is no Production Installation, such as in the case of exploration drilling, the Onshore OPEP would also include details of any relevant response arrangements capable of being managed from the offshore area.

5.8 It is recognised that in practice an entity other than the Licence Operator, such as the Installation Operator, may be the party which would be responsible for implementing a particular Offshore OPEP in the event of an incident. It is therefore proposed that Licence Operators would be able to transfer responsibility for compliance with an Offshore OPEP to the Installation Operator. In such

circumstances FIG would take enforcement action against the Installation Operator in relation to the Offshore OPEP for which it is responsible, as opposed to against the Licence Operator.

- 5.9 It is proposed that only the Licence Operator (or if a different party from the Licence Operator, a Well Operator) would be capable of being responsible for compliance with an Onshore OPEP, in line with Licence Holders' existing obligations under the Exploration and Production Licensing Regime to hold relevant insurances.
- 5.10 Even where an Installation Operator is to be responsible for compliance with an OPEP, it is proposed that the Licence Operator would be responsible for submitting to FIG and obtaining approval of an OPEP or set of OPEPs covering all of the risks set out above. If the Licence Operator intends to transfer responsibility for compliance with an OPEP to an Installation Operator, it is proposed that the OPEP or set of OPEPs submitted for approval by the Licence Operator would make this clear, and FIG's approval of the Installation Operator for this purpose would be required.
- 5.11 It is proposed that a Communication and Interface Plan would be required to be submitted for approval by FIG, in order to provide a link between the OPEP(s) covering a Production Installation and covering any Temporary Operations. This would link a Production Installation OPEP, an NPI OPEP and/or a Temporary Operations OPEP.
- 5.12 It is proposed that such a plan would be required in relation to Combined Operations (operations undertaken on an installation working in conjunction with another installation(s) where the risks to the safety of persons or the environment are materially affected on any of the involved installations).
- 5.13 It is proposed that such plans would only be required in relation to Non-Combined Operations (operations which are not Combined Operations) in situations where it is intended that primacy for the oil spill response remains with a Production Installation. In these situations, it is proposed that a Temporary Operations OPEP would also be required to be put in place. It is proposed that the Temporary Operations OPEP would detail the information pertaining to the Temporary Operations and their interrelation with the Production Installation, and which is not included in either the Production Installation / Field OPEP (as would be the case under Combined Operations) or the NPI OPEP.
- 5.14 **Scope**
- 5.15 It is proposed that an OPEP would be required in relation to the following infrastructure within Controlled Waters:-
- 5.15.1 every Offshore Installation and its Connected Infrastructure in Offshore Waters; and
- 5.15.2 every Oil Handling Facility which:-
- (a) is a pipeline; or
- (b) would be an Offshore Installation were it in Offshore Waters.
- 5.16 It is proposed that an Offshore Installation would mean a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, in either case which is in Offshore Waters and used for offshore oil and gas operations or in connection with such operations.
- 5.17 However, it is proposed that this would only include mobile offshore drilling units when they are stationed in Offshore Waters for drilling, production or other activities associated with offshore oil and gas operations.
- 5.18 It is proposed that an Oil Handling Facility would be defined as a facility which presents a risk of an oil pollution incident and would include an oil terminal, pipeline and any other facility handling oil. It is proposed that this would not include an Offshore Installation or its Connected Infrastructure,

which would instead be covered under the proposed definition of an Offshore Installation set out above.

5.19 Responsibility for compliance with OPEP regime

5.20 It is proposed that the relevant Licence Operator would be responsible for submitting for approval and complying with an approved OPEP or set of OPEPs in relation to:-

5.20.1 a Production Installation and its Connected Infrastructure – in the form of either (i) an Onshore OPEP and an Offshore OPEP in the form of a Production Installation / Field OPEP, or (ii) a Consolidated OPEP (combining the Onshore OPEP and Offshore OPEP in a single plan);

5.20.2 Temporary Operations (for instance involving a Non-production Installation and any Combined Operations) – in the form of an Onshore OPEP and an Offshore OPEP in the form of an NPI OPEP (and for Non-combined Operations) also a Temporary Operations OPEP), which would operate together with a Production/Field OPEP, governed by a Communication and Interface Plan; and

5.20.3 Suspended Wells – in the form of either (i) an Onshore OPEP and an Offshore OPEP in the form of a Production Installation / Field OPEP, or (ii) a Consolidated OPEP (combining the Onshore OPEP and Offshore OPEP in a single plan). It is proposed that an OPEP would only be required in relation to Suspended Wells where the Licence Operator has determined that the Well could give rise to an oil release. It is proposed that if it is determined that there is no risk of an oil release, the supporting assessment may be required to be provided to FIG for approval in lieu of an OPEP.

5.21 The different types of OPEP which a Licence Operator may put in place, and how they interrelate, are shown in detail in the table in the section on Types of OPEP in section 5.40.

5.22 It is proposed that the Licence Operator should be able to transfer responsibility for compliance with an Offshore OPEP to an Installation Operator. In such circumstances it is proposed that the Licence Operator would apply to FIG for approval of their proposed OPEP arrangements and would nominate different named parties to be responsible for compliance with a relevant Offshore OPEP or OPEPs. This would allow the party responsible for compliance with an Offshore OPEP in relation to:-

5.22.1 a Production Installation and its Connected Infrastructure, to be either the Operator in relation to the installation or connected infrastructure ("the Installation Operator") or the Licence Operator;

5.22.2 a Non-production Installation and its Connected Infrastructure, to be either the person entitled to control the operation of the installation ("the Installation Operator") or the Licence Operator; and

5.22.3 Subsea tie-back, to be either the Well Operator or the Licence Operator. It is noted that the Licence Operator and the Well Operator are likely to in most circumstances be the same entity. However, it is proposed to cater for the possibility that these parties could be separate entities, in which case it would be possible for the Well Operator to hold and be responsible for compliance with a Production Installation / Field OPEP relating to the subsea tieback, consistent with recent changes to the UK OPEP regime.

5.23 It is proposed that in circumstances where after approval of an OPEP or set of OPEPs, an Installation Operator, not being the Licence Operator, agrees to put in place an OPEP as described above, it is proposed that the Licence Operator would be able to notify FIG of this and the Licence Operator would be required to submit an amended OPEP for approval.

5.24 It is also proposed that Offshore Installations and any related Oil Handling Facilities which are either a pipeline or which would be an Offshore Installation if it were in Offshore Waters (including

ship to ship transfers of oil) would be able to prepare and submit for approval a joint OPEP covering all of the oil pollution risks associated with the relevant installations.

5.25 **Process for OPEP Approval**

5.26 It is proposed that the Licence Operator for a Relevant Installation would be required to submit an OPEP to FIG at or before the Environmental Plan is submitted for approval. It is proposed that this may nominate that a relevant Installation Operator or Installation Operators should be held responsible for compliance with any Offshore OPEP.

5.27 It is proposed that in relation to an application for such approval FIG would:-

5.27.1 confirm its approval of the OPEP; and

5.27.2 indicate that it considers that any OPEP is:-

(a) not compatible with the Falkland Islands National Contingency Plan; or

(b) not appropriate for dealing with oil pollution incidents which may occur in the area in which the party responsible for compliance with the OPEP regime has jurisdiction or exercises responsibility.

5.28 If FIG does not approve the OPEP, it is proposed that FIG may, after consultation with Licence Operator, direct that the OPEP shall be altered accordingly. It shall be the duty of the Licence Operator to alter the relevant OPEP in accordance with any such direction.

5.29 It is proposed that the party responsible for compliance with the OPEP regime would be required to submit their OPEP for approval by the stage a project is applying for approval of the Environment Plan. The submission be required to contain sufficient information to give an accurate understanding of its effectiveness, the resources that the operator is committing to have available and therefore the associated residual risk.

5.30 Where certain required details, which are not pertinent to the understanding of residual risk, are not available at the time of submission, the Governor may approve the OPEP subject to condition that further information is submitted.

5.31 It is proposed that transitional arrangements would apply in relation to existing installations.

Consultation

5.32 It is proposed that Licence Operators should be required to consult with Interested Parties during preparation of their OPEP, so as to allow them to make an informed assessment of any potential impacts on relevant stakeholders.

5.33 It is proposed that Licence Operators would be required to allow each Interested Party a reasonable time to consider and comment on their OPEP or set of OPEPs, and that a minimum period of 28 days would apply.

5.34 It is proposed that the Interested Parties for consultation in relation to an OPEP will be set out in legislation, and will include:-

5.34.1 relevant FIG departments, with subject matter expertise within the appropriate disciplines and any person or organisation working on their behalf;

5.34.2 any person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the OPEP; and

5.34.3 any other person that the applicant or FIG considers relevant.

5.35 It is proposed that Licence Operators should be required to provide a report on the consultation process and any changes to proposals for operating the Relevant Installation in light of such consultation.

5.36 **Financial Assurance**

5.37 The Governor has the power under the Offshore Minerals Ordinance 1994 (as amended) to require holders of an Exploration Licence or Production Licence to have adequate insurance in place to meet any liability or compensation arising out of environmental damage resulting from oil spills. In this context the minimum level is set at \$250 million per incident, in line with OPOL.

5.38 However, this is different from having the financial resources in place to manage an incident in accordance with an OPEP. As detailed in 5.68, it is proposed that operators must demonstrate that they have in place sufficient financial resources and/or insurance to deliver an approved OPEP.

5.39 **Content of OPEP**

5.40 It is proposed that, in line with the UK regime, an OPEP would have to:-

5.40.1 take into account:-

- (a) the risk assessment undertaken during preparation of the most recent safety case submitted under Falkland Islands legislation implementing the EU Offshore Safety Directive; and
- (b) where a mobile Non-production Installation is to be used for carrying out Well Operations, the risk assessment undertaken as part of the preparation of the notification of Well Operations, required by Falkland Islands legislation implementing the EU Offshore Safety Directive;

5.40.2 include the following information:-

- (a) positions of persons authorised to initiate emergency response procedures and the positions of persons directing the emergency response to an oil pollution incident;
- (b) positions of persons responsible for liaising with the authority or authorities responsible for the Falkland Islands National Contingency Plan;
- (c) arrangements for training personnel in the duties they will be expected to carry out in the event of any incident, where necessary co-ordinating the training with the Falkland Islands National Contingency Plan;
- (d) a description of the potential worst case release of oil to the sea from the installation or connected infrastructure, arising from the scenarios identified in the safety case in respect of that installation or infrastructure (as required by Falkland Islands legislation implementing the EU Offshore Safety Directive). It is proposed that this must include any relevant details when two or more installations operate in combination in a way that affects the major hazard potential;
- (e) arrangements for limiting risks to the environment, including a description of equipment and arrangements for the protection of the environment from an incipient major accident and how warnings are to be given and the actions persons are expected to take on receipt of a warning;

- (f) a description of the equipment and resources available to respond to a release of oil to the sea, including the equipment and resources available for the capping of any potential release from a Well, including:-
 - (i) a complete and up-to-date inventory of emergency response equipment pertinent to those operations; and
 - (ii) details of the ownership, the storage location, the arrangements for transport to, and mode of deployment at, the incident location of the equipment and resources;
- (g) the measures in place to ensure that the response equipment and procedures are maintained in an operable condition;
- (h) an estimate of the oil spill response effectiveness, including consideration of the following environmental conditions:-
 - (i) weather, including wind, visibility, precipitation and temperature;
 - (ii) sea states, tides and currents;
 - (iii) presence of ice and debris;
 - (iv) hours of daylight; and
 - (v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;
- (i) evidence that prior assessment of any relevant chemical dispersants has been carried out to minimise public health implications and any environmental damage;
- (j) an assessment of the identified potential environmental effects resulting from a release of oil and a description of the technical and non-technical measures envisaged to prevent, reduce or offset them, including monitoring; and
- (k) arrangements for providing early warning of a major environmental incident arising from a major accident to the authority or authorities responsible for initiating the Falkland Islands National Contingency Plan, including:-
 - (i) details of the type of information that should be contained in any warning; and
 - (ii) the arrangements for the provision of more detailed information as it becomes available.

5.40.3 be consistent with the Falkland Islands National Contingency Plan.

5.41 It is proposed that in preparing an OPEP the Licence Operator (or Well Operator) or Installation Operator responsible for compliance will be required to take account of any relevant guidance issued by FIG and/or FIG. It is considered that the UK Guidance Notes for Preparing Oil Pollution Emergency Pollution Plans for Offshore Oil and Gas Installations and Relevant Oil Handling Facilities, revision 2, August 2016, published by the Department of Energy and Climate Change, could provide an appropriate starting point for key elements of such guidance.

5.42 **Types of OPEP**

5.43 As indicated above, it is proposed that it would be up to the Licence Operator to determine how to organise its oil spill response. It is proposed that there should be two main type of OPEP – an Onshore OPEP and an Offshore OPEP:-

5.43.1 **Onshore OPEP.** It is expected that the majority of operators will prepare an Onshore OPEP, which it is proposed would detail response arrangements applicable to the Relevant Installation(s) for which they have responsibility in relation to oil pollution incidents that require a response beyond the capacity of the Offshore Installation. It is proposed that Onshore OPEPs would always be complemented by an Offshore OPEP, which would detail the response arrangements in relation to incidents that can be managed from and using the resources available to the Offshore Installation.

5.43.2 **Offshore OPEP.** An OPEP which details the response arrangements for a Production Installation and/or a field which are within the capability of an Offshore Installation. There are four sub-categories of Offshore OPEP:-

(a) **Production Installation / Field OPEP.** It is proposed that these OPEPs would detail the Production Installation(s) response arrangements in relation to risks that can be managed from and using the resources available to the Offshore Installation. It would also include any other pertinent information required under the OPEP in order to undertake an effective response to an oil pollution event.

It is proposed that it should be acceptable for a 'Field' OPEP to contain response arrangements for more than one Relevant Installation provided certain information is included for each installation and there is effective delineation within the OPEP between installations to allow for ease of reference between the relevant sections. Where the Well Operator of a subsea tie-back is a different party to the Licence Operator, it is proposed that the Well Operator of the tie back may hold a separate Offshore OPEP (Production Installation / Field OPEP) specifically for that tie-back. It is proposed that a copy of such an OPEP would be required to be held on the host installation. a Production Installation / Field OPEP would also be capable of being held in relation to a suspended well.

(b) **Non Production Installation (NPI) OPEP.** It is proposed that the NPI OPEP would detail the parts of the response arrangements in relation to risks that can be managed from and using the resources available to the Offshore Installation that are specific to that NPI. The intention is that the NPI OPEP would not change from operation to operation and would only require amendment in the event that the specific arrangements on that NPI have changed. As these OPEPs are not required to be site specific, it is expected that the information contained within them would be limited and this would be supplemented by information provided in the Onshore OPEP, the Production Installation/Field OPEP, the Temporary Operations OPEP (in the case of Non-combined Operations) and a Communication and Interface Plan as appropriate.

(c) **Temporary Operations OPEP.** It is proposed that this would be required in conjunction with a Non-Production Installation (NPI) OPEP where the NPI is undertaking operations which are not detailed within an existing Production Installation/Field OPEP. It is proposed that this would be required to include all of the information on response arrangement pertaining to the Temporary Operations, which would otherwise be required to be contained within a Production Installation/Field OPEP (such as in the case of Combined Operations), in relation to risks that can be managed from and using the resources available to the Offshore Installation, with the exception of that which has already been provided within the relevant NPI OPEP. It is proposed that roles and responsibilities, reporting requirements and the interface

arrangements between different OPEP types would be required to be clearly detailed within the Temporary Operations OPEP.

5.43.3 **Consolidated OPEP.** It is proposed that Licence Operators should be able to combine their Offshore OPEP and Onshore OPEP(s) into a single Consolidated OPEP, which details all of the response arrangements applicable to a Relevant Installation. In such cases it is proposed that separation of the aspects which would ordinarily be covered by each of the Offshore and the Onshore OPEPs respectively would be required, so as to provide clear delineation of the information required to facilitate an effective offshore response.

5.44 The Falkland Islands is currently preparing its own Falkland Islands National Contingency Plan. It is proposed that a risk associated with a Relevant Installation would be considered to require a national response where it requires the Falkland Islands National Contingency to be engaged.

5.45 The table below sets out the different types of OPEP that can be put in place in relation to different types of operation.

Activities		Onshore OPEP	Production Installation / Field OPEP	NPI OPEP	Temporary Operations OPEP	Communication and Interface Plan
Production Operations	Installation (including sub-sea tie backs)	X	X			
	Field Multiple Installations	X	X			
	Pipelines	X	X			
	Floating Storage Unit	X	X			
Temporary Operations	Combined Operations	X	X	X		X
	Non-combined Operations	X		X	X	X (only required where primacy for the response remains with a Production Installation rather than the NPI)
Suspended Wells		X	X			

5.46 In common with the UK, it is proposed that the detailed approach to the different types of OPEPs set out above would be set out in guidance rather than prescribed in legislation.

5.47 **Communication and Interface Plan**

5.48 It is proposed that a Communication and Interface Plan would be required in relation to Temporary Operations (including involving NPIs, drilling and well intervention). It is proposed that the plan would provide a link between a Production Installation OPEP, an NPI OPEP and/or a Temporary Operations OPEP.

5.49 It is proposed that the plan would be required to detail any operation specific requirements such as roles, responsibilities, reporting requirements and response options. Prior to the commencement of any Combined Operations, it is proposed that introduction of the plan would be considered to be a major change to the Production Installation/Field OPEP which would be required to be approved by FIG.

5.50 Where a NPI intends to undertake Non-combined Operations in a location within the scope of an existing Production Installation/Field OPEP and the primacy for the oil spill response remains with the Production Installation, it is proposed that it a Communication and Interface Plan would be required to be approved.

5.51 **Duty to Implement OPEP**

5.52 It is proposed that it would be the duty of the party set out in the relevant approved OPEP (whether the Licence Operator, Well Operator or the Installation Operator as described above) to comply with that OPEP and to implement the approved OPEP (including an amended OPEP that has been approved) in the event of an oil pollution incident.

5.53 In particular it is proposed that the party responsible for compliance would be required to:-

5.53.1 maintain equipment and expertise relevant to the OPEP which is approved in respect of matters for which the person is responsible;

5.53.2 ensure that such equipment and expertise is available for use at all times;

5.53.3 make such equipment and expertise available to the authorities responsible for the execution of the Falkland Islands National Contingency Plan;

5.53.4 undertake exercises to maintain relevant expertise for the implementation of the plan, including interaction with the Falkland Islands National Contingency Plan;

5.53.5 retain evidence of those exercises; and

5.53.6 provide such evidence to FIG, if so required by FIG by written notice.

5.54 **Material Change**

5.55 It is proposed that where any major change occurs which affects or could affect the validity or effectiveness of an OPEP to a material extent then the party responsible for compliance with the OPEP would be required to submit a new plan, or amendments to the existing plan, within three months of such change becoming known to it.

5.56 In particular, it is proposed that where there has been a material change to:-

5.56.1 the safety case submitted under the Falkland Islands legislation implementing the EU Offshore Safety Directive; or

5.56.2 any of the documents required to be prepared or submitted to the competent authority by or by virtue of relevant provisions of Falkland Islands legislation implementing the EU Offshore Safety Directive,

in respect of an Offshore installation, Connected Infrastructure or Well Operations, the relevant Licence Operator would be required to submit to FIG a new OPEP or OPEPs, or amendments to

the existing OPEP or OPEPs, within three months of such change becoming known to the Licence Operator.

5.57 Periodic Review of OPEPs

5.58 It is proposed that an OPEP would be required to be reviewed by the party responsible for compliance with the OPEP within every five years after its first submission, and that an OPEP would be required to be re-submitted for approval by the Licence Operator before the expiry of five years after the date of submission of the previous plan.

5.59 It is also proposed that FIG would be able to, by written notice, require a party responsible for compliance to review an OPEP which has been approved in respect of any matters for which that party is responsible. It is proposed that such a notice would be required to state the date by which an amended OPEP must be submitted to FIG by the Licence Operator for approval and would be able to impose requirements relating to the carrying out of that review including the manner in which the review is to be carried out and specific matters to be included within the review.

5.60 It is proposed that a party on which a notice requiring a review is served would be required to review the OPEP and the Licence Operator would be required to submit an amended OPEP to FIG for approval.

5.61 It is proposed that where a Licence Operator fails to submit an amended OPEP within the five year review period, or the period specified in a notice from FIG requiring a review to be undertaken, the OPEP in question would cease to be approved on the date by which the amended OPEP was required to be submitted to FIG for approval.

5.62 It is proposed that where FIG considers that any OPEP, or amendment submitted in relation to an OPEP as described above, is:-

5.62.1 not compatible with the Falkland Islands National Contingency Plan; or

5.62.2 not appropriate for dealing with oil pollution incidents which may occur in the area in which the party responsible for compliance with the OPEP has jurisdiction or exercises responsibility,

FIG would have the power, after consultation with the Licence Operator, to direct that the OPEP should be altered accordingly, and to set the timescale within which this must be done. It is proposed that it would be the duty of the Licence Operator to alter the plan in accordance with any such direction.

5.63 Offences

5.64 It is proposed that it would be an offence for Licence Operator in relation to a Relevant Installation to without reasonable cause:-

5.64.1 fail to submit an OPEP in relation to a new Relevant Installation;

5.64.2 fail to re-submit an OPEP in relation to a five yearly review and/or in response to a notice requiring a review of an OPEP;

5.64.3 not maintain an OPEP, as approved (with alterations directed by FIG if so directed) in accordance with the requirements for a review of an OPEP in the event of a material change affecting the validity or effectiveness of an OPEP, or in the event of a material change to the safety case for the installation; and

5.64.4 fails to implement an OPEP in the event of an oil pollution incident.

- 5.65 It is also proposed that it would be an offence for any party responsible for compliance with an OPEP to without reasonable cause:-
- 5.65.1 fail to comply with the duty to maintain equipment and expertise in readiness for implementing an OPEP, as described above; or
 - 5.65.2 breach the obligation to ensure that no operations relating to an offshore installation, its connected infrastructure or well operations for which that party is responsible, are carried out unless they are the subject of an approved OPEP; or
 - 5.65.3 fail to implement an OPEP for which they are responsible in the event of an oil pollution incident.

5.66 It is proposed that the penalty should be up to an unlimited fine.

5.67 **Inspection of Offshore Installations**

5.68 It is proposed that any person duly authorised by FIG would be able to inspect any Offshore Installation and its Connected Infrastructure or Oil Handling Facilities which are pipelines or which would be Offshore Installations were they in Offshore Waters to which the OPEP regime applies, for the purpose of confirming if the proposed OPEP regime was being complied with.

5.69 It is proposed that inspection powers would be broadly the same as under the Environmental Case regime.

5.70 **Period for which OPEP must be maintained**

5.71 It is proposed that all offshore installations and oil handling facilities would be required to maintain an OPEP until such time as the party responsible for compliance with the OPEP regime has determined that there is no risk of an oil pollution event, and FIG has accepted that this is the case.

5.72 It is proposed that the Licence Operator would apply to FIG for confirmation that an OPEP is no longer required in relation to a Relevant Installation.

5.73 **Application Fees**

5.74 It is proposed that a fee would be payable on submission of an OPEP, which would be sufficient to cover the costs and expenses of OPEP approval by FIG. The fee will depend on the nature and complexity application and will be specified in a charging scheme to complement the proposed OPEP regime.

5.75 It is proposed that the fee would be payable in two stages at the point of making an application for EIA approval and at the point of making an application for approval of an OPEP.

5.76 It is proposed that any charging scheme would be separately consulted on.

6. **PROPOSALS FOR INTERVENTION PROVISIONS**

6.1 FIG has identified a requirement for updated and enhanced intervention powers in relation to the regulation of offshore installations. FIG therefore intends to implement a regime providing for powers of intervention equivalent to those granted by the UK Offshore Installations (Emergency Pollution Control) Regulations 2002.

6.2 **Powers of Intervention**

6.3 It is proposed that powers would be conferred on the Governor to give directions in relation to an offshore installation to the operator, manager or any servant or agent of the operator of the offshore installation for the purpose of preventing or reducing pollution, or the risk of pollution.

6.4 In this context it is proposed that the operator would mean any person who operates the offshore installation and would include any person who owns it at the time that the powers conferred are exercised in relation to the offshore installation.

6.5 It is proposed that the Governor would only be entitled to exercise these powers in limited circumstances, namely where:-

6.5.1 an "accident", namely any occurrence causing material damage or a threat of material damage to an offshore installation, has occurred, or is in imminent danger of occurring; and

6.5.2 in the opinion of the Governor (i) the accident will or may cause significant pollution in the Falkland Islands, Falkland Islands waters or any designated area under relevant international law conventions and (i) the use of the powers to give directions is urgently needed.

6.6 **Form and Content of Directions**

6.7 It is proposed that directions given under the proposed Emergency Intervention regime would require the person being directed to take or refrain from taking any kind of action whatsoever, including:-

6.7.1 to move or not to move the offshore installation or any part of it to or from a specified place or area or over a specified route, or

6.7.2 to unload or discharge or not to unload or discharge any oil or other substance, or

6.7.3 to take or not to take specified remedial measures.

6.8 It is proposed that if those powers, in the opinion of the Governor, are inadequate for the purpose, he may, for the purpose of preventing or reducing pollution or the risk of pollution take, in relation to the offshore installation or its contents, any action of any kind whatsoever, including:-

6.8.1 taking any such action as the Governor has the power to require to be taken by a direction,

6.8.2 undertaking operations for the sinking or destruction of the offshore installation, or any part of it, of a kind which is not within the means of any person to whom the Governor can give directions; or

6.8.3 undertaking operations which involve the taking over of control of the offshore installation (whether by boarding the offshore installation or entering and using any premises which appear to the Governor to be premises from which the operations of the offshore installation may be controlled).

6.9 It is proposed that the powers conferred on the Governor would also be capable of being exercised by persons which are authorised for the purpose by or on behalf of the Governor.

6.10 **Offences**

6.11 It is proposed that the following matters would constitute offences under the proposed regime:-

6.11.1 Contravening or failing to comply with any requirement of a direction given under the regime.

6.11.2 Intentionally obstructing any person who is:-

(a) acting on behalf of the Governor in connection with the giving or service of a direction under the regime;

- (b) acting in compliance with a direction under the regime; or
- (c) acting under the powers to take any other action under the regime.

6.12 It is proposed that it would be a defence for the accused to prove that:-

6.12.1 he used all due diligence to ensure compliance with the direction, subject to the overarching requirement to use best endeavours to avoid any risk to human life; or

6.12.2 that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

6.13 It is proposed that the level of fine applicable in the event of an offence would be up to an unlimited fine and/or up to [2] years in prison where there has been the consent and/or connivance of a director or officer of the company.

6.14 **Compensation**

6.15 The UK regime for emergency intervention, established under the UK Offshore Installations (Emergency Pollution Control) Regulations 2002 ("the 2002 Regulations"), provides wide powers for the UK Government to issue directions to operators of offshore installations, in certain limited circumstances.

6.16 Under that regime if any action taken by a person in pursuance of a direction given under the regime:-

6.16.1 is not reasonably necessary to prevent or reduce pollution or the risk of pollution; or

6.16.2 was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered as a result of the action,

a person incurring expense or suffering damage as a result of the action or by taking the action, is entitled to recover compensation from the government.

6.17 It is proposed to include similar provisions under the proposed legislation. These provisions primarily seek to ensure that such directions are not subject to lengthy debate at a time where urgent action may be required.

7. **PROPOSALS FOR POLLUTER PAYS REGIME APPLICABLE TO OFFSHORE OIL AND GAS ACTIVITIES**

7.1 **Background**

7.1.1 There are a number of ways in which the principle of polluter pays is already applied in the Falkland Islands, and would be applied through the Environmental Case and OPEP regimes proposed above, including:-

- (a) proposed power for FIG to undertake works to secure that the steps in an Enforcement Notice or Prohibition Notice are taken and to recover the cost of doing so from the operator / Responsible Person;
- (b) as a penalty for unplanned discharges (including discharges in contravention of provisions in an Environmental Case) it is proposed that enforcement action may include imposition of a fixed penalty fine as well as criminal prosecution in more serious or persistent cases;
- (c) as compensation to third parties following pollution incidents, with polluters already required to meet costs for clean-up and for compensation to third parties; and

- (d) payment of proposed Environmental Case and OPEP application fees and subsistence fees, which would cover the costs of regulation of installations and activities by FIG.
- 7.1.2 The Offshore Minerals Ordinance 1994 imposes strict liability on operators for the following, but only where caused by an oil spill:-
- (a) damage to the environment of Controlled Waters or of the Falkland Islands or their dependent or associated ecosystems arising from exploration or exploitation of minerals in the Controlled Waters, including payment if there has been no restoration to the original state of the environment;
 - (b) loss or impairment of an established use of the ecosystem (more specifically the conservation and rational use of living resources, tourism, navigation and aviation) arising directly out of damage as described above;
 - (c) loss of or damage to property of a third party, personal injury or loss of life of a third party arising directly out of damage as described above; and
 - (d) reimbursement of reasonable costs by whomsoever incurred in relation to necessary response action, including prevention, containment and clean-up and removal measures and actions taken to restore the environment to its original state where exploration for or exploitation of minerals undertaken in the Controlled Waters result in or threaten to result in damage to the environment of the Controlled Waters or of the Falkland Islands or their dependent or associated ecosystems.
- 7.1.3 The Governor has the power to impose licence conditions requiring holders of Exploration Licences and Production Licences to have adequate insurance in place to meet any liability or compensation arising out of environmental damage resulting from oil spills. In this context the minimum level is set at \$250 million per incident, in line with OPOL.
- 7.1.4 There are also offences under the Offshore Minerals Ordinance 1994 in relation to the discharge of oil or mixtures thereof.
- 7.1.5 However, none of the above mechanisms would enable FIG to ensure that there is a direct benefit to the local environment from hosting potentially hazardous activities, such as oil and gas exploration and production on a large scale. FIG therefore intends to amend the Offshore Minerals Ordinance to bring it into line with the requirements of the EU Polluter Pays Directive and post-Safety Directive changes to the UK Environmental Damage (Prevention and Remediation) Regulations 2009.
- 7.1.6 The regime described below would introduce a liability regime focused on prevention and remediation of damage that they risk or cause, rather than compensation to persons affected by such damage. It would require operators to prevent and/or remediate damage that they risk or cause to the environment, instead of providing for compensation to be payable to those whose property or other interests are affected. As such it takes a different approach from and is proposed to apply in addition to the Environmental Case and OPEP regimes.

7.2 Overview of Proposed Polluter Pays Regime

- 7.2.1 It is proposed that an obligation would be imposed on operators of offshore oil and gas and other offshore activities that cause an imminent threat of Environmental Damage, or an imminent threat of Damage where there are reasonable grounds to believe that the damage will become Environmental Damage, to immediately:-
- (a) take all practicable steps to prevent the Damage, and
 - (b) to notify all relevant details to FIG.

- 7.2.2 It is proposed that there would be a corresponding power for FIG to serve a notice (whether or not it has received notification from the operator) requiring specific measures to be taken to prevent Damage within a specific period of time.
- 7.2.3 It is proposed that obligations would also be imposed on operators of activities that have caused Environmental Damage or have caused Damage where there are reasonable grounds to believe that the Damage is or will become Environmental Damage, to immediately take all practicable steps to prevent further Damage, and to notify all relevant details to FIG. It is proposed that there would be a corresponding power for FIG to serve a notice (whether or not it has received notification from the operator) requiring specific measures to be taken to prevent (or further) Damage within a specific period of time.
- 7.2.4 It is therefore proposed to amend the Offshore Minerals Ordinance 1994 to include additional provisions in line with those under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015.

7.3 **Scope**

- 7.3.1 It is proposed that parties undertaking the activities specified in the paragraph below will be subject to strict liability under the Polluter Pays regime. This means that there is no requirement for FIG to demonstrate fault or negligence on the part of the operator, or that there has been a contravention of an Environmental Case.
- 7.3.2 It is proposed that any party undertaking an offshore oil and gas activity and in particular any Licence Operator and any owner of an offshore oil and gas facility and/or any holder of an Exploration Licence or Production Licence relating to an installation in Controlled waters would be considered to be carrying out an activity specified under the regime.
- 7.3.3 It is proposed that parties undertaking other offshore activities would only be subject to the proposed Polluter Pays regime:-
- (a) in relation to Damage to protected species and habitats; and
 - (b) if it could be shown that they had been at fault or negligent in relation causing to the Damage in question.
- 7.3.4 It is considered very unlikely that Damage could be taking place to protected species and habitats whilst a Responsible Person was complying with their Environmental Case, due to the definition of Damage outlined below. It is expected to apply in the aftermath of an event or incident which is outside of the normal operation of an activity or facility.

7.4 **Definitions of "Damage" and "Environmental Damage"**

- 7.4.1 It is proposed that the concept of "Damage" would be defined in line with the EU Polluter Pays Directive, as meaning a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly.
- 7.4.2 It is proposed that the concept of "Environmental Damage" would also be defined in line with the EU Polluter Pays Directive, as meaning:-
- (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. It is proposed that the significance of such effects would be assessed with reference to the baseline condition, taking account of specific criteria;
 - (b) damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by provisions of national law on nature conservation;

- (c) 'water damage', which is any damage that significantly adversely affects:-
 - (i) the ecological, chemical or quantitative status or the ecological potential, of the waters concerned; or
 - (ii) the environmental status of the Falkland Islands waters, in so far as particular aspects of the environmental status of the marine environment are not already addressed through (a); and
- (d) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

7.5 The Regulating Body

- 7.5.1 It is proposed that the Regulating Body would be responsible for regulating and enforcing the proposed Polluter Pays regime.
- 7.5.2 It is proposed that executive regulatory powers under this legislation will rest with the Governor in Executive Council. The Department of Mineral Resources (with assistance from other Government departments as required) will be the administrative and "day-to-day" regulating body. This approach mirrors that which is already in place under the Offshore Minerals Ordinance 1994.

7.6 Enforcement of the Polluter Pays Regime

- 7.6.1 It is proposed that there would be scope for interested parties or others with a sufficient interest (such as a relevant NGO) to request that action be taken by FIG in relation to Environmental Damage that is or is likely to affect them or their interests.
- 7.6.2 It is proposed that it would be an offence under the Polluter Pays regime to fail to comply with a notice served by FIG requiring an operator to take action and to notify FIG of Damage or Environmental Damage as described above.
- 7.6.3 It is proposed that FIG would be required to establish, where there has been Damage, that there are reasonable grounds for believing it is or may be Environmental Damage. If FIG establishes that there is or may be Environmental Damage it is proposed that it would be required to notify the operator responsible for it, requiring them to submit proposals to investigate and/or remediate the Environmental Damage.
- 7.6.4 It is proposed that FIG would be required to consult with any affected persons on the proposals for remediation, and to specify the measures to be taken and the timescale for taking them to achieve remediation of the Environmental Damage.
- 7.6.5 It is proposed that the operator would have a right of appeal against a notice served on them under the Polluter Pays regime. It is proposed that the penalty would be up to an unlimited fine.

7.7 Power of the Regulating Body to Act and to Recover Costs

- 7.7.1 It is proposed that FIG would also be able to undertake any duty to act in accordance with the Polluter Pays regime, instead of the operator, in an emergency, if the operator cannot be found or his identity ascertained or if the operator fails to comply with a notice.
- 7.7.2 It is proposed that FIG would be able to carry out any reasonable works if the operator cannot be identified, if the operator fails to comply with a remediation notice or if the operator is not required to carry out remediation under the Polluter Pays regime.
- 7.7.3 It is proposed that if FIG does so it would be able to recover the costs from the operator.

- 7.7.4 It is proposed that FIG would also be able to recover its reasonable costs incurred in preparing relevant notices under the Polluter Pays regime, and in ensuring compliance with the regime. It is proposed that this would include costs for assessing whether Damage is Environmental Damage, establishing who is the responsible operator, establishing what remediation is appropriate, carrying out necessary consultation and monitoring the remediation both during and after the work.
- 7.7.5 It is proposed that the costs would be recoverable from the operator as a charge on the responsible operator's premises.

7.8 Exclusions

- 7.8.1 It is proposed that the provisions would apply notwithstanding any other environmental regimes, such as the Environmental Case regime. It is proposed that the following exclusions from the Polluter Pays regime would apply:-
- (a) Damage which occurred before a Relevant Date, the Commencement of Operations;
 - (b) Damage which occurred after the Relevant Date or which is or was threatened after that date, but which is caused by an incident, event or emission that took place before that date;
 - (c) Damage caused by an incident, event or omission that takes or took place after that date, if it derives from an activity that took place and finished before that date;
 - (d) Environmental Damage caused by:-
 - (i) an act of war or act of terrorism;
 - (ii) an exceptional natural phenomenon, equivalent to a force majeure type event, provided the operator took all reasonable precautions to protect against damage being caused by such an event;
 - (iii) activities the sole purpose of which are to protect against natural disasters;
 - (iv) any incident in respect of which liability or compensation falls within the scope of the International Convention on Civil Liability for Oil Pollution Damage, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, or the International Convention on Civil Liability for Bunker Oil Pollution Damage; and
 - (v) activities the main purpose of which are to serve FIG defence or international security.
 - (e) Environmental Damage caused by pollution of a diffuse character would only be covered if it is possible to establish a causal link between the damage and the specific activities.

7.9 Compensation

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 also provide that where an operator follows the instructions in a notice served by the enforcing authority under that regime, and this causes or threatens to cause Environmental Damage, as defined in that regime, the operator may recover the cost of any further actions required under the Regulations from the enforcing authority, unless the instructions related to an emission or incident

caused by the operator's own activities. It is proposed to include similar compensation provisions in the proposed legislation.

Annex A

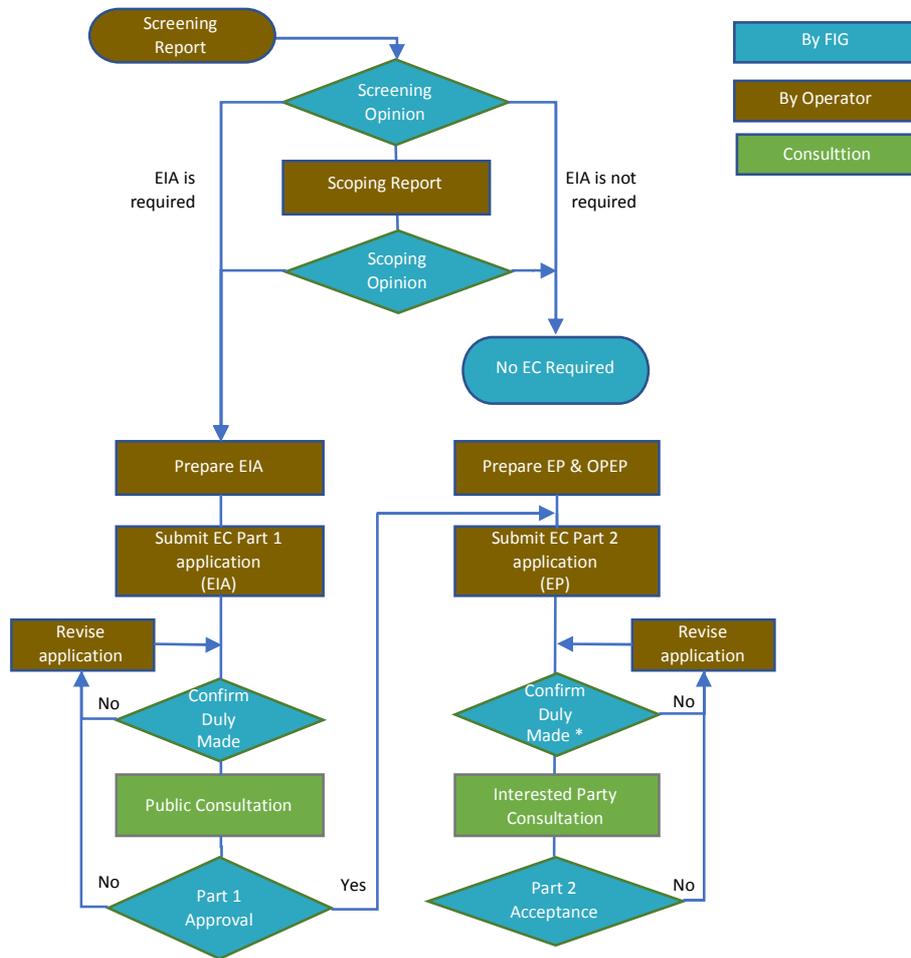
Key Elements of Guidance on Performance Standards

It is proposed that guidance will outline the general approach which is expected of Environmental Plan applicants in relation to the setting of performance standards, and it is expected that is likely to take account of the following:-

- Performance Standards are expected to apply at a system level and may address multiple environmental aspects and performance outcomes.
- All performance outcomes which have, through the environmental assessment, been identified as being managed to ALARP would require to have performance outcomes and measurement criteria identified.
- Performance Standards would normally describe the desired effectiveness of a control measure in terms of its functionality, availability, reliability, survivability, independence and compatibility.
- Performance Outcomes, Performance Standards and their associated measurement criteria will generally achieve the purpose of demonstrating environmental performance if they fulfil the intent of the 'S.M.A.R.T.' criteria commonly used in business and applied in this context:-
 - specific: well defined and not open to wide interpretation.
 - measurable: can be measured, and where possible, in a quantitative manner.
 - achievable: can be met, ie are realistic.
 - relevant: relate to the potential environmental impacts and risks of the activity.
 - time-based: include a time component (where relevant).
- The purpose of measurement criteria is to provide evidence to demonstrate that the Performance Standard required of the control measure has been met and evidence that the Performance Outcome has been achieved.
- Each Performance Outcome or Performance Standard may require more than one measurement criterion to appropriately measure environmental performance. Performance Outcomes and Performance Standards may have common measurement criteria but it must be clear how each Performance Outcome and each Performance Standard will be measured.
- Appropriate measurement criteria should outline the characteristics, data outputs, accuracy and/or calibration requirements, as required, of the method used to achieve the measurements.
- The Environmental Plan should define how measurement criteria will be monitored during normal operations and under emergency conditions with sufficient detail to demonstrate that the measurements can be taken and are appropriate to demonstrate environmental performance against Performance Outcomes and Performance Standards.
- In cases where the effectiveness of a control measure is dependent on a measurement criterion, such as the use of an instrument or specific scientific technique, it may be appropriate for these to have their own Performance Standards.

Annex B

Flow Chart of Environmental Case Application Process



GLOSSARY

"ALARP"	As Low As Reasonably Practicable
"Combined Operation"	operations undertaken on an installation working in conjunction with another installation(s) where the risks to the safety of persons or the environment are materially affected on any of the involved installations
"Connected Infrastructure"	means:- <ul style="list-style-type: none"> (a) any well or supplementary unit connected to an Offshore Installation and (b) the following which are within the safety zone which applies to an offshore installation, namely:- <ul style="list-style-type: none"> (i) any associated structure or device which is connected to the installation (ii) any apparatus or works on, or affixed to, the main structure of the installation and (iii) any pipeline apparatus or works attached to the installation
"Consolidated OPEP"	an OPEP combining an Onshore OPEP and an Offshore OPEP
"Controlled Waters"	means any or all of the following:- <ul style="list-style-type: none"> (a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limits of the territorial sea (b) any designated area of the continental shelf, and (c) such inland waters as may be prescribed for such purposes by Order made by the Governor
"DMR"	Director of Mineral Resources. Reference to DMR is made here where authorities delegated by the Governor would be in place
"Duly Made"	in relation to an application for approval of an Environmental Plan means that the application of the face of it includes all of the information required by the legislation to accompany the application
"Duty Holder"	entity responsible for discharge of regulatory duty associated with an offshore OPEP
"EC"	Environmental Case
"EIA"	Environmental Impact Assessment
"EIA Scoping"	means the process involving a request for further information being made by the Governor in relation to an application for exemption from the requirement for an EIA or in the context of an application under the Offshore Minerals Ordinance 1994 which may require an EIA
"EIA Scoping Report"	means the information in the form of a report or similar submission provided by an applicant in response to an EIA Scoping request made by the Governor

"EIA Screening"	means the process involving an applicant seeking an exemption from the requirement for an EIA or involving an applicant demonstrating, in the context of an application under the Offshore Minerals Ordinance 1994 which may require an EIA, that no EIA is required on the basis that no significant environmental effects are likely to arise in connection with the relevant activity
"EIA Screening Report"	means the information in the form of a report or similar submission provided by an applicant in connection with an application under the Offshore Minerals Ordinance 1994 which may require an EIA, or in connection with an application for an exemption from the requirement for an EIA
"EIS"	Environmental Impact Statement
"Emergency Intervention regime"	the proposed regime set out in section 6 of this document
"EMS"	Environmental Management System
"Environmental Case regime"	the proposed regime set out in section 4 of this document
"Environmental Impact Assessment"	means an assessment of the likely significant environmental effects associated with an installation or activity
"Environmental Impact Statement"	means a report detailing the findings of an EIA
"ExCo"	FIG Executive Council. Reference to ExCo is made where policy approval is required
"Exploration and Production Licensing Regime"	the regime requiring operators of certain activities to have and to comply with an Exploration Licence and/or a Production Licence under the Offshore Minerals Ordinance 1994
"Exploration Licence"	a licence under the Offshore Minerals Ordinance 1994, which authorises the holder to search for a mineral or minerals in accordance with its terms but does not authorise the holder to bore for any mineral in the course of exploration or to get any mineral in the course of exploration, unless the contrary is stated in the Exploration Licence. An Exploration Licence cannot authorise the getting of any mineral in any greater quantity or for any purpose other than is incidental to exploration for that mineral
"FIG"	Falkland Islands Government
"Governor"	Governor of the Falkland Islands. The Governor is the entity granted powers b the Offshore minerals Ordinance
"Installation Operator"	the person appointed to conduct any offshore oil and gas operations, but excluding the planning and execution of a Well Operation
"LO"	Licence Holder - the organisation appointed by the Licence group (which may be a joint venture) to organise / supervise their activities
"MRC"	Mineral Resources Committee of the Executive Council
"National Parks"	means areas designated as National Parks under section 4(1) of the National Parks

	Ordinance
"National Nature Reserves"	means areas designated as National Nature Reserved under section 13(1) of the Conservation of Wildlife and Nature Ordinance (or treated as if so designated)
"NOPSEMA"	National Offshore Petroleum Safety and Environmental Management Authority (Australia)
"Non-Production Installation (NPI)"	An offshore installation other than a production installation and includes mobile offshore drilling units, light well intervention vessels, flotels and jack-up accommodation/maintenance/light well intervention barges
"NPI"	Non Production Installation
"NPI OPEP"	An OPEP detailing the parts of the response arrangements in relation to risks that can be managed from and using the resources available to the Offshore Installation and which are specific to that NPI
"Offshore Installation"	A stationary, fixed or mobile facility or a combination of facilities permanently interconnected by bridges or other structures, which is used in offshore waters and for offshore oil and gas operations or in connection with such operations Mobile offshore drilling units are considered to be Offshore Installations only when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations
"Offshore OPEP"	An OPEP which details the response arrangements for a Production Installation and/or a field which are within the capability of an Offshore Installation Offshore OPEPs are categorized as:- (a) Production Installation / Field OPEPs (b) NPI OPEPs, or (c) Temporary Operations OPEPs
"Offshore Waters"	means (a) tidal waters and parts of the sea in or adjacent to the Falkland Islands up to the seaward limits of the territorial sea, and (b) any designated area of the continental shelf
"Oil Handling Facility"	a facility which presents a risk of an oil pollution incident and includes, inter alia, an oil terminal, pipeline and any other facility handling oil, but does not include an Offshore Installation or its Connected Infrastructure
"Onshore OPEP"	an OPEP which details the response arrangements which are beyond the capability of an Offshore Installation to which an Offshore OPEP applies an Onshore OPEP is used in conjunction with an Offshore OPEP, and together these OPEPs address the risks associated with a Production Installation and/or a field, a Non-Production Installation and/or a suspended well
"OPEP"	Oil Pollution Emergency Plan
"OPEP regime"	the proposed regime set out in section 5 of this consultation document
"OPOL"	Offshore Pollution Liability Association

"OSC"	Offshore Safety Case
"Polluter Pays regime"	The proposed regime set out in section 7 of this consultation document
"Production Installation / Field OPEP"	an OPEP detailing the Production Installation(s) response arrangements in relation to risks that can be managed from and using the resources available to the Offshore Installation
"Production Installation"	an Offshore Installation used for the offshore extraction of oil and gas from the underground strata of the geographical area covered by an Exploration License or a Production Licence, including offshore processing of oil and gas and its conveyance through connected infrastructure, this includes floating storage units
"Production Licence"	a licence under the Offshore Minerals Ordinance 1994, which authorises the holder to search and bore for and get a mineral or minerals in accordance with its terms
"Regulated Well"	means a well that would be drilled for the purposes or in connection with (i) exploring for petroleum, (ii) establishing the existence of petroleum in a particular locations, (iii) appraising the quantity, characteristics or quality of the petroleum in a particular location, or extracting petroleum
"Relevant Consent"	any application for an authority, dispensation, exemption, licence or permission which the Governor has the power to grant under the Offshore Minerals Ordinance 1994 or which is required under model conditions or other conditions imposed when granting the consent, and which is an application for:- <ul style="list-style-type: none"> • an activity (including exploration for or exploitation of minerals and the abandonment or proposed abandonment of an offshore installation) • a process (including the liquefaction of gas and the refining of petroleum) or • works (including the enlargement or alteration of an offshore installation or the enlargement or alteration of its capacity or capability)
"Relevant Installation"	in relation to the OPEP regime means the following infrastructure within Controlled Waters:- <ol style="list-style-type: none"> (a) every Offshore Installation and its Connected Infrastructure in Offshore Waters (b) every Oil Handling Facility which:- <ol style="list-style-type: none"> (i) is a pipeline or (ii) would be an Offshore Installation were it in Offshore Waters
"Responsible Person"	Entity responsible for complying with an Environmental Case
"SoS"	Secretary of State
"Test Well"	means a Well in relation to which:- <ol style="list-style-type: none"> (a) is being drilled below the surface of the seabed to a depth of no more than 350m

	<p>(b) is being drilled in connection with exploring for petroleum</p> <p>(c) is being drilled to obtain geological information about strata or a drilling operation and</p> <p>(d) the main purpose of drilling is to test of the stability of the seabed</p>
"Well"	includes a borehole
"Well Operation"	<p>the drilling of a Well, including the recommencement of drilling after a Well has been completed, suspended, or abandoned by plugging at the seabed and</p> <p>any operation in relation to a Well during which there may be an accidental release of fluids from that well that could give rise to the risk of a major accident</p>
"Well Operator"	in relation to a Well or proposed Well means the person appointed to conduct the planning and execution of Well Operations