

APPENDIX 2 – LEGISLATION

An overview of the main environmental regulatory requirements applicable to the Athena Field Decommissioning is given below.

The Petroleum Act 1998

The Petroleum Act 1998 provides the basis for granting licences to explore for and produce oil and gas. Production licences grant exclusive rights to the holders to “search and bore for, and get, petroleum” in specific blocks. Ithaca Energy (UK) Ltd (Block Operator) were awarded a traditional Production Licence for Block 14/18b in 2005 as part of the DTI’s (now Department of Energy and Climate Change, DECC) 23rd seaward Licensing Round. Block licences may contain specific seasonal or other conditions on the advice of the JNCC or other advisors. The following block specific issues were identified in the licence for Block 14/18b.

Seasonal concerns				4. Special Conditions (see “Section 2- Block specific issues” above).
Block or sub-block	1. Period of concern for seismic surveys	2. Period of concern for drilling	3. Spawning sites	
14/18	February-June (SEERAD)	July-August (JNCC)	-	-

Under the terms of a Production Licence, licence holders require the authorisation of the Secretary of State prior to conducting activities such as installing equipment or drilling of wells in the licence area. Consent to flare or vent gas is also required from DECC under the terms of the Model Clauses¹ incorporated into Production Licences (see also the Gas Act 1986, as amended).

In the case of submerged structures (i.e. ones which do not break the surface at any point during the tide), an application has been made to the Secretary of State requesting that a safety zone be established centred on the riser base structure. The existing safety zone centred on the production manifold will be retained until fully decommissioned. In general, these exclusion zones are patrolled by support vessels; however safety zones surrounding subsea developments are not always marked with surface buoys. Details of these zones can be found within Admiralty charts, Kingfisher charts and Fish Safe computer systems.

Operators proposing to decommission an installation (as defined by the Petroleum Act), must submit decommissioning programmes including an Environmental Impact Assessment (Environmental Statement) to DECC for approval prior to any works being commenced. Consultation and monitoring is also required. DECC (2010)² guidance indicates a presumption that offshore installations will be re-used, recycled or disposed of on land and that any exceptions to that general rule will be assessed individually in accordance with the provision of OSPAR Decision 98/3 and the IMO Guidelines and Standards for the removal of Offshore Installations and Structures on the Continental Shelf, 1989. In addition, the Energy Act amends Part IV of the Petroleum Act 1998 in relation to decommissioning. The following is taken from the DECC (2010) guidance. In summary, the 2008 Energy Act amends the decommissioning regime by:

- Enabling the Secretary of State to make all the relevant parties liable for the decommissioning of an installation or pipeline and, where a licence covers multiple sub-areas, clarifying which licensees will be liable

¹Current Model Clauses for Seaward Production Licences are found in The Petroleum Licensing (Production) (Seaward Areas) Regulations 2008

² DECC (2010). Guidance Notes: Decommissioning of Offshore Oil and Gas Installations and Pipelines under the Petroleum Act 1998.

- Giving the Secretary of State power to require decommissioning security at any time during the life of an oil or gas field if the risks to the taxpayer are assessed as unacceptable.

More detail is provided in paragraphs 3.22-3.28 of the DECC (2010) decommissioning guidance.

The Offshore Petroleum and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended 2007)

Approvals for Field Decommissioning Programmes are contingent on complying with the requirements of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations, 1999 (as amended in 2007). An Environmental Statement (ES) is mandatory for certain projects including new developments with expected production >500 tonnes of oil/day or 500,000 cubic metres of gas/day and new pipelines >40km in length and 800mm in diameter.

In 2007 these Regulations were amended to include provision for the Public Participation Directive (Directive 2003/35/EC). This Directive implements the 1998 Aarhus Convention for improved public access to environmental information and greater participation in the environmental decision-making process. The 2007 amendment requires that all information that relates to the main effects the project is likely to have on the environment or where information becomes available after the date of application and this information is deemed by the Secretary of State to be of material relevance to his decision, must be made available to the public (Regulation 8 of the amended Regulations). This can result in a new 28 day period of public consultation.

The Radioactive Substances Act 1993

Onshore and offshore storage and disposal of naturally occurring radioactive materials (NORM) is regulated under the Radioactive Substances Act 1993 and operators are required to hold, for each relevant installation, an authorisation to store and dispose of radioactive waste such as low specific activity scale (LSA) which may be deposited in vessels and pipework, or discharged in produced water. The authorisation specifies the route and methods of disposal. Records of disposal are required. The use, storage and disposal of radioactive sources are regulated under the same legislation. A registration certificate is required to keep and use sources and records must be kept.

The regulators are: in Scotland, the Scottish Environment Protection Agency; in England and Wales, the Environment Agency and in Northern Ireland, the Industrial Pollution & Radiochemical Inspectorate (DoENI).

The Offshore Petroleum Activities (Conservation of Habitats) Regulations, 2001 (as amended 2007)

These regulations implement European Directives for the protection of habitats and species namely, Council Directive 92/43 on the conservation of natural habitats and of wild fauna and flora and Council Directive 79/409 on the conservation of wild birds in relation to oil and gas activities carried out in whole or in part on the UKCS. DECC's Oil and Gas Directorate is the Competent Authority. The Secretary of State will, where he considers that an activity completed under project consent may have a significant effect on a Special Area of Conservation (SAC) or Special Protection Area (SPA), conduct an Appropriate Assessment (AA) prior to granting the consent. The regulations also require a consent in writing (in the form of a PON14 supported by an Environmental Narrative unless it has been included in an ES) from DECC prior to conducting geological surveys – this includes seismic surveys (including VSP), rig site surveys and pipeline route surveys.

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations, 2007

These Regulations make provision for implementing Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora in relation to marine areas where the United Kingdom has jurisdiction beyond its territorial sea.

The new Regulations revise the definition of disturbance of European Protected Species (EPS), species which are listed on the Annex IV of the Habitats Directive and which include the Atlantic sturgeon (*Acipenser sturio*) and all species of cetaceans and turtles occurring in European waters.

Some oil and gas related activities can potentially affect cetaceans, particularly those that generate sound and physical obstruction. An assessment has to be carried out, by the developer or person carrying out the activity, to determine the likelihood of committing a disturbance offence as a result of carrying out that activity. In order to assess the risk, the characteristics of the proposed activity and the associated potential disturbance factors need to be taken into account, in addition to species related information.

The Joint Nature Conservation Committee (JNCC) has developed guidance to aid developers to assess both their potential of committing a disturbance offence, and whether or not a wildlife disturbance licence should be applied for.

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005

The Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations update and supersede the exemption provisions to allow the lawful discharge of operational discharges under the Prevention of Oil Pollution Act 1971 (POPA). Three fundamental differences exist: the definition of oil as found in the Prevention of Pollution Act 1971, has been updated (to mean '*any description including any liquid hydrocarbon, or substitute liquid hydrocarbon, whether obtained from plants or animals, or mineral deposits or by synthesis*'); a system of permits for oil discharges is introduced to replace the previous exemptions; and more wide-ranging powers have been given to inspectors. Operators are required to regularly make reports of actual oil discharge in order that adequate monitoring can be achieved. Inspectors will have more power to investigate permitted oil discharges and to prosecute unlawful discharges. Existing exemptions for production facilities, issued under the Prevention of Oil Pollution Act 1971 will remain in force until they expire or are replaced by permits issued under the new regulations. Discharges of reservoir oil associated with production or drilling must be covered by a Term Permit. Application for a permit is made to the Secretary of State. The regulations are a mechanism to continue implementation on the UKCS of OSPAR Recommendation 2001/1 and made provision for the introduction of the dispersed oil in produced water trading scheme (cancelled in 2008).

The Food and Environment Protection Act 1985 (as amended) and the Deposits in the Sea Exemptions Order 1985

The Food and Environment Protection Act (FEPA) 1985 (as amended) is the mechanism through which deposits in the sea are regulated. A licence is required under FEPA Part II for all deposits in the marine environment (on or under the seabed) unless specifically exempt from the requirement, including the deposit of rock on the seabed following pipeline installation. The Deposits in the Sea Exemptions Order 1985 exempts non-oil operational discharges, including chemicals, drilling cuttings and muds, associated with the exploration and production of oil and gas from the licensing requirements of the Act. Disposal of other materials by injection i.e. sewage and domestic waste, is not permitted. The injection of chemicals and/or drilling fluids requires a chemical permit (OCR

2002). On-site injection is covered by Section 15 of the schedule to the deposits in the Sea Order 1985 whilst off-site injection requires a license under FEPA Part II Deposits in the Sea (as amended). LSA (Low Specific Activity) and NORM (Naturally Occurring Radioactive Material), scales and sludges may be deposited through injection or discharged to the sea if injection is not practicable (the UK Strategy for Radioactive Discharges, DECC 2009). Such substances may also require to be authorised under the Radioactive Substances Act.

A Pipeline³ Works Authorisation is required from DECC under Part 3 of the Petroleum Act 1998 for the construction and/or use of a submarine pipeline in territorial waters and on the continental shelf. Additional consent that was previously required under the Coast Protection Act (CPA) 1949 Part II has been repealed under the Marine and Coastal Access Act (MCAA) 2009, i.e. the carrying out of activities which, “causes, or is likely to result in, obstruction or danger to navigation (whether while the operation is being carried out or subsequently)”. The Act inserts similar provisions of Part II of the CPA into a new Part 4A, “Works Detrimental to Navigation”, in the Energy Act 2008. This is applicable to activities not licensable under Part 4 of the MCAA, which includes certain oil and gas activities (see section 77 of the MCAA).

The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (as amended)

These Regulations give effect to Annex I of MARPOL 73/78 (prevention of oil pollution) in UK waters. They address oily drainage from machinery spaces on vessels and installations. The North Sea is designated a “Special Area”, within which the limit for oil in discharged water from these sources is 15ppm. For mobile drilling units, discharges of processed bilge water from machinery spaces should only be undertaken when there is a positive water movement past the rig, i.e. at times of the day when the tidal flow is at its greatest, and provided there is no visible sheen. Vessels and installations are required to hold a valid UKOPP (UK Oil Pollution Prevention) or IOPP (International Oil Pollution Prevention) Certificate. Vessels and drilling rigs are also required to hold a current, approved Shipboard Oil Pollution Emergency Plan (SOPEP) which is in accordance with guidelines issued by the Marine Environment Protection Committee of the International Maritime Organisation.

The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 (amended 2001)

The Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention (OPRC)) Regulations 1998 require all existing offshore installations and oil handling facilities (e.g. pipelines) to have an “approved” oil spill contingency plan (OSCP). The MCA (Maritime and Coastguard Agency) are responsible for the control and approval of contingency plans. Oil spill plans must be submitted for approval at least two months in advance of commencement of operations. The regulations apply to installations and to mobile drilling rigs while engaged in drilling operations on the UKCS. DECC is the regulator for this legislation and has issued guidance on the regulations. Oil Spill Contingency Plans are required to follow a defined format and include spill risk assessment, response arrangements and details of actions, interfaces, training and exercises as required by the Regulations. (Note: Operators are required to report all oil spills as soon as possible, regardless of size to the Coastguard, DECC and other relevant authorities according to the instructions and format included with Petroleum Operations Notice 1 (PON 1).

³ Pipeline defined in the Petroleum Act 1998, and modified in the Energy Act 2008 as, “a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with all apparatus, works and services associated with the operation of such a pipe or system”.

The Offshore Installations (Emergency Pollution Control) Regulations 2002

The Offshore Installations (Emergency Pollution Control) Regulations, 2002 implement the recommendations from Lord Donaldson's 1999 review insofar as they relate to the oil and gas industry. The Regulations give the Government powers to intervene in the event of an incident involving an offshore installation where there is, or may be a risk of, significant pollution, or where an operator is failing or has failed to implement effective control and preventative operations.

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008

The Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 implements the revised Annex IV of MARPOL 73/78 (Regulations for the Prevention of Pollution by Sewage from Ships) and Annex V of MARPOL 73/78 (Regulations for the Prevention of Pollution by Garbage from Ships). These regulations apply to all fixed and floating offshore installations (including rigs) and their support vessels operating on the UKCS. Annex IV of MARPOL 73/78 (not previously implemented in UK legislation) is an optional annex and contains requirements to control pollution of the sea by sewage. The annex applies to ships engaged in international travel that are of 400 gross tonnage and above or below 400 gross tonnage and certified to carry more than 15 persons. Schedule 2 of the Merchant Shipping Notice 1807 provides recommendations on standards for the rate of discharge of untreated sewage from ships, permissible outside of 12nm from land.

Annex V of MARPOL, implemented in the above regulations and those previously implemented in 1998, are applicable to every ship of 400 gross tonnage and above and any ship with more than 15 passengers, which must have a Garbage Management Plan in accordance with IMO guidelines and those set out in Schedule 3 of Merchant Shipping Notice 1807. A Garbage Record Book or equivalent must also be kept by all ships (within the thresholds set out already) engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties to Annex V of MARPOL. This requirement also applies to Fixed and Floating platforms, FSUs and FPSOs.

The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

These regulations implement the 1997 Protocol for the establishment of International Regulations for the Prevention of Air Pollution from Ships which resulted in the addition of Annex VI (with revisions adopted in October 2008) to MARPOL 73/78. Annex VI comprises 19 Regulations and includes a Technical Code on the Control of Emissions of Nitrogen Oxides from Marine Diesel Engines (NO_x Technical Code). These regulations are applicable to relevant ships (over 400 gross tonnage) and fixed and floating platforms and drilling rigs. Platforms are subject to the survey and certification requirements of Annex VI, the scope of which is set out in Schedule 8 of Merchant Shipping Notice 1819.

The Environmental Protection Act 1990

The Environmental Protection Act 1990 and associated regulations introduced a "Duty of Care" for all controlled wastes. Waste producers are required to ensure that wastes are identified, described and labelled accurately, kept securely and safely during storage, transferred only to authorised persons and that records of transfers (waste transfer notes) are maintained for a minimum of two years. Carriers and waste handling sites require licensing. Although the Act does not apply to offshore installations, it requires operators to ensure that offshore waste is handled and disposed onshore in accordance with the Duty of Care introduced by the Act.

Special Waste Regulations 1996 (as amended)

The Special Waste Amendment (Scotland) Regulations 2004

The Special Waste Regulations 1996 make provision for handling special waste and for implementing Council Directive 91/689/EEC on hazardous waste. The Special Waste Amendment (Scotland) Regulations, 2004 amend the Special Waste Regulations with respect to Scotland. They implement the revised European hazardous waste list, (incorporated into the European Waste Catalogue). They introduced a new consignment note, segregation, packaging and labelling requirements.

OSPAR Decision 2000/3 on the Use of Organic-Phase Drilling Fluids (OPF) and the Discharge of OPF-Contaminated Cuttings

OSPAR Decision 2000/3 has been in force since 16 January 2001 and applies to the use and discharge of all organic phase drilling fluids which include both oil based and synthetic based drilling fluids. No such fluids may be used without prior authorisation (normally through the PON 15/Environmental Statement process), and discharge of cuttings to sea with a concentration >1% by weight of oil based fluids on dry cuttings is prohibited. The discharge to sea of cuttings contaminated with synthetic fluids will only be authorised in exceptional circumstances.

The Offshore Chemicals Regulations 2002

The Offshore Chemicals Regulations 2002 implement the OSPAR Decision (2000/2) and Recommendations (2000/4 and 2000/5) introducing a Harmonised Mandatory Control System for the use and reduction of the discharge of offshore chemicals. The regulations have introduced a permit system for the use and discharge of chemicals offshore and include a requirement for site specific risk assessment. Chemicals used offshore must be notified through the Offshore Chemical Notification Scheme (OCNS) and chemicals are ranked by hazard quotient, using the CHARM model. Applications for permits are made via the submission of the relevant PON15.

REACH (Reach Enforcement Regulations 2008)

REACH is an EU Regulation (EC 1907/2006) which entered into force in June 2007 and deals with the **Registration, Evaluation, Authorisation and Restriction of Chemical Substances**. This introduces new registration requirement covering all substances supplied above 1 tonne per year and new authorization requirement covering substances of high concern. It transfers the responsibility for gathering data and carrying out initial risk assessments to the industry. Although most of the provisions of REACH cover manufacturers and importers of chemicals, downstream users (e.g. oil and gas operators) are obliged to implement risk reduction measures recommended by their chemical suppliers and under certain circumstances they may be obliged to conduct a risk assessment covering their particular use(s) of a chemical.

The REACH Enforcement Regulations 2008 enforce the EU REACH Regulations in the UK, including on all offshore installations (not including ships) in UK territorial waters and Continental Shelf. By June 2010 REACH restrictions on certain chemicals will come into force