

Falklands Oil¹

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Introduction

The disagreement between the governments of Argentina and the United Kingdom concerning the Falkland Islands (Islas Malvinas) has been discussed in these pages (e.g. by Armstrong and Forbes, *BSB*, April 1993: 73-80) and extensively elsewhere. Although the 1982 conflict, occasioned by the Argentinean invasion of the islands, resulted in extremely strained relations between the two nations for several years, a series of meetings between representatives of the two countries has brought about a measure of agreement over peripheral matters such as the conservation of fisheries in waters adjacent to the islands and southern Argentina, and air-sea rescue in the southern Atlantic region.

The warming of the extremely cool diplomatic waters surrounding the Falklands was further accelerated by a visit of Douglas Hurd, British Foreign Secretary to Buenos Aires in early 1993: this was the first visit of a UK cabinet minister to Argentina since the 1982 conflict. Subsequently Domingo Cavallo (Argentine Economy Minister), and Guido Di Tella (Foreign Minister), have visited London.

Another recent development, has been the very rapidly paced establishment of an effective legal regime for the prospecting for, and ultimate exploitation of, the hydrocarbon resources of the continental shelf surrounding the islands, and a good deal of preliminary geophysical prospecting has now been completed.

The stakes are extremely high; the area of suitable sedimentary formations in the region of continental shelf to which the Falkland Islanders lay claim is 50% larger than the analogous area of the North Sea. Some estimates have it that "*billions of pounds worth*" of oil may be involved. One estimate, now several years old and based on no real scientific basis (although some seismic survey work was done by an American company in 1978) was that sedimentary basins surrounding the islands might contain reserves of 200 billion barrels of oil, several times those of the North Sea. No drilling has yet been undertaken. Obviously prospecting, and eventually terminal and pipeline development, could

be expected to bring substantial economic benefits to barren southern Argentina, as well as the Falklands, wherever oil is actually found. If oil or gas were to be found in the straits between the Falkland Islands and the mainland of South America, it would make sense to pipe it ashore to Argentina: the sea-bed is gently shelving, South America is an obvious market, and there are environmental arguments for keeping the level of actual construction development in the islands relatively modest. The incentives to both countries for a sufficient rapprochement to enable exploration and development to proceed harmoniously are considerable.

Legal developments

1. The Management of Fisheries

Following a period during which the management of the resources of the islands was largely neglected, immediately after the 1982 conflict, the British Government commissioned Lord Shackleton to prepare *The Falklands Islands Economic Study*. In view of the substantial overfishing, by vessels from many countries, that then occurred in the waters adjacent to the Falkland Islands, this report recommended:

"that in order to secure the future economic benefits from the offshore fisheries of the Falklands, the United Kingdom should adopt for the Falklands the regime now accepted as normal world-wide, namely a fisheries limit of 200 miles. This would incidentally remove the anomaly that Argentina already claims control over waters extending 200 miles from the Falklands, but Britain does not; it would also remove one deterrent to commercial development."

After lengthy deliberation on this matter, in the UK Parliament and elsewhere, on 29 October 1986, the Governor of the Falkland Islands issued a Proclamation (No. 4 of 1986), which is worth quoting at some length:

"Whereas the Falkland Islands are entitled under international law to a fishery limit of

200 nautical miles from the baselines from which the breadth of the territorial sea is measured subject to the boundary with a neighbouring state prescribed by the rules of international law concerning the delimitation of maritime jurisdiction,

And Whereas there is a need to conserve the living resources and to regulate on an interim basis, fishing in the seas around the Falkland Islands,

Now Therefore I, Gordon Wesley Jewkes, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim as follows:

1. There is established for the Falkland Islands an interim fishery conservation and management zone, hereinafter referred to as "the zone".

2. The zone has as its inner boundary the outer limits of the territorial sea of the Falkland Islands and has as its seaward boundary the line formed by the circumference of a circle which has a radius of 150 nautical miles and its centre at Latitude 51°40'S, Longitude 59°30'W, except that between those points on that circumference situated at Latitude 52°30'S, Longitude 63°19.25'W and Latitude 54°08.68'S, Longitude 60°00'W the seaward boundary shall be a rhumb line."

The United Kingdom Government thus affirmed the right to assume a fishing zone of 200 nautical miles, but as an "interim" measure only established the fishery conservation and management zone out to 150 miles, perhaps partly because its immediate predecessor was a "naval protection zone", aimed at excluding Argentine ships and aircraft from Falklands waters following the 1982 conflict. The 'slice' out of the zone to the south-west is presumably an acknowledgement of Argentine rights to an Exclusive Economic Zone; the rhumb line defined in the proclamation is approximately equidistant between West Falkland and the south-eastern corner of Tierra del Fuego. Subsequent sections of the Proclamation reserved the right to extend the outer margin of the zone (section 3), and to manage and conserve the living resources of the zone in the same manner as in the territorial waters of the Islands (section 4).

In the same year, the Falkland Islands *Fisheries (Conservation and Management) Ordinance*, 1986

was passed, establishing procedures for the calculation of tonnages to be taken of various species, and for application for licences, etc. In the years that followed, fishing vessels of several nations (Japan, Poland and South Korea among them) were licensed to fish in the zone, particularly for squid, and factory ships were a familiar sight offshore of Berkeley Sound, East Falkland. Licence fees subsequently brought in several million pounds per annum, growing year by year. In 1992 licences for squid yielded £20.6 million, out of a total Falkland Islands Government revenue of £44 million.

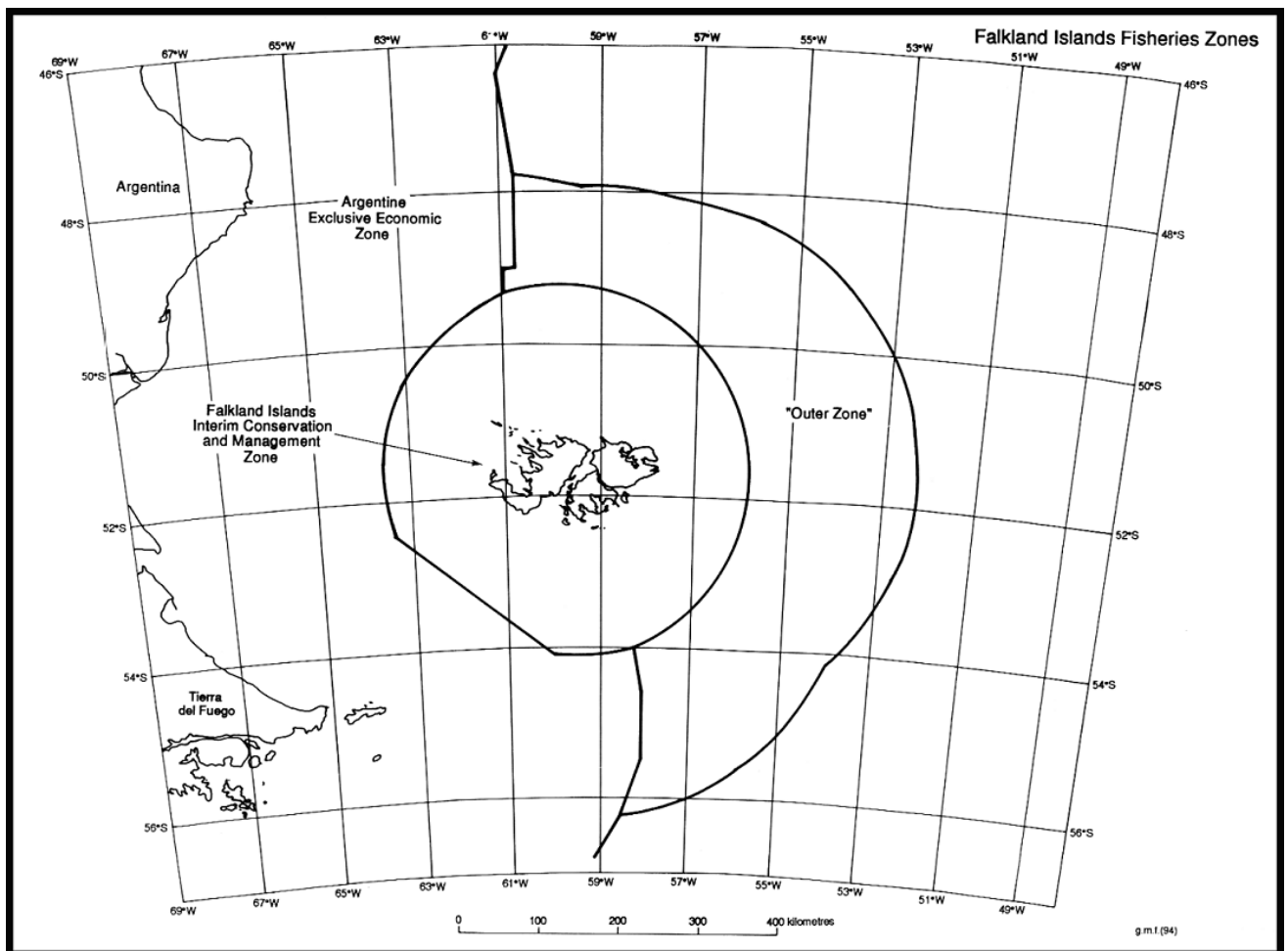
Following talks between the UK and Argentina, concluded on 28 November 1990, it was agreed that the UK and Argentina would cooperate over the conservation of fisheries in the South Atlantic between 45° and 60°S. Accordingly in a Proclamation dated 20 December 1990 (No. 2 of 1990) the Acting Governor of the Islands established an "outer zone" as proclaimed, a crescent shaped area enclosing the inner zone on the latter's western side, extending the conserved area to a limit of 200 nautical miles in that direction (see Figure 1).

A complex set of coordinates in a schedule to the Proclamation establishes the precise boundaries between the 'horns' of this outer zone and the adjoining Argentine Exclusive Economic Zone. Thenceforth management, conservation and fishing licence procedures applied to both the outer zone and the inner conservation zone. On the whole the policies have been successful, although in 1993 some friction developed with Argentina, as the Argentine authorities in that year issued a larger number of licences than usual to foreign fishing vessels operating in their waters, jeopardising, in the Falkland Islanders' view, the viability of squid stocks, which 'straddle' the boundary.

2. The Continental Shelf

The development of the fisheries conservation and management zone policy of the Falkland Islands has been discussed in some detail, as the regions of the outer and inner zones considered together formed the regions of the Falkland Islands offshore area to which the United Kingdom claimed rights in the continental shelf. In Proclamation No. 1 of 1991 the Governor of the Islands proclaimed:

Figure 1: Falkland Islands Fisheries Zones



"1. Any rights exercisable over the seabed and subsoil of the continental shelf, including the natural resources thereof, beyond and adjacent to the territorial sea around the Falkland Islands are hereby vested in Her Majesty."

In section 2 of the Proclamation the area within the rights mentioned in section 1 are exercisable and defined as comprising:

- "(a) the area defined in section 2 of Proclamation No. 4 of 1986;*
- (b) the area defined in section 2 and the schedule to Proclamation No. 2 of 1990; and*
- (c) any such area designated by a further Proclamation as an area within which any such rights are exercisable.*

All such areas are hereafter referred to as designated areas."

In other words, for the time-being at least, the limits of the continental shelf are claimed to coincide exactly with the total area over which fisheries jurisdiction is asserted.

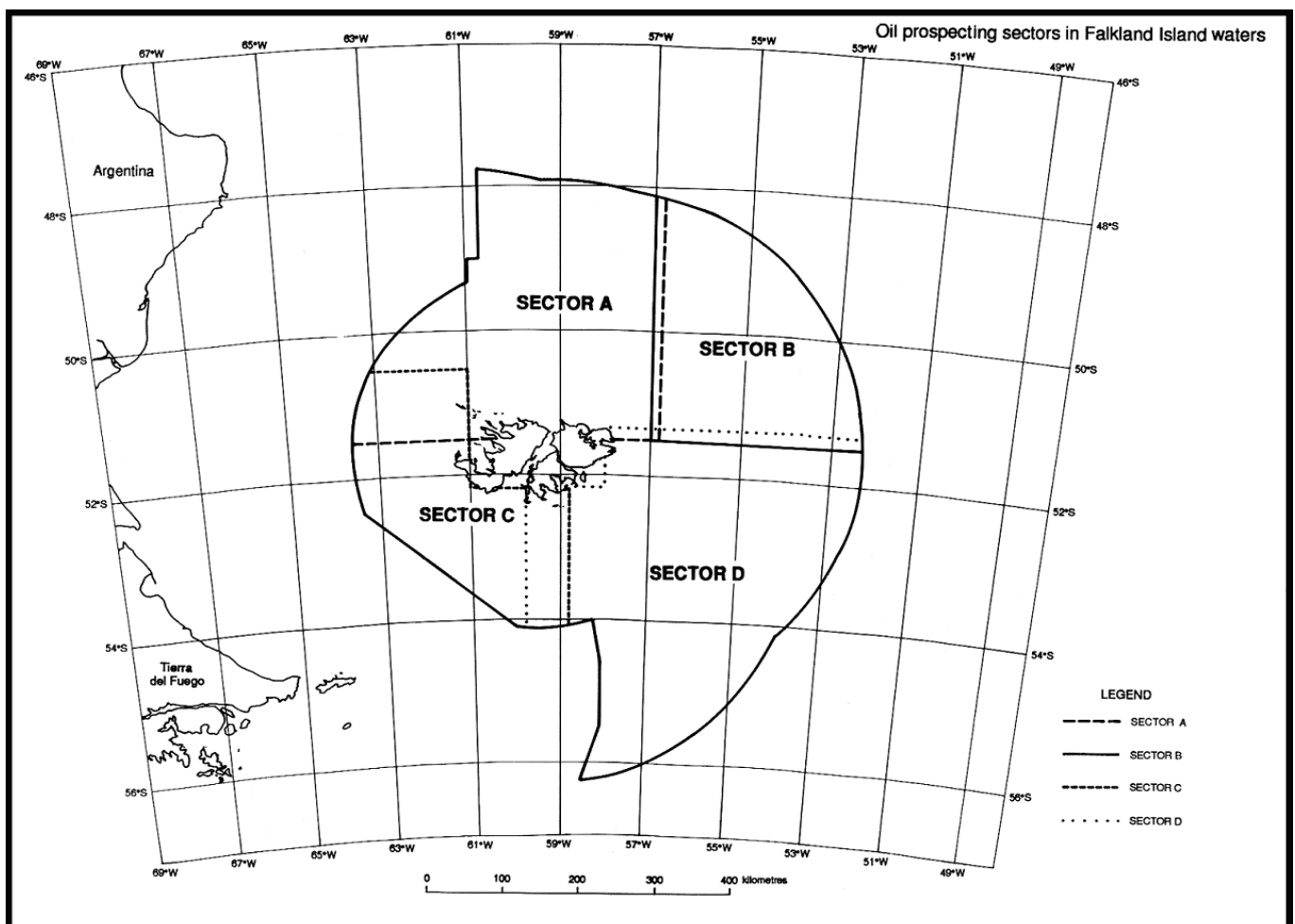
On the same day that this Proclamation was issued by the Governor (22 November 1991), the Legislature of the Colony of the Falkland Islands, passed the *Continental Shelf Ordinance, 1991*. Section 3 of this ordinance prohibits any person or body corporate from exploring for any mineral in the designated area, or removing any mineral from the area. The term "explore" is carefully defined in the ordinance to include all forms of geological and geophysical prospecting and the removal of any sample. Heavy penalties are prescribed for infringements. Section 4 sets down procedures for the granting of licences.

3. The Issue of Survey Licences

The Falkland Islands Government appointed the British Geological Survey as consultants in the matter of the issue of licences for petroleum survey (the Falklands project was coordinated through an office in Edinburgh), and in the first part of 1992 invited bids for licences from companies known to be interested in geophysical surveying. Obviously the number or character of the bids received in some way fell short of what was hoped for, as on 22 September 1992 a public invitation was issued seeking applications for licences: an extraordinary issue of the *Falkland Islands Gazette* (vol CI, No 17) gave in full the Notice (No 41) inviting "*fresh applications from persons wishing to conduct speculative seismic and gravity-magnetic surveys in the Falklands Designated Area*". Companies that had expressed interest earlier in 1992 were "*in no way disqualified from applying pursuant to the*

public invitation". Interested companies were invited to send for an "information pack" explaining the procedure for applying for licences, and copies of the appropriate Falklands Islands Ordinances, Proclamations and other documents. The pace at which matters were proceeding can be judged from the fact that applications, accompanied by an application fee of £1,000, had to be submitted no later than 1500 hrs GMT on 16 October 1992 (i.e. 24 days after the publication of the announcement that applications were sought). Successful companies were to be notified by the end of November, with a view to survey work being carried out in the southern hemisphere summer of 1992-93. Despite, or perhaps because of, this phrenetic pace, the terms of the licences, contained in the *Continental Shelf Petroleum Survey Licences (Model Clauses) Regulations, 1992*, did not appear

Figure 2: Oil Prospecting Sectors in Falkland Island Waters



until 27 October 1992! The Designated Area was divided into four overlapping sectors (presumably so that the survey information from one sector could be easily married to that of an adjacent one) and applications were sought from companies for one or more of these sectors (see Figure 2).

The exact procedures whereby a selection was made remain confidential, but in 1992-93 two British exploration companies appear to have eventually undertaken the research: Spectrum Energy and Geko-Prakla, a British subsidiary of an American oil concern. There is some evidence that major firms shied away from the work, feeling that it might cause difficulties with their operations in Argentina. Offshore work continued through a good deal of 1993, and computer analysis of the data was only completed in late November 1993. It seems that the results were strongly positive, with newspaper reports estimating the potential oil-bearing area at anything from 25% to 50% larger than that of the North Sea. Surveying was to continue in 1994, but it seems that international oil companies are shortly to be given the opportunity to apply for drilling licences. One estimate has it that drilling may start as early as 1997.

Environmental and Political Concerns

The British Government has indicated a readiness to allow Argentine companies to take part in the development of oilfields in Falklands' waters "provided", as one source is reported to have put it, "they acknowledge that any oil extracted belongs to Britain". Such posturing may be a negotiating ploy, but southern Argentina is certainly a logical site for some support operations. Argentina has certainly sought a role in the development of oil and gas reserves, but, at this stage is unlikely to agree to anything that imply recognition of Britain's sovereignty over the islands. Also in 1993 British Gas stated it had had discussions with YPF, Argentina's nationalised oil concern. Clearly some rapprochement with Argentina is necessary before development can proceed very far. There are some islanders who see a down side to this, however, arguing that the necessity for improving relations with Argentina will give that country immensely strong leverage in the negotiations.

Meanwhile other aspects of long-term planning are proceeding apace. With the assistance of economists at Aberdeen University a draft plan for taxing oil revenues is being prepared, and on the basis of comparisons with the Shetlands, estimates are being prepared of the social and economic

impacts. Five species of penguins breed in the Falkland Islands and other very large seabird colonies include those of the black-browed albatross. There are also a number of seal colonies (numbers of seals are still recovering from destruction earlier this century), and offshore are several species of cetaceans. Recent difficulties over oil spills off the coast of the Shetlands have also drawn attention to the need for environmental planning. The Falkland Islanders wish to conserve, as far as possible, the unique beauty of their islands, and their distinctive way of life, and here too they are looking to the Shetlands as a model; they see there an environment and society in some respects similar, which has responded reasonably successfully to challenges similar to those that they anticipate over the next decade.

1 I thank Lt Commander C. M. Carleton (Territorial Waters Officer, UK), Viv Forbes (University of Western Australia), and Jim McAdam (The Queen's University, Belfast) for providing information or other assistance. Besides official sources, information has been culled from a number of newspapers including the *Telegraph*, *Sunday Telegraph*, *Falkland Islands Newsletter* and *Financial Times*. Guy Foster drew the maps.

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