

Wilderness Society Submission in response to consultation paper: “Clarifying consultation requirements for offshore oil and gas storage regulatory approvals”

8 March 2024

About the Wilderness Society

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. The Wilderness Society has a long-standing organisational interest in the conservation of coastlines and oceans. As an organisation, we are powered by more than 150,000 supporters from all walks of life who share our commitment to giving nature a voice to support the life that supports us all.

Executive Summary

The Wilderness Society welcomes the opportunity to input into this review: Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals.

Communities who are likely to be affected by or have an interest in an environmental decision have the right to be genuinely consulted. When this right is recognised, there are better outcomes for people and nature.

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Our submission brings together our expertise on international standards of consultation and our direct experience engaging in offshore consultation processes over almost 10 years.

In summary, our key analysis and associated recommendations are:

- 1. A key deficiency of the current regulatory regime is that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is not currently required to consider the substantive matters raised during consultation.**

***Recommendation 1:** The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Cth) (OPGGS Environment Regulations) be amended to require NOPSEMA take into account all information provided during relevant persons consultation (and public comments provided during public comment processes) in making decisions under the legislation.*

***Recommendation 2:** The OPGGS Environment Regulations be amended to require that where NOPSEMA determines a proponent has failed to genuinely consider and address matters raised by a relevant person during consultation on an environment plan, NOPSEMA cannot accept the environment plan.*

- 2. A second key deficiency of the current regulatory regime is that NOPSEMA is not currently required to provide oversight to ensure genuine consultation occurs.**

***Recommendation 3:** The regulatory scheme be amended to grant NOPSEMA the power to oversee a titleholder's conduct throughout the consultation process, including by enabling NOPSEMA to give directions to proponents as to the manner in which consultation is to occur.*

***Recommendation 4:** The OPGGS Environment Regulations be amended to require that where NOPSEMA determines a proponent has failed to conduct genuine consultation with a relevant person in relation to an environment plan (in line with the components described in sections 4 and 5, below), NOPSEMA cannot accept the environment plan.*

3. A strength of the current regime is that it conceives of relevant persons in a way that aligns with international standards.

Recommendation 5: *The scope of who may be considered a relevant person under the OPGGS Environment Regulations must not be narrowed. First Nations Peoples with connection or responsibility for land and sea Country must be recognised as a relevant person. It must be the responsibility of the proponent and/or the regulator to identify who is a relevant person and invite their participation. It is not and cannot be the responsibility of local communities, First Nations Peoples or environmental organisations to constantly scan technical and inaccessible data sources to ascertain where they may be a relevant person and be required to insert themselves into consultation processes. The regulator must be able to direct a proponent to consult a relevant person if necessary.*

4. The Wilderness Society's experience as a relevant person has highlighted many issues in relation to processes for consultation, resourcing, access to information and timing.

Recommendation 6: *The OPGGS Environment Regulations be amended to clarify that consultations must be undertaken in a way that meets the needs of each relevant person, and to enable informed assessments of proposed activities on functions, interests and objectives.*

Recommendation 7: *The OPGGS Environment Regulations be amended to ensure relevant persons, especially First Nations people, are properly resourced to participate in the consultation process, including through remuneration for time and expertise, and resources for obtaining necessary technical support.*

Recommendation 8: *NOPSEMA should deliver ongoing training and provide ongoing guidance to support relevant persons to participate in consultation processes.*

Recommendation 9: *The OPGGS Environment Regulations be amended to clarify that relevant persons, and the public, can access comprehensive, comprehensible and accessible information related to planned offshore oil and gas activities. The proponent must provide this information to meet the needs of the relevant person,*

whatever they may be. In many cases, this will involve multiple opportunities to consider information provided and request clarifications or further information.

Recommendation 10: Consultation requirements that are pre-conditions for project approval should not be deemed to be satisfied under the OPGGS Environment Regulations until a proponent can accurately and completely communicate all key concerns of a relevant person to the regulator, so that the regulator is able to then fully consider the concerns raised. If the regulator can see deficiencies in terms of consultation process, resourcing, information or time, the regulator should not consider the pre-approval consultation requirements satisfied and should not make a decision to accept an environment plan.

- 5. All consultations with relevant persons who are First Nations Peoples must comply with First Nations cultural and self-determination rights, including the principle of free, prior and informed consent (FPIC).**

Recommendation 11: The regulatory scheme be amended to embed the principles of FPIC in all consultation requirements as they relate to First Nations Peoples.

- 6. The current regime allows for access to review, which must be maintained.**

Recommendation 12: Access to legal challenge by any relevant person must not be curtailed.

The final section of our submission outlines concerns we have about this review in the context of government climate commitments and other government activity currently being activity.

Introduction

The Wilderness Society welcomes the opportunity to input into this review, entitled “Clarifying consultation requirements for offshore petroleum and greenhouse gas storage regulatory approvals.” The Wilderness Society has almost 10 years direct experience engaging with offshore oil and gas companies and NOPSEMA in relation to proposed offshore fossil fuel activities.

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The Wilderness Society makes this submission with the understanding that the Australian Government is seeking to *clarify* and *improve* relevant persons consultation under the *Offshore Petroleum Greenhouse Gas Storage Act 2006* (OPGGs Act) and the OPGGS Environment Regulations.

We are providing input into this review with the expectation that it will lead to better consultation on proposed offshore oil and gas activities, which necessarily involves enshrining community rights in environmental decision-making, and the cultural and self-determination rights of First Nations Peoples.¹ It is vital that this review does not result in a weakening of consultation requirements.

The paper provided to support this review poses a range of specific questions. While our commentary on key consultation issues below doesn't answer the questions directly, it addresses the broad themes of many of the questions. We expect that our input, drawing on key principles of meaningful consultation, as well as our direct experience as a relevant person, is valuable to this review.

In addition, the Wilderness Society believes there are some fundamental shortcomings in the current role and responsibilities of NOPSEMA in relation to consultation processes and outcomes, that need to be considered within this review. Our commentary below outlines these issues and makes recommendations to strengthen and clarify the regulator's role.

Recommendations to clarify and improve consultation under the OPGGS Act

1. NOPSEMA's regulatory role must be strengthened to mandate consideration of matters raised during consultation

¹ Principle 10 of the Rio Declaration on Environment and Development sets out three fundamental community rights in environmental decision-making: the right to access information, participate in decision-making and seek review of decisions. The cultural and self-determination rights of First Nations Peoples are set out in the United Nations Declaration on the Rights of Indigenous Peoples. Australia is a signatory of both declarations.

A key principle of meaningful consultation is that the decision-making body representing the state should also have responsibility for ensuring that due consideration is given to the comments of the public during consultation.² It is not sufficient for the obligation to take due account of public participation to be placed only on the proponent.³

This principle reflects the fact that a significant component of meaningful public participation occurs when a decision-maker engages with public feedback, weighs it in their decision, and transparently explains the decision to the public. “Taking due account” of consultation should be understood as, at a minimum, the decision-maker’s duty to respond to the substantive concerns and arguments put forward in the comments.⁴

It is a major deficiency of the current consultation arrangements under the OPGGS Environment Regulations that NOPSEMA itself is not required to consider the community’s feedback, nor how the proponent has considered and responded to comments raised during consultation, in its decision-making about whether to accept an environment plan. Instead, the OPGGS Environment Regulation section 24(g) only requires NOPSEMA to consider whether consultation occurred, and whether measures adopted as a result are appropriate. This is a far lower bar of regulatory responsibility and is inconsistent with internationally established principles of meaningful consultation.

In practice, the Wilderness Society’s experience is that without the regulator being mandated to consider the substantive issues we raise, proponents frequently go through the process of consultation but rarely engage genuinely. Proponents do not modify their activities in response to the issues we raise because they know they will not be scrutinised by NOPSEMA. It is the Wilderness Society’s position that if there is no realistic possibility for the community’s feedback influencing project design and decisions, then any consultation is, and will be seen as a performative exercise that will ultimately damage public trust in the regulation of offshore oil and gas projects.

² United Nations Environment Programme. (2015). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

³ United Nations Economic Commission for Europe. (2015). *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention*. https://unece.org/sites/default/files/2022-10/1514364_E_web.pdf

⁴ United Nations Environment Programme. (2015). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

NOPSEMA's lack of regulatory responsibility to take due account of matters raised during consultations is a gaping hole in the current consultation and approvals regime that requires urgent reform.

Recommendation 1: *The OPGGS Environment Regulations be amended to require NOPSEMA take into account all information provided during relevant persons consultation (and public comments provided during public comment processes) in making decisions under the legislation.*

Recommendation 2: *The OPGGS Environment Regulations be amended to require that where NOPSEMA determines a proponent has failed to genuinely consider and address matters raised by a relevant person during consultation on an environment plan, NOPSEMA cannot accept the environment plan.*

2. NOPSEMA must provide strong oversight of the consultation process, including a complaints process for relevant persons

Guaranteeing the quality of consultation in regard to environmental decision-making is the responsibility of nation states. This is clearly laid out in guidelines for the development of national legislation on Principle 10 of the Rio Declaration of Environment and Development.⁵ Fulfilling this role requires that states actively encourage proponents to facilitate the meaningful participation of relevant persons.⁶ This is in line with the role of regulators as bodies charged with ensuring compliance with legislative requirements, and responding to instances of non-compliance.

However, as outlined in section 1, it is a deficiency of the current regime that NOPSEMA is only required to validate that some form of consultation occurred, not how genuine it was or whether the proponent actually addresses concerns raised.

The Wilderness Society's experience is that proponents conduct consultation in ways that cause many issues to arise. These issues relate to the identification of relevant persons,

⁵ United Nations Environment Programme Governing Council. (2010). *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*. <https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>

⁶ United Nations Environment Programme. (2015, p.79). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

process, access to information, and timeframes, and are outlined in detail in sections 3 and 4 below. Under the current regime, there is no avenue for resolving issues that arise during consultation. We find ourselves writing to seek assistance from NOPSEMA, only for NOPSEMA to pass our concerns back to the proponent. As we attempt to resolve issues with the proponent prior to contacting NOPSEMA, this isn't helpful.

Clarifying and improving NOPSEMA's role in overseeing consultation is key to ensuring compliance with consultation requirements. This is particularly the case in the current context of proponent-led consultation where trust between proponents and relevant persons is very low as a result of historic and continuing poor practice by proponents.

Recommendation 3: *The regulatory scheme be amended to grant NOPSEMA the power to oversee a titleholder's conduct throughout the consultation process, including by enabling NOPSEMA to give directions to proponents as to the manner in which consultation is to occur.*

Recommendation 4: *The OPGGS Environment Regulations be amended to require that where NOPSEMA determines a proponent has failed to conduct genuine consultation with a relevant person in relation to an environment plan (in line with the components described in sections 4 and 5, below), NOPSEMA cannot accept the environment plan.*

3. Proponents must proactively identify all relevant persons

An established principle of meaningful consultation is that a decision-maker and/or project proponent should take a "proactive approach" to identifying relevant persons.⁷ The concept of a relevant person, or "the public concerned", includes members of the public affected or likely to be affected by, or having an interest in, the environmental decision-making process or outcome. It also includes non-governmental organisations promoting environmental protection.⁸

The scope of the "relevant person" test in the OPGGS regime was clarified by the Full Court of the Federal Court in *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 (the *Tipakalippa* case). This case found that titleholders and NOPSEMA must construe the

⁷ United Nations Environment Programme. (2015, p.79). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

⁸ Ibid, p.76.

phrase “functions, interests or activities” broadly, and the term “interests” should be given a meaning conforming to that generally accepted in other areas of public law. Specifically, the decision clarified that Traditional Owners’ connection with sea Country can be an “interest” for the purpose of the OPGGS Environment Regulations.

It is a strength of the regime that the OPGGS Environment Regulations use a definition of relevant persons consistent with internationally recognised standards in requiring that titleholders consult with, amongst others, “a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan”.⁹

Yet despite this being the regulatory requirement, the Wilderness Society's experience is that proponents have sought to exclude our organisation (and other clearly affected organisations) from being considered a relevant person. This is despite our functions, operations, interests and activities clearly being affected by offshore fossil fuel activities.

As a specific example, in January 2020 the Wilderness Society was forced to resort to legal action to seek to enforce this requirement, when NOPSEMA approved Equinor’s exploration drilling environment plan in the Great Australian Bight after forcefully refusing to conduct relevant persons consultation with environment organisations, First Nations Peoples and local governments affected by the proposed project. At the time, Equinor relied upon a Draft Consultation guideline prepared by industry peak body Australia Energy Producers to defend its exclusion of these clearly relevant persons from consultation, which was erroneously accepted by NOPSEMA.

Subsequent to the *Tipakalippa* case, the Wilderness Society has found proponents more likely to recognise and engage us as a relevant person. While we welcome this improvement, it is disappointing that it came in response to legal action, rather than from efforts by NOPSEMA to ensure proper consultation. We also note that our experience in more actively being identified as a relevant person may not be the case for many local communities, First Nations Peoples and community organisations around Australia.

Recommendation 5: *The scope of who may be considered a relevant person under the OPGGS Environment Regulations must not be narrowed. First Nations Peoples with connection or*

⁹ Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Cth), regulation 25

responsibility for land and sea Country must be recognised as a relevant person. It must be the responsibility of the proponent and/or the regulator to identify who is a relevant person and invite their participation. It is not and cannot be the responsibility of local communities, First Nations people or environmental organisations to constantly scan technical and inaccessible data sources to ascertain where they may be a relevant person and be required to insert themselves into consultation processes. The regulator must be able to direct a proponent to consult a relevant person if necessary.

4. Proponents must consult with relevant persons in a way that meets the needs of that relevant person in terms of processes, resourcing, provision of information and sufficient time

The right to participate in environmental decision-making is a fundamental right established under Principle 10 of the Rio Declaration on Environment and Development. In ensuring access to this right, states should proactively seek public participation “in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.”¹⁰

Process

Relevant persons should be given an adequate opportunity to express their views, through an approach that is tailored to their specific circumstances. Special efforts may be required to include hard-to-reach and marginalised groups. For these reasons, it is not appropriate for regulations to specify a one-size-fits-all model for relevant persons consultation.¹¹ Likewise, the *Tipakalippa* case clarified that under the OPGGS Environment Regulations, consultation must be appropriate and adapted to the nature of the interests of the relevant persons.

The Wilderness Society’s experience is that proponents like to have a set of consultation activities they can tick off. For example, town hall meetings, one-on-one meetings,

¹⁰ United Nations Environment Programme Governing Council. (2010, p.6). *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*.

<https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>

¹¹ United Nations Environment Programme. (2015, p.80). *Putting Rio Principle 10 Into Action: An Implementation Guide*.

<https://wedocs.unep.org/handle/20.500.11822/11201>

provision of documentation and correspondence via email, regardless of whether this provides our organisation with the set of interactions or information we require to make an informed assessment of the proposed activities on our functions, interests and activities, as required under regulation 25(2) of the OPGGS Environment Regulations. The Wilderness Society's experience has been that being forced to engage in ways set by proponents does not provide for genuine consultation.

A better approach would be for proponents from the outset to ask relevant persons how they would like to be consulted, and to develop the process together, to meet the needs of each relevant person.

Recommendation 6: *The OPGGS Environment Regulations be amended to clarify that consultations must be undertaken in a way that meets the needs of each relevant person, and to enable informed assessments of proposed activities on functions, interests and objectives.*

Resourcing

Another critical element of ensuring relevant persons have an adequate opportunity to express their views is that financial issues should not be an impediment for civil society to participate. Public authorities (in this case, the regulator) should deal with financial obstacles to participation, including by providing minimum financial resources needed to ensure fair, equitable and balanced participation.¹²

Fossil fuel companies are large, mostly multinational, profit-making companies, with extensive resources. In contrast, local communities, First Nations Peoples and environment groups put substantial time and effort into consultation and largely do this in a voluntary capacity. This resourcing imbalance needs to be addressed.

Resourcing also refers to more than just funds. Adequately engaging in consultation processes on complex project proposals usually requires a degree of education and support. Over the almost 10 years the Wilderness Society has been participating in consultation processes, we have seen little effort by NOPSEMA to facilitate good consultation through education and guidance to either proponents or relevant persons.

¹² United Nations Environment Programme. (2015, p.80). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

Recommendation 7: The OPGGS Environment Regulations be amended to ensure relevant persons, especially First Nations people, are properly resourced to participate in the consultation process, including through remuneration for time and expertise, and resources for obtaining necessary technical support.

Recommendation 8: NOPSEMA should deliver ongoing training and provide ongoing guidance to support relevant persons to participate in consultation processes.

Information

Under Principle 10 of the Rio Declaration on Environment and Development, access to environmental information is an important right on its own, as well as in the role it plays in facilitating meaningful participation. Relevant persons must be provided access to the information necessary to allow them to participate effectively in consultations. The information should be provided in “locally relevant forms that make it accessible and understandable”. Ideally the information should be provided directly to relevant persons, as well as through platforms such as websites and other appropriate media.¹³ The regulator should be prepared to give relevant persons additional assistance and explanations, where appropriate.¹⁴

The Wilderness Society has experienced a myriad of challenges in obtaining the information we require to assess if and how planned activities affect our functions, operations, interests or activities. These challenges include:

- Requests for information being completely ignored by proponents
- Being provided with the bare minimum of information and having to go back and forth multiple times attempting to extract further information, and at times still not being provided with the information necessary for us participate effectively
- Being provided with thousands of pages of information such that it is difficult to find the relevant information
- Meetings where a proponent presents information that is already publicly available, with no or limited opportunity to ask questions or seek clarifications

¹³ United Nations Environment Programme. (2015, p.77). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

¹⁴ Ibid, p.77.

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- Information being provided in such a technical language as to be indecipherable
- Being told we cannot have pivotal information because it is commercial in confidence, when in fact it was not and should have been provided. As an example, this was the case with oil spill modelling when we engaged with Equinor.
- Being advised information is out of scope for the proposed activity when it is clearly within scope: for example, questions about the suitability of a pipeline for carbon dioxide transport where that is the basis for delaying decommissioning of the pipeline
- Efforts to obtain information being dealt with in an adversarial manner
- Not being provided with information until the last minute
- Being advised that “we are out of time” by a proponent soon after being provided new information and before we have had time to review or discuss with the proponent information or responses that are relevant.

For the Wilderness Society, and likewise for others in civil society, the key requirement is being able to ask for and access any information the company has to enable us to assess the proposed activities. We also benefit from meetings where we are able to ask questions and receive genuine and informative responses.

Recommendation 9: *The OPGGS Environment Regulations be amended to clarify that relevant persons, and the public, can access comprehensive, comprehensible and accessible information related to planned offshore oil and gas activities. The proponent must provide this information to meet the needs of the relevant person, whatever they may be. In many cases, this will involve multiple opportunities to consider information provided and request clarifications or further information.*

Time

Consultation should include reasonable timeframes that allow relevant persons to prepare and participate effectively.¹⁵ This includes sufficient time for the relevant persons

¹⁵ United Nations Environment Programme. (2015, p.75). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>

to become acquainted with relevant documentation, and to seek additional information, so as to facilitate informed participation.¹⁶

The notion of a “reasonable timeframe” should be based on the perspective of relevant persons. It should take into account relevant factors, including the complexity and potential environmental impacts of the proposed activity, the cultural context in which the project is located and being consulted on, as well as the amount of documentation relevant persons must digest in order to be sufficiently informed.¹⁷

Offshore oil and gas projects are scoped, planned and developed over many years. The current regulations require that the titleholder must allow a relevant person a reasonable period for the consultation.¹⁸

Despite this, the Wilderness society often experiences time pressure to participate in consultation within time windows that suit proponents and are insufficient for us to assess the planned activities. We’ve also had the experience of being told consultation is complete, with the proponent submitting an environment plan to NOPSEMA, where we have clearly articulated that consultation is not complete including because we are awaiting outstanding information.

Issues around insufficient time are compounded by the factors discussed above, including lack of resourcing and insufficient information.

This review should not seek to impose arbitrary timeframes for consultation. What is a reasonable period will depend on the nature of the proposed activity, the relevant person and the extent to which a proponent operates in good faith providing an appropriate consultation process and necessary information for the circumstances.

We also note that best practices around consultation provide for it to be an ongoing obligation from the earliest stages of project proposals, throughout the life cycle of the

¹⁶ United Nations Economic Commission for Europe. (2015, p. 29). *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention*. https://unece.org/sites/default/files/2022-10/1514364_E_web.pdf

¹⁷ United Nations Economic Commission for Europe. (2015, p. 28). *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention*. https://unece.org/sites/default/files/2022-10/1514364_E_web.pdf

¹⁸ OPGGS Environment Regulation 25(3)

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project (i.e. going beyond pre-approval consultation), to have ongoing, iterative opportunities for meaningful consultation and participation in decisions by relevant persons.¹⁹

Recommendation 10: Consultation requirements that are pre-conditions for project approval should not be deemed to be satisfied under the OPGGS Environment Regulations until a proponent can accurately and completely communicate all key concerns of a relevant person to the regulator, so that the regulator is able to then fully consider the concerns raised. If the regulator can see deficiencies in terms of consultation process, resourcing, information or time, the regulator should not consider the pre-approval consultation requirements satisfied and should not make a decision to accept an environment plan.

5. Free, prior and informed consent

Meaningful consultation with First Nations Peoples must comply with First Nations cultural and self-determination rights, including the principle of free, prior and informed consent (FPIC). In brief, the components of FPIC include:

- **Free:** First Nations community members give or withhold their consent voluntarily, without coercion, intimidation or manipulation.
- **Prior:** Consent is obtained well in advance of each relevant decision, and is actively sought and maintained on an ongoing basis throughout the life of a development.
- **Informed:** First Nations community members access, understand, and deliberate on all relevant information before giving or withholding their consent.
- **Consent:** First Nations decisions to agree to, refuse, or offer conditional consent to developments affecting their land or sea Country are respected and followed by both government and the relevant developer.

These rights are set out by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which Australia is a signatory, and other international agreements

¹⁹ World Commission on Dams (2000, p.281). Dams and Development: A New Framework for Decision-Making. Noting that consultation processes should take place regularly as part of “a continuous, iterative process of communication and negotiation spanning the entire planning and project cycles.”

that are binding on Australia.²⁰ While UNDRIP is not in and of itself a binding instrument, it is regarded as articulating many customary international law norms, which are binding.

Recommendation 11: *The regulatory scheme be amended to embed the principles of FPIC in all consultation requirements as they relate to First Nations Peoples.*

6. Right to review

Individuals and communities have specific legal rights to have decisions reviewed or remade if the decisions have been made illegally, incorrectly or unreasonably, according to Principle 10 of the Rio Declaration on Environment and Development. This means the community must be provided with effective access to judicial and administrative proceedings, including redress and remedy.

Access to justice is essential for transparency and oversight of government action, which in turn improves decision-making, public accountability of decision-makers, and deters corruption.²¹ The ability of the public to hold decision-makers to account is a fundamental foundation of Australia's democracy, and improves the performance of law over time.²²

Recommendation 12: *Access to legal challenge by any relevant person must not be curtailed.*

Overarching contextual comments for this review

The Wilderness Society is participating in this review in good faith and in the expectation that our feedback will help improve consultation for offshore oil and gas proposals. However, we make some comments on the broader context and process for this review.

²⁰ For example, rights to self-determination and to cultural protections are set out in the International Covenant on Civil and Political Rights (Arts. 1, 27) and the International Covenant on Economic, Social and Cultural Rights (Arts. 1, 15), both of which have been ratified by, and are legally binding on, Australia.

²¹ Independent Commission Against Corruption, Anti-corruption safeguards in the NSW planning system (2012).

²² Independent Review of the EPBC Act – Final Report (October 2020) 92.

Climate change

The Wilderness Society is strongly of the view that any new offshore (or onshore) exploration for future fossil fuel extraction is incompatible with a global goal of limiting atmospheric warming to 1.5C or less. It is also incompatible with efforts to transition Australia's economy to be competitive in a net zero world.

In that context, the current objects of the OPGGS Act, especially in relation to the petroleum provisions, are no longer fit for purpose to meet Australia's needs. The OPGGS Act, without explicit indication, is geared towards maximising variously the volume of fossil fuel extraction, the economic activity of fossil fuel extraction, and other loosely defined economic elements such as resource rents. However, the current global circumstances demand that the "value" of fossil fuels and their extraction are considered in primary a climate change construct because the negative economic, environmental and community consequences of fossil fuel proliferation are vastly greater than any short-term economic activity.

Thus, this OPGGS Act consultation reform process is contrary to Australia's national and public interests of securing a safe global climate and the Australian Government should instead be constraining fossil fuel proliferation rather than support it.

Timeframe for consultation

The Wilderness Society is disappointed by the short time frame for making a submission to this review. The direct experience of local communities, First Nations people and environmental organisations is vital to ensuring appropriate regulation of the offshore oil and gas industry. The regulatory processes involved are complex, and the proper input of these stakeholders is critical. An eight week consultation process, overlapping with the January summer holidays and wet-season period, is not adequate time to ensure genuine input.

Concurrent and intersecting review processes are already underway

The Wilderness Society is concerned this review is being undertaken ahead of broader substantive reviews of both the offshore environmental management framework and

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environmental laws under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Wilderness Society considers it to be premature to alter consultation requirements set out in regulations ahead of these broader reviews. The rushing through of changes to consultation, in the context of public and private pressure by the fossil fuel industry, undermines the Australian Government's credibility on and commitments related to restoring community trust and confidence to environmental decision-making, community rights in environmental decision-making and climate action.

Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024

The Wilderness Society is deeply concerned by the Australian Government's introduction of section 790E of the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Bill 2024, relating to the interaction between offshore oil and gas decision making and the EPBC Act. We're concerned that this amendment is being progressed ahead of the two substantive reviews described above, and also this current "Clarifying Consultation" review. As per recommendations we've made in submissions and correspondence elsewhere, we ask that section be removed from the Bill.

Conclusion

There are clear opportunities, and urgent governance and economic needs, to clarify and improve consultation on offshore oil and gas proposals under Australia's OPGGS Act and Environment Regulations.

The Wilderness Society welcomes the opportunity to continue to contribute to this review, including by reviewing proposed changes and draft regulations.

To discuss anything raised in our submission, or to work with our organisation as this review progresses, please do not hesitate to contact

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