



Australian Government
Department of the Environment

Environment and Communications References Committee

“Inquiry into the potential environmental, social and economic impacts of BP’s planned exploratory oil drilling project, and any future oil or gas production in the Great Australian Bight”

Submission by the Department of the Environment

April 2016

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Background

On 22 February 2016, the Senate referred the following matter for inquiry and report by **12 May 2016**:

The potential environmental, social and economic impacts of BP's planned exploratory oil drilling project, and any future oil or gas production in the Great Australian Bight, with particular reference to:

- a. *the effect of a potential drilling accident on marine and coastal ecosystems, including:*
 - i. *impacts on existing marine reserves within the Bight,*
 - ii. *impacts on whale and other cetacean populations, and*
 - iii. *impacts on the marine environment,*
- b. *social and economic impacts, including effects on tourism, commercial fishing activities and other regional industries;*
- c. *current research and scientific knowledge;*
- d. *the capacity, or lack thereof, of government or private interests to mitigate the effect of an oil spill; and*
- e. *any other related matters.*

The Department of the Environment is pleased to offer this submission to assist the Inquiry.

Introduction

This submission to the Inquiry details the Department of the Environment's roles and responsibilities in the Commonwealth marine area (outside three nautical miles of the coast) in relation to:

1. Marine Bioregional Planning
2. National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) Strategic Assessment
3. Oil and chemical spills in Australia's Commonwealth marine area
4. The Great Australian Bight Commonwealth Marine Reserve

Commonwealth marine areas are protected as a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). As such, actions that have, will have, or are likely to have, a significant impact on Commonwealth protected areas require approval.

A strategic assessment has been undertaken of the environmental management authorisation process for petroleum and greenhouse gas activities administered by the National Offshore Petroleum Safety and Environmental Management Authority (the NOPSEMA Strategic Assessment). Following the endorsement of NOPSEMA's environmental management authorisation process by the Federal Minister for the Environment on 7 February 2014 and the issuance of a class of actions approval on 27 February 2014, referral, assessment and approval of petroleum activities in Commonwealth waters under the EPBC Act is no longer necessary. Impacts on matters protected under Part 3 of the EPBC Act are assessed by NOPSEMA (see section 2 for further detail) under that strategic assessment.

1. Marine Bioregional Planning

Marine bioregional plans have been developed under the EPBC Act to improve the way Australia's oceans are managed so they remain healthy and productive. The plans are used by government and industry to improve the way the marine environment is managed and protected. Very little is known about Australia's oceans compared to our terrestrial environment. Marine bioregional plans have improved our understanding of Australia's oceans by presenting a consolidated picture of their biophysical characteristics and diversity of marine life.

Marine bioregional plans have been prepared under section 176 of the EPBC Act which requires the Commonwealth Environment Minister to have regard to a bioregional plan in making any decision under the EPBC Act for which the plan has relevance. The South-West Marine Bioregional Plan is relevant to the Great Australian Bight.

The South-West Plan describes the marine environment and conservation values (protected species, protected places and key ecological features) of the South-West Marine Region, sets out broad objectives for its biodiversity, identifies regional priorities, and outlines strategies and actions to achieve these. The conservation values include key ecological features – things that are of importance for biodiversity or ecosystem function and integrity; and biologically important areas – breeding, foraging, resting or migration areas for protected species.

The identification of these conservation values serves to focus the attention of project proponents and regulators on aspects of the marine environment that are important for biodiversity conservation and ecosystem health. Information on conservation values is used by project proponents, the department and NOPSEMA to facilitate environmental approval processes. The marine bioregional plans are a part of the NOPSEMA arrangement.

Also of relevance to the area is the South-East Marine Region Profile. Unlike marine bioregional plans, the earlier South-East Marine Region Profile was prepared under different policy settings and has no legal status in relation to decisions under the EPBC Act. Nonetheless, this does not prevent the Profile from being considered as a matter relevant to decision making under the EPBC Act, or in the context of the NOPSEMA arrangement. The South-East Profile consolidates information on the region and identifies conservation values – eight key ecological features, and biologically important areas for 20 protected species.

The South-East Profile and South-West Plan are also underpinned by publicly searchable databases that, for example, allow project proponents to retrieve information on conservation values relevant to a particular location – available at www.environment.gov.au/cva.

Full copies of the South-West Marine Bioregional Plan and South-East Profile are available on the Department's website at:

<http://www.environment.gov.au/topics/marine/marine-bioregional-plans/south-west>
<http://www.environment.gov.au/marine/publications/south-east-marine-region-profile>

2. National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) Strategic Assessment

Strategic assessments¹ under Part 10 of the EPBC Act provide for landscape scale assessments of relevant impacts on relevant matters of national environmental significance² (protected by a provision of Division 1 of Part 3 of the EPBC Act), and facilitate the achievement of both conservation and planning outcomes on a much larger scale than can be achieved through project-by-project assessments. The process is designed to be flexible and provide the opportunity to reach a positive outcome for all parties to the strategic assessment.

A strategic assessment has been undertaken of the environmental management authorisation process for petroleum and greenhouse gas activities administered by National Offshore Petroleum Safety and Environmental Management Authority (the **NOPSEMA Strategic Assessment**)³.

Offshore petroleum and greenhouse gas activities are subject to regulation under both the EPBC Act and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)* (**OPGGS Act**) and its associated *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Cth)* (**OPGGS Environment Regulations**).

¹ www.environment.gov.au/protection/assessments/strategic

² www.environment.gov.au/epbc/what-is-protected

³ www.environment.gov.au/protection/assessments/strategic/offshore-petroleum-greenhouse-gas

The NOPSEMA Strategic Assessment means entities seeking to undertake activities, including in the Great Australian Bight, that fall within the approved classes of actions for offshore petroleum or greenhouse gas activities in Commonwealth waters in accordance with the endorsed Program, are considered to hold a valid approval under the EPBC Act and will no longer need to refer those actions for assessment or approval under Parts 7, 8 and 9 the EPBC Act. Under these arrangements, environmental protection will be assessed and determined through the NOPSEMA statutory decision-making processes.

Endorsement and approval of the NOPSEMA Strategic Assessment

On 7 February 2014, pursuant to section 146 of the EPBC Act, the Environment Minister endorsed⁴ the *Program Report - Strategic Assessment of the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 February 2014 (the Program)*⁵. The Program outlines the environmental management authorisation process for offshore petroleum and greenhouse gas activities administered by NOPSEMA, which describes how the Authority's authorisation process protects matters of national environmental significance.

Under the Program, there are two submissions which are assessed by NOPSEMA in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations)*, being (i) Offshore Project Proposals for offshore projects as defined in the Environment Regulations and (ii) environment plans⁶ for all petroleum activities in Commonwealth waters. The Environment Regulations set out the criteria for acceptance and the content requirements for offshore project proposals and environment plans.

The Environment Regulations require submissions to demonstrate that environmental impacts and risks from an activity will be as low as reasonably practicable and of an acceptable level (among other acceptance criteria). Recent amendments to the Environment Regulations have made it more explicit that submissions must consider the relevant values and sensitivities of matters protected as well as all other values and sensitivities that exist in the environment.

The EPBC Act matters assessed and approved under the Program are:

- The World Heritage values of a declared World Heritage property (sections 12 and 15A of the EPBC Act)
- National Heritage values of a declared National Heritage place (sections 15B and 15C of the EPBC Act)
- The ecological character of a declared Ramsar wetland (sections 16 and 17B of the EPBC Act)
- Listed threatened species and ecological communities (sections 18 and 18A of the EPBC Act)
- A listed migratory species (sections 20 and 20A of the EPBC Act)
- The environment in a Commonwealth marine area (sections 23 and 24A of the EPBC Act).

Pursuant to section 146B of the EPBC Act, the Environment Minister may approve the taking of actions, or classes of actions, in accordance with an endorsed policy, plan or program. Entities of approved classes of action will not be subject to the assessment or approval processes under Parts 8 or 9 of the EPBC Act.

Actions not taken in accordance with the endorsed Program are not covered by the approval and may not be taken without obtaining approval under the EPBC Act if they have, will have or are likely to have significant impact on a matter of national environmental significance.

⁴ www.environment.gov.au/system/files/pages/06872cd4-b755-4ecf-a4e7-dd16145e1384/files/offshore-endorsement-notice.pdf

⁵ www.environment.gov.au/system/files/pages/06872cd4-b755-4ecf-a4e7-dd16145e1384/files/offshore-program-report.pdf

⁶ <http://www.nopsema.gov.au/environmental-management/environment-plans/>

On 27 February 2014, the Environment Minister granted an approval⁷ for classes of actions under the Program for the NOPSEMA Strategic Assessment. Petroleum and greenhouse gas activities undertaken in Commonwealth waters in accordance with the endorsed Program are considered “approved classes of action” (refer **Box 1**), with the exception of petroleum and greenhouse gas activities that:

- have, will have or are likely to have a significant impact on the environment on Commonwealth land
- are taken in any area of the sea or seabed that is declared to be part of the Great Barrier Reef Marine Park under the *Great Barrier Reef Marine Park Act 1975* (Cth)
- have, will have or are likely to have a significant impact on the world heritage values of the Great Barrier Reef World Heritage property or on the national heritage values of the Great Barrier Reef National Heritage place
- are taken in the Antarctic
- are injection and/or storage of greenhouse gas.

In addition to the previously mentioned exceptions, any petroleum activity in Commonwealth waters that does not have an accepted Environment Plan is not an ‘approved class of action’ under the Program.

Box 1: *Examples of classes of actions approved under the NOPSEMA Strategic Assessment*

Examples of petroleum and greenhouse gas activities covered by the approval include:

- *Petroleum exploration*
- *Petroleum recovery operations*
- *Constructing or reconstructing an infrastructure facility*
- *Constructing or reconstructing or operating a pipeline*
- *Exploring for:*
 - *A potential greenhouse gas storage formation or*
 - *A potential greenhouse gas injection site*

Activities also include any decommissioning activities in relation to the above listed activities.

The Program also specifically excludes petroleum or greenhouse gas activities from occurring within the boundaries of any declared World Heritage area as defined under the EPBC Act, including the Great Barrier Reef World Heritage Area.

Assurance, monitoring and enforcement

NOPSEMA is a well-resourced Commonwealth statutory authority with extensive expertise, skills and knowledge in environmental management and regulation. The endorsed Program requires NOPSEMA to implement monitoring and enforcement protocols for relevant EPBC matters, along with mechanisms to provide the Department with assurance that the commitments within the endorsed Program are being met. The various assurance mechanisms outlined within the endorsed Program and approved administrative arrangements includes regular reporting against the Program’s performance, independent program review, incident reporting, regular meetings and development of NOPSEMA’s regulatory policies and guidance documentation.

Through the approved administrative arrangements, the Department plays an active role in monitoring NOPSEMA’s compliance with the endorsed Program. The administrative arrangement allows the Department and NOPSEMA to share information to ensure a smooth transition between

⁷ www.environment.gov.au/system/files/pages/06872cd4-b755-4ecf-a4e7-dd16145e1384/files/offshore-approval-decision-notice.pdf

regulatory regimes. In addition to reporting requirements, the arrangements outline the transfer of knowledge and expertise between agencies, reporting to meet national and international requirements, program review requirements and dispute resolution mechanisms.

A key assurance mechanism required by the Program was NOPSEMA's requirement to undergo an independent Program performance review for the first twelve months of operation. The review included stakeholder interviews, a review of relevant processes and case studies. The independent review⁸ determined that all commitments have been met during the initial 12 months of the Program.

The review made a number of suggestions for refinement of management arrangements (Opportunities for Improvement), as well as additional considerations outside the scope of the review. It highlighted potential for increased consultation between the Department and titleholders, and between NOPSEMA and third party stakeholders. The Department is working closely with NOPSEMA to implement these improvements. The next review required under the Program is scheduled to commence in early 2019.

Other environmental approvals and permits requirements

If the Minister (or delegate) approves the taking of actions in accordance with a strategic assessment's endorsed policy, plan or program (section 146B of the Act), then this approval is taken to be the same as if the action were approved on an individual basis in accordance with Part 9 of the EPBC Act (section 146D of the Act). The EPBC Act also provides that where a Part 9 approval is in force, then in some instances other permits and approvals required under the EPBC Act may no longer be required to be obtained.

While most of these requirements are unlikely to be relevant to oil and gas exploration and production activities, some would be applicable should a relevant approval not be in force, for example the requirement to obtain a permit under section 238 EPBC Act to take an action relating to killing, injuring, taking, trading, keeping, moving or interfering with a cetacean in certain parts of the Australian Whale Sanctuary or beyond the limits of the Australian Whale Sanctuary, or treating or possessing unlawfully killed, taken or imported cetaceans.

A strategic assessment approval also has the effect that certain activities in Commonwealth reserves (as set out in Part 12 of the EPBC Regulations) do not generally require a permit.

3. Oil and chemical spills in Australia's marine area – the Department's role

The ***National Plan for Maritime Environmental Emergencies*** provides a framework that gives effect to a number of international conventions and agreements to which Australia is a party and sets out nationally agreed arrangements, policies and principles for the management of maritime environmental emergencies in Australia's Exclusive Economic Zone, offshore islands and territories and the high seas where the incident has the potential to impact upon Australian interests. It applies to pollution of the sea or harm to the marine environment by oil or hazardous and noxious substances. AMSA manages the National Plan, working with Commonwealth, state, and Northern Territory governments, along with the shipping, ports, oil, salvage, exploration and chemical industries, and emergency services nationwide, to maximise Australia's marine pollution response capability.

The National Plan framework recognises the role of NOPSEMA as the control agency for offshore petroleum activities in the Commonwealth marine area and the responsibility of petroleum titleholders to control response activities in the event of an oil spill.

The Department is a member of the ***Australian Government National Plan Committee*** (AGNPC) whose purpose is to coordinate the Australian Government arrangements under the National Plan.

⁸ <http://www.nopsema.gov.au/resources/data-reports-and-statistics/>

The **Offshore Petroleum Incident Coordination Committee** (OPICC), chaired by the Department of Industry, coordinates Australian Government efforts and resources, and communicates to the public and affected stakeholders all matters relevant to a significant offshore petroleum incident in Commonwealth waters. The decision to activate the OPICC will be determined by the scale and nature of the incident and may be taken by the responsible officers within the Department of Industry in consultation with other agencies and regulators. The Department may be included in the OPICC as needed.

The **Offshore Petroleum Incident Coordination Framework** (OIPCF) outlines the governance arrangements for the OPICC, including its purpose, membership and key protocols for member agencies.

The **Australian Government Crisis Management Framework** (AGCMF) outlines that leadership of the Australian Government's response to a crisis will, in the first instance, be the responsibility of the relevant portfolio minister. In the event of a significant petroleum incident in Commonwealth waters, the Minister for Industry is the lead Commonwealth Minister.

The **Australian Government Coordination Arrangements for Maritime Environmental Emergencies** provides a framework for the coordination of Australian Government departments and agencies in response to a maritime environmental emergency and applies to all maritime environmental emergencies as defined by the National Plan.

As detailed in the key national plans and frameworks identified above, the Department of the Environment plays a support role in emergency responses. These roles in maritime environmental emergencies flow from the legislation it administers, notably the EPBC Act, the *Environment Protection (Sea Dumping) Act 1981* (Sea Dumping Act), the *Historic Shipwrecks Act 1976* and the *Antarctic Treaty (Environment Protection) Act 1980*. Under these pieces of legislation, the Department's key roles of relevance to maritime environmental emergencies are:

- administration of the environmental impact assessment and approval requirements of the EPBC Act, which relate to activities that have or may have a significant impact on matters of national environmental significance defined under the Act;
- the management of Commonwealth Reserves (i.e. marine protected areas) established under the EPBC Act;
- administration of permitting requirements under the EPBC Act related to activities that interact with threatened, migratory and marine species listed under the Act; and
- the provision of information on environmental and heritage values in the marine environment, especially matters of national environmental significance defined under the EPBC Act, marine and migratory species listed under the EPBC Act, and historic shipwrecks protected under the Historic Shipwrecks Act.

The Department provides spatial information on conservation values in the Oil Spill Response Atlas (OSRA), managed by the Australian Maritime Safety Authority (AMSA), and ensures that conservation values are captured in the guidelines for industry development of oil spill impact monitoring plans.

Depending on the nature of the response arrangements to the incident, approvals may be necessary for activities associated with efforts to arrest a significant incident by the Department under the EPBC Act where they are not covered by the EPBC Act exemption for oil spill response undertaken in accordance with the **National Plan for Maritime Environmental Emergencies**.

4. The Great Australian Bight Commonwealth Marine Reserve

The Great Australian Bight Marine Park (Commonwealth Waters) was declared by proclamation in 1998. In November 2012, the Great Australian Bight Commonwealth Marine Reserve was declared as part of the South-west Commonwealth Marine Reserve Network. The Great Australian Bight Commonwealth Marine Reserve includes the area of the former Great Australian Bight Marine

Park (Commonwealth Waters). In 2013 the reserve was re-proclaimed to allow for the independent review into the Commonwealth marine reserves declared in 2012.

While the independent review is under consideration, the Director of National Parks has instituted transitional management arrangements for all reserves declared in 2012. In the context of the Great Australian Bight Commonwealth Marine Reserve, transitional management arrangements dictate that for the area of the former Great Australian Bight Marine Park (Commonwealth Waters), management is undertaken consistent with the management arrangements that were in place prior to November 2012. For the new areas added to the Great Australian Bight Commonwealth Marine Reserve, the Director of National Parks has issued an approval under section 359B of the Environmental Protection and Biodiversity Conservation Act (1999) (EPBC Act). No further approval from the Director is required for individual activities.

Under the previous management plan for the Great Australian Bight Marine Park (Commonwealth Waters), mining (including exploration activities) was allowable (following approval) in the Benthic Protection Zone but not allowed in the Marine Mammal Protection Zone. For the Great Australian Bight Commonwealth Marine Reserve, oil and gas is allowable in both the Multiple Use and Special Purpose Zones (IUCN VI zones) of the reserve but not allowed in the Marine National Park Zone (IUCN II).