

Our ref: A707007

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Dear Mr Palethorpe

### **Inquiry into the impact of seismic testing on fisheries and the marine environment**

Thank you for your letter of 3 December 2019 and the opportunity to respond to allegations made by Mr Chris Fenner and Mr Geoff Prideaux in their submissions to the Senate Inquiry into the impact of seismic testing on fisheries and the marine environment. We appreciate you bringing these allegations to our attention as we are concerned that they are detrimental to NOPSEMA. We understand the allegations to be incorrect and a misrepresentation of the facts and evidence on the subjects to which the allegations relate.

While we believe the allegations by Mr Fenner and Mr Prideaux lack foundation we recognise that the community is engaging more in the debate regarding offshore petroleum activities and the degree to which it may impact the environment and how the industry is therefore regulated. The potential for seismic survey activity to impact on commercially important fish and invertebrate species and on protected species such as whales is understandably of specific concern. In NOPSEMA's experience, community concern is often fuelled by factors including;

- inaccurate media reports about the potential impacts from seismic surveys;
- a low level of understanding about the limitations in applying scientific research to inform environmental impact assessment and the management of full scale seismic surveys; and
- limited understanding of how the petroleum industry is regulated.

Mr Fenner is alleging that NOPSEMA is 'ignoring the legislation designed to protect the environment and the fishing industry' in relation to Section 280 subsection 2 (b and c) of the Offshore Petroleum and Greenhouse Gas Storage Act 2006. He has also provided some links to a published research article, a website news article, a research report and a workshop report on the impacts of seismic to lobsters, scallops and squid that he claims as 'irrefutable evidence that seismic testing can cause harm to squid and rock lobsters and kill scallops'.

We believe Mr Fenner's allegation to be without foundation and incorrectly casts NOPSEMA's role in a poor light. NOPSEMA takes the requirements of the OPGGS Act seriously. That Act seeks to ensure that a person conducting a seismic survey does not interfere with fishing or the conservation of resources to a greater extent than is necessary for the reasonable exercise of their rights under an exploration licence through NOPSEMA's assessment and compliance functions, as required under section 280. NOPSEMA also ensures that the latest published peer reviewed science is applied in an appropriate and relevant way during assessment of environment plans and during regulatory decision making. These matters are addressed in detail in the NOPSEMA submission to the Senate Inquiry.

Mr Prideaux alleges that NOPSEMA is slow to apply the Convention on Migratory Species (CMS) Noise Environmental Impact Assessment Guidelines, is avoiding certain elements, is not independent as it relies on industry funding and fatally relies on receiving stakeholder concern before acting to limit activities.

These claims are inaccurate and indicate a misunderstanding of the legal status of the CMS Family Guidelines in Australia (not a legislated requirement). The claims also fail to have due regard to aspects relating to the regulatory regime under which NOPSEMA operates, such as cost recovery processes and how NOPSEMA regulates the offshore petroleum industry. Relevant material about the CMS Family Guidelines, environmental impact assessment processes and the independent regulation of the offshore petroleum industry is provided in the NOPSEMA submission. NOPSEMA has also given evidence on the CMS Guidelines requiring independent review of Environmental Impact Assessment at Senate Committee hearings on Budgetary Estimates (date 21 February 2019, pages 125-126). I attach these Hansard records for ease of access.

We have no objection to our response to the two submissions being made public and respectfully request the Committee consider this response as well as the detail in NOPSEMA's submission to the inquiry when considering the validity of allegations made.

Yours sincerely

Stuart Smith  
Chief Executive Officer

12 December 2019

Att.

**National Offshore Petroleum Safety and Environmental Management Authority**

[22:12]

**CHAIR:** I welcome the representatives of NOPSEMA and thank you for being so patient and waiting. You're our last guests for the evening. Do you have an opening statement for the committee?

**Mr Smith:** Only to say thanks for the opportunity to speak tonight. We've had a few issues in the media of late and this will be a good opportunity to address some of those, I expect. I will also flag that I'm currently suffering from some bronchitis, so my colleagues are probably going to do more talking than I will. But, fortunately, they're very competent, and between the three of us we hope to be able to answer everything you have.

**Senator STORER:** I'm interested in the approval that NOPSEMA gave to the Norwegian subsidiary PGS in January this year for seismic testing in the Great Australian Bight. I think it's well documented that southern right whales and their calves migrate through the area NOPSEMA approved for seismic blasting through September, October and November 2019. I have been told that there's evidence that there was one mother-and-calf pair that were not strong enough to leave for their long journey south until December, verified by the South Australian Whale Centre sighting log. That's outside the September to November period that was set for seismic testing. Did the recent conditional approval for seismic testing in the Great Australian Bight given to PGS take into account migration routes of southern right whales?

**Mr Smith:** I'll get Mr Grebe to address that one. He is the head of the environment division.

**Mr Grebe:** Thank you, Senator, for the question. The short answer is yes, we did answer the impacts on a full range of relevant marine fauna at that time of year and that location, including southern right whales. It was part of the assessment decision-making and also drove part of the conditions that were being established that you mentioned that were attached to the approval.

**Senator STORER:** The conditions were that seismic blasting is between September and November 2019 and possibly again from September to November 2020—is that right?

**Mr Grebe:** Seismic surveys, or blasting—in ancient history, dynamite was actually a technique used, but thankfully that was well and truly phased out. These days seismic testing uses compressed air released to generate an air bubble to create a popping sound which sends acoustic energy into the sea bed. I wouldn't call it blasting. But yes, during that period, the environmental impact assessment that was conducted for the survey considered the impact of the sound from the acoustic array over the whole survey area using sound modelling and predicting potential impacts on sound using relevant available science. It was shown to not have a significant impact on the ability of the southern right whales that you mentioned, for example, as a species to migrate.

**Senator STORER:** So the seismic testing is approved for September to November 2019 or outside of that period?

**Mr Grebe:** Only within that period in 2019 or 2020. It's approved to be conducted across those months in both or either of those years. However, particularly in the latter part of both those periods, there is the potential for the commencement of upwelling, which is nutrients coming from deeper cold waters welling up, and that is what attracts feeding blue whales and pygmy blue whales later on in the year and the aggregations of tuna. So the conditions predominantly relate to ensuring that the survey wouldn't continue in those periods should there be critical life activities. It's a biologically important area identified in the blue whale recovery plan, for example. The survey wouldn't continue regardless of the fact that the potential for seismic was included in the environment plan in those later periods with the conditions, and the arrangements in the environment plan would prevent the company from continuing to operate.

**Senator STORER:** Are you aware that the Australian government agreed to the UN Convention on Migratory Species noise EIA guidelines in October 2017?

**Mr Grebe:** Yes.

**Senator STORER:** Are you aware that that makes it clear that independent review of seismic survey environmental impact assessment should be required?

**Mr Grebe:** Yes.

**Senator STORER:** Did NOPSEMA require PGS to conduct an independent review into the veracity of scientific evidence on seismic impacts?

**Mr Grebe:** The Australian government arrangements are that—and this is quite common—the proponent conducts the environmental impact assessment. We achieve the independent review of those impact assessments by NOPSEMA, which the government has established to independently regulate the offshore petroleum industry.

We do conduct that independent review. That's our role. We don't prepare the environmental impact assessment report. We do review it with subject matter expertise—

**Senator STORER:** So the independent review is NOPSEMA?

**Mr Grebe:** Yes. There's not an independent review of the independent review.

**Senator STORER:** Yes, but the independent review is not independent of you.

**Mr Grebe:** We are the independent review. We are not part of the proponent; we are completely separate from the proponent.

**Senator STORER:** But the independent review is not another body—it's not someone else.

**Mr Grebe:** We are the body that is the independent review.

**Senator STORER:** It's just interesting. You're the independent review but you are the body that will provide the approval as well.

**Mr Grebe:** We don't have any role in conducting seismic surveys, releasing exploration permits or promoting oil and gas development. We're purely considering whether the environmental impact of the survey, for example, if it's a seismic survey, could be conducted without unacceptable impacts.

**Senator STORER:** So you're independent of government, and that's why you can do it?

**Mr Smith:** If I could just add: that's partly why NOPSEMA has been established as an independent statutory authority, whereas other elements of the offshore petroleum regime, like NOPTA, are part of the department.

**Mr Grebe:** The thing that wasn't clear, probably, in terms of decision-making, which is a bit unusual as to other regulators, is that all of the powers to decide to approve or reject environmental approvals or safety approvals in the legislation have been provided to NOPSEMA, as the authority.

**Senator STORER:** Yes, that's right.

**Mr Grebe:** So the minister doesn't have any role, and we don't communicate with the minister or the department on our decision-making.

**Senator STORER:** That's one way to look at the independence of NOPSEMA.

**Mr Grebe:** I'm not sure you can make it any more independent!

**Senator STORER:** What I mean is: it's one way to look at the decision-making process regarding that. You're making the point that it's independent of the minister, so there's validity in that. Other people would put that, if the minister was involved, there would be further assessment undertaken beyond NOPSEMA's viewpoint. But I don't have a question for you on that.

**Senator Canavan:** That's really a policy matter, I suppose. The parliament has established this arrangement, which Stuart and his team are dutifully exercising.

**Senator STORER:** Yes. It seems appropriate that, in a region of such ecological significance as the Great Australian Bight, broad and deep consideration of peer-reviewed scientific evidence as to seismic testing should be required. To what extent did NOPSEMA consider the impact of seismic testing on zooplankton and, in particular, krill?

**Mr Grebe:** The environmental impact assessment—sorry; NOPSEMA's decision-making, starting with that, and our assessment process, consider, certainly, the applicant's environmental impact assessment, which does include and rely on environmental research that has been conducted, and they apply that in the environmental impact assessment process. We also have our own sources of research and knowledge and expertise that we stay abreast of through participating in conferences and engaging with the research community. But, in individual assessment processes, both of those sources of information are used to inform decision-making, and, in this particular example—you brought up zooplankton—primary productivity was a key matter that was of concern to stakeholders, and we reported that, in the key matters report that we published, supporting the publication of the full environment plan that the proponent had submitted, where we explained how the research on zooplankton—I'm assuming you're referring to recent research done by the University of Tasmania by McCauley a couple of years ago in Tasmania, but also subsequent research from the CSIRO—

**Senator STORER:** Yes.

**Mr Grebe:** and also other researchers' commentary about that zooplankton—

**Senator STORER:** Yes. That is my question: did you consider scientific evidence which has shown that widely-used marine seismic survey operations negatively impact zooplankton? Did you consider that?