

Clarifying statutory requirements and good practice consultation

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Background

Effective stakeholder engagement is recognised as an important part of the offshore energy industry's approach to understanding the environment that they are operating in, informing environmental management and obtaining a social licence to operate. NOPSEMA promotes the need for engagement with the public, the community and relevant persons through a range of approaches, both statutory and good practice.

The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Regulations) specify that a particular group of stakeholders, termed relevant persons, must have been consulted by the titleholder before NOPSEMA can approve an environment plan for a specific offshore energy activity. In addition to this requirement, public comment on environment plans and offshore project proposals provides opportunity for all stakeholders to have their say about an activity (Figure 1).

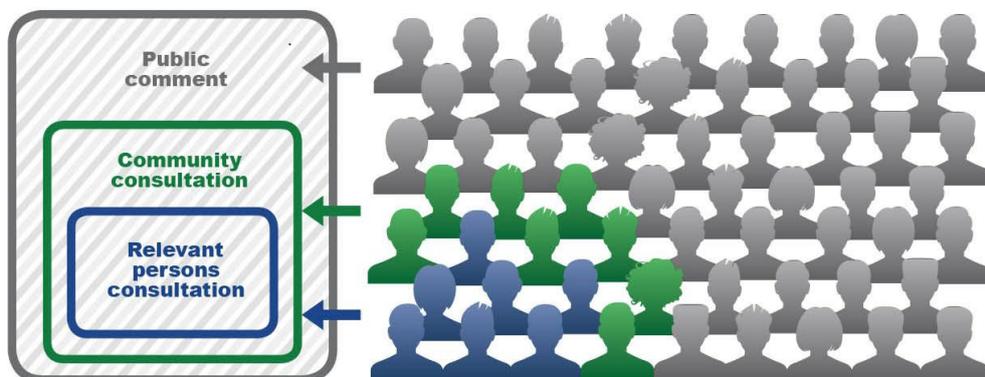


Figure 1: Relevant Persons are a specific subset of the community and the broader public

NOPSEMA recognises the need for further clarification to assist with categorising a person or organisation as a relevant person. In some instances, individuals may consider themselves to be a relevant person for consultation but may not meet the specific regulatory definition. As identified through the Chief Scientist's

Independent Audit of NOPSEMA's Consideration of Exploration in the Great Australian Bight (Finkel, A. 2019)¹ this has led to unmet expectations and concerns among some stakeholders.

This bulletin aims to clarify the definitions given for categories of relevant persons in the Regulations. Good practice advice is also provided to titleholders and the community on how to get the most out of engagement.

Regulatory interpretation

1.1.1. Public comment process

Changes to the Regulations in April 2019 provided increased transparency and opportunity for the public to provide input to the environmental management of proposed exploration drilling and seismic survey activities. During a 30 day public comment period, any member of the public or a stakeholder group may submit comments about a range of matters relating to information in an environment plan. NOPSEMA facilitates the public comment process by publishing the environment plan on its website, receiving and recording submitted comments and providing public comments to titleholders.

Following the close of the public comment period, titleholders must provide a report to NOPSEMA outlining how they have considered the matters raised during the public comment period and where they have modified the environment plan in response these matters. NOPSEMA publishes this report on its website, together with the resubmitted environment plan for assessment.

NOPSEMA must also consider the matters raised during the public comment process in its assessment. Once the assessment is completed, NOPSEMA will publish a report describing how the information received during public comment was taken into account.

1.1.2. Community engagement

Stakeholders, including members of the public and community, may also be engaged through broader engagement by the titleholder about the proposed activity. This is often through community meetings, open forums, one on one discussions or through telephone, mail and email communications. This engagement is not limited to a particular group of stakeholders and is often undertaken with the wider community, the public, interest groups and advocates.

NOPSEMA promotes this form of wider community engagement as information gained will be useful to better understand the environmental, cultural, and socio-economic features of the region in which a titleholder proposes to operate and assist with development of an environment plan. The Chief Scientist (Finkel, 2019) also recognised that there is an opportunity for titleholders to consider further community engagement, in particular, where individuals or groups hold special interest or concern but do not meet the

¹ Finkel, A. (2019). Independent Audit of NOPSEMA's Consideration of Exploration in the Great Australian Bight. Retrieved from: <https://www.industry.gov.au/sites/default/files/2019-09/independent-audit-of-nopsemas-consideration-of-exploration-in-the-great-australian-bight.pdf>

specific regulatory definitions for relevant persons. While the Regulations do not prescribe how this engagement is to occur, early engagement, appropriate strategies and respectful communication techniques will lead to more effective interactions with stakeholders.

1.1.3. Relevant persons consultation

Consultation is required by law with a more specific subset of people. Regulation 11A of the Regulations requires that before submitting an environment plan to NOPSEMA, a titleholder must consult with relevant persons.

In order to be considered a relevant person for this targeted consultation the individual or group must meet specific legislative definitions. Relevant persons are divided in the Regulations into five distinct categories [subregulations 11A(1)(a), (b), (c), (d) and (e)]. Table 1 below describes each category of relevant person and provides some clarification on these categories.

Table 1: Relevant person categories clarifications

Relevant person category	Clarification
each Department or agency of the Commonwealth to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant	A titleholder must consult with each Department or agency of the Commonwealth to which the activities to be carried out under the environment plan, may be relevant. This is taken to mean a government department or agency that has responsibility for managing or protecting the marine environment. This may include those with responsibilities for environmental and fisheries management, oil pollution management and response, defence and communications, biosecurity, maritime/navigational safety, marine parks and native title.
each Department or agency of a State or the Northern Territory to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant	A titleholder must consult with each Department or agency of the State or Territory to which the activities to be carried out under the environment plan, may be relevant. This is taken to mean a government department or agency that has responsibility for managing or protecting the marine environment. This may include those agencies with responsibilities for environmental and fisheries management, oil pollution management and response, defence and communications, biosecurity, maritime/navigational safety, marine parks and native title. In the case of the Commonwealth offshore area adjacent to Ashmore Cartier and other offshore Commonwealth territories, consultation would be undertaken through the relevant Commonwealth department or agency. However, titleholders should investigate the potential for presence of State-managed fisheries as these can extend into Commonwealth waters jurisdiction beyond the 3 nautical mile state waters boundary.
the Department of the responsible State Minister, or the responsible Northern Territory Minister	A titleholder must consult with the Department of the responsible state or Northern Territory minister. This is taken to mean the department that has responsibilities for offshore petroleum or energy resources in the adjacent state or the Northern Territory.
a person or organisation whose functions, interests or activities may be affected by the activities to	A titleholder must consult with persons or organisations whose functions, interests or activities may be affected by the petroleum or greenhouse gas activity described in the environment plan. This is taken to mean that a potential effect on a person's or organisation's functions, interests or

be carried out under the environment plan, or the revision of the environment plan	activities must be directly connected to the activities that an environment plan provides for (i.e. the conduct of a drilling or seismic survey activity). That is, the activity described in the environment plan must have the potential to impact or make a change to the relevant person's functions, interests or activities.
any other person or organisation that the titleholder considers relevant	A titleholder must consult with any person or organisation that it considers relevant. For this category, titleholders can choose to consult with a wide range of stakeholders as part of informing good environmental management practice.

1.1.4. Clarification on 11A(1)(d)

While most relevant person categories outlined in the table above are self-explanatory, further clarification is provided below on the interpretation of regulation 11A(1)(d) and how it is applied by NOPSEMA in decision-making for environment plans.

1.1.5. ..."Functions, interests or activities"

These terms are not defined in the Regulations and are three separate criteria that should be used by the titleholder as part of the process for identifying whether a person or organisation is a relevant person. NOPSEMA considers the following definitions in deciding whether relevant persons under regulation 11A(1)(d) have been consulted:

Functions are a person or organisation's power, duty, authority or responsibilities.

Interests are a person or organisation's rights, advantages, duties, and liabilities; or a group or organisation having a common concern.

Activities are a thing or things that a person or group does or has done.

1.1.6. ..."affected by"

Regulation 11A(1)(d) applies when a person's or organisation's functions, interests or activities may be "affected by the activities to be carried out". 'Affected' in this context is taken to mean any change, whether adverse or beneficial, that wholly or partially results from an activity.

A relevant person under this category is a person or organisation whose functions, interests or activities may be directly affected, impacted, impaired or influenced injuriously by the activity. That is, the activity must impact on the functions, interest and activities themselves. This category could include other marine users such as fishing, mining, tourism, research or shipping organisations or persons where their functions, interests or activities can be affected by the proposed activity. NOPSEMA considers that a person or organisation's functions, interest or activities are not affected by an activity if they cannot be changed by the activity.

1.1.7. ..."the activities to be carried out"

In the context of regulation 11A(1)(d), 'activities' is defined under Regulation 4, which means a petroleum activity or greenhouse gas storage activity. NOPSEMA considers that this includes the planned aspects of the activity, as well as the unplanned or emergency conditions that could arise as a result of the activity, even if those are very unlikely.

Advice for Titleholders

Public comment

The public comment period provides an opportunity for stakeholders to have their say about the environmental management of the activity. Comments received during the public comment period may be from any member of the public, which may include individuals and groups who are also engaged through community and relevant person's consultation. Titleholders should promote the public comment period, by publishing advertisements in relevant local, state and national newspapers as well as on their website.

NOPSEMA cautions titleholders against relying solely on the public comment process for conducting broader engagement with the community. Doing so may reduce community confidence in the titleholder's ability to act responsibly.

Community engagement

NOPSEMA encourages good practice approaches to engagement beyond the statutory relevant person consultation requirements. Titleholders should use existing environmental knowledge, past experience, internet research, initial campaign emails, existing networks and forums, social media, and other research tools to decide who to engage during this process. Information gained from this engagement will be useful in gaining an understanding of the environment in which a titleholder proposes to operate and informing development of an environment plan. This engagement could include community meetings, open forums, engaging with local councils, environmental groups and the broader community. Titleholders should be transparent and upfront as to the basis of engagement to ensure that expectations are clear.

The model for engagement utilised for any given activity may vary depending on a range of factors. However, certain good practice principles should be evident in all processes to provide open and effective engagement between the titleholder and the stakeholder through two-way communication, transparency, collaboration, inclusiveness and integrity.

Relevant persons consultation

It is the expectation of NOPSEMA that a systematic, methodical approach is used by a titleholder to identify relevant persons, and that this method is documented in the environment plan to support the case that appropriate consultation has been undertaken. NOPSEMA considers that relevant persons must be identifiable by the titleholder; that is, should consist of established organisations or representatives that are active and recognisable within their region. This enables titleholders to focus their efforts in a defensible way, without being required to consult indefinitely with private individuals holding opinions or views about offshore energy activities.

A reasonable approach would be to define the environment, including the socio-economic environment that may be affected by the proposed activity and then identify the relevant government departments, agencies and organisations who may be affected by the activities within that environment.

Titleholders should note that once a person or organisation has been identified as a relevant person, all consultation is to be documented in the environment plan consultation report.

Advice for the public, the community and relevant persons

Both statutory and good practice consultation approaches provide the opportunity for the public, the community and relevant persons to provide their input and comment on offshore energy activities. While

specific statutory requirements for consultation apply to relevant persons, the community and the public are afforded opportunity to comment during the 30-day public comment period on all exploration drilling and seismic survey environment plans and to be engaged through additional consultation practices undertaken by the titleholder.

Comments made during the public comment process must relate to the information contained in the environment plan in order to be considered a relevant issue or key matter. Commenters are encouraged to include supporting documents where there is new information that NOPSEMA or the titleholder should consider. For more advice on how to make an effective comment see the [Public comment on environment plans brochure](#).

Individuals and groups engaging through additional engagement practices implemented by the titleholder should ensure that their purpose in engaging and their expectations are clearly communicated to the titleholder. Issues and concerns being raised should be specific about the matter that is to be addressed or heard and follow the good practice principles listed above to allow for meaningful dialogue.

Under the Regulations, relevant persons are those persons or organisations whose functions, interests or activities may be directly affected by an activity. Persons or organisations that consider that they are relevant persons for an activity should identify themselves to the titleholder, ideally when they become aware of a proposal rather than through the public comment process. Persons or organisations that feel that they have been incorrectly omitted as relevant persons should contact NOPSEMA to ensure that this is considered in the decision-making process.

Additional Resources

A suggested list of good practice guidance on consultation is provided below:

- Commonwealth Ministerial Council on Mineral and Petroleum Resources
http://www.pir.sa.gov.au/_data/assets/pdf_file/0020/41735/mcmpr_principles_nov05.pdf
- ISO 26 000:2010; Social Responsibility <https://www.iso.org/iso-26000-social-responsibility.html>
- International Association of Public Participation <https://www.iap2.org.au/resources/iap2-published-resources/>

Contact

Enquiries should be directed to communications@nopsema.gov.au and quote 'Bulletin – Clarifying statutory requirements and good practice engagement person'.