



Decision-making guideline – Criterion-10A(g) Consultation requirements

Criteria (g): Demonstrates that the consultation required has been carried out and the measures adopted are appropriate

Subregulation 10A(g) requires that the environment plan (EP) demonstrates that the titleholder has carried out the consultations required by Division 2.2A of the regulations and that the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate.

Context

The regulations establish consultation requirements in three areas:

- Establishing a requirement to consult during the preparation of an EP through identifying who needs to be consulted, requiring sharing of information and allowing time for consideration of this information (regulation 11A).
- Requiring titleholders to disclose information in an EP about consultation carried out to allow NOPSEMA to independently assess the consultation undertaken (regulation 16(b)).
- Setting out criteria for NOPSEMA to decide whether it is reasonably satisfied that appropriate consultation has been undertaken (regulation 10A(g)).

These requirements comprise of the necessary consultation framework of an appropriate consultation process and should be read together. Separate provisions exist for consultation undertaken during preparation of an Offshore Project Proposal. Consultation undertaken through this process can be used to assist in the preparation of an EP but should be seen as a separate process.

Beyond the preparation stage of an EP, titleholders are required to have a plan in place for ongoing consultation to be undertaken during the activity. This is part of the implementation strategy for the activity and not addressed in this guideline (regulation 10A(e)).

Specific factors influencing decisions

The consultation process used: It is useful to see the regulations as seeking to drive effective consultation processes that provide natural justice to those people that are potentially affected by a proposed activity, and allow them to have their views heard before a regulatory decision that may affect them is made. Effective consultation should enable the hearing of views and contribute to titleholder understanding in the management of impacts and risks of their activity. It should be undertaken with a genuine desire to better understand the environments in which oil and gas companies operate.

Information sought from stakeholders to inform the evaluation of impacts and risks: Information gathered through the consultation process gives important context to accurately plan activities to avoid and minimise impacts and risks on others and the environment. Agreement on the outcome of the process

Consultation process principles

Titleholders are responsible for running an effective consultation process.

Titleholders are responsible for letting relevant persons know if they may be affected by an activity and the process for making comment.

Relevant persons have a right to request information about how they might be affected.

Titleholders must give relevant persons a reasonable time to respond to requests for consultation.

Views from relevant persons must be used to inform quality risk and impact assessments.

Relevant persons consulted have a right to know how their input has been taken into account by NOPSEMA.

NOPSEMA must receive all copies of consultation correspondence in the EP.

NOPSEMA decides whether or not the consultation has been appropriate.



is not always reached and not necessarily required. NOPSEMA’s assessment focuses on the process followed and rationale for decisions where conflicts exist.

The transparency and completeness of the report on consultations:

The titleholder is required to submit a report on all consultations with relevant persons. NOPSEMA uses this information to make decisions about the appropriateness of the consultation undertaken. The consultation report must include all details of consultations undertaken prior to submission of the EP, including details about:

- the consultation process undertaken
- how a titleholder has identified relevant persons
- whether a reasonable period and sufficient information were provided to relevant persons
- the name of the relevant persons consulted
- a brief description of the functions, interests or activities of each relevant person
- the dates consultations occurred
- the method of consultation (i.e. email, phone call or meeting).

NOPSEMA looks for the following in the content of the consultation report.

- **A summary of each response:** A succinctly written summary of each response made by a relevant person is required. This applies to all responses provided by a relevant person regardless of format.
- **An assessment of merits of any objection or claim about adverse impact:** The assessment of merits must clearly identify and address the specific objection or claim raised. It must also logically support, with sufficient evidence, the conclusions drawn by the titleholder. An ‘objection or claim’ is taken to mean:
 - to express opposition, protest, concern or complaint about the proposed activities; a request or demand that certain action be taken by the titleholder to address adverse impacts
 - an assertion that there will be an adverse impact; or allegation to cast doubt about the manner in which the activities will be managed.

NOPSEMA considers that there is a direct link between the outcomes of consultation and demonstrating that impacts and risks of an activity have been reduced to ALARP (as low as reasonably practicable) and will be of an acceptable level. In addressing objections or claims raised by relevant persons, a titleholder must demonstrate that the risk or impact in question has been reduced to ALARP and will be of an acceptable level.

It is not always possible to resolve every issue between a titleholder and a relevant person. Often these issues are associated with a broad objection to resource exploitation or differing views on the significance of an environmental impact or risk. In these cases, NOPSEMA expects to see how the items identified in the breakout box have been addressed.

- **A statement of the titleholder’s response:** The titleholder must provide a statement that addresses each element of the objection or claim made by a relevant person. Where the titleholder implements control measures to resolve objections and claims, the titleholder must clearly communicate this to the relevant person. This should occur prior to submission of the EP and must be included in the report on consultation.

Resolving objections and claims

In some circumstances titleholders and relevant persons may be unable to reach agreement on an activity proceeding as proposed. In this case NOPSEMA expects:

Reasonable attempts have been made.

Reasonably available options have been explored for resolving or mitigating the degree to which a person may be affected, particularly through control measures.

An affected person has been informed about how the titleholder has addressed their objections or claims.

The affected person has been made aware of how their objections or claims are going to be represented to NOPSEMA.

Did you know...?

NOPSEMA is available, on request, to provide advice to all stakeholders about the consultation process.



- **A copy of the response by a relevant person:** Copies of all written responses provided by a relevant person must be included in the report. Extracts or summaries of responses by relevant persons prepared by a titleholder will be considered to represent an incomplete report and a failure to demonstrate that appropriate consultation has been carried out.

Making a decision

The decision about whether or not the NOPSEMA decision maker is or is not reasonably satisfied is made by judgement, taking into account assessment findings made by NOPSEMA environmental specialists. Findings that record how the decision maker became reasonably satisfied will be made with specific regard to the following content requirement regulations. These findings will include the considerations, facts, reasons, and conclusions of NOPSEMA assessors in relation to:

- Regulation 13(5)&(6): evaluation of impacts and risks
- Regulation 16(b): report on consultations.

Where NOPSEMA considers that a submission is considerably lacking in terms of the consultation undertaken, it will not proceed with the assessment. **An EP has demonstrated the consultation process has been followed and the measures adopted are appropriate when stakeholders affected by the survey are aware of the environmental impacts and risks and have received natural justice prior to the submission of the EP.** This point is reached when:

Relevant persons consulted with: The regulations describe five categories of relevant persons with whom a titleholder must consult. NOPSEMA will consider consultation incomplete without consultation with each relevant authority, person and organisation.

- The first two categories are Government departments or agencies that may be relevant based on the activities proposed. This is taken to mean a Government department or agency that has responsibility for managing the marine environment. This may include those with responsibilities for environmental and fisheries management, defence and communications, maritime/navigational safety, marine parks and native title.
- The third category is 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 Northern Territory.
- The fourth category is 'a person or organisation whose functions, interests or activities may be affected' by the proposed activities. Establishing relevancy will be highly dependent on the nature and scale of the activity, receiving environment and environmental impacts and risks of the activity.
- The final category is 'any person or organisation that the titleholder considers relevant'. NOPSEMA suggests that this includes any person or body not captured by the above categories, but the titleholder considers relevant to the activity.

Deciding if relevant persons have been consulted

NOPSEMA scrutinises the methods used to determine who is a relevant person.

Existing environmental knowledge, past experience, internet research, initial campaign emails, existing networks and forums, social media, and other research tools may all be used by titleholders.

Reasonable efforts to determine who may be affected by the activity must be applied.

In deciding if relevant persons have been consulted NOPSEMA will consider:

- publicly available information such as published consultation expectations,
- the quality of information relied upon to exclude persons from consultation who may be relevant,
- information provided by other relevant persons during consultation,
- information provided directly to NOPSEMA from persons who may be relevant.

**How a relevant persons functions, interests and activities have been defined:**

The terms ‘functions’, ‘interests’ or ‘activities’ are three separate criteria for identifying whether a person or organisation is a relevant person. If any of a person’s functions, interests or activities may be affected by an activity, they are considered to be a relevant person and must be consulted. NOPSEMA considers the following definitions in deciding if consultation has been undertaken with all relevant persons.

- Functions are a person or organisation’s power, duty, authority or responsibilities.
- Activities are a thing or things that a person or group does or has done.
- Interests are a person or organisation’s rights, advantages, duties, and liabilities; or a group or organisation having a common concern.

Provision of ‘sufficient information’ to stakeholders: Determining how a person, organisation or authority is affected requires provision of information about the way in which the proposed activity might impact on their functions, interests or activities. NOPSEMA needs to see information that demonstrates the titleholder has shared information that is targeted to relevant persons’ needs and:

- details the proposed activity and any impacts and risks that may be relevant to them
- puts forward information on how an impact or risk may affect that relevant person
- includes the control measures proposed to manage the potential impacts to that relevant person.

Determining what is sufficient will be influenced by the degree to which the relevant person may potentially be affected by the activity. NOPSEMA requires the information provided be relevant, accurate and clear. The provision of information will likely need to be iterative during the development of an EP. More specific and targeted information may need to be provided following initial consultation to ensure sufficient information is provided.

The reasonableness of the period provided: The time required for consultation varies depending on the individual circumstances of the relevant person, the proposed activity, the extent of impact and risks on that relevant person and the level of information that has been provided. NOPSEMA expects titleholders to provide more time to a relevant person significantly affected or where the effect is uncertain. In addition, some relevant persons may require longer timeframes than others, such as those that do not have resources dedicated specifically to liaise with the petroleum industry. NOPSEMA considers sufficient time will allow:

- a relevant person to assess information
- and provide a response detailing any ‘objections or claims’
- for the titleholder to consider responses in the developing the EP
- for the titleholder to reply back to the relevant person on how they propose to address any ‘objections or claims’ in the EP.

This must occur prior to submission of the EP. Additional time may be needed in circumstances where more specific and targeted information has been provided following initial consultation. The above steps should be repeated in these cases.

In the event that no response is provided by a relevant person, it must be apparent to NOPSEMA that reasonable attempts have been made to elicit a response. A variety of methods of communication should

A sample of NOPSEMA decision-making questions

Could the relevant person consulted make an informed decision about how they may be affected by an activity?

Is it clear that information gathered through consultation has informed the following:

- the description of the environment
- the evaluation of impacts and risks
- the adoption of control measures?

Were the relevant persons aware of how to provide information, how to get more information, and how their views were taken into account?

Are the consultation efforts of the titleholder proportionate to the degree to which that relevant person will be affected?

Has the titleholder met any publicly available expectations of consultation held by that relevant person?

Are the reasons for selecting/rejecting additional measures proposed by relevant person reasonable?



be considered and attempted. The effort spent should be considered in relation to the above factors such as the degree to which the relevant person may be affected by the activity.

FOR CONSULTATION