

Consultation with Commonwealth agencies with responsibilities in the marine area

The content of this guideline was available on the Department of Industry, Innovation and Science's website and has been transitioned to NOPSEMA. This guideline will be subject to review by NOPSEMA in 2020.

1. Introduction

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is responsible for regulating environmental management arrangements for offshore petroleum and greenhouse gas activities in Commonwealth waters. Petroleum and greenhouse gas activities undertaken in Commonwealth waters¹ do not require individual referral, assessment or approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provided they are undertaken in accordance with the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations) and additional commitments described in the [Program report - Streamlining offshore petroleum environmental approvals](#).

2. Purpose

When developing or revising an environment plan in accordance with the Environment Regulations, titleholders must consult with relevant Australian Government agencies with responsibilities in the Commonwealth marine area. This guidance seeks to assist titleholders in determining which agencies may be considered relevant.

This guidance does not preclude the need for titleholders to consider the requirements for consultation with other Australian Government agencies and state or Northern Territory agencies, where there are relevant agency interests. It remains the titleholder's responsibility to conduct their own assessment of relevant agencies.

Parties proposing to undertake a petroleum activity within the Perth Treaty Area should ensure that they are aware of, and in compliance with, all laws and regulations of Australia and other relevant countries. Any consultation with potentially affected parties must be undertaken according to those regimes, as required.

¹ Subject to the following exclusions:

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

3. Consultation process

A titleholders request to consult with an Australian Government agency should be submitted to the appropriate point of contact for the agency (see the table for details). The consultation request should provide sufficient information to allow the relevant agency to make an informed assessment of how their functions, interests or activities may be impacted by the proposed petroleum or greenhouse gas activity.

Agencies will respond to consultation requests within 10 business days of receipt. For more complex or detailed consultation requests, a longer processing time may be required and the titleholder will be advised of this within the initial 10 business day period. General notifications will not be considered as consultation requests.

Agencies may provide comments or advice on control measures that should be considered by titleholders to manage the potential impacts and risks of a petroleum activity.

It is NOPSEMA's role to determine whether proposed control measures are appropriate to the nature and scale of the proposed petroleum activity.

4. Australian Government agency interests

DEPARTMENT OF THE ENVIRONMENT AND ENERGY (Including the Australian Antarctic Division)

Role in the Commonwealth marine area

The Department of the Environment and Energy administers the EPBC Act, the *Historic Shipwrecks Act 1976* and the *Environment Protection (Sea Dumping) Act 1981*, all of which have some application in the Commonwealth marine area*.

The Department's role in administering the EPBC Act includes ensuring the objectives of the EPBC Act are met. The Department is also responsible for monitoring the state of the environment, in particular matters protected under national environment law. To support this role, the Department develops policy guidance on the protection and conservation of matters protected under the EPBC Act, including the Commonwealth marine area, Ramsar Wetlands and threatened, migratory and marine species. Under the Program, NOPSEMA has committed to having regard to relevant policies, guidelines, plans of management and other supporting documentation on the Department's website in assessing environment submissions.

NOPSEMA has issued guidance to titleholders on the assessment requirements for matters protected under the EPBC Act under the Program see (<http://www.nopsema.gov.au/assets/Information-papers/N-04750-IP1382-Streamlining-environmental-regulation-of-petroleum-activities-in-Commonwealth-waters.pdf>). This includes reference to relevant public policy, guidance, management plans and search tools available on the Department's website. Titleholders with questions regarding publicly available information should contact the Department's Community Information Unit on 1800 803 772 and ask to be connected with the relevant line area.

In addition, information collected by industry or the research sector on species, biologically important areas or key ecological features may be submitted to the Department for internal quality assurance review and, where relevant, incorporation in policy documents or support tools, such as the conservation values atlas. This ensures the best available information is publicly accessible and the environmental information baseline remains current. Industry and researchers are encouraged to refer to the biologically important areas protocol in preparing data for submission.

The Australian Antarctic Division

The Australian Antarctic Division (AAD), encompassing the Australian Marine Mammal Centre, is also part of the Environment portfolio. The AAD provides the *Cetacean Sightings Application* to assist industry with its reporting obligations under the EPBC Act.

Data collected during seismic surveys should be submitted within two months of the completion of a survey, and should follow the format of the *cetacean sightings application*. It is AAD's expectation that sightings, ship strikes, and entanglements that occur during offshore oil and gas activities will be reported in accordance with Section A.4 of *EPBC Act Policy Statement 2.1 on the Interaction between offshore seismic exploration and whales*.

In addition to reporting tools for sightings of cetaceans, the AAD also hosts reporting tools for *Ship Strikes* and *Entanglements*. All reports are collated into the national marine mammal database. This database can provide industry, researchers, and the public with summarised information on the biology of marine mammals, and will assist with data-driven management and conservation decisions. Questions regarding reporting formats and requests to access data should be sent to sightingsdata@aad.gov.au. The *cetacean sightings application*, online reporting tools, and downloadable forms are available at data.marinemammals.gov.au.

Environment Protection (Sea Dumping) Act 1981 (Sea Dumping Act)

The disposal or storage of wastes directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources is exempted from the permitting requirements of the Sea Dumping Act. Under the Sea Dumping Act, titleholders may require a sea dumping permit if the activity involves any abandonment or toppling at site of platforms, or movement of waste material from the site to another location for sea disposal during decommissioning. Abandonment in the sea of infrastructure (e.g. cables, pipelines, and marine research devices) that is placed for a purpose such as production may not require a sea dumping permit. Titleholders should contact the Department during the development of environment submissions under the Program if they wish to use the submissions in applying for a permit under the Sea Dumping Act. For enquiries about sea dumping permit requirements contact: seadumping@environment.gov.au

Historic Shipwrecks Act 1976

In very general terms, state/territory laws apply to coastal waters (up to three nautical miles) and Commonwealth laws apply from those waters out to the 200 nautical miles limit of the exclusive economic zone. However, under the *Offshore Constitutional Settlement 1978* the Commonwealth maintains jurisdiction over historic shipwrecks and associated relics within the coastal waters of the states, the Northern Territory and Norfolk Island. Titleholders should refer to the historic shipwrecks web site environment.gov.au/topics/historic-shipwrecks and consider the information and guidance provided, including the detailed spatial and historical data, for inclusion in environment submissions under the Program, where relevant.

* For activities that may impact on Commonwealth marine reserves specifically, see Director of National Parks.

Where the Department is a relevant agency under the Environment Regulations

As the Department's functions, interests and activities have been incorporated in the requirements of the Program, the Department is not considered a relevant agency for consultation purposes under the Environment Regulations.

Contact

EPBC.referrals@environment.gov.au

DIRECTOR OF NATIONAL PARKS

Role in the Commonwealth marine area

The Director of National Parks is the statutory authority responsible for administration, management and control of Commonwealth marine reserves. Under the EPBC Act, any activity undertaken in a Commonwealth marine reserve that may impact on the conservation values of the reserve or is for commercial purposes requires approval from the Director of National Parks. Petroleum and greenhouse gas activities undertaken in a Commonwealth marine reserve are assessed by NOPSEMA in accordance with the Program. Additional assessment by the Director of National Parks is therefore not necessary as the endorsed Program takes into account impacts on marine reserve values. For details about the locations of Commonwealth marine reserves see: environment.gov.au/topics/marine/marine-reserves/overview/resources.

Objectives for managing Commonwealth marine reserve include providing for the protection of conservation values within reserves and the ecologically sustainable use of natural resources. The Director of National Parks responsibility for the management of Commonwealth marine reserve requires an awareness of activities that occur in reserves and understanding of potential benefits, impacts and risks to the values of those reserves.

Consistent with requirements of the Environment Regulations, the Director of National Parks expects that impacts and risks to the values of a Commonwealth marine reserve associated with offshore petroleum activities will be of an acceptable level and reduced to as low as reasonably practicable.

NOPSEMA has published guidance in consultation with the Director of National Parks and Parks Australia that outlines key considerations during the preparation of submissions for activities that are within, or have the potential to impact on the values of, a Commonwealth marine reserve (see the Petroleum activities and Australian marine parks guidance note). The key goal of this guidance is to explain implications of Commonwealth marine reserve transitional management arrangements for titleholders and their activities. NOPSEMA will work with the Director of National Parks to update the guidance to reflect changes to management arrangements for Commonwealth marine reserves as required.

Further information on the Director of National Parks expectations for consultation by titleholders on matters relating to offshore petroleum activities (including timeframes and what constitutes sufficient information) can be obtained by emailing: marinereserves@environment.gov.au

Where the Director of National Parks is a relevant agency under the Environment Regulations

The Director of National Parks is a relevant person for consultation where:

- the activity or part of the activity is within the boundaries of a proclaimed Commonwealth marine reserve
- activities proposed to occur outside a reserve may impact on the values within a Commonwealth marine reserve
- an environmental incident occurs in Commonwealth waters surrounding a Commonwealth marine reserve and may impact on the values within the reserve.

Contact

For enquiries to the Director of National Parks please contact: marinereserves@environment.gov.au

DEPARTMENT OF AGRICULTURE AND WATER RESOURCES - Fisheries

Role in the Commonwealth marine area

The Department of Agriculture and Water Resources has primary policy responsibility for promoting the biological, economic and social sustainability of Australian fisheries. The Department provides policy advice to the Australian Government on a range of economic and environmental fisheries issues, including the conservation of marine ecosystems and biodiversity that support commercially valuable fisheries resources.

It is the Department's expectation that proposed actions must conform to the principles of ecologically sustainable development, including minimising habitat loss and degradation of Commonwealth fisheries. This includes appropriate management or mitigation if the proposed action creates the:

- threat of serious or irreversible environmental damage to Australian fisheries
- possibility that the health, diversity and productivity of the environment is threatened or has the potential to be degraded
- potential that the long-term and short-term economic, environmental, social and equity considerations are reduced or degraded.

The Commonwealth has generally limited its jurisdiction to commercial fishing, with state and territory fisheries departments assuming responsibility for recreational fishing. In general terms, state/territory laws apply to coastal waters (up to three nautical miles) and Commonwealth laws apply from those waters out to the limit of the Australian fishing zone (200 nautical miles), the boundary of Australia's exclusive economic zone.

Activities such as seismic surveys, drilling, exploration, geotechnical surveys, construction and installation of sub-sea infrastructure have the potential to affect commercially important fish species, their prey and habitats, and the business activities of commercial fishers.

Where the Department is a relevant agency under the Environment Regulations

The Department is the relevant agency under the following circumstance where the activity has the potential to negatively impact fishing operations and/or fishing habitats in Commonwealth waters by:

- disrupting existing fishing activities
- causing declines in valuable fisheries resources in the area
- damaging habitat or marine eco-systems on which valuable fisheries resources depend.

Contact

For enquiries about fisheries contact: Petroleum&Fisheries@agriculture.gov.au

DEPARTMENT OF AGRICULTURE AND WATER RESOURCES - Biosecurity (vessels, aircraft and personnel)

Role in the Commonwealth marine area

The Department of Agriculture and Water Resources administers the *Biosecurity Act 2015*. The Biosecurity Act has jurisdiction within Australian territory and does not encompass the full extent of the Commonwealth marine area.

The department has inspection and reporting requirements to ensure that all conveyances (vessels, installations and aircraft) arriving in Australian territory comply with international health regulations and that any biosecurity risk is managed. The biosecurity risk of each conveyance entering Australian territory is assessed to determine if the risk is unacceptable and if required necessary action is taken to manage the risk.

Offshore petroleum activities conducted outside of Australian territory will not come into the control of the department. However, a conveyance which leaves Australian territory (not subject to biosecurity control) and interacts with a petroleum installation or vessel associated with petroleum activities will become an exposed conveyance. In the context of interactions with offshore petroleum activities, a conveyance is a vessel or aircraft.

A conveyance becomes exposed by being in physical contact with, in close proximity to, or being contaminated by an offshore petroleum installation or associated vessel. When the exposed conveyance returns to Australian territory, it becomes subject to biosecurity control and must arrive at a first point of entry, pre-arrival report and notify if it intends to unload goods.

The department acknowledges that there are many conveyance interactions outside Australian territory that present minimal biosecurity risk. The department's approach is that when these low risk interactions occur the exposed conveyance should not become subject to biosecurity control when returning to Australia, not have to arrive at a first point of entry or pre-arrival report or notify to unload goods.

The Biosecurity (Exposed Conveyances – Exceptions from Biosecurity Control) Determination 2016 (the Determination) gives effect to the department's policy approach. The Determination is a legislative instrument made under section 192(6) of the Biosecurity Act.

Where a conveyance can meet the conditions of the Determination, it is exempted from being subject to biosecurity control when returning to Australian territory and can return to any port. Additionally, the conveyance qualifies for exceptions to pre-arrival reporting and notification to unload goods under the Biosecurity Regulation 2016.

Where the Department is a relevant agency under the Environment Regulations

The department is the relevant agency where the titleholder's activity involves:

- the movement of aircraft or vessels between Australia and offshore petroleum activities either inside or outside Australian territory
- the exposure of an aircraft or vessel (which leaves Australian territory not subject to biosecurity control) to offshore petroleum activities
- the movement of goods or personnel to or from offshore petroleum activities
- an aircraft or vessel seeking permission to return to a non first point of entry after exposure to offshore petroleum activities
- wanting to satisfy the Director of Biosecurity that the biosecurity risk of its installation is acceptable, to enable exposed conveyances to access exceptions under the Determination.
- wanting consideration to enter into an approved arrangement to manage the biosecurity risk of its installation or vessel involved in offshore petroleum activities.

Contact

For inquiries about aircraft or vessel interactions with offshore petroleum activities contact:
seaports@agriculture.gov.au

DEPARTMENT OF AGRICULTURE AND WATER RESOURCES - Biosecurity (Marine Pests)

Role in the Commonwealth marine area

The Department of Agriculture and Water Resources has primary policy and regulatory responsibility for managing biosecurity for incoming goods and conveyances, including biosecurity for marine pests. The Department implements and enforces the *Biosecurity Act 2015* (Biosecurity Act), which includes a chapter on the management of ballast water. The Department provides national leadership in management of established marine pests, and in responding to incursions of exotic marine pests. The Department also represents Australia at the International Maritime Organisation (IMO) on ballast water and biofouling matters. Ballast water and biofouling are internationally recognised as major pathways for the global spread of marine pests.

The Department's principal functions with respect to marine pests are:

- to reduce the likelihood of the entry and establishment of exotic marine pests
- to provide national leadership in the response to new marine pest incursions and in the management of established marine pests, in cooperation with state and territory governments, and with industry stakeholders
- to represent Australia's interests in the establishment of international guidelines and conventions relating to marine pests.

The Department is responsible for implementing ballast water requirements under the Biosecurity Act. This includes implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (Convention) and domestic ballast water regulations, in addition to current management measures in place for vessels arriving from international ports. Domestic ballast water requirements relate to movement of ballast water within Australian waters and these will be implemented when the Convention comes into force for Australia.

Where the Department is a relevant agency under the Environment Regulations

The Department is the relevant agency where an offshore activity has the potential to transfer marine pests between installations and mainland Australia.

Contact

For enquiries about marine pests contact: pestmarine@agriculture.gov.au

AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY

Role in the Commonwealth marine area

The Australian Fisheries Management Authority (AFMA) is responsible for the implementation of Commonwealth fisheries policy. In managing Commonwealth fisheries, AFMA pursues objectives as outlined in the *Fisheries Management Act 1991*, *Fisheries Administration Act 1991* and *Torres Strait Fisheries Act 1984*. In managing Commonwealth fisheries, AFMA applies the principles of ecologically sustainable development and complies with the relevant sections of the EPBC Act.

AFMA manages Commonwealth fisheries in consultation with the fishing industry and other user groups, such as those that represent traditional fishing, recreational fishing and the environmental non-government organisations. These management processes are used to implement controls, such as limits on catch or effort levels, and regulations of fishing methods in order to manage Australia's fisheries in a sustainable way.

AFMA ensures that any broad-scale impacts of offshore petroleum industry development on commercial fishing in Commonwealth waters are considered in decision making by the Department of Industry, Innovation and Science.

AFMA provides comment on the annual offshore petroleum exploration acreage release prior to their release (this information is made available to operators as part of the release area notices).

AFMA has developed guidelines which outline AFMA's approach to consultation and engagement with the petroleum industry. AFMA has also developed information for fishing operators who want to find out more about petroleum industry activities.

AFMA expects petroleum operators to consult directly with fishing operators about all activities and projects which may affect day to day fishing activities. AFMA provides a Fisheries Consultation Directory of contacts for fishing industry associations in each fishery. Another option for petroleum operators is to access the names and addresses of individual Commonwealth statutory fishing right, fishing permit and high seas permit holders from the Public Register, which can be obtained by contacting AFMA Licensing.

Where AFMA is a relevant agency under the Environment Regulations

AFMA is a relevant agency where the activity:

- can impact or has the potential to impact on fisheries resources in AFMA managed fisheries.
- interacts with other legislation administered by AFMA, for example the *Fisheries Management Act 1991* or *Torres Strait Fisheries Act 1984*.

Contact

For enquiries about potential impacts on fisheries resources or interactions with legislation administered by AFMA contact: petroleum@afma.gov.au

AUSTRALIAN MARITIME SAFETY AUTHORITY

Role in the Commonwealth marine area

The Australian Maritime Safety Authority (AMSA) is a statutory authority established under the *Australian Maritime Safety Authority Act 1990* (the AMSA Act). AMSA's principal functions are:

- promoting maritime safety and protection of the marine environment
- preventing and combating ship-sourced pollution in the marine environment
- providing infrastructure to support safe navigation in Australian waters
- providing a national search and rescue service to the maritime and aviation sectors.

AMSA delivers a range of navigational services, primarily aimed at the levy-paying commercial shipping industry. These services provide ships with the ability to navigate safely around Australia's coastline and to and from its ports.

AMSA also implements and enforces a range of legislation relevant to the Commonwealth marine area which gives effect to Australia's obligations under various international treaties and conventions including the

MARPOL International Convention for the Prevention of Pollution from Ships. Commonwealth legislation includes the *Navigation Act 2012* and the Protection of the Sea legislation. AMSA also actively engages in the work of the International Maritime Organisation.

Where AMSA is a relevant agency under the Environment Regulations

AMSA is a relevant agency under the following circumstances:

- When proposed offshore activities including, but not limited to, geotechnical exploration, geophysical exploration, drilling, coring, offshore laydowns and/or fixed or floating construction, may impact on the safe navigation of commercial shipping in Australian waters.
- For the supply of historical commercial shipping tracks and other related spatial information.
- Where there are changes to aids to navigation on fixed or floating structures, buoys, beacons or virtual or synthetic automatic identification systems (AIS) and radar beacon (RACONs).
- For any other aspect involved in marine spatial planning and the management of common water space in Commonwealth waters.
- When titleholders have questions about the application of MARPOL in relation to vessels.

Contact

For consultation on navigation: NauticalAdvice@amsa.gov.au

For questions on the application of MARPOL in relation to vessels: eps@amsa.gov.au

DEPARTMENT OF DEFENCE (including the Australian Hydrographic Service)

Role in the Commonwealth marine area

The Australian Defence Force utilises several maritime exercise areas in Australian waters to perform a unique role in support of Australia's strategic and national security interests. The Australian Defence Force role requires not only naval warfare capabilities but also disaster relief, search and rescue, fisheries protection and border patrol training capabilities.

It is important for the Australian Defence Force to continue to utilise its offshore training areas, manage potential conflict between the presence of the resources sector with Australian Defence Force and other defence training and operational requirements and manage the risk of unexploded ordnance in areas where offshore petroleum activities may take place.

The Australian Hydrographic Service (AHS) is responsible for the publication and distribution of nautical products and other information required for the safety of ships navigating in Australian waters.

Where Defence is a relevant agency under the Environment Regulations

The Department of Defence is a relevant agency under the following circumstances:

- where the proposed activity may impact operational requirements
- where the proposed activity encroaches on known training areas and/or restricted airspace
- where there is a risk of unexploded ordnance in the area where the activity is taking place
- when nautical products or other maritime safety information is required to be updated.

Contact

Directorate of Property Acquisition, Mining and Native Title: offshore.petroleum@defence.gov.au
 Australian Hydrographic Office: datacentre@hydro.gov.au

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

Role in the Commonwealth marine area

The Department of Foreign Affairs and Trade promotes and protects Australia's interests internationally and contributes to global stability and economic growth. The department works with other government agencies to ensure that Australia's pursuit of its global, regional and bilateral interests is coordinated effectively.

Australia shares maritime boundaries with a number of other countries including Indonesia, Timor Leste, Papua New Guinea and New Zealand. The Department of Foreign Affairs and Trade manages Australia's relationships and interaction with the governments of our neighbouring countries.

The Department of Foreign Affairs and Trade has no direct role in the management of the Commonwealth marine area, but has an interest in ensuring that consultation with foreign entities, both private and government, is effective and is aligned with Australia's interests. Titleholders may wish to notify the Department of Foreign Affairs and Trade if they are planning to conduct consultations with any of the aforementioned parties.

Where DFAT may be consulted

The Department of Foreign Affairs and Trade may be consulted under the following circumstances:

- where a proposed activity may cross into or impact on waters outside of Australia's maritime jurisdiction
- where a proposed activity poses any oil spill or other environmental risks that could result in impacts to other international jurisdictions
- where relevant persons that may be impacted by a proposed activity include foreign individuals or governments.

Contact

Derya Koc-McDonald
Derya.Koc-McDonald@dfat.gov.au
Director, Sea Law and Antarctica Section
Transnational and Sea Law Branch
Department of Foreign Affairs and Trade

5. Related documents

N-04750-PL1347 – Environment assessment policy

N-04750-GL1721 – Environment plan decision making guideline

N-04750-GN1344 – Environment plan content requirements guidance note

N-04750-GN1785 – Petroleum activities and Australian marine parks guidance note