



Environment plan assessment policy

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Purpose

The purpose of this policy is to provide a documented, systematic and consistent approach for conducting the assessment of environment plans (EPs). The environment plan assessment policy supports and provides detail to the overarching NOPSEMA assessment policy (N-04000-PL0050).

1 Scope

This policy applies to the assessment of all EPs and proposed revisions to EPs submitted to NOPSEMA under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations)¹. Except where otherwise specified, a reference to a regulation in this document refers to the Environment Regulations.

For the purposes of this policy, unless otherwise specified, the term 'titleholders' refers to both current titleholders as well as applicants for petroleum access authorities, petroleum special prospecting authorities, pipeline licenses, greenhouse gas search authorities or greenhouse gas special authorities.

2 Decision-making principles

NOPSEMA's decisions on EPs are determined by the extent to which the criteria for acceptance detailed in regulation 10A are met. However, NOPSEMA recognises that assessment of this criterion raises complex and often competing environmental, social and economic considerations. As a result, NOPSEMA has adopted a decision-making approach which utilises the principles of good decision-making² as well as satisfying the object of the Environment Regulations³. This framework allows NOPSEMA to discharge its obligations fairly, as well as ensuring its decisions give due regard to all relevant and mandatory environmental considerations.

3 Pre-assessment requirements

The submission of an EP to NOPSEMA must be made by a titleholder for the activity, or by an applicant for the class of titles specified in the Environment Regulations⁴. If the title application is granted during the assessment of the EP, the titleholder should inform NOPSEMA and have consideration of their obligations including compliance with financial assurance requirements.

Prior to making an EP submission, titleholders are encouraged to engage with NOPSEMA if clarification on submission, scope, content or other regulatory requirements is necessary.

Submission of an EP is an eligible voluntary action⁵ and as such, must be made either jointly (for activities with multiple titleholders) or by the titleholder that is nominated to undertake eligible voluntary actions on behalf of all registered titleholders. It is the titleholder's responsibility to ensure that a submission is made in accordance with Section 775B of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act).

¹ For further information on whether or not an EP is required for a particular activity, please refer guidance published on NOPSEMA's website.

² In accordance with the *Administrative Decisions (Judicial Review) Act 1977*.

³ Environment Regulations, regulation 3.

⁴ Environment Regulations, regulation 9(2).

⁵ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Part 9.6A

3.1 Form of an environment plan

An EP must be in writing and may include maps, diagrams and figures as relevant. NOPSEMA requests that one electronic copy (PDF, fully searchable, unprotected) is provided for all submissions, as described in the Making submissions to NOPSEMA guideline (N-04000-GL0225).

An EP may relate to multiple stages of a single activity, multiple activities, multiple locations and activities undertaken by multiple titleholders. EPs must be structured clearly and describe the scope of the activity or activities that are proposed to be in an approved form⁶. If it becomes apparent during an assessment that the 'form' of the EP is preventing NOPSEMA from finding reasonable grounds to accept the plan, NOPSEMA will notify the titleholder as soon as practicable.

It is NOPSEMA's policy to require revision of the whole EP, should a revision be required. Agreement to revise an EP in part will only be given under exceptional circumstances⁷.

3.2 Information previously supplied to NOPSEMA

Regulation 31 provides for a titleholder to refer to information that was previously given to NOPSEMA for another purpose in their EP submission. The information referred to as part of the EP submission will be taken to be part of the EP. NOPSEMA will determine whether the information is sufficient and adequate for the purpose of the submission.

Titleholders must ensure that where previous information is to be taken into consideration, references to this information must be specific and unambiguous. Care should be taken if referring to whole documents that may have irrelevant information that undermines the case being made in the EP. Titleholders must avoid contradictions between the submission and the information previously supplied for this provision to be useful. Titleholders may use the feature where information does not change between individual EPs.

3.3 Submission and completeness of the environment plan

All EP submissions made to NOPSEMA undergo a pre-assessment check to confirm:

- that an appropriate titleholder or applicant is making the submission
- that the submission appears administratively complete (i.e. all identified attachments and appendices have been included with the submission)
- contact details for a liaison person for the submission have been provided
- that the basis for the submission is clear (i.e. the regulation under which the submission is being made has been identified)
- that the activity will not be undertaken in any part of a declared World Heritage property
- whether the activity is part of an offshore project (see Section 3.4).

An incomplete submission may result in that submission being returned or the commencement of the assessment being delayed. Apart from the checks described above, the information provided in an EP submission is presumed to be complete and accurate.

⁶ Environment Regulations, regulation 9(7).

⁷ Environment Regulations, regulation 20.

3.4 Activities that are part of an offshore project

All EP submissions made to NOPSEMA are checked to confirm whether any of the activities described in the EP are part of an offshore project as defined in the Environment Regulations.⁸ If so, NOPSEMA will ensure that the titleholder has clearly demonstrated that an offshore project proposal (OPP) for the activity has been accepted, or that an equivalent decision in accordance with the *Environment Protection and Biodiversity Conservation Act (1999)* (EPBC Act) has been made for the project. If these previous authorisations are not in place for the activity, NOPSEMA will advise the titleholder that the EP is taken not to have been submitted.

For EP submissions with activities that are part of an offshore project, NOPSEMA considers appropriate environmental performance outcomes to be ones that are consistent with those set out in the accepted OPP. Variation of one or more environmental performance outcomes must not result in environmental impacts or environmental risks that are at levels higher than those in the accepted OPP.

3.5 Publication of information on submission

Following the submission of an EP, NOPSEMA must publish specific information pertaining to that EP⁹ on its website as soon as practicable. This includes contact details of the nominated titleholder liaison person for the activity, a description of the activity to which the EP relates and the location of the activity. Where there is increased stakeholder attention, NOPSEMA may also undertake additional publicity about the EP assessment process or other relevant information.

To enable publication of appropriately detailed information NOPSEMA requires the following information to be provided by titleholders at the time of submission:

- a brief description (approx. 250 words) of the activity
- a map clearly showing the activity location in .jpeg format.

The map should allow stakeholders who visit the webpage to be informed of proximate environmental sensitivities to the location of the activity.

Should the titleholder decline to provide the requested information on submission, NOPSEMA will publish the full description of the activity as it appears in the EP and a map selected from the EP, in order to meet the regulatory requirements of publication of information.

Further details of the information to be submitted by the titleholder for publication are provided in Making submissions to NOPSEMA guideline (N-04750-GL0225) and the EP submission cover sheet form (N-04750-FM1257).

⁸ For more information on offshore project proposal content requirements please refer guidance published on NOPSEMA's website.

⁹ Environment Regulations, sub-regulation 9(8).

4 NOPSEMA assessment of environment plans

4.1 Assessment process

NOPSEMA's assessment of an EP considers all information provided on submission (including information previously given to NOPSEMA that is explicitly referenced by the titleholder as being part of the EP, see section 3.2).

The Environment Regulations place the responsibility on the titleholder to demonstrate in the EP that impacts and risks have been detailed, evaluated and reduced to levels that are acceptable and as low as reasonably practicable. Titleholders are required to provide content in the EP to meet each requirement of division 2.3 of the regulations¹⁰ Titleholders are also required to demonstrate how each of the legislative requirements that apply to the activity will be met and how commitments made in the EP will be implemented.

Further advice on how the titleholder can prepare an EP that complies with the legislation can be found on the NOPSEMA website. Specifically, NOPSEMA has published decision making guidelines which describe how decisions are made in accordance with the acceptance criteria. NOPSEMA will have regard to all its published advice during the assessment and in making decisions. NOPSEMA will also have regard to the Department of the Environment and Energy (DEE) policies, guidelines, plans of management and other material relating to matters protected under Part 3 of the EPBC Act relevant to the activity.

NOPSEMA will consider the EP content to determine whether NOPSEMA can be reasonably satisfied that the plan, as a whole and for each part, meets the acceptance criteria in regulation 10A. NOPSEMA's assessment will test the sufficiency, appropriateness, completeness and accuracy of the information in the EP. NOPSEMA will not infer compliance where information is disparate and not clearly justified in the EP.

NOPSEMA will consider requesting further written information, prior to making an assessment decision. In circumstances where information is not presented or is insufficient to make a determination on whether a titleholder has provided information required in division 2.3 and/or that the EP meets the acceptance criteria, NOPSEMA will request further written information, prior to making an assessment decision (see sections below for further information).

Where there is scientific uncertainty or technical complexity associated with the information presented, NOPSEMA may seek expert technical advice from an appropriately experienced third party. In this circumstance, relevant context from the EP may be provided to the third party(ies) under a confidentiality agreement to inform development of technical advice.

It is NOPSEMA's preference that all correspondence relating to an objection or claim regarding an activity is directed to the titleholder to ensure it is addressed in the EP. If third-party correspondence is received by NOPSEMA it will be passed to the titleholder to allow procedural fairness and natural justice. The EP assessment will consider information provided by a third-party that is, or may be, relevant to the decision.

¹⁰ For more information on EP content requirements please refer to guidance published on NOPSEMA's website.

4.2 Assessment scoping (setting the assessment brief)

The assessment process consists of two separate elements, a 'general assessment' which looks at the entire submission and a more detailed 'topic assessment' which focuses extra attention on aspects of the submission which by their nature require additional consideration. The choice of the particular topic assessment is made before the assessment commences by the Lead Assessor who reviews the submission and seeks input from relevant technical team managers. This is called setting the assessment brief which is endorsed by a representative of NOPSEMA. Initial scoping of the assessment will assign more resources and effort to submissions for activities that are large and complex. A justification for the assessment brief will be recorded and shared with the titleholder through inclusion in decision letters.

General assessment

Each EP submission is subject to a general assessment. The general assessment considers whether the contents of the EP comply with all of the requirements of division 2.3 (content requirements), and generally whether NOPSEMA should be reasonably satisfied that the submission, taken as a whole, meets the criteria set out in regulation 10A (criteria for acceptance). The general assessment involves assessment of the whole EP.

Topic assessment

Topics are selected so as to ensure that the highest environmental impacts and risks are given appropriate assessment attention. Topic assessment considers the extent to which the EP complies with content requirements of an applicable selection of the regulations with respect to the topic. The topic assessment scoping process considers:

- the knowledge base and certainty about the impacts and risks on the values and sensitivities of the environments in which the activity is proposed to occur
- the extent to which the titleholder has adopted novel approaches or new technology
- regulatory intelligence including previous assessments and inspections for the same titleholder, similar activity types, and receiving environment

4.3 Assessment team

The assessment will be undertaken by a team of at least two people including a representative of NOPSEMA¹¹. Contact details for the lead assessor will be provided to the titleholder as soon as practicable at the commencement of the assessment. Where practicable, the assessment team will remain the same for the duration of the assessment. However, where resourcing pressures, conflicts of interest or other circumstances make it impractical to do so, the assessment team may change. Once the team is established the assessment brief is reviewed and endorsed by a representative of NOPSEMA.

4.4 Assessment recommendation

The assessment team will complete a full assessment of the EP submission. The findings and conclusions of the general assessment and each topic assessment are evaluated together to assist the team to form a view as to whether the EP, as a whole, meets the criteria for acceptance. After these considerations the team will make a recommendation to a representative of NOPSEMA about whether the EP has, or has not, met the criteria for acceptance of regulation 10A.

¹¹ As appointed under section 675 of the OPGGS Act

4.5 Assessment decisions and notifications

Under the Environment Regulations, NOPSEMA must decide whether to accept or, refuse to accept the EP. If NOPSEMA is reasonably satisfied that the criteria for acceptance in regulation 10A has been met, then NOPSEMA must accept the EP¹². NOPSEMA will make decisions under the regulations in accordance with NOPSEMA's Decision-making guidelines (N-04750-GL1721).

NOPSEMA will notify the titleholder via email on the day that a decision is made¹³. If accepted, the EP is considered to be in-force on the date it is accepted by NOPSEMA.

If NOPSEMA is not reasonably satisfied that the criteria for acceptance in regulation 10A has been met, and has provided the titleholder with an opportunity to modify and resubmit the plan, then NOPSEMA must refuse to accept the EP¹⁴. While the Environment Regulations allow for NOPSEMA to accept an EP subject to limitations or conditions or to accept an EP in part¹⁵, this will only occur in exceptional circumstances and with the approval of the NOPSEMA CEO.

If NOPSEMA refuses to accept an EP, the titleholder will be notified with an electronic letter attached to an email on the day that this decision is made¹⁶. This notification will set out the reasons for the decision to refuse to accept the plan¹⁷.

In taking these decisions, NOPSEMA will act in accordance with its commitments under the NOPSEMA Program endorsed under part 10 of the EPBC Act (the Program).

In reaching a decision on whether the EP meets the criteria for acceptance NOPSEMA may request further written information in accordance with regulation 9A. Alternatively, if NOPSEMA is not reasonably satisfied that the criteria for acceptance have been met NOPSEMA must provide an opportunity to modify and resubmit the EP. These parts of the assessment process are described below.

Requests for further written information

In accordance with regulation 9A, NOPSEMA may request further written information from the titleholder during the assessment process. NOPSEMA will issue such a request if:

- further information is required to clarify aspects of the submission before a decision can be made on whether the acceptance criteria have been met, or
- information appears to be missing from the submission that is necessary to meet the criteria for acceptance.

NOPSEMA will provide a consolidated list of requests for further information once review of the current submission is complete, in order to ensure that the full context of the submission is considered and unnecessary requests are avoided.

Titleholder responses to a request for further written information are considered as part of the EP on which NOPSEMA makes its assessment decision.

NOPSEMA will typically issue only one request for further written information prior to making a decision on each EP submission or resubmission.

¹² Environment Regulations, sub-regulation 10(1)(a).

¹³ Environment Regulations, sub-regulation 11(1)(a).

¹⁴ Environment Regulations, sub-regulations 10(1)(b), 10(2), 10(3) and 10(4)(b).

¹⁵ Environment Regulations, sub-regulations 10(6).

¹⁶ Environment Regulations, sub-regulation 11(1)(b).

¹⁷ Environment Regulations, sub-regulation 11(2).

NOPSEMA will specify a reasonable time period within which this further written information will be required. NOPSEMA will determine what is considered to be a reasonable period of time based on the nature and amount of information requested. Should the titleholder have reasons that NOPSEMA may not be aware of that relate to the reasonableness of the time period, the titleholder should inform NOPSEMA and request an extension. Granting of such an extension is at the discretion of NOPSEMA.

If, after further written information is received, a decision is made that NOPSEMA is not reasonably satisfied that a submission meets the requirements of the Environment Regulations and the titleholder is provided with an opportunity to modify and resubmit the EP (see section 4.6), this information should be incorporated into subsequent resubmissions of the EP.

Opportunity to modify and resubmit

If NOPSEMA is not reasonably satisfied that an EP meets the criteria for acceptance when first submitted, NOPSEMA must give the titleholder a reasonable opportunity to modify and resubmit the EP. This opportunity will be provided through a written notification that identifies which criteria for acceptance the EP does not meet, and NOPSEMA's reasons for arriving at this decision. Other deficiencies identified in the assessment process will be included in this notification to assist titleholders amend the EP to comply.

NOPSEMA will typically provide two opportunities to modify and resubmit an EP prior to making its decision to accept, or refuse to accept the EP. Application of this policy is at NOPSEMA's discretion and there may be situations that arise as a result of unforeseeable circumstances, new information arising during the assessment process, or other circumstances, that require an alternative approach.

NOPSEMA will set a date by which the titleholder must resubmit the EP, giving consideration to the circumstances in which the resubmission is being made. These circumstances may include, but are not limited to:

- the nature and complexity of matters raised
- the anticipated amount of work required to modify the EP to address those matters
- the context in which the EP submission was made (i.e. whether it is an EP for a new activity yet to commence, or a revised EP for an activity already underway)
- whether there are any outstanding enforcement actions or other associated regulatory operational issues relating to that activity
- the status of the activity.

Should the titleholder have reasons that NOPSEMA may not be aware of that relate to the practicality of the time period, the titleholder should inform NOPSEMA and request an extension. Granting of such an extension is at the discretion of NOPSEMA. If a titleholder does not resubmit an EP by the set date, NOPSEMA must either:

- refuse to accept the EP
- accept the EP in part for a particular stage of the activity
- accept the EP subject to limitations or conditions

NOPSEMA requires the resubmissions to be submitted as one final copy and one copy showing all changes (both in pdf, fully searchable, unprotected). Assessment of resubmissions focuses on areas where the previous submission was deficient and on any areas where information has been added or removed, which may influence the findings made on the previous submission.

A resubmission as a result of an opportunity to modify and resubmit an EP is considered a standalone document and must be complete. A resubmission does not constitute a submission of a new EP or proposed revision of an EP and therefore does not attract a new EP levy.

4.6 Confirmation of financial assurance prior to environment plan acceptance

Prior to accepting an EP, NOPSEMA must be reasonably satisfied that the titleholder has demonstrated compliance with the financial assurance requirements of subsection 571(2) of the OPGGS Act in a form acceptable to NOPSEMA¹⁸. NOPSEMA has a financial assurance for petroleum titles guideline (N-04750-GL1381) that details what a form acceptable to NOPSEMA entails. Financial assurance declarations may be submitted to NOPSEMA at any time.

NOPSEMA prefers that a financial assurance confirmation is provided at the time of submission of an EP. NOPSEMA will proceed with an assessment of an EP in instances where a declaration and confirmation remain outstanding. However, NOPSEMA is unable to accept the EP until such time as these have been provided.

4.7 Assessment process for proposed revisions

The assessment process for proposed revisions to EPs is the same as for new EP submissions. For proposed revisions regarding specific matters, assessment of the EP will focus primarily on the reason for the revision and the changes in external context in the time since acceptance. The extent and significance of the changes to the activity and the associated impacts and risks are determined by NOPSEMA when setting the assessment brief. The assessment will not, in most cases, encompass a complete reassessment of the EP. Proposed revisions submitted because of a change in titleholder or revisions submitted after a five-year period will be assessed as if it were a new EP.

4.8 Withdrawal of an environment plan submission from assessment

A titleholder may notify NOPSEMA in writing of request to withdraw an EP submission from assessment at any time before an acceptance or refusal decision has been made. As soon as practicable after this notification, NOPSEMA will publish a notice on its website that the submission has been withdrawn. Further information on the implications of withdrawal of an EP on levies payable to NOPSEMA is provided in the Environmental management cost recovery guideline (N-04750-GL1350).

4.9 Timeframe for the environment plan assessment process

NOPSEMA will notify titleholders in writing of the date that the EP submission has been received and the assessment commenced.

Statutory timeframes for assessment are calculated starting the day after the EP submission is received by NOPSEMA, in accordance with section 36 of the *Acts Interpretation Act 1901*¹⁹. If the final day of the statutory timeframe falls on a weekend or public holiday, then the *Acts Interpretation Act 1901* allows for the decision to be made on the following business day²⁰.

The statutory timeframe for NOPSEMA to notify the titleholder of its decision on an EP assessment is 30 days, as set out in the Environment Regulations²¹. However, the Environment Regulations also allow for NOPSEMA to propose an alternative timeframe if NOPSEMA is unable to make a decision within the statutory timeframe²². This may occur for a range of reasons including:

- the complexity of the submission (i.e. for complex or large activities)
- prioritisation of EP submissions in consultation with the titleholder (i.e. when other submissions from the same titleholder are identified to be of a higher priority)

¹⁸ Environment Regulations, regulation 5G.

¹⁹ *Acts Interpretation Act 1901*, sub-section 36(1).

²⁰ *Acts Interpretation Act 1901*, sub-section 36(2).

²¹ Environment Regulations, sub-regulation 10(1).

²² Environment Regulations, sub-regulation 10(1)(c).

- issue of a request for further written information
- NOPSEMA awaiting financial assurance declarations or confirmation from a titleholder
- other/similar circumstances.

If NOPSEMA notifies the titleholder that it is unable to make a decision within 30-days, NOPSEMA must set out a proposed timetable for consideration of the EP²³.

Note that a decision made by NOPSEMA to accept or refuse to accept an EP is not invalid only because NOPSEMA did not comply with the 30-day period.²⁴

5 Post-decision requirements

5.1 Publication of information

NOPSEMA will update the status of the assessment for that activity on its website at: nopsema.gov.au as soon as practicable after a decision to accept or refuse to accept is made.

The EP summary for the activity will be published on the NOPSEMA website as soon as practicable following determination that the content is acceptable (see section 5.2 below).

NOPSEMA will update the titleholder and nominated liaison contact information on its website as soon as practicable after receiving a notification that these details have changed, or when the change in contact details is to take effect.

5.2 Environment plan summary for public disclosure

The titleholder must provide an EP summary document for public disclosure within 10 days from receipt of acceptance notification (commencing the day after the notification date). NOPSEMA will only publish the EP summary document once satisfied with the content. The information requirements for the EP summary document are described in the Environment Plan summaries guideline (N-04750-GL1566).

NOPSEMA will review the summary and either advise acceptance or request modifications be made to the summary by the titleholder within a reasonable timeframe. Upon acceptance the summary will be published on the website as soon as practicable. Typically, NOPSEMA will provide no more than 10 additional days for modification and resubmission of an EP summary.

6 Titleholders must not act in a manner contrary to an EP in force for an activity

The Environment Regulations preclude a titleholder for an activity from carrying out the activity in a manner that is contrary to the EP unless the titleholder has consent in writing from NOPSEMA to the contrary²⁵. The Environment Regulations do not allow NOPSEMA to issue such consent unless there are reasonable grounds for believing that the manner in which the activity will be carried out will not result in any significant, new or increased impact or risk²⁶. NOPSEMA will only issue written authority under this provision in exceptional circumstances. In most circumstances, any change to an EP in force will need to be undertaken in accordance with the requirements for a proposed revision to an EP (see section 6 above).

²³ Environment Regulations, sub-regulation 10(1)(c).

²⁴ Environment Regulations, sub-regulation 10(7).

²⁵ Environment Regulations, sub-regulation 7(2)

²⁶ Environment Regulations, sub-regulation 7(3)

7 Policy review

NOPSEMA will review and update this policy regularly and as the assessment process is refined. Reviews may be prompted by changes to legislation or by lessons learned as a result of environmental incidents and investigations.

8 Relevant legislation

- *Offshore Petroleum and Greenhouse Gas Storage Act 2006*
- *Environment Protection and Biodiversity Conservation Act 1999*
- Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

9 Related documents

PL0050 – Assessment policy

GL1721 – Decision-making guideline – Criterion 10A Reasonably satisfied

GL1720 – Decision-making guideline – Criterion 10A(a) Nature and scale

GL1687 – Decision-making guideline – Criterion 10A(b) ALARP

GL1637 – Decision-making guideline – Criterion 10A(c) Acceptable level

GL1722 – Decision-making guideline – Criterion 10A(d) Environmental performance

GL1723 – Decision-making guideline – Criterion 10A(e) Implementation strategy

GL1702 – Decision-making guideline – Criterion 10A(f) World Heritage properties

GL1629 – Decision-making guideline – Criterion 10A(g) Consultation requirements

GL1724 – Decision-making guideline – Criterion 10A(h) Complies with the Act and regulations

GL0225 – Making submissions to NOPSEMA guideline

FM1257 – Environment plan submission cover sheet form

GL1381 – Financial assurance for petroleum titles guideline

GL1566 – Environment plan summaries guideline