

Requirements for Consultation and public comment on petroleum activities in Commonwealth waters

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The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the regulator for health and safety, well integrity and environmental management for offshore oil and gas activities in Commonwealth waters and in coastal waters where regulatory powers and functions have been conferred.

Regulatory requirements

The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations) provide the community with two opportunities to have their views taken into account:

1. For every environment plan, a titleholder undertakes consultation with relevant persons that could be affected by the proposed petroleum activity.
2. For every offshore project proposal, NOPSEMA facilitates a public comment process.

Both consultation with relevant persons and public comment are important processes for understanding the environmental impacts and risks of petroleum activities, and for developing control measures that reduce impacts and risks to an acceptable level. The information collected via consultation and public comment is closely considered by NOPSEMA during environmental assessment and approvals.

Public comment on offshore areas made available for petroleum activities

The Department of Industry, Innovation and Science manages a public comment process for offshore areas proposed to be made available for petroleum activities. As an independent regulatory authority, NOPSEMA has no role in this process. For more information see petroleum-acreage.gov.au.

Consultation conducted by the titleholder before submitting their environment plan to NOPSEMA

It is an explicit regulatory requirement for titleholders to carry out appropriate consultation with *relevant* persons before submitting an environment plan for assessment by NOPSEMA. Environment plans are required for all petroleum activities from exploration through to construction, operations and eventual decommissioning.

Titleholders have a responsibility to ensure that relevant persons are identified and provided with enough information about the proposed activity that they can evaluate how it might impact on their functions, interests and activities. The purpose of this consultation is to identify environmental values, including social, economic and cultural features, which could be affected by the petroleum activity. The titleholder must then ensure that impacts and risks to these values are addressed in their environment plan.

Relevant persons must be given adequate opportunity to convey to the titleholder how they may be affected. The titleholder must then assess the merits of any objections and claims raised by the relevant person. The titleholder must also provide a response on how they propose to address these objections and claims and include this information, along with details of the consultation and copies of written correspondence in their environment plan

Critical factors for successful consultation

A consultation process should provide for open and effective engagement between the titleholder and relevant persons through two-way communication, transparency, collaboration, inclusiveness and integrity.

NOPSEMA has published an information paper (IP1411) on its website that provides detailed advice on successful consultation processes for both titleholders and relevant persons. Some of the key factors for success are described below.

Advice for relevant persons

Relevant persons can make themselves known to the titleholder and outline their relevance to the proposed activity by clearly describing how their functions, interests or activities may be affected.

To facilitate effective consultation with a titleholder, relevant persons should consider:

- presenting any objections or claims about the potential adverse environmental impact of the activity to the titleholder, with supporting information where possible
- avoiding blanket requests for the environment plan, which is likely to be incomplete during the planning stage for an activity and does not necessarily contain information in the right format for stakeholders
- using written correspondence (email or hardcopy) to record key aspects of the consultation so that it can be provided in the environment plan submission to NOPSEMA.

Relevant persons who have extensive dealings with titleholders should consider developing guidance on how and when they wish to be consulted.

Advice for titleholders

Early engagement, appropriate consultation strategies and respectful communication techniques will lead to more effective interaction with relevant persons and will ultimately increase the likelihood



of meeting the consultation requirements of the Environment Regulations.

In some circumstances titleholders and relevant persons may be unable to reach agreement on an activity proceeding as proposed. Occasionally 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 the environmental approval document to explain that:

- reasonable attempts have been made
- reasonably available options have been explored for resolving or reducing the degree to which a person may be affected, particularly through control measures
- the relevant person has been informed about how the titleholder has addressed their objections or claims
- the relevant person has been made aware of how their objections or claims are going to be represented to NOPSEMA.

Who are relevant persons?

The Environment Regulations define relevant persons as:

- particular government departments or agencies with responsibilities that are relevant to the petroleum activity;
- a person or organisation whose functions, interests or activities may be affected by the petroleum activities themselves to be carried out under the environment plan, which generally includes other marine users in the vicinity of the activity and its immediate footprint; and
- any other person or organisation that the titleholder considers relevant. This may vary between activity and titleholder, and NOPSEMA recommends that titleholders apply this category broadly when considering who to consult with.

Opportunities for public comment before NOPSEMA's assessment

The Environment Regulations are moving towards establishing opportunities for the public to view all environmental approval documents in full, and to express views directly to NOPSEMA prior to the environmental assessment process. In the meantime, a public comment process is provided for long-term development projects (via the offshore project proposal process). Regulatory reform is also underway to introduce public comment on

environment plans for exploration activities such as seismic surveys and exploration drilling.

Public comment processes allow the community to submit their view to NOPSEMA during a specified period. This process allows anyone, including relevant persons involved in consultation with the titleholder, to raise relevant information directly with NOPSEMA.

To facilitate public comment on submissions, NOPSEMA will publish the name of the activity and titleholder, the location and a copy of the submitted document (the offshore project proposal or environment plan) on its website. Comments must be made within the specified time period in order to be considered.

NOPSEMA is obliged to take into account information that is, or may be, relevant that is provided during public comment when making its assessment decision. Equally, NOPSEMA is obliged not to consider information that is not relevant to decision-making, such as where it is outside of the objects of the regulations and the decision-making criteria provided in the law.

NOPSEMA's assessment and compliance monitoring processes

NOPSEMA assesses each offshore project proposal or environment plan submission over a specified period and according to its assessment policy, which includes a focus on aspects of the petroleum activity that involve the greatest level of environmental impact or risk. The Environment Regulations require NOPSEMA to give the titleholder a reasonable opportunity to respond to NOPSEMA's queries or concerns during the assessment, by modifying the document or providing more information.

At the end of the assessment process, NOPSEMA publishes its decisions on its website. Current regulatory reform will soon enable NOPSEMA to publish the final versions of all environmental approval documents allowing for greater transparency.

When the petroleum activity is underway, NOPSEMA conducts monitoring and inspection activities to ensure compliance with the accepted environment plan, including any commitments made by the titleholder to continue consulting with relevant persons to manage impacts and risks. In the event of non-compliance, NOPSEMA has a range of tools available to compel the titleholder to act, including notices and directions.





NOPSEMA

Further information

NOPSEMA publishes policies, guidance notes, guidelines, and information papers at nopsema.gov.au.

The Offshore Petroleum and Greenhouse Gas Storage Act 2006, subsidiary regulations and the *Environment Protection and Biodiversity Conservation Act 1999* are available in full at comlaw.gov.au.

Legislative requirements not administered by NOPSEMA can be obtained from:

- The Department of Industry, Innovation and Science at industry.gov.au
- State/Northern Territory department at directory.gov.au
- The National Offshore Petroleum Titles Administrator at nopta.gov.au.

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