



Terms of Reference for the initial Program review of the
National Offshore Petroleum Safety and Environmental
Management Authority Program¹ endorsed under part 10 of
the *Environment Protection and Biodiversity Conservation Act*
1999

¹ The strategic assessment (under part 10 of the *Environment Protection and Biodiversity Conservation Act 1999*) of the environmental management authorisation process for petroleum and greenhouse gas activities administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act), which was endorsed by the Australian Minister for the Environment on 7 February 2014.



Preamble

Program and Program Review

A strategic assessment under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was undertaken of the environmental management authorisation process for petroleum and greenhouse gas activities administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

NOPSEMA's environmental management authorisation process for offshore petroleum and greenhouse gas activities in accordance with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act), Act and *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* was endorsed by the Australian Minister for the Environment as a Program that meets the requirements of Part 10, section 146(2)(f) of the EPBC Act. The Minister for the Environment subsequently approved the taking of actions under the Program, under section 146(B) on 27 February 2014.

The Program requires an initial Program review following the first year of implementation and then five-yearly reviews of the operation of the Program thereafter. The final report on the initial Program review and NOPSEMA's response is to be completed within 18 months of Program endorsement (i.e. by 7 August 2015).

The purpose of the initial Program review is to assess the performance of the Program against the Program objectives including ensuring that impacts on matters protected under Part 3 of the EPBC Act are not unacceptable.

NOPSEMA has a statutory requirement under section 695 of the OPGGS Act to be subject to independent operational reviews of its performance. The next operational review is due to commence in early 2015. The first Program review will be independent of this operational review. After the first Program review, the five-yearly Program reviews will be incorporated into future operational reviews, the next scheduled to be undertaken in 2020.

For the purpose of these Terms of Reference for the initial Program review, the parties are NOPSEMA and the Australian Department of the Environment (DOE).

The Terms of Reference may be varied at any time by written agreement between the parties and in consultation with the Australian Department of Industry and Science (DOIS).

Nominated reviewer

The Review will be conducted by an independent reviewer selected by NOPSEMA and endorsed by the DOE and DOIS in accordance with Australian Government procurement rules.

The desirable skill set of the independent reviewer to undertake the Review is: environmental background and knowledge of regulatory regimes (the OPGGS Act and EPBC Act); offshore petroleum industry experience; and auditing.



The Review will be conducted impartially to the views of parties to the Program and will establish and present information on a factual basis within the boundaries established in these Terms of Reference.

Resourcing

The independent reviewer endorsed by DOE and DOIS will be engaged by NOPSEMA.

Project officers are to be funded by their employers.

Schedule

The parties will endeavor to finalise the Terms of Reference by 31 January 2015.

The engagement of the independent reviewer will be finalised by end February 2015 to allow commencement of review by start of March 2015.

A draft report is to be prepared by 1 May 2015 with the final report prepared by 30 July 2015.

The schedule for the Review is at Attachment A.

Review report

The reviewer will prepare and issue a draft review report to NOPSEMA that NOPSEMA will provide to the DOE and the DOIS within two working days for consideration against the Terms of Reference and respond to NOPSEMA within 20 working days.

NOPSEMA will provide consolidated comments to the reviewer and a final review report will be provided to NOPSEMA.

The DOE and DOIS will aim to provide responses to any requests for comments in a timely manner to NOPSEMA, and no later than 20 business days after receipt of a request.

Response to the Review

NOPSEMA will prepare a draft response to the Review and seek input from the DOE and DOIS.

NOPSEMA will provide the final review report and final NOPSEMA response to the Minister for the Environment and the Minister for Industry and Science for consideration and endorsement.

Publication

Following endorsement by the Minister for the Environment and the Minister for Industry and Science, NOPSEMA will publish the final review report and the final response to the review on NOPSEMA's website.



Key elements of Program Review

Purpose of the review

The purpose of the Review is to:

- assess the performance of the Program against Program objectives, outcomes and commitments outlined in the Program Report with particular reference to Appendix A of the Program Report;
- ensure the impacts from actions authorised under the Program, on matters protected under Part 3 of the EPBC Act, are not unacceptable;
- assess NOPSEMA's compliance with the Program commitments outlined in the Program Report (as shown in Attachment B of this Terms of Reference); and
- enable NOPSEMA to determine if refinements to management arrangements and standards are required to ensure the Program's commitments and objectives for EPBC protected matters are being delivered by the Program.

Scope of the review

The Review is an evaluation of the authorisation processes under the Program for environment plans and offshore project proposals subject to the endorsed program and submitted on or after 28 February 2014.

The Review will not include:

- consideration of authorisations prior to 28 February 2014;
- a review of findings in relation to specific individual authorisation decisions;
- assess the effectiveness of NOPSEMA with regard to environmental regulation outside of the authorisation process; and
- a review of NOPSEMA's inspection, enforcement and investigation activities except where they relate to the Program commitments.

Method of the review

Case studies

As an input to the first Program review, a sample of all decisions made by NOPSEMA will be subject to a detailed evaluation to ensure appropriate consideration of matters protected under Part 3 of the EPBC Act. Case studies will be identified by the independent reviewer in consultation with the parties taken from the list of environment plans and offshore project proposals accepted between 28 February 2014 and 28 February 2015.

The set of case studies must cover a broad spectrum of decisions including the range of: EPBC protected matters; environmental features and sensitivities; and offshore petroleum and greenhouse gas activities covered under the Program.



Interviews

The reviewer is expected to conduct internal and external interviews to assist in meeting the Terms of Reference. These interviews should include (but not be limited to):

- NOPSEMA environment personnel nominated by the NOPSEMA representative;
- a minimum of two active titleholders (in consultation with the parties);
- a minimum of two relevant persons that may include fishing bodies, individuals or other stakeholders (in consultation with the parties);
- DOIS personnel nominated by the DOIS representative; and
- DOE personnel nominated by the DOE representative.

The reviewer, in consultation with NOPSEMA, DOE and DOIS, will agree to the case studies to be reviewed and the stakeholders to be interviewed.

Review plan

The reviewer will prepare a review plan for endorsement by the parties to this agreement within three weeks of commissioning. The review plan will outline:

- a review outline as framed by these Terms of Reference;
- case studies to be considered from the list of accepted environment plans and offshore project proposals accepted since 28 February 2014; and
- interviews to be conducted with titleholders and other stakeholders.

Attachments

- A. Indicative schedule for review
- B. Program commitments from the Program report



Attachment A – Indicative schedule for review

Key action	Timing	Lead responsibility
Final Terms of Reference endorsed by DOE	End January 2015	DOE
NOPSEMA procurement activity for independent reviewer to contract award, including consultation with DOE on proposed reviewer.	February 2015	NOPSEMA
Reviewer Endorsed	end February 2015	DOE and DOIS
Review commences	1 April 2015	Reviewer
Review plan issued to NOPSEMA	14 April 2015	Reviewer
Draft review report issued to NOPSEMA	21 May 2015	Reviewer
Draft review report provided to DOE and DOIS	within 2 days after receipt of draft review report	NOPSEMA
Consolidated comments sent to reviewer	15 June 2015	NOPSEMA
Second draft review report issued to NOPSEMA	6 July 2015	Reviewer
Parties final comment to NOPSEMA for consolidation	17 July 2015	DOE, NOPSEMA, DOIS
Reviewer issue final report	3 August 2015	Reviewer
NOPSEMA response to the review and Review report to Minister for the Environment	7 August 2015	NOPSEMA
Publication of report post Minister endorsement	After endorsement by the Minister for the Environment	NOPSEMA



Attachment B – Program commitments (excerpt taken from the Program Report)

The Program will ensure that activities carried out do not have unacceptable impacts on the following matters protected under Part 3 of the EPBC Act:

- the World heritage values of a declared World Heritage property
- National heritage values of a declared National Heritage place
- the ecological character of a declared Ramsar wetland
- listed threatened species and ecological communities
- a listed migratory species
- the environment in a Commonwealth marine area
- the environment on Commonwealth land

The specific Program commitments that ensure this undertaking is met are provided below.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
World heritage properties	The outstanding universal value of world heritage properties will be identified, protected, conserved and transmitted to future generations.	<ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that involves the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being conducted in any part of a declared World Heritage property within the meaning of the EPBC Act. • NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a World Heritage property or proposes unacceptable impacts to the world heritage values of a World Heritage property. • If there is no plan of management for a World Heritage property, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the property is not inconsistent with the Australian World Heritage management principles. • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> – make reference to consideration of the protection of the values of World Heritage properties – include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as Statements of Outstanding Universal Value, plans of management and EPBC Act guidance documents. • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, Statements of Outstanding Universal Value and plans of management on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
National heritage places	The outstanding value to the nation of national heritage places will be protected, conserved and transmitted to future generations of Australians.	<ul style="list-style-type: none">• NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a National Heritage place or proposes unacceptable impacts to the National heritage values of a National Heritage place.• If there is no plan of management for a National Heritage place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the place is not inconsistent with the National Heritage management principles.• NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:<ul style="list-style-type: none">– make reference to consideration of the protection of the values of National Heritage places– include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments and EPBC Act guidance documents.• In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, gazettal instruments and plans of management on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
Wetlands of international importance	The ecological character of each Ramsar wetland will be maintained, and the conservation use of each wetland is promoted for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.	<ul style="list-style-type: none">• NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a Ramsar wetland or proposes unacceptable impacts to the ecological character of a Ramsar wetland.• If there is no plan of management for a Ramsar wetland, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the wetland is not inconsistent with the Australian Ramsar management principles.• NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:<ul style="list-style-type: none">– make reference to consideration of the protection of the ecological character of the Ramsar wetland– include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as Ramsar Information Sheets, Ecological Character Descriptions and EPBC Act guidance documents.• In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, Ramsar Information Sheets, Ecological Character Descriptions and plans of management on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
Listed threatened species and ecological communities	The survival and conservation status of listed threatened species and ecological communities will be promoted and enhanced, including through the conservation of critical habitat and other measures contained in any recovery plans, threat abatement plans or conservation advices	<ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to a listed threatened species or ecological community. • NOPSEMA will not accept an Environment Plan that is inconsistent with a recovery plan or threat abatement plan for a listed threatened species or ecological community. • NOPSEMA will have regard to any approved conservation advice in relation to a threatened species or ecological community before accepting an Environment Plan. • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> – make reference to consideration of the listing category and protection of the listed threatened species or ecological community – include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as recovery plans, threat abatement plans, conservation advice and EPBC Act guidance documents. • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, recovery plans, threat abatement plans, conservation advice and guidelines on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
Listed migratory species	The survival and conservation status of listed migratory species and their critical habitat will be promoted and enhanced.	<ul style="list-style-type: none">• NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to a migratory species or an area of important habitat for a migratory species.• NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:<ul style="list-style-type: none">– make reference to consideration and protection of the listed migratory species– include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as wildlife conservation plans, and EPBC Act guidance documents.• In undertaking assessments, NOPSEMA will have regard to relevant policy documents, wildlife conservation plans and guidelines on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
Commonwealth marine area	The environment of Commonwealth marine areas will be maintained and protected in conformity with relevant marine bioregional plans and plans of management for relevant Commonwealth reserves.	<ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to the environment of a Commonwealth marine area. • NOPSEMA will have regard to any relevant bioregional plan and not act inconsistently with a plan of management for a Commonwealth reserve or a Commonwealth Heritage place in deciding whether or not to accept an Environment Plan. • If there is no plan of management for a Commonwealth reserve, then NOPSEMA will ensure that acceptance of an Environment Plan is not inconsistent with the IUCN reserve management principles. • If there is no plan of management for a Commonwealth Heritage place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the place is not inconsistent with the Commonwealth Heritage management principles. • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> – make reference to consideration of the environment of the Commonwealth marine area – include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments, bioregional plans, wildlife conservation plans, plans of management and EPBC Act guidance documents. • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, gazettal instruments, bioregional plans, wildlife conservation plans, plans of management and EPBC Act guidance documents on the DOE website.



PART 3 MATTER	VALUES	PROGRAM COMMITMENT
Commonwealth land	The environment on Commonwealth land will be maintained and protected in conformity with relevant plans of management.	<ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to the environment on Commonwealth land. • NOPSEMA will have regard to any bioregional plan and not act inconsistently with a plan of management for a Commonwealth reserve or a Commonwealth Heritage place in deciding whether or not to accept an Environment Plan. • If there is no plan of management for a Commonwealth Heritage place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan is not inconsistent with the Commonwealth Heritage management principles. • If there is no plan of management for a Commonwealth reserve, then NOPSEMA will ensure that acceptance of an Environment Plan is not inconsistent with the IUCN reserve management principles. • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> – make reference to consideration of the environment of the Commonwealth land – include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments, bioregional plans, plans of management and EPBC Act guidance documents. • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, gazettal instruments, bioregional plans, plans of management and guidance documents on the DOE website.



In addition, the following commitments are made to ensure that the implementation and administration of the Program deliver on the commitment to ensure that activities carried out under the Program do not have unacceptable impacts on protected matters under Part 3 of the EPBC Act.

PROGRAM COMMITMENT	BY WHOM	WHEN
Agree and enter into administrative arrangements with DOE for the transfer of relevant information regarding the administration of the Program.	NOPSEMA DOE	Within 6 months of Program endorsement
Prepare amendments to NOPSEMA's existing advice documents to reflect consideration of matters protected under Part 3 of the EPBC Act.	NOPSEMA	Following Program endorsement, for implementation when approval of classes of actions is in place
Develop specific advice document(s) that titleholders should consider in the preparation of their Offshore Project Proposals and Environment Plans, to make reference to consideration of the protected matters under Part 3 of the EPBC Act. This advice should include references to relevant guidance documents to be considered by titleholders in preparing Offshore Project Proposals and Environment Plans such as EPBC Act guidance documents.	NOPSEMA DOE	Within 6 months of Program endorsement

