

Blue Whale Conservation Management Plan – Frequently asked questions

12 November 2021

The scope of this frequently asked questions (FAQ) document applies to referrals assessed under Part 7 to 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and to Offshore Project Proposals and Environment Plans assessed under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations)*.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the National regulator of environmental management in the offshore energy industry while the Department of Agriculture, Water and the Environment (DAWE) is Australia's primary environmental policy agency. NOPSEMA and DAWE have been working together to address questions from offshore energy proponents and titleholders regarding the interpretation and application of the *Conservation Management Plan (CMP) for the Blue Whale*. This CMP is a recovery plan under the EPBC Act and applies to the blue whale (*Balaenoptera musculus*) and its subspecies that are listed as endangered under the EPBC Act.

DAWE has published [guidance on key terms within the CMP](#) on its website which clarifies terminology in the CMP. NOPSEMA and DAWE have developed these FAQs to accompany and support use of the guidance published by DAWE. These FAQs form part of Australian government advice in response to questions about the application of the Blue Whale CMP to environmental impact assessments (EIA).

These FAQs are a 'live' document. They will be further clarified and/or added to as points of clarification or new questions arise.

Frequently Asked Questions

FAQ 1: Does the requirement on decision-makers to not act inconsistently with a recovery plan, apply to each objective and each recovery action of the Conservation Management Plan?

Yes. Each recovery objective and recovery action relevant to the activity and its impacts are taken into account by the decision maker. Recovery objectives and actions not relevant to the activity and its impacts are not taken into account.

FAQ 2: Do the actions within the Conservation Management Plan that relate to assessing and addressing anthropogenic noise apply only to seismic surveys?

No. Most actions set out under Action Area A.2 of the Conservation Management Plan (Assessing and addressing anthropogenic noise) apply to management of 'anthropogenic noise'. Generally, for this Action Area, no limitations are set for applicable sources of noise. The one exception to this, is the action requiring EPBC Act Policy Statement 2.1 *EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales* to be applied to all seismic surveys.

FAQ 3: Can new petroleum activities or offshore projects be proposed if there is potential for underwater noise within a Foraging Area to be at a level that is above the relevant published behavioural disturbance threshold for blue whales?

Yes. However, there are expectations for the Environmental Impact Assessment presented in the environment plan and implications for decision-making that will vary depending on factors such as:

- the time of year the activity is proposed to be undertaken
- likelihood of blue whale foraging in that area
- the extent, intensity, and duration of sound exposure within the Foraging Area, and
- the capacity for the activity to be managed during implementation to enable the detection of blue whales, and the undertaking of any appropriate mitigation responses to prevent unacceptable impacts.

The CMP provides guidance on conservation planning and the key threats and management actions that must be considered when assessing proposed activities, and the [guidance on key terms within the CMP](#) provides guidance on what constitutes a **Foraging Area** and how other key terms are to be interpreted.

If an offshore project or activity creates noise above relevant published injury and/or behavioural disturbance impact criteria inside a Foraging Area, proponents and titleholders should firstly evaluate all feasible measures to **avoid** times of the year when blue whales are likely to be foraging.

If an offshore project / activity creates noise above relevant published injury and/or behavioural disturbance criteria inside a Foraging Area, but is proposed to occur **outside** the time of year when blue whale foraging is known to occur, the EIA should:

- consider the possible presence of blue whales outside of known foraging periods
- evaluate potential impacts and include commitments to manage the activity to ensure any potential impacts to blue whales will be of an acceptable level and not inconsistent with the CMP in accordance with the Environment Regulations, and the EPBC Act.

If it is not possible to avoid times of year when there is credible information indicating that blue whale foraging in a Foraging Area is likely, it is important to note that there are requirements of the EPBC Act and the NOPSEMA EPBC Act-endorsed Program that constrain decision makers to 'not act inconsistently' with EPBC Act instruments, such as a recovery plan (e.g. the CMP).

Accordingly, in order to demonstrate, with a high level of confidence, that requirements of the CMP will be met, approvals documentation needs to include content such as:

- well-founded Environmental Impact Assessment;
- commitment(s) to implement whale detection that will be effective in detecting whales over the extent and duration of predicted impacts, including provision for detection measures to be scalable based on triggers such as activity timing and location, and whale sighting data; and

- associated management measures that are likely to be effective at preventing unacceptable impacts over the extent and duration scales informed by impact predictions and whale detection data gathered during the activity.

In all cases, titleholders should refer to the [guidance on key terms within the CMP](#) that is available on the DAWE website, to inform their EIA and selection of control measures.

FAQ 4: What does a titleholder of a new petroleum activity or offshore project within or adjacent to a designated blue whale Biologically Important Area (though not a Foraging Area – see FAQ 3) need to do to demonstrate that the EP is not inconsistent with the CMP?

If the new activity or offshore project is proposed within or adjacent to any of the Biologically Important Areas (BIAs) that are not a defined Foraging Area, titleholders should:

- Utilise the Blue whale CMP, and the [guidance on key terms within the CMP](#), to inform the defined acceptable level(s) of impact to blue whales.
- Conduct a thorough EIA drawing on relevant and contemporary peer-reviewed literature, other contextual information, including relevant baseline survey data (refer to FAQ 6), and requirements in the CMP, and modelled predictions of the likely underwater noise footprints.
- Using best available scientific advice and relevant published research, predict potential impacts to blue whales.
- Compare predictions of impact with the defined acceptable level of impact as outlined in Section 8 of NOPSEMA's Environment Plan Decision Making Guideline ([GL1721](#)) and Attachment A of the Offshore Project Proposal content requirements guidance note ([GN1663](#)).
- In most circumstances, the mitigation hierarchy (i.e. the framework to avoid, minimise, mitigate and offset environmental impacts) will need to be applied to demonstrate that the activity will be managed such a way that anthropogenic noise will not cause unacceptable impacts. For example:
 - It may be necessary to apply seasonal or temporal **avoidance** measures to activities or offshore project components in or adjacent to BIAs.
 - Where it is not possible to avoid BIAs and/or periods of blue whale presence in those areas (e.g. multiple well drilling campaign), the adoption of reasonably practicable noise **minimisation** controls supported by appropriate whale detection and adaptive management measures, should be considered. Some examples of such controls include, but are not limited to, facility selection to reduce noise from dynamic positioning, frequency and timing of facility resupply etc.
- Describe how the implementation strategy will give effect to control measures and verify their effectiveness (e.g. noise verification studies, whale detection and **mitigation** measures, titleholder conformance management during operations).

FAQ 5: What does a titleholder of a historically approved, currently operating offshore production facility within a Foraging Area need to do to demonstrate that their activity is 'not inconsistent' with the CMP?

Existing fixed and floating offshore production facilities that are in a Foraging Area received project-level approvals prior to the current 2015-2025 Conservation Management Plan being made. The first joint recovery plan for Blue Fin and Sei whales was released in 2005 and included a different set of requirements compared to those detailed in the current CMP.

Titleholders of existing approved projects and activities, need to review the [guidance on key terms within the CMP](#) and consider any need to take actions in accordance with the environmental management system for the activity being undertaken. The aim is to ensure that the environmental impacts and risks for the ongoing activity remain acceptable and continually reduced to as low as reasonably practicable (ALARP), and that management of the activity is not inconsistent with the CMP.

When preparing proposed revisions of the environment plan for existing operating activities, titleholders should consider the threats, potential impacts and risks to whales as outlined in the CMP. It should be noted that the risk assessment within the CMP has been prepared to support conservation planning and is unlikely to provide sufficient detail to support activity-specific assessments. Nonetheless, this may provide guidance on the types of impacts and risks that should be considered, and this can be combined with additional information such as historic blue whale sightings data when evaluating impacts and risks, and selecting control measures for inclusion in the proposed EP revision.

FAQ 6: Are baseline studies required to understand blue whale presence and behaviour in the area that may be affected by a new offshore project or activity before submitting approvals' documentation for assessment?

The need for and extent of baseline studies is driven by, though may not be limited to, the following factors:

- the location of the offshore project / activity
- the nature and scale of noise generating activities
- levels of noise predicted to be received in the environment, including where and when, and
- the level of scientific certainty regarding the presence of blue whales in the area of interest.

The value and importance of baseline data on blue whales for EIA would be expected to increase for:

- offshore projects/activities proposed in locations where scientific knowledge regarding blue whale presence and habitat utilisation is limited or out-dated, and
- projects / activities which have restricted potential to be adapted during operations in response to whale presence.

Baseline studies, particularly for large migratory whales, can have long lead times to implement, interpret and apply to EIAs. To ensure that investment in baseline studies is effective, early engagement with the policy agency and the regulator is encouraged. Seeking early advice will help to ensure that proposed study designs and approaches can be tested/explored to best support EIA-related requirements of the CMP.

FAQ 7: Is it necessary to take into account that feeding opportunities for blue whales may be present outside of designated Foraging Areas and foraging BIAs?

Yes. The Blue Whale Conservation Management Plan states that blue whale feeding grounds are areas of high primary productivity that can support sufficient densities of krill. It also highlights that feeding opportunities may exist outside of the designated Foraging Areas and foraging Biologically Important Areas. The management of anthropogenic underwater noise where opportunistic foraging may potentially exist continues to be an important consideration for industry.

There are areas outside of those identified in the CMP or in the National Conservation Values Atlas ([NCVA](#)) that may have credible evidence for blue whale foraging. In such cases, monitoring and adaptive management should be used during industry activities to prevent the potential occurrence of unacceptable impacts to blue whales from underwater anthropogenic noise.

This approach is consistent with requirements of *EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales*, with respect to marine mammal observation and activity adaptive management, avoidance, and mitigation measures.

FAQ 8: Information describing blue whale distribution and habitat utilisation in the CMP differs from the Biologically Important Area (BIA) layers in the National Conservation Values Atlas (NCVA). Which is the authoritative source of spatial information for blue whales to inform EIA?

The primary difference between the spatial information on blue whales presented in the CMP and NCVA is in the naming of the BIAs. All foraging areas shown in the CMP are designated as foraging BIAs within the NCVA, just with some differences in the naming conventions.

If an activity has the potential to interact with blue whales in areas identified within the CMP or NCVA, the relevant information in both the CMP and NCVA should be considered as part of the EIA process.

FAQ 9: How is new scientific knowledge about blue whales (e.g. foraging area extent or seasonality) incorporated into the CMP or NCVA?

The Blue Whale Conservation Management Plan is a 10-year statutory recovery plan made under the EPBC Act in 2015, that provided information on the species' distribution and Biologically Important Areas (BIAs) at the time of its development. Recovery plans sunset after 10 years and are replaced by a new Recovery Plan (RP) if required. Any relevant new, peer-reviewed scientific data and information is considered and incorporated as appropriate into a new RP during its development. The current Blue Whale CMP sunsets in October 2025.

Through the development of Marine Bioregional Plans, BIAs have been identified for threatened, migratory and marine species. BIAs are not defined under the EPBC Act but represent spatially defined areas where aggregations of individuals of a species are known to display biologically important behaviour (e.g. breeding, foraging, migration). It is important to note that BIA maps do

not represent a species' full geographic range and are informed by the best scientific information available at the time of development.

Geospatial information for BIAs can be accessed using the NCVA.

The Blue Whale CMP recognises the NCVA as a tool that houses specific information on important marine habitats and areas used by the blue whale.

The publicly available [BIA Protocol](#) outlines the Department's process for creating and updating BIA maps and explains how the public can provide new geospatial data for consideration. DAWE has recently commenced a process to review the BIA Protocol. This will establish a process for reviewing new, reliable spatial and scientific information, and will facilitate updates to BIAs across a range of threatened and migratory marine species. Until the Protocol has been updated the current process for providing new information to DAWE for consideration remains in place.

During the BIA review process, DAWE will work closely with cetacean research scientists to review cetacean sighting data submitted to DAWE's [National Marine Mammal Database](#) (including that provided by industry). Targeted consultation will be undertaken with relevant government jurisdictions, industry, NOPSEMA and other stakeholders as appropriate.