

8 July 2024

[REDACTED]
Deputy CEO
NOPSEMA
Level 10, 58 Mounts Bay Road
Perth WA 6000

By email only: [REDACTED]@nopsema.gov.au
cc: communications@nopsema.gov.au, feedback@nopsema.gov.au

Dear [REDACTED],

Re: TGS's Otway Basin 3D Multi-Client Marine Seismic Survey Environment Plan

1. The [REDACTED] is a relevant person¹ in relation to the Otway Basin 3D Multi-Client Marine Seismic Survey proposed by TGS-NOPEC Geophysical Company Pty Ltd (**TGS**). [REDACTED] has particular interests in protecting threatened ocean wildlife.²
2. We understand that the history of the Environment Plan process for the proposed seismic survey is as follows:
 - a) The EP was first submitted by TGS to NOPSEMA on 20 September 2022 (**September EP**).³
 - b) The EP was published by NOPSEMA for public comment from 12 July 2023 and 11 August 2023.⁴
 - c) A revised EP, addressing comments received from the public, was submitted to NOPSEMA on 7 December 2023 (**December EP**).⁵
 - d) On 8 March 2024, NOPSEMA sent TGS a letter which requested TGS provide further information and resubmit a modified EP within 60 days (**8 March Letter**).⁶
 - e) TGS further revised the EP in late March 2024, as announced in public webinars on 15 May 2024.⁷ The modification is significant as it involves changes to the areas where the EP's activities are proposed to occur: the Operational Area (**OA**) and Active Source Area (**ASA**).
 - f) TGS submitted the further revised EP to NOPSEMA for assessment on approximately 14 June 2024 (**further revised EP**).⁸
 - g) On 26 June 2024, TGS made some of the further revised EP available on its website. It appears not all appendices have been uploaded, including one on cumulative impacts.

¹ *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (Cth), reg 25.

² December EP, 'Table 48 Regulation 25(1)(d) Relevant Person Identification', p 317; Appendix J ('List of Relevant Persons'), p 2.

³ NOPSEMA, '[Otway Basin 3D Multi-client Marine Seismic Survey](#)' (online, 2024).

⁴ December EP, p 330.

⁵ NOPSEMA, '[Under assessment](#)' (online, 2024).

⁶ FOI Request F253 on NOPSEMA's [FOI Disclosure Log](#).

⁷ *Ibid*, p 1.

⁸ As indicated by the change of status to 'under assessment (with NOPSEMA)' as of 14 June 2024: NOPSEMA, '[Under assessment](#)' (online, 2024).

3. The purpose of this correspondence is to:
 - a) Ask NOPSEMA to confirm it will publish and provide a further opportunity for public comment on the complete further revised EP, given the substantial and significant nature of the changes made by TGS;
 - b) Urge NOPSEMA to require TGS to carry out further consultation;
 - c) Note that based on our preliminary review of the further revised EP, it does not appear that TGS has addressed the concerns in the 8 March Letter and therefore NOPSEMA could not be reasonably satisfied that the EP meets the criteria for acceptance; and
 - d) Reiterate our unresolved concerns about risks to pygmy blue whales, notwithstanding the proposed revision to the EP activities.

Request for the publication of the further revised EP and opportunity for comment

4. In our view, NOPSEMA is required by reg 31 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (Cth) (**Regulations**) to publish the further revised EP as soon as practicable and allow for a period of public comment.
5. Reg 31 applies in the following circumstances:
 - a) A titleholder who submitted a seismic or exploratory drilling EP modifies it;
 - b) the EP relates to a 'significant modification' of the seismic or exploratory drilling activities; and
 - c) the modification was not made in response to comments made via the standard public comment period in reg 30(1).
6. The effect of reg 31 is that once the significantly modified EP is resubmitted NOPSEMA must act as though the earlier EP ceases to exist, and must check and publish the modified EP for public comment in accordance with regs 27, 28 and 30.

The EP has been significantly modified

7. The changes to the further revised EP constitute a "significant modification" for the purposes of reg 31(1)(b)(i) for the following reasons:
 - a) There is no case law considering the phrase "significant modification" in this statutory context. The words therefore take their ordinary meaning. 'Significant' means important or of consequence.⁹
 - b) There is nothing in reg 31(1)(b) to suggest that a modification will only be significant if it increases the scale of the proposed activity.¹⁰ A modification is significant if it makes an important change to any of the seismic activities to which the EP relates. In this case, the scale appears to have remained the same, since the same amount of survey data will be acquired (15,000km² or 400 days of surveying).

⁹ Macquarie Dictionary, 6th ed (2013).

¹⁰ The Explanatory Statement issued for the 2023 Regulations indicates that Reg 31 is intended to achieve the desired policy outcomes of consultation and transparency (p 40). The Explanatory Statement expresses the view that Reg 31 is not intended to apply where there has been a reduction in the scale of a proposed activity and is intended to apply where changes to an activity increase environmental risk (p 40). In this case, we submit that where the amount of survey data to be acquired remains the same, there has been no reduction in the scale of the proposed activity. By reducing the ASA, there may be an increase in the intensity and therefore a greater environmental risk posed by the activity: see [7(c)] of this letter.

- c) TGS submits that the changes to the ASA and OA will reduce the environmental risk of the proposed survey.¹¹ We do not accept that this is the case. The ASA has been reduced in size, but the acquisition activity has increased in intensity. The maximum amount of survey data to be collected is the same: 15,000km² (or 400 days of surveying), now in an area of 31,000km² (before, the Acquisition Area was 45,000km²). There is no assessment that we can find in the further revised EP reflecting the increased intensity of seismic source deployment in the new ASA. The impact on all marine life within the ASA may be increased, with acoustic disturbance being both more intense and harder to avoid.
 - d) Further, the amount of data collected is expressed in the further revised EP as being “full fold”.¹² This phrase is a new addition to the survey parameters. We understand it to mean data that has been fully sampled by all traces, which may mean that not all survey data collected will count towards the maximum permitted total. This could effectively allow for more data acquisition to take place (again, increasing the intensity and impact of surveying within the ASA).
 - e) The changes to the location of the activity strike at the heart of the EP. The extent to which those changes might alter the environmental risk is a matter of considerable public importance. The very high level of public interest in this proposed seismic survey to date and the repeated requests at the TGS Webinar information session to see the “new EP” indicate that the changes made are subjectively noteworthy to members of the public.
 - f) The above observations come from a preliminary review of the further revised EP. There may be other amendments to the activities that become apparent on closer review.
8. In summary, the risks associated with the revised ASA and OA (and any other amendments to the EP) have not been considered by experts, relevant persons and the public.
9. We note that TGS has assumed that, because the area of the ASA and the OA has been reduced, relevant persons “have either had their objection and claim resolved already or would likely no longer hold the objection or claim”.¹³ This assumption is incorrect: [REDACTED] and likely other relevant persons have not had their objections resolved. Based on our preliminary assessment, we set out some unresolved risks to blue whales at [13] – [29] below. We also note that whether the titleholder believes objections would be resolved or not by the modification is irrelevant for the purposes of reg 31 and the obligation it places on NOPSEMA.

The modification was not in response to comments described in under reg 30

10. TGS submitted a December EP in response to comments described in reg 30(1). The further revised EP was resubmitted following and in response to NOPSEMA’s 8 March Letter.¹⁴ Regulation 32 allows a titleholder to incorporate further information into an EP. However, it does not provide a free pass for making substantial changes to the EP under cover of “providing information”. As soon as an EP is significantly modified whether in response to request under reg 32 or notice under reg 33(5), it is caught by reg 31 and must be resubmitted and republished. This is made clear by the express exception which

¹¹ TGS, ‘[TGS Otway 3D MSS Update Webinar – Questions and Answers](#)’ (14 May 2024) pp 3–4..

¹² Further revised EP, p 60.

¹³ TGS, ‘[TGS Otway 3D MSS Update Webinar – Questions and Answers](#)’ (14 May 2024) pp 3–4..

¹⁴ We note that TGS has also made public statements to this effect, ‘[TGS Otway 3D MSS Update Webinar – Questions and Answers](#)’ (14 May 2024), pp 2-3.

only applies where an EP is modified in response to the public comment under reg 30 which does not apply to the further revised EP.

Titleholder consultation

11. The consultation process set out in the Regulations mandates that each relevant person is given “sufficient information...to make an informed assessment of the possible consequences of the activity”.¹⁵ It is not possible to make such an assessment without time and opportunity to consider and comment on the further revised EP.
12. As such, we request that NOPSEMA:
 - a) Confirm it will publish the further revised EP and invite a further round of public comment, in accordance with regs 28, 30 and 31 of the Regulations; and
 - b) Require that TGS conduct another round of consultation in accordance with reg 25 of the Regulations.

Ongoing concerns in relation to blue whales

13. [REDACTED] has not had time to review the further revised EP in detail and is not yet able to provide an informed assessment or comprehensive input. We also note that not all Appendices to the further revised EP have yet been made available. It is also difficult to see what changes have been made since the December EP, in the absence of a document showing tracked changes, or a summary of changes.
14. However, even on our limited initial review, it is clear that our concerns about the impact of the proposed activities on marine life have not been resolved. It is our view that several of the deficiencies raised by NOPSEMA in its 8 March Letter have also not been addressed. We have cross-referenced our concerns to the table prepared by NOPSEMA as part of its 8 March Letter (**RFFWI Table**), but note that more issues would likely arise on a detailed review. Some preliminary matters are outlined below.
15. TGS has indicated that the revised ASA mostly does not overlap with the existing Biologically Important Area (**BIA**) for blue whales, but the revised OA still overlaps with the existing BIA.¹⁶ Our main concern, set out as #5 below, is that the modification to the ASA is nothing more than superficial compliance with one aspect of the Blue Whale Recovery Plan. It fails to address the reality that blue whales are very likely to be encountered in deeper waters, outside the designated BIA. The measures in place for seismic data acquisition outside the BIA are inadequate and result in unacceptably high risks to whales.

Unresolved concern #1: does not provide sufficient evaluation of 2D seismic acquisition – item 1.4 in RFFWI table

16. TGS has modified the ASA so that it now only has a limited direct overlap with the BIA, in the form of two “tie-in lines” to be acquired via 2D surveying. Item 1.4 in the RFFWI table notes that the EP does not provide a sufficient assessment of the impacts to whales of acquiring those tie-in lines within the BIA.¹⁷ We cannot see that the further revised EP contains an evaluation of the impact of the 2D acquisition within the BIA as required.

Unresolved concern #2: noise evaluation is not adequate –item 1.5 in RFFWI table

17. NOPSEMA requested that TGS revise the EP to include supporting rationale for the behavioural response thresholds adopted for whales. The further revised EP uses the

¹⁵ Regulations, reg 25(2).

¹⁶ TGS [Interactive Map](#) of proposed ASA and OA.

¹⁷ Relevant to reg 34(a) of the Regulations: analysis in the plan must be appropriate for the nature and scale of the activity.

same maximum predicted onset distance for behavioural effects (7km) as the December EP.¹⁸ We cannot see that TGS has added any supporting rationale for the continued use of this distance. We note that the Blue Whale Study Submission on the proposed activities¹⁹ reported pygmy blue whales reacting to a seismic source 19.5km away.²⁰ That was in shallow water (150m). In deeper water, sound is likely to propagate further. TGS has not justified its use of the much shorter distance of 7km. Using the 7km distance allows TGS to conduct activities much closer to whales than if it adopted a more conservative measure.

Unresolved concern #3: cumulative impacts not properly considered – item 1.7 in RFFWI table

18. The further revised EP contains a new Appendix S – Cumulative Impact Scoping Assessment. This Appendix is not publicly available. Without it, [REDACTED] has not been able to assess whether the analysis of cumulative impacts required by the comprehensive list in Item 1.7 of the RFFWI table has been carried out.
19. In [REDACTED] submission to NOPSEMA during the 2023 public comment process, we repeatedly emphasised the importance of considering the cumulative impacts of noise on whales and other marine fauna.²¹ Given that the further revised EP would now seem to provide for greater intensity of surveying activity within the compressed ASA, the need for a robust cumulative impacts analysis is even greater than before.

Unresolved concern #4: there is not a thorough consideration and evaluation of all reasonable control measures – items 2.1 and 2.3 in RFFWI table

20. The failure to thoroughly evaluate reasonable control measures is relevant to reg 34(b) of the Regulations. In the limited time for review, [REDACTED] has not been able to assess the control measures for managing acoustic disturbance in the further revised EP. However, it appears that several of the proposed control measures listed in Item 2.1 have not been adopted. Below is one example of a control measure that does not appear to be adequate. It is not an exhaustive statement of our unresolved concerns in relation to control measures.
21. Concerningly, there appears to be a less stringent control measure related to night-time and low visibility operations in the further revised EP.²² In the December EP, night-time and low visibility operations were limited to circumstances where no whale initiated shut-downs had been made in the preceding 24 hours.²³ Now, it appears that night-time and low visibility operations will be able to commence provided there have not been **three or more** whale-instigated shut-downs in the preceding 24-hours.²⁴ Some extra measures for blue whales or southern right whales set out later in the control measures table appear to indicate that one shut-down due to a blue whale or southern right whale will be sufficient if that shut-down is sufficiently close to the proposed night-time operations.²⁵ This still represents a relaxation of the previous control measure.

¹⁸ Further revised EP, p 524.

¹⁹ Blue Whale Study In. Submission to NOPSEMA re: TGS Otway Basin 3D Marine Seismic Survey (11 August 2023) (**BWS Submission**).

²⁰ [REDACTED] Submission, pp 8 – 9.

²¹ [REDACTED] Submission to NOPSEMA Public Comment Process re: TGS-NOPEC Geophysical Company Ptd Ltd (11 August 2023), pp 2, 3 (**[REDACTED] Submission**).

²² Further revised EP p 613, CM 29 in Table 101.

²³ December EP, p 528.

²⁴ Further revised EP p 613, CM 29.

²⁵ Further revised EP p 632.

22. Night-time and low visibility operations are especially dangerous for whales because surface monitoring by Marine Fauna Observers is not effective in these conditions. For this reason, ██████ recommended an absolute prohibition on seismic operations in night-time and low-visibility conditions in its submission during the 2023 public comment process.²⁶ The apparent relaxation of this control measure poses a significant risk to whales.

Unresolved concern #5: the activity is inconsistent with the Conservation Management Plan for the Blue Whale – item 3.5 in RFFWI table

23. The further revised EP remains inconsistent with the Recovery Plan in place for the blue whale. Adjusting the ASA so that it skirts the border of the BIA fails to address the risks to whales, for the following reasons.

24. First, high numbers of blue whales feed in deeper waters offshore in the Otway Basin, outside the area currently designated as a BIA. As the EP states (in-text references removed):

“Historical and more recent records also show PBWs occur in deeper waters of the OA and the broader region, including at depths greater than 2,000m.”²⁷

...

“The combination of recent sightings data from the Otway 2D MSS, satellite tagging data, acoustic data and historical whaling data indicate that pygmy blue whales not only occur on the Continental Shelf, but also in deeper waters throughout the OA. It is likely that whales occurring throughout this region are taking advantage of the highly productive waters associated with both the Bonney Upwelling and the STC as foraging habitat.”²⁸

25. In the Otway 2D MSS referenced above, 58 blue whales were sighted during four months in a similar area to the OA proposed in the December EP.²⁹

26. While the proposed ASA reduces overlap with the existing BIA, it does not address the risk (acknowledged by TGS above) that there is a high likelihood blue whales will be feeding in deeper waters, outside of the existing BIA. On the contrary, Figure 38 in the further revised EP shows how numerous whale sightings from that dataset are **still within the proposed ASA**.³⁰ This shows that the reduction in area of the ASA does little to reduce the actual risk of encounters with blue whales.

27. Further and consistent with the above, the Commonwealth government is currently reviewing the BIAs for blue whales.³¹ Experts have submitted that the existing BIA should be extended southward – this is acknowledged in the EP by TGS:

“It is also noteworthy that deeper waters of the OA have also recently been nominated as a BIA (P. Gill, pers comm). Due to the overlap between the OA and the existing BIAs and the nominated BIA extension, the likelihood of encountering PBW during the Otway Basin 3D MC MSS is ‘high’.”³²

²⁶ ██████ Submission, p 2.

²⁷ December EP pp 163; further revised EP p 181.

²⁸ December EP p 166; further revised EP p 184.

²⁹ December EP p 163; and see p 164 ‘Fig 36: Pygmy Blue Whale Sightings Made During the Otway Basin 2020 2D MSS’. Further revised EP p 181.

³⁰ Further revised EP p 182, Fig 38.

³¹ ██████ [‘Biologically Important Areas for protected marine species \(BIAs\)’](#) (online, 2024).

³² December EP p 168; TGS, *Titleholder Report on Public Comment*, matter 109. Further revised EP, p 186.

28. Second, the proposed ASA runs along the edge of a significant stretch of the BIA. This may prevent whales from entering the BIA as they move between the BIA and the surrounding ocean.

29. Third, the OA still has considerable overlap with the BIA (and presumably also considerable overlap with what TGS describes as the 'nominated BIA extension'). It is not clear what activities are proposed to occur within this area, even if they do not constitute "active" acquisition.

Request for response

30. As noted above, without time to consider the details on the further revised EP, it is not possible for [REDACTED] to provide thorough and comprehensive input. As such, we request that NOPSEMA respond to this letter by **4pm on 12 July 2024**, publish the further revised EP in full, and invite a further round of public comment.

Yours faithfully,

[REDACTED]

[REDACTED]

[REDACTED]