

Securing compliance – Inspection conclusions and advice

Document No: N-02000-GN2402 A1264999

Date: 28/01/2026

Core concepts

- NOPSEMA conducts inspections as part of its legislated function to implement an effective compliance monitoring strategy to ensure compliance with NOPSEMA listed laws¹ and/or commitments in the accepted permissioning documents such as environment plans, well operations management plans or safety cases.
 - The inspection report given to the duty holder will include conclusions. Where there is an elevated risk, a compliance gap, a pathway to future non-compliance or relevant industry better practice, the report may also provide advice - such as recommendations - on measures to return to compliance, prevent future non-compliance or consider better practice.
 - When issuing the inspection report to the duty holder, NOPSEMA will request the duty holder provide details of the actions they will take to address conclusions or otherwise will request the duty holder to provide specific details of the actions the duty holder has taken or intends to take to:
 - manage the risks to ALARP
 - establish the underlying cause(s) of the non-compliance
 - remediate the non-compliance (return to compliance)
 - prevent its reoccurrence (confirm the remedial actions undertaken were effective).
 - The level and extent of details requested will be commensurate with the nature and seriousness of the non-compliance.
 - NOPSEMA has five categories of compliance advice/recommendation which are used depending on the level of non-compliance identified.
 - This note provides guidance on NOPSEMA's expectations on the level of detail that is required to be included in the duty holder's response.
 - The note also sets out NOPSEMA's expectations on the timeliness of duty holder responses and provides guidance if a duty holder cannot meet an agreed due date.
 - NOPSEMA will monitor the actions taken by the duty holder to return to compliance and may seek verification that the actions have been implemented.
 - If a duty holder fails to return to compliance in an appropriate timeframe and/or if new information becomes available, NOPSEMA may re-evaluate its approach to securing compliance.
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¹ NOPSEMA listed laws are defined in Section 601 of the OPGGS Act

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1. Purpose

This guidance note provides information for operators, titleholders and other duty holders (collectively referred to as 'duty holders' in this guidance) required to formally respond to conclusions and advice provided by NOPSEMA in its inspection reports.

2. Scope

This guidance note applies to all inspection reports issued to duty holders following completion of a NOPSEMA inspection.

3. Inspection conclusions

NOPSEMA conducts inspections as part of its legislated function under Schedule 2A, 2B and 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act). NOPSEMA's approach to conducting inspections is set out in NOPSEMA's [Policy - Inspections - Monitoring and Securing Compliance](#) (N-02000-PL1523) available on our website (Inspections | NOPSEMA).

The objectives of an environmental management, well Integrity or OHS inspection are to determine:

- whether a listed environment management law, well integrity law or OHS law has been, or is being, complied with.
- whether information given in compliance, or purported compliance, an environment management law, well integrity law or an OHS law is correct, or
- matters relating to an accident or dangerous occurrence that has happened.

An inspection assesses an operators' level of compliance in the areas selected for review. The outcome may include findings of both compliance and non-compliance. Where non-compliance is considered significant, or poses an immediate threat to the workforce, NOPSEMA may escalate the matter to an investigation and/or enforcement action. For more information on how and when NOPSEMA issues enforcement measures, refer to NOPSEMA's [Enforcement Policy](#) (N-05000-PL0067) available on our website (Enforcement and appeals | NOPSEMA).

A NOPSEMA inspection provides only a partial review of a duty holders' compliance with the relevant laws and regulations. It does not confirm full compliance at any one point in time, nor does it determine the overall level of risk at a facility or title area. Managing this risk to a level that is ALARP remains the duty holder's responsibility.

4. Compliance advice and recommendations

NOPSEMA provides advice in the form of recommendations to guide duty holders on the expected response to address a risk or a compliance gap. The categories of recommendations are:

- Remedial action plan-based
- Outcome-based
- Direct action
- Take caution
- Better practice

4.1. Remedial action plan recommendation

A remedial action plan (RAP) is associated with complex compliance issues or serious risks that fall short of enforcement where for example:

- the duty holder does not have a full understanding of the risks, impacts or functionality and availability of controls identified in the permissioning documents for prevention or mitigation of a safety, well integrity or environmental hazard
- where implementation of the current controls has failed to reduce the impacts or risks to safety, environment and well integrity
- the issue/non-compliance appears to be systematic, there is a history of similar non-compliance, or the extent of the issue is unknown
- they may require multiple actions to return to compliance over a defined timeframe.

4.1.1. Duty holder's response to a remedial action plan recommendation

It may take time for a duty holder to investigate and understand the causes for the non-compliance and/or risk gap. The duty holder may consider providing a staged response to NOPSEMA, for example:

Initial response providing details of:

- the temporary control measures put in place by the duty holder to manage the immediate risk until the investigation has been completed
- a description of the investigation (who, what, where and when) the duty holder intends to take to fully understand the issue and to develop the remedial action plan
- the date that the duty holder intends to provide the remedial action plan to NOPSEMA

Detailed response providing details of:

- the investigation including a description of the underlying causes of the non-compliances and consideration if the underlying causes could lead to non-compliances in other critical systems
- the remedial action plan including a list of corrective actions and the due dates when the corrective actions will be implemented
- a description of how the duty holder intends to track and monitor the corrective actions through to action close out
- follow-up review to establish if the remedial actions have been effective in addressing the non-compliances/risk gaps.
- Details of how the duty holder will keep NOPSEMA updated on progress with implementing the RAP.

If NOPSEMA requires clarification, the duty holder will be given an opportunity to revise its response to provide an appropriate level of detail. This may require a meeting for NOPSEMA to state its expectations. If NOPSEMA is not satisfied that the response addresses the inspection findings and cannot obtain a sufficient level of detail following discussions with the duty holder, enforcement will be considered.

4.1.2. NOPSEMA's monitoring of remedial action plans

NOPSEMA shall monitor the duty holder's progress in completing actions and returning to compliance. Following submission of the plan, including proposed due dates, NOPSEMA shall agree a timeframe for the duty holder to report progress against the plan. The degree of monitoring will be dependent on the scale of risk gap/non-compliance, the time required for the duty holder to address the actions, the duty holder's past record in addressing NOPSEMA recommendations and NOPSEMA's other regulatory interactions, such as assessments and inspections, with the duty holder.

It is NOPSEMA's expectation that the duty holder provides realistic due dates for completing the actions so that risks are reduced and compliance is achieved at the earliest practicable time. If, however, there is an unforeseen delay, the duty holder should contact NOPSEMA to seek a revised due date. Refer to section 5 guidance in seeking a due date extension.

4.2. Direct action recommendation

A direct action, or prescriptive recommendation is used where there is a specific action that the duty holder needs to take to address a non-compliance or risk gap. This type of recommendation is useful in cases where a duty holder requires specific guidance (direction) to achieve a specific outcome.

A direct-action recommendation is used when:

- there is a specific action that the duty holder needs to take to address a non-compliance
- the action to return to compliance is clear, known (i.e. straightforward), and no further investigation/analysis is required by the duty holder
- the duty holder is non-compliant with a safety case/ environment plan /well operations management plan commitment (including commitments to specific codes and standards) and/or legislation
- when immediate remediation is required to return to compliance, but enforcement is not warranted.

4.2.1. Duty holder's response to direct action recommendations

If the duty holder agrees with the recommended action, it should give specific details of:

- the action to be taken
- when the action will be completed
- the position assigned and the responsibility for taking the action
- how it will track progress of the action until it is completed and closed by NOPSEMA.

If the duty holder believes there is an alternative action that it can take, it can propose the preferred action in its response, stating how it will achieve compliance and close the risk gap to ALARP. NOPSEMA will assess whether the proposed action is reasonable and can be completed in an acceptable timeframe.

4.3. Outcome based recommendations

An outcome-based recommendation is used where the conclusion identifies a clear compliance gap and NOPSEMA can confidently define the outcome the duty holder needs to achieve to be able to return to compliance but is not invested in the specific actions the duty holder should take to achieve this outcome (or where it is not appropriate to specify actions).

An outcome-based recommendation is used when:

- the inspector is confident that the outcome needed to return to compliance is known (and doesn't want to prescribe specific actions). The outcome is likely to be specified in the permissioning document
- the matter is sufficiently straightforward and/or the risk low or limited that it does not warrant trying to find out why the duty holder has become non-compliant in the first place
- the issue does not appear to be symptomatic of a broader issue
- there are no multiple findings/non-compliances relating to the topic under inspection.

4.3.1. Duty holder's response to outcome-based recommendations

In its response to NOPSEMA, the duty holder is expected to provide:

- details of the action(s) that the duty holder plans to undertake to return to compliance in response to the conclusion
- reasonable timeframes for when the action(s) will be taken
- responsible person for ensuring the recommendation is completed within the agreed timeframe.

4.3.2. NOPSEMA's monitoring of outcome and direct action-based recommendations

Depending on the complexity of the action and the scale of the risk gap/non-compliance, NOPSEMA may either:

- close the recommendation and verify the action has been taken during the next inspection
- keep the recommendation open until the duty holder has informed NOPSEMA that the action has been completed.

4.4. Take caution recommendation

A precautionary recommendation is to be used where the duty holder has generally been able to demonstrate compliance, however there is a clear pathway towards non-compliance and/or high risk or impact in the foreseeable future (either short term or long term).

A take caution recommendation is used when:

- the duty holder needs to take action to prevent future non-compliance when a clear pathway to non-compliance and associated risk/impact is present
- there is a reasonable opportunity to prevent non-compliance and a reasonable expectation that providing a caution is sufficient to induce the necessary changes (i.e. enforcement is not warranted)

- there is an event or impact that will or is likely to happen in the future (either in the short or long term) if the duty holder continues to undertake their activities in the way identified during the inspection.

4.4.1. Duty holder's response to a take caution recommendation

In its response to NOPSEMA, the duty holder is expected to provide:

- details of the action(s) that the duty holder plans to undertake to return to compliance in response to the conclusion
- reasonable timeframes for when the action(s) will be taken
- responsible person for ensuring the recommendation is completed within the agreed timeframe.

4.4.2. NOPSEMA's monitoring of take caution recommendations

NOPSEMA may either:

- close the recommendation and verify the action has been taken during the next inspection
- keep the recommendation open until the duty holder has informed NOPSEMA that the recommendation has been completed.

4.5. Better practice recommendation

Better practice recommendations may be given where the duty holder has demonstrated compliance but has not adopted good practice, reputable guidelines or standards that appear reasonable to implement and likely to further reduce risks or impacts. In these cases, the duty holder is encouraged to give serious consideration to adopting the better practice.

The better practice recommendation is used when:

- there is an opportunity to reduce the risk/impact further (i.e. ALARP)
- the duty holder is in compliance with the accepted permissioning document, legislation, codes and practice
- the inspector would not expect to follow up on the resulting actions until a permissioning document revision or reasonable timeframe proposed by the duty holder.

4.5.1. Duty holder's response to a better practice recommendation

In its response to NOPSEMA, the duty holder is expected to provide:

- details of the ALARP analysis conducted to consider the better practice
- the outcomes of the analysis.

5. Common issues with responding to conclusions and advice

The list below identifies some common issues in duty holder responses to conclusions and advice. In all cases, NOPSEMA will take a graduated approach to determining how the issue is managed.

- failure to provide a response to the conclusions and recommendations
- failure to fully consider the report findings and NOPSEMA advice when addressing conclusions

- failure to provide a reasonable response that contains sufficient detail or an amount of time that is appropriate to the conclusion or recommendation.
- failure to request an extension of time or complete an action before the target date.

If the duty holder cannot achieve the due date agreed with NOPSEMA, it must contact the Lead inspector before the action becomes due, stating the reasons for the delay and proposing a revised due date.

6. Verification and close-out of actions and/or conclusions

6.1. Closing duty holder actions

Closing duty holder actions will take into account the material provided by the duty holder to provide evidence that the action has been completed, and (where applicable) the extent to which the associated conclusion has been addressed.

The NOPSEMA inspector will contact the duty holder by email to either:

- advise that the action has been closed, or
- request further information/action and advice that the action remains open and provide a new date by which the duty holder needs to respond with more information. The duty holder can request a meeting with the inspector to seek further clarification on the request.

6.2. Verification of outcomes

NOPSEMA may follow up on recommendations during inspections to verify that the actions:

- have been implemented
- have addressed the previous in inspection findings
- are functional in returning the duty Holder to compliance and reducing risks to ALARP.

7. Related documents

N-02000-PL1523 – Inspection Policy (Inspections | NOPSEMA)