

1 April 2016

Via email ec.sen@aph.gov.au

Re: Senate Inquiry into the potential environmental, social and economic impacts of BP's planned exploratory oil drilling project, and any future oil or gas production in the Great Australian Bight

The Environmental Defenders Office (SA) Inc ("the EDO") is an independent community legal centre with over twenty years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

We appreciate the opportunity to provide a submission to this Inquiry which is seeking comment on:

- a. the effect of a potential drilling accident on marine and coastal ecosystems, including:
 - i. impacts on existing marine reserves within the Bight,
 - ii. impacts on whale and other cetacean populations, and
 - iii. impacts on the marine environment,
- b. social and economic impacts, including effects on tourism, commercial fishing activities and other regional industries;
- c. current research and scientific knowledge;
- d. the capacity, or lack thereof, of government or private interests to mitigate the effect of an oil spill; and
- e. any other related matters.

The EDO's submission focusses on regulation of this industry and in particular the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulation 2009 (the Regulation).

Our analysis of the Regulation concludes that it fails in key respects to meet the requirements of the Environment, Protection and Biodiversity Conservation Act (Cth) 1999 (the EPBC Act) and therefore should be amended as detailed below.

Objects

Recommendation

Include objects which specifically reflect the objects of the EPBC Act in addition to the object to act "in a manner consistent with the principles of ecologically sustainable development".

The Regulation should also include substantive provisions which operationalise the objects. The recommendations below will assist in this respect.

Offshore Project Proposals (OPPs)

Recommendation

Offshore project proposals (OPPs) should identify, where relevant, matters of national environmental significance (MNES) and to be prepared for exploration activities.

Assessment

- A. Titleholders are not required to provide sufficient information in Environment Plans (EPs)

Recommendations

To require titleholders to;

- a. Provide full details of their environmental history, including details of any proceedings taken against the proponent;
 - b. Outline whether any impacts associated with the activity are likely to be unknown, unpredictable or irreversible and;
 - c. Specify the source, date, reliability and (if relevant) any uncertainties concerning the information contained therein.
- B. The EP process lacks transparency and accountability particularly in terms of availability of information to the public and opportunities for comment.

Comprehensive access to information is very important in ensuring open, accountable, and transparent governance. Public access to information is an internationally recognised procedural right that plays an important role in environmental and planning law. It manifests in many ways, from the right to be notified of an opportunity to participate in a decision-making process through to the right to access and comment on particular proposals. The right of access to information is an important precursor to exercising other rights such as the right to challenge government decisions in court.

Currently access to information in this area is unduly restricted in two ways.

First, limitations are placed on the public and onto environmental advocacy organisations as to who is or is not considered a 'relevant person' for the purposes of consultation with stakeholders. While NOPSEMA's guidance has provided that the concept of a 'relevant person' must be interpreted broadly by titleholders, the EDO is concerned that this policy could prevent reasonable access to information regarding

offshore project proposals. In our view it is unjust that the titleholder determines the relevancy status of members of the public, as opposed to members of the public having an unfettered right to information as is the case under the EPBC Act. While the guidance states that people or organisations may assert their relevance, the EDO is concerned that by allowing titleholders to make these determinations, affected people and organisations may not be involved in important consultations. The EDO submits that any person should be allowed to comment. This would improve accountability and decrease the burden on titleholders to make decisions as to who is a 'relevant' person.

Second, relevant persons need only be provided with 'sufficient information' (as opposed to the entire environment plan) to allow them to make an assessment of the impacts on their interests, functions and activities. What is 'sufficient' is not defined. Even when an EP is approved only summaries of the plan are publically available. In our view this is not in the public interest. The EDO does not see valid reasons for excluding the public from accessing relevant information. Given the scale of some offshore projects and possible serious environmental and other impacts, it is clearly in the public interest that full and complete information about such projects is disseminated as occurs with proposals assessed under the EPBC Act.

Recommendations

- a. To require exhibition of the EP and a plain English summary for a minimum of 20 business days;
- b. To allow all members of the community the ability to comment on the EP and plain English summary;
- c. To require the Regulator to take into account any comments received during the exhibition period when deciding whether to approve or reject the EP;
- d. To enable the Minister to call in a project and conduct a public inquiry to assess the environmental impacts associated with a particular activity;
- e. To require public availability of consultation reports – to include comments along with titleholder's response as to how those comments have been addressed and ;
- f. To require consultation where revised versions of the EP are submitted for approval.

Approval and condition provisions

Recommendations

- A. To require the Regulator when deciding whether to approve the EP, to not act inconsistently with :
 - a. Australia’s obligations under the World Heritage Convention, the Australian World Heritage management principles, or a plan that has been prepared under s.316 of the EPBC Act for the management of the a declared World Heritage property (where the activity is likely to impact a World Heritage property);
 - b. The National Heritage management principles, an agreement to which the Commonwealth is party under a National Heritage Place, or a plan that has been prepared under s. 324S of the EPBC Act for the management of a National Heritage place (where the activity is likely to impact a National Heritage place);
 - c. The Ramsar Convention (where the activity is likely to have an impact on a Ramsar-listed wetland);
 - d. Australia’s obligations under the Biodiversity Convention, or a recovery plan or threat abatement plan (where the activity is likely to have an impact on threatened species or endangered communities and ;
 - e. The Bonn Convention, the China –Australia Migratory Bird Agreement (CAMBA), the Japan-Australia Migratory Bird Agreement (JAMBA), or the Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA) (where the activity is likely to impact certain migratory species).
- B. To require the Regulator to be reasonably satisfied that the EP is consistent with the principles of ESD;
- C. To require the Regulator to attach conditions to the EP designed to protect MNES and;
- D. To give the Regulator the power to suspend an approval where there is a change, or proposed change, of circumstances or operations of an activity due to a significant new environmental impact or risk, or significant increase in an existing environmental impact or risk not provided for in the EP until a revised EP is approved.

Precautionary principle

Recommendation

- a. To require the Regulator to take into account the precautionary principle when deciding whether to approve or reject the EP.

Offence provisions

Recommendations

- a. To augment the civil penalty units for undertaking an activity without an EP. The civil penalty should reflect those contained in the EPBC Act for Part 3 civil offences;
- b. To reinstate a criminal offence provision for undertaking an activity without an EP. Penalty units and imprisonment terms should reflect those contained in the EPBC Act for Part 3 criminal offences;
- c. To augment the existing criminal offence provisions concerning the EP. Penalty units and imprisonment terms should reflect those contained in the EPBC Act for Part 3 criminal offences and ;
- d. To reinstate a quantitative limit on the discharge of produced formation water and the corresponding offence provisions.

Standing provisions

Recommendation

- a. To include standing provisions that reflect those contained in the EPBC Act.

Please advise if you require clarification on any of the issues raised in this submission.

Yours faithfully



Melissa Ballantyne
Coordinator/Solicitor
Environmental Defenders Office (SA) Inc.

