



Offshore Petroleum Factsheet Series:

Production licences: How to get involved as a ‘relevant person’?

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet explains a key stage in the granting of petroleum production licence: the approval of an environment plan for production. It focuses on what you can do if you’ve been identified as a relevant person and contacted by a petroleum production company. It also provides information on steps you should take if you believe to be a ‘relevant person’ but was not consulted with and briefly sets out your rights to challenge a decision to approve an environment plan.

Outline

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Overview of the process for production

Before a company can move to full scale production, it must prepare and submit an environment plan for NOPSEMA to approve.¹

¹ OPGGS (E) Regulations reg 26.

When preparing an environment plan, a company must consult relevant persons only. If you are identified as a relevant person, consider how you'd like to be consulted and co-design the consultation process with the company based on this.

If you are not identified as a relevant person, but believe your functions, interests, or activities will be affected by petroleum production, write to NOPSEMA and the company and assert yourself as a relevant person.

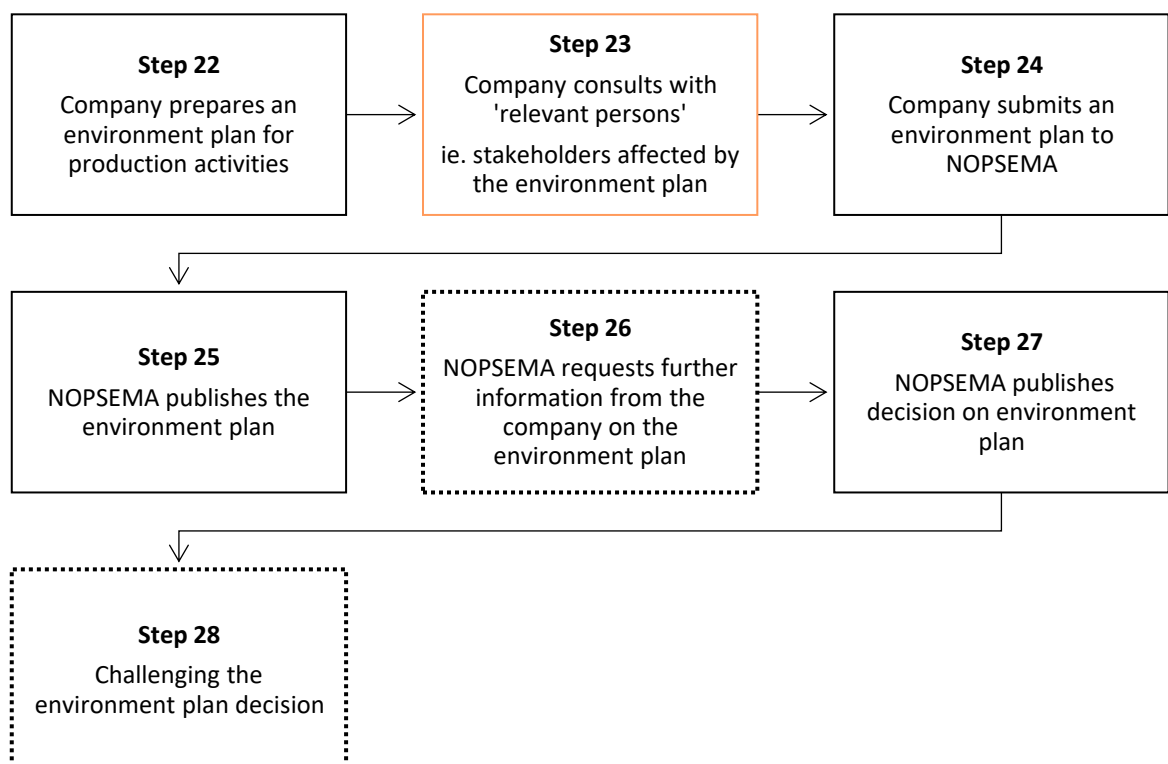
For the general public, there are no opportunities to comment on the environment plan.

However, you can raise concerns about petroleum production activities or the environment plan with the company and NOPSEMA by writing a letter outlining your concerns and recommendations. The company and NOPSEMA are not required to respond or act on these concerns.

Remember to clearly explain your concerns and the evidence supporting them, referencing specific sections of the environment plan and/or the consultation report.

While the company and NOPSEMA are not obliged to respond, these concerns may factor into their decision.

The Figure below shows the process for environment plans for production activities. This factsheet focuses on Steps 23 and 28.



Relevant persons

During the preparation of an environment plan, the company is required to consult with all stakeholders affected by the environment plan. The purpose of consultation is to ensure the company identifies all potential risks and impacts to the environment and the measures it will take to address these.

The opportunity to comment on an environment plan for production is the same as the process for commenting on an environment plan for exploration. This includes the process for identifying and consulting with ‘relevant persons’ and submission writing.

Read: [EDO’s Factsheet on Your right to comment on and challenge an Environment Plan](#) for more information about your rights as a ‘relevant person’ and how to engage effectively in the consultation process, as well as how to write an effective submission.

NB: If you were consulted during the design process of the exploration environment plan, you can expect that the draft production environment plan would include similar details.

However, you should expect different risks and impacts associated with production than those associated with exploration and more greenhouse gas emissions associated with production and the combustion of petroleum. For example, a production environment plan will cover the impacts of offshore infrastructure, such as a floating or fixed production facility or a pipeline.

Consulting with First Nations communities

Australia has obligations under the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**). The UNDRIP requires countries to consult and cooperate with First Nations communities and obtain their ‘free and informed consent prior to the approval of any project affecting their lands or territories...’²

While obligations under UNDRIP don’t strictly apply to the companies undertaking consultation,³ these obligations should inform what NOPSEMA considers to be sufficient consultation, in terms of the information given and time provided for feedback.

Read: The [UNDRIP](#) to find out more about free, prior and informed consent.

² United Nations Declaration on the Rights of Indigenous People (2007) Art 32.

³ UNDRIP applies to “states” or countries rather than third parties, e.g. oil and gas companies.

Read: NOPSEMA's [guideline](#) for consultation on offshore environment plans

What happens next?

Publication of the environment plan

If NOPSEMA considers the environment plan to be complete,⁴ the plan will be published on the NOPSEMA website.⁵ If NOPSEMA publishes a revised environmental plan it will also have to publish the reasons for the revision.⁶

N.B To be notified when a production environment plan is published by NOPSEMA, subscribe to NOPSEMA's [mailing list](#)

However, if NOPSEMA decides that the environment plan is still not complete, the company must resubmit the plan again.⁷ There is no formal notification for this step, so it's important to check the NOPSEMA website regularly. The website shows the **status** for each environment plan under assessment, and this will change from "with NOPSEMA" to "with titleholder" if a request for further information has been made.

Visit: The NOPSEMA [website](#) to view the status of environment plans under assessment.

NOPSEMA publishes decision on environment plan

Once NOPSEMA has assessed the environment plan, it will decide to:⁸

- Accept the environment plan
- Accept the environment plan with conditions, or
- Refuse the environment plan

If refused, a company can start over and submit a new environment plan.

N.B To be notified of accepted environment plans, subscribe to NOPSEMA's [mailing list](#).

⁴ OPGGS (E) Regulations reg 27

⁵ OPGGS (E) Regulations reg 28(1).

⁶ Ibid, reg 28(2)

⁷ OPGGS (E) Regulations reg 33 (5)-(6)

⁸ OPGGS (E) Regulations reg 33(7).

Your right to challenge an approved production environment plan

Who can challenge?

An aggrieved person (that is, a person whose interests are affected by the decision) can challenge NOPSEMA's decision in the Federal Court of Australia (**Federal Court**). This type of challenge is called judicial review, and it is only available if there is a legal error in the decision-making process.

What is a legal error?

If NOPSEMA accepts an environment plan that doesn't address all the information that is required under the law, the Court *may* consider this to be a legal error.

Is there a deadline?

If you think there may be grounds to challenge a decision, you should seek legal advice as soon as you're made aware of the decision. Once NOPSEMA publishes the decision, and a statement of reasons, you have 28 days to file an application for judicial review.⁹

N.B

Judicial review is a complex process, involving tight timeframes and significant resources and costs. You should seek legal advice to determine whether you have grounds to challenge a decision and any risks associated with challenging a decision in Court.

Evaluate this resource

EDO welcomes feedback on this legal resource. Your feedback will help us ensure we provide useful legal information.

If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:



Annexe 1

⁹ *Administrative Decisions (Judicial Review) Act 1977* (Cth), s 11(3). In practice, NOPSEMA generally publishes a statement of reasons for the decision to accept an offshore proposal plan. If NOPSEMA does not publish the statement of reasons, you can seek these within 28 days of the decision being made.

The table below sets out the information an environment plan must include.¹⁰ Keep this in mind if you have the opportunity to see a draft environment plan during the consultation process.

Section of Environment Plan		What's included
Environmental assessment	Description of the activities	Proposed production activities including impacts of offshore infrastructure, such as a floating or fixed production facility or a pipeline. Also outlines where and when these activities will be conducted.
	Description of the environment that may be affected	Areas that will be explored are referred to in the environment plan as petroleum activity areas (PAA). Environment plans will also include a map or description of the area that may be affected by the worst-case scenario, such as a petroleum spill. This is called the environment that may be affected (EMBA). You'll want to consider both the PAA and EMBA when giving your feedback as part of the consultation.
	Direct environmental impacts and risks of the activities	Direct impacts to the PAA and the EMBA. The environment plan should consider impacts on the natural environment and on the social, economic, and cultural values of people and their communities. ¹¹ This includes: <ul style="list-style-type: none"> • Climate change and greenhouse gas emissions associated with production and the combustion of petroleum • Sea Country and other marine or terrestrial areas of significance to Aboriginal and Torres Strait Islander peoples. • Marine animals such as the Blue Whale, Southern Right Whale, Dugongs and Whale Sharks.

¹⁰ OPGGS (E) Regulations pt 4 div 2 'Contents of an environment plan'.

¹¹ Definition of 'environment' under the OPGGS Act.

		<ul style="list-style-type: none"> • Critical marine habitat, key migration routes for wildlife and Biologically Important Areas (BIA) • Impacts on key species listed as threatened by the government • Impact of proposed seismic, drilling, production, transport, and decommissioning activities on Marine Park Areas (MPA)
	Indirect environmental impacts and risk of the activities	Indirect impacts include those that fall outside the PAA or EMBA. For example, climate change due to downstream emissions.
	Environmental performance standards	How direct and indirect impacts will be managed to a level as low as reasonably practicable (ALARP) and to an acceptable level. This section also outlines how the company will continue to monitor its environmental impacts.
Implementation strategy for the environment plan	Consultation with relevant persons	Identifies relevant persons and the company's consultation strategy to give relevant persons <i>sufficient</i> information and time to engage in the consultation. Also outlines how relevant persons are identified. This is usually based on whether a person or group's interests, functions and activities fall within the PAA and EMBA.
	Roles and responsibilities	Key roles and responsibilities for company and contractor staff in conducting exploration.
	Oil pollution emergency plan	How a petroleum spill would be managed, including responding to the spill and monitoring its environmental performance.
Other information	Corporate environmental policy	An attached copy or link to the company's corporate environmental policy.
	Consultation report	A report on all consultation with relevant persons, including a summary of each

		person's claims or objections, and the company's response.
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