



Offshore Petroleum Factsheet Series:

Your right to comment on and challenge an Environment Plan

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 is useful to anyone who is considering commenting on an approved environment plan. It explains how to stay updated on opportunities to comment and how to write an effective submission. It also briefly explains your right to challenge a decision to approve an environment plan.

Outline

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Overview of the process for environment plans

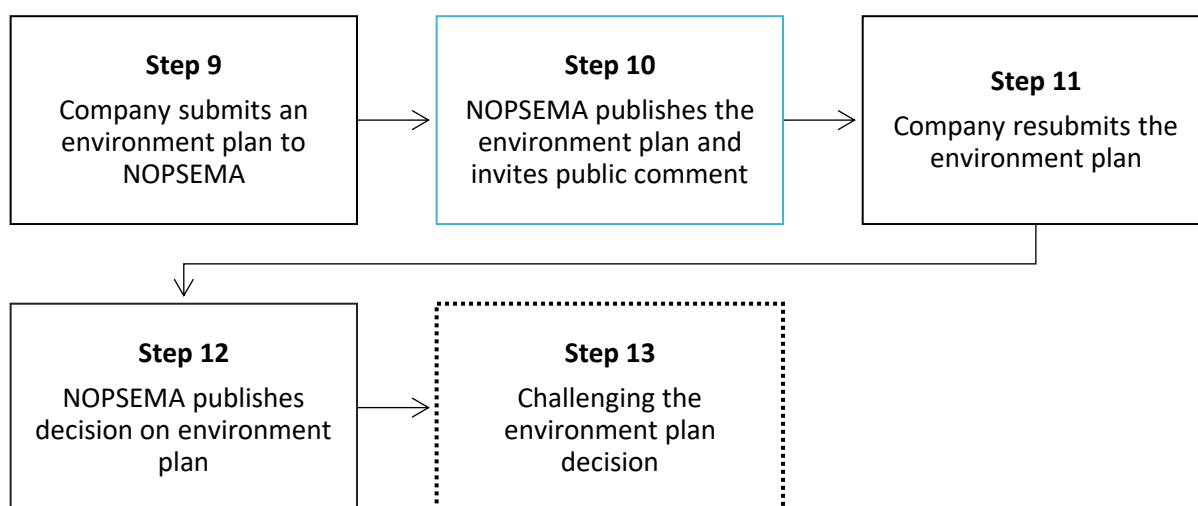
A company requires permission (in the form of an exploration permit, or in some cases, a special prospecting authority) and an accepted environment plan before it can explore for petroleum offshore.

Following the first submission of an exploration environmental plan to NOPSEMA, anyone can comment on it within the timeframe set by NOPSEMA.

If you wish to comment, identify your key concerns in your submission and make strong, and clear recommendations to NOPSEMA on what decision you would like NOPSEMA to make with regards to the environment plan.

Following the publication of NOPSEMA's decision plan, you may (if certain circumstances have been met), challenge it in the Federal Court of Australia through a process called judicial review.

The Figure below shows these steps. This factsheet focusses on Steps 10 and 13.



Your right to comment on environment plans

Anyone can comment on an exploration environment plan once it is published on NOPSEMA's website.¹ The public comment period is open for 30 days.² By law, NOPSEMA is required to consider these public comments when deciding whether to accept an environment plan.³

N.B To be notified when an exploration environment plan is open for comment, subscribe to NOPSEMA's [mailing list](#)

Remember this step applies to exploration environment plans (exploration drilling and seismic blasting) **only**.

What is a submission?

A submission is a written document that sets out your views on a proposal. Your aim is to persuade the decision-maker to make the decision you want them to make. The decision-maker is required to consider submissions before making a decision, but the decision still rests with them.

¹ OPGGS (E) Regulations reg 30

² OPGGS (E) Regulations reg 30(1).

³ OPGGS (E) Regulations reg 30(6).

Tip: Use your time and resources carefully!

Writing submissions can be time consuming and laborious. As your submission may not change the outcome of a decision, you should carefully consider where you direct your time and resources, so you get maximum impact.

Consider networking with other individuals or organisations that have previously made submissions on offshore petroleum activities or who you know are working in this space. When a consultation opportunity arises, get in touch and see what concerns other people or groups will be raising. Instead of repeating these concerns, you can simply endorse their submissions and go about writing your own submission tailored to your key concerns and expertise.

How to make an effective submission?

Consider the following template when writing your submission.

Step 1. Introduce yourself or your group

Introduce yourself/your group and say why you are interested in the environment plan being considered. For example, you may be a traditional custodian of the Sea Country where the activity is proposed or a commercial fisher whose livelihood depends on a healthy ocean. Or you might be a member of the public who is concerned about the climate change impacts of fossil fuel projects.

Tell a quick story about who you are that connects the decision-maker, NOPSEMA, to the issue from your perspective. Why is this activity important to you? What experience or knowledge do you have that the decision-maker should be aware of?

Step 2. Outline your key concerns

Your submission doesn't need to be long, and the shorter you can make it the better. Avoid using emotive or abusive language, as this can detract from your arguments.

When thinking about your key concerns, it helps to think about what NOPSEMA will have to consider when making a decision.

NOPSEMA considers things like:⁴

- whether the environment plan is appropriate for the nature and scale of the project
- the environmental impacts and risks of the proposed project or activity
- the proposed measures for managing the environmental impacts and risks
- whether the impacts and risks have been reduced as low as reasonably practicable and to an acceptable level
- the proposed methods for monitoring the environmental performance of the project or activity

⁴ OPGGS (E) Regulations reg 34.

To be accepted by NOPSEMA, a company's environment plan must show that it has consulted with relevant persons and provided sufficient information and time for this consultation.⁵

Therefore, the most important sections of the environment plan you should consider when drafting your submissions are the environmental assessment (impacts and risks associated with the activity) and the consultation report.⁶

Step 3. Make strong and clear recommendations

It is vital that you tell NOPSEMA what you want them to do. Criticism without suggested solutions is rarely received well. Make sure NOPSEMA has the power to grant your recommendations.

Here are the main recommendations you can make:

1. Decision on the plan

When deciding on an environment plan, NOPSEMA can

- accept,
- accept with conditions or limitations, or
- refuse the environment plan.

You may therefore request that NOPSEMA refuse the environmental plan or, if it approves it – do so with your suggested conditions or limitations

2. Requests further information

If you think the environment plan is lacking in information or includes information that is incorrect or incomplete, you can request that NOPSEMA use its powers to get the company to:

- address those issues by providing additional information
- conduct and report back on further consultation with relevant persons

3. Check the environment plan's consultation section

Look at who the company has consulted with and ensure that all relevant persons have been identified. If individuals or groups are missing, you can raise this in your submission to NOPSEMA. For example, a tourism company operating in the impacted area

If you believe you're a relevant person who was not consulted, write to the company and NOPSEMA directly.

⁵ OPGGS (E) Regulations reg 25 (2)-(3).

⁶ Refer to Annexe 1 for required content in an environment plan. If information is missing, you can raise it in your submission to NOPSEMA.

Read: [EDO's Factsheet on Relevant Persons](#) for guidance on how to identify yourself as a relevant person

4. *Consider environmental impacts*

An environment plan must outline direct and indirect impacts of the activity. Examples of issues you could raise include:

- **Climate change:**
 - You can ask NOPSEMA to request further information about the total greenhouse gas emission (incl. methane emissions associated with exploration, estimated greenhouse gas emissions associated with further production).
 - Based on these estimated contributions to climate change, you may request NOPSEMA reject the environment plan
 - If you wish to support your request, you may raise the International Energy Agency's Net Zero Emissions by 2050 pathway, which recommends no new oil and gas fields.⁷
 - You may also acknowledge that the activity may be accepted, and thus request that NOPSEMA impose a condition that the company reduces its greenhouse gas emissions in line with meeting the temperature goal of Paris Agreement.
- **Marine species:**
 - You can ask NOPSEMA to consider impacts on marine species, particularly threatened species
 - It could be worthwhile requesting that NOPSEMA makes decisions that are consistent with the federal government's 'Threatened Species Action Plan: Towards Zero Extinctions'.⁸

N.B. To see the conservation status of a specific species, visit the IUCN Red List [here](#).

Step 4. Use evidence or case studies or stories to support your arguments and recommendations

Wherever possible, support your arguments with evidence. This could be knowledge you (or your group) possess, studies or reports written by others, information from government websites, court judgments or journal articles.

If the proposed exploration is offshore from where you live or in waters where you work, think of yourself as a local expert. For example, if you know whale sharks visit the area,

⁷ International Energy Agency (2023) 'Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach' < <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach> >

⁸ DCCEEW, *The Threatened Species Action Plan* (Web Page, March 2023) < <https://www.dcceew.gov.au/environment/biodiversity/threatened/action-plan> >.

but they are not mentioned in the environment plan, you should recommend NOPSEMA request further information from the company on how its activities will affect whale sharks and what it will do to manage these impacts.

Use your knowledge to ensure NOPSEMA has the relevant facts when making a decision. Use your perspective to help the NOPSEMA understand the values that you believe are important. For example, the economic value of gas and oil exploitation vs the economic, cultural and intrinsic value of a clean environment, tourism, fishing, cultural heritage, threatened species, protected wildlife, Biologically Important Areas (BIA) and healthy communities.

Step 5: Lodge your submission

Remember to lodge your submission in time, and in the proper format. For submissions on exploration environment plans, go to the NOPSEMA ‘Open for Comment’ page, and follow the prompts.

N.B. Environment plans that are open for public comment will appear [here](#).

What happens next?

Company resubmits the environment plan

Within 12 months of the public comment period ending, the company must resubmit the environment plan to NOPSEMA along with a written statement outlining its response to the submissions received.⁹ The environment plan, and the written statement, is then posted on the NOPSEMA website. Remember this step applies to exploration environment plans (exploration drilling and seismic blasting) **only**.

If NOPSEMA decides that the environment plan still does not meet the criteria for acceptance or requires further information, the company must resubmit the plan again.¹⁰

N.B: 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: NOPSEMA’s website - the status of environment plans under assessment will appear [here](#).

⁹ OPGGS (E) Regulations reg 30 (3).

¹⁰ OPGGS (E) Regulations reg 33(5)-(6).

Public comment on a ‘significantly modified’ environment plan

If a company re-submits an environment plan that is significantly modified or includes a new stage of seismic or exploration drilling activities, then NOPSEMA must invite further public comment on the resubmitted environment plan.¹¹ This only applies in limited circumstances.

NOPSEMA publishes decision on environment plan

Once NOPSEMA has assessed the environment plan, it will decide to:¹²

- 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 when an exploration environment plan is accepted by NOPSEMA, subscribe to NOPSEMA’s [mailing list](#).

Your right to challenge an 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.

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:

¹¹ OPGGS (E) Regulations reg 31.

¹² OPGGS (E) Regulations reg 33(7)-(8).

EDO Legal Resource Evaluation
Form



Annexe 1

The table below sets out the information an environment plan must include.¹³ Keep this in mind when you review an environment plan. If any information is missing, you may raise this in your submissions to NOPSEMA.

Section of Environment Plan		What's included
Environmental assessment	Description of the activities	Proposed exploration activities including seismic surveying and drilling. 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. ¹⁴ This includes: • Climate change and the emission of greenhouse gases through drilling (known as fugitive emissions) and processing. • 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.

¹³ OPGGS (E) Regulations pt 4 div 2 'Contents of an environment plan'.

¹⁴ Definition of 'environment' under the OPGGS Act.

		• 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, as exploration is a precursor to production, climate change may be considered an indirect impact.
	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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