

Petroleum activity

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How do I know what is considered a petroleum activity under the Environment Regulations?

Core concepts

- The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the regulator of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (the Environment Regulations).
- This Guidance Note specifically refers to petroleum activities as defined under the Environment Regulations. Whilst the concepts discussed may also be applicable to greenhouse gas activities it is recommended that greenhouse gas titleholders engage directly with NOPSEMA if further advice regarding these activities is required.
- The Environment Regulations state that it is an offence to carry out a petroleum activity, as defined in Regulation 5, if there is no environment plan (EP) in force for the activity.
- A titleholder must have an EP in force before commencing a petroleum activity and must submit a proposed revision of an EP before the commencement of any new activity, or any significant modification or new stage of an activity, not provided for in the EP in force.
- A titleholder is responsible for determining if an activity meets the definition of a petroleum activity and therefore requires an EP in accordance with the Environment Regulations.
- This guidance note seeks to assist titleholders in determining whether proposed operations or works constitute a petroleum activity for the purposes of the Environment Regulations. Any views expressed in this document should not be relied on as, or treated as a substitute for, legal advice.
- All regulatory references contained within this guidance note are from the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the associated Commonwealth regulations. For activities undertaken in designated coastal waters, please refer to the relevant State or Northern Territory legislation.

1. Background and purpose

The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (the Environment Regulations) seek to ensure that petroleum activities are carried out in accordance with the principles of ecologically sustainable development as set out in the *Environment Protection and Biodiversity Conservation Act 1999*. The Environment Regulations require an accepted Environment Plan (EP) to be in place which demonstrates how the titleholder will carry out the activity in a manner which reduces environmental impacts and risks of the activity to as low as reasonably practicable and to an acceptable level.

The purpose of this guidance note is to provide advice as to what constitutes a petroleum activity under the Environment Regulations. This guidance note seeks to assist the titleholder in making a decision about whether operations or works in an offshore area require an accepted EP. It is not the purpose of this guidance note, nor is it NOPSEMA's role, to identify which operations or works will constitute a petroleum activity, or to define the scope of the proposed activity.

This guidance note is also not intended to provide advice on whether operations or works in an offshore area are petroleum activities if no title exists or a company wishes to undertake operations or works over a title held by another company. In these cases, companies should first consult with the National Offshore Petroleum Titles Administrator (NOPTA) to determine whether a title is required. For further information visit www.nopta.gov.au.

2. Defining a petroleum activity

Regulation 5 of the Environment Regulations provides a definition of a petroleum activity.

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

Regulation 5 Definitions

petroleum activity: means any operations or works in an offshore area carried out for the purpose of:

- (a) exercising a right conferred on a petroleum titleholder under the Act by a petroleum title; or
- (b) discharging an obligation imposed on a petroleum titleholder by the Act or a legislative instrument under the Act.

The definition links petroleum activities directly to the rights conferred, or obligations imposed, on a titleholder under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act).

To determine whether an EP is required to be submitted for operations or works, in accordance with the Environment Regulations, titleholders need to determine whether the operations or works meet this definition. The following sections provide some information and examples that may assist titleholders with this decision.

3. Exercising a right conferred by a petroleum title

Titles granted under the OPGGS Act allow the titleholder to undertake a range of activities that are directly related to exploration and/or recovery of petroleum resources or the construction of petroleum pipelines or infrastructure. This includes drilling of exploration wells, construction of subsea infrastructure or recovery of petroleum for production.

In addition, a number of titles explicitly authorise the titleholder to carry on such operations and execute such works in the title area as 'are necessary for' or in the case of pipeline licences, 'incidental to' those purposes. In these cases, titleholders should examine whether operation or works are "necessary for" (i.e. required or essential to be undertaken) or "incidental to" (i.e. happening as a result of, or in connection with, an activity). This may not extend to those operations or works that titleholders opt to undertake to address internal risks or examine optionality of future operations or works.

Titleholders should refer to the relevant sections of the OPGGS Act (i.e. s98, s135, s161, s194, s211, s230, s239 and s252) to understand what rights are specifically relevant to their title and applicable to their circumstances. Where a right conferred by a title includes the right to explore for petroleum in the title area, the extended meaning of 'explore' in section 19 of the OPGGS Act should be taken into account in determining whether particular operations or works are, or are not, a petroleum activity.

The scope of the definition of a petroleum activity is not intended to capture all maritime works and operations that a company may undertake in an offshore area and which may be beyond the scope of the OPGGS Act. Where a maritime activity is occurring in conjunction with a petroleum activity the titleholder must ensure that the operational and jurisdictional interface between the two activities is clearly defined.

The examples listed below may assist in providing guidance on operations or works which may be petroleum activities.

Example 1

A petroleum exploration permittee proposes to undertake geotechnical drilling and surveying for the purposes of locating a drilling rig prior to drilling exploration wells. Section 98 of the OPGGS Act sets out the rights conferred by a petroleum exploration permit on a permittee, including to explore for petroleum in the permit area, to recover petroleum on an appraisal basis in the permit area, and to carry on such operations and execute such works in the permit area as are necessary for those purposes. Therefore, geotechnical drilling and surveying carried out under a petroleum exploration permit is a petroleum activity if the titleholder deems it to be necessary for the purposes of exploration drilling.

Example 2

A petroleum retention lessee proposes to undertake a ROV survey and geotechnical survey to determine the location of a proposed pipeline for future field development. The rights conferred under section 135 of the OPGGS Act include exploring for petroleum in the lease area, recovering petroleum in the lease area and carrying on such operations and executing such works in the lease area as are necessary for those purposes. The lessee has determined that these surveys are not considered a petroleum activity if they are undertaken for the purposes gathering information for the installation of pipeline infrastructure which is not a right conferred on the lessee for a petroleum retention lease.

Example 3

A petroleum production licence holder is undertaking field development and proposes to install rock foundations for the production platform well in advance of the platform structure being installed. The rights conferred under section 161 of the OPGGSA Acts for petroleum product licence holders include to recover petroleum in the licence area or in another area that the holder has lawful access, to explore for petroleum and to carry on such operations and execute such works in the permit area as are necessary for those purposes. In this instance, the licence holder has determined that the installation of rock foundation is necessary for establishing a solid foundation for the production platform and is therefore a petroleum activity.

The same licence holder also proposes to install monitoring equipment on the title area for the purposes of undertaking environmental baseline scientific investigations prior to field development. The licence holder has determined that the investigations are not a petroleum activity as the operations are not deemed necessary for the purposes of exploring for, or recovery of, petroleum.

4. Discharging an obligation under the OPGGS Act

Titleholders should refer to the sections of the Act relevant to their activities and their circumstances to assist in identifying any obligations imposed by the Act that may be relevant. The reference to obligations imposed on a petroleum titleholder by a legislative instrument would include directions given to a titleholder by NOPSEMA or the responsible Commonwealth Minister under the OPGGS Act. For example, NOPSEMA may give a direction to a titleholder under sections 586 to 588 of the OPGGS Act requiring the titleholder to remove property brought into the title area. The titleholder would be required to develop

and submit an EP for acceptance by NOPSEMA prior to taking action to remove the property in accordance with the direction.

In limited circumstances, some directions (such as those given under s574, 574A or 576B) have effect and must be complied with despite anything in the regulations. For example, if an urgent direction was given in the event of a significant offshore petroleum incident, the titleholder may not need to have an accepted EP in force prior to complying with the direction.

In this situation, the obligation that is created by the direction is still considered a 'petroleum activity', however the relevant provisions of the OPGGS Act (section 574A (6) and section 576C(1)(c)) operate to override the requirement for an EP in certain circumstances.)

The reference to obligations in the definition of a petroleum activity does not include work program commitments or retention lease conditions; the OPGGS Act does not contain any provision specifically stating that a titleholder must comply with a condition of a title. The incentive to comply with title conditions lies in administrative powers such as the ability of the Joint Authority to start the cancellation process or to refuse a renewal of a title on the ground of non-compliance with a condition of the title.

This is not to suggest, however, that any operations or works carried out in an offshore area that are undertaken as a work program commitment, such as a seismic survey or drilling of a well, would not be a petroleum activity. These would be petroleum activities because they are carried out in an offshore area in exercise of a right conferred by a petroleum title (fulfilling paragraph (a) of the definition of petroleum activity). In each case, the titleholder would need to consider what they are actually required to do by the condition, and whether that would be a petroleum activity in accordance with the definition.

5. EP submissions from applicants for petroleum titles

If an activity will be carried out for the purpose of exercising a right conferred under a petroleum access authority, a petroleum special prospecting authority or a pipeline licence for which the title has been applied for but not yet granted, subregulation 26(2) allows applicants of these titles to submit an EP to NOPSEMA prior to grant of the title. The Environment Regulations provide that an applicant for one of these titles is taken to be the 'titleholder' for the purposes of this preparation, submission, and acceptance of an EP. For all other types of petroleum titles, the submission of an EP must be undertaken by a titleholder after grant of the title.

6. Actions taken outside title areas (except emergency response)

The definition of petroleum activity in the Environment Regulations is directly related to a title granted under the OPGGS Act and applies to those petroleum activities that will be conducted within the boundary of a petroleum title.

Depending on how a titleholder intends to use the EP, there may be occasions where planned operations or works that do not require a title are included in the scope of the EP. If this occurs NOPSEMA's assessment of the EP will consider the impacts and risks of these operations or works in the overall context of the proposed activity. Therefore, titleholders are advised to carefully consider the description of the operations or works that may occur outside title areas. Because, once included in the scope of the EP, these operations or works will be assessed against the content requirements of the Environment Regulations.

However, titleholders may choose to include in an EP operations or works on vacant acreage that are associated with petroleum activities. Individually, these operations or works may not need a title and would not be a petroleum activity. However, if these operations or works are described in the EP, then the EP would need to contain the relevant contents as required by the Environment Regulations.

7. Further information

Titleholders may wish to contact NOPSEMA to discuss this guidance in general terms. However, given the complexity of individual circumstances, titleholders should seek legal advice if assistance is required to identify whether an activity is a petroleum activity for the purposes of the Environment Regulations.

If a titleholder determines that an activity meets the definition of a petroleum activity, an EP must be submitted in accordance with the Environment Regulations. Companies are encouraged to engage with NOPSEMA in the first instance prior to submitting plans for assessment especially where there is uncertainty about whether the proposed operations or works are within the regulatory scope of the OPGGS Act.

If a titleholder determines that an activity is not a petroleum activity and therefore believes that it does not require submission of an EP in accordance with the Environment Regulations, the titleholder must ensure compliance with all other relevant legislative requirements.