

Responding to public comment on environment plans

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Abbreviations

Environment Regulations	Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023
EP	Environment plan
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
OPGGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>

1. Purpose and scope

The purpose of this guidance note is to assist titleholders in understanding the public comment process for seismic and exploratory drilling EPs. It applies solely to EPs prepared for assessment under the Environment Regulations.

The guidance reflects NOPSEMA's interpretation of the requirements of the Environment Regulations. This guidance is not a substitute for legal advice or detailed consideration of the OPGGS Act and relevant regulations.

This guidance note should be read in conjunction with NOPSEMA's Environment plan assessment policy (N-04750-PL1347) and Environment plan decision making guideline (N-04750-GL1721).

2. Background

In March 2019 amendments were made to the Environment Regulations to improve the consultation and transparency provisions of the environmental assessment process for offshore petroleum activities in Commonwealth waters. One of the key changes is a 30-day period of public comment on all seismic and exploratory drilling EPs, before NOPSEMA's assessment commences.

During the public comment period interested members of the community can submit comments to NOPSEMA. The titleholder proposing the activity must take public comments relevant to the environmental management of their activity into account in their environment plan and NOPSEMA will take public comments into account during the assessment process. The Environment Regulations include obligations for both the titleholder and NOPSEMA to respond to comments received from the public, in general terms, by way of published reports.

Comments are collected primarily via an online portal accessible from NOPSEMA's website at: nopsema.gov.au. Summary information and maps will be published there, along with the full EP. Public comments must be submitted prior to the closing date of the public comment period. If comments are received after the closing date, NOPSEMA is not able to consider them in the assessment process.

3. Titleholder access to public comments

Titleholders will receive electronic copies of all comments received by NOPSEMA during the public comment period. This includes comments received from the online form, mail and email. NOPSEMA will provide titleholder access to comments by way of an electronic share folder with access to this folder provided at the start of the public comment period. Once NOPSEMA has determined that a submitted EP is a complete submission and can be published for public comment, it will inform the titleholder in writing and provide access to the share folder. Comments will be collated and transferred to the share folder by NOPSEMA on a weekly basis with a final file transfer to take place as soon as practicable after the end of the public comment period.

The weekly transfer of public comments received allows the titleholder to consider any new issues as they are raised and provides an opportunity for timely follow up with the commenter for clarification if needed.

4. Titleholder response to public comment

Titleholders must respond in 'general terms' to any comments received during the public comment period. This response must be made in a written statement, using the Titleholder report on public comment form (N-04750-FM1846) available on NOPSEMA's website.

The titleholder's report on public comment (report) will be published for the public to view along with the EP submitted to NOPSEMA for assessment. Sensitive information cannot be included in this report¹.

Responding in 'general terms' means that the titleholder should outline its consideration of the issues or themes raised in public comments. A separate response to each comment received is not required. Titleholders should take care to maintain the intent and key claim of the comments, avoiding an overly broad generalisation of information to a level that degrades the meaning of the comments and undermines the purpose of transparency.

Titleholders should ensure that a genuine response to public comment is provided in the report. This should include:

- an evaluation of the issue or theme as it relates, or otherwise, to the environment management of the activity
- a statement by the titleholder of how the issue or theme has been taken into account, or otherwise in the EP.

In circumstances where a number of comments are received raising common issues or themes about the effect of the petroleum activity on a particular environmental sensitivity or group of sensitives (e.g. a particular threatened species, the values of a particular habitat or protected places, or a specific fishery); it is expected that a 'key matter' for that particular sensitivity would appear in the report on public comment outlining the key issues, concerns, and/or new information provided through the public comment process pertaining the identified key matter. The report would then need to explain how the titleholder has addressed the key matter, for example, through making changes to environmental management aspects of the activity, the inclusion of new information relevant to impacts and risks in the EP, or by explaining how the matter has already been accounted for in the EP.

Where the titleholder has made changes to the EP as a result of information received through the public comment process, these must be clearly identified in the report. This can be achieved by referring to the section heading or page number where changes were made.

Key matter examples

Example 1

Matter: Underwater sound impacts on marine mammals

Claim: Activity would have an unacceptable impact on whales as a result of underwater noise

Example 2

Matter: Spill risk to sensitive environments

Claim: The arrangements for spill response are inadequate

Example 3

Matter: Consultation provisions inadequate

Claim: Inadequate provisions for ongoing consultation for stakeholders that may be affected by the activity

¹ Environment Regulations, Regulation 5 – Sensitive information.

Should comments be received that do not relate to the EP, or the activity to which the EP relates, the titleholder's report on public comment should outline the nature of these comments with a clear statement that due to the irrelevancy of the comments, they have not been considered further in preparing the EP.

If there are no comments received during the public comment period, the titleholder is not required to submit a report.

Titleholders are not required to follow up with commenters directly, though they may wish to do so to engage with community members and foster positive relationships. However, if any new potential relevant persons (whose functions, interests or activities may be affected by the activity)² identify themselves or any existing relevant persons raise claims through the public comment process, the titleholder should consider if further consultation with this person is needed to ensure consultation requirements of the Environment Regulations have been met prior to submission of the EP for assessment.

NOPSEMA's template provided for the completion of the Titleholder's report on public comment provides further guidance (N-04750-FM1846) and is available on NOPSEMA's website.

5. NOPSEMA's consideration of public comments

While NOPSEMA will not assess the titleholder's report on public comment, NOPSEMA will consider public comments and assess how the titleholder has taken these into account through its assessment of the EP when determining if the acceptance criteria of the Environment Regulations have been met. If NOPSEMA makes a decision to accept an EP, NOPSEMA will publish a Key matters report that will include statements as to how NOPSEMA has taken public comments into account and any other matters deemed relevant for communicating decisions to the public regarding the assessment of the EP. Further information on this process is provided in NOPSEMA's Environment plan assessment policy (N-04750-PL1347).

6. Submitting the EP after public comment

After the public comment process is complete, titleholders must resubmit the EP to NOPSEMA to commence the assessment process. This is required even if no comments are received, or no changes are made to the EP as a result of public comment.

For transparency, copies of the EP and the titleholder's response to public comment will be published on NOPSEMA's website when the assessment process commences. On completion of the assessment process and when an EP is accepted, the final EP and NOPSEMA's response to public comment will also be published.

7. Relevant legislation

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

² Environment Regulations, sub-regulation 25(1)

8. Related documents

N-04750-PL1347	Environment plan assessment policy
N-04750-GL1721	Environment plan decision making guideline
N-04750-FM1846	Titleholder response to public comment report form