

Mineral and Energy Resource Exploration

Productivity Commission Inquiry

Submission from the Department of Sustainability, Environment, Water, Population and Communities

Introduction

The Australian Government Department of Sustainability, Environment, Water, Population and Communities (the department) welcomes the opportunity to make a submission regarding the Productivity Commission's Inquiry into mineral and energy resource exploration.

The department has portfolio responsibilities in administering regulatory provisions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act, which commenced on 16 July 2000, is the government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, heritage places and Commonwealth marine areas - defined in the EPBC Act as matters of national environmental significance. Matters of national environmental significance are: World Heritage, National Heritage, Wetlands of International Importance (Ramsar wetlands), threatened species and communities, migratory species, nuclear actions, the Commonwealth Marine Area, and the Great Barrier Reef Marine Park. Other protected matters include (i) the environment, where actions proposed are on, or will affect Commonwealth land; and (ii) the environment, where Commonwealth agencies are proposing to take an action.

The EPBC Act is also the statutory mechanism to ensure that Australia meets its obligations under key international environmental conventions. Section 3(1) of the EPBC Act outlines the objects of the EPBC Act:

(1) The objects of this Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and

(c) to promote the conservation of biodiversity; and

(ca) to provide for the protection and conservation of heritage; and

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

Scope of submission

The department has prepared the following submission in response to the Productivity Commission's Issues Paper entitled *Mineral and Energy Resource Exploration (December 2012)* to assist the Productivity Commission with their inquiry. The department's submission provides:

- an overview of referral, assessment and approval processes for exploration activities under chapter 4 of the EPBC Act;
- information regarding guidance materials and initiatives to aid proponents in decision-making; and
- an overview of mechanisms which streamline and improve the efficiency of assessment and approval processes under the EPBC Act.

1. ENVIRONMENTAL IMPACT ASSESSMENTS UNDER THE EPBC ACT

The Commonwealth currently undertakes assessments of projects that impact on matters of national environmental significance through a range of environmental impact assessment approaches outlined in the EPBC Act.

Proponents are only required to refer proposed actions to the department where:

- a proposed action is likely to have a significant impact on one or more matters of national environmental significance;
- a proposed action is likely to have a significant impact on the environment of Commonwealth land; or
- a proposed action is undertaken by a Commonwealth agency anywhere in the world, and is likely to have a significant impact on the environment.

Proponents can however refer a proposal to the department for a decision as to whether or not the action will have a significant impact on nationally protected matters. The statutory timeframe for the referral decision making process is 20 business days.

If a significant impact is considered to be unlikely, then further assessment is not required and the proposal is either determined to be 'not a controlled action', and can proceed, or may be determined to be 'not a controlled action' and proceed provided it is undertaken in a 'particular manner'. This 'manner', which is specified in the decision notice, can refer to timing, management measures, or other regulatory instruments or decisions, all of which serve to inform the decision that a significant impact on a matter of national environmental significance is not likely.

If a significant impact is considered likely by the Commonwealth Environment Minister (the Minister) or their delegate, this action is determined to be a 'controlled action', and further assessment will be required prior to the Minister deciding whether to approve the project under the EPBC Act. If the Minister decides to approve the project, there may be conditions that apply to such an approval.

In all cases, following the conclusion of the assessment process a decision is made on whether to approve the activity, and where an action is approved there may be conditions associated with this approval. Where there are conditions, there is likely to be monitoring required following the approval decision. Conditions may include the preparation and approval of management plans before all or certain parts of the action can proceed.

1.1 Referrals under the EPBC Act

Exploration proposals account for approximately 11% of referrals with 10% for exploration in marine environments and 1% for on-shore exploration (see Figure 1). Referred actions in the marine environment largely comprise of seismic surveys and exploration drilling. Referred actions on-shore mostly includes seismic surveys, mineral exploration drilling, drilling and gas monitoring programs.

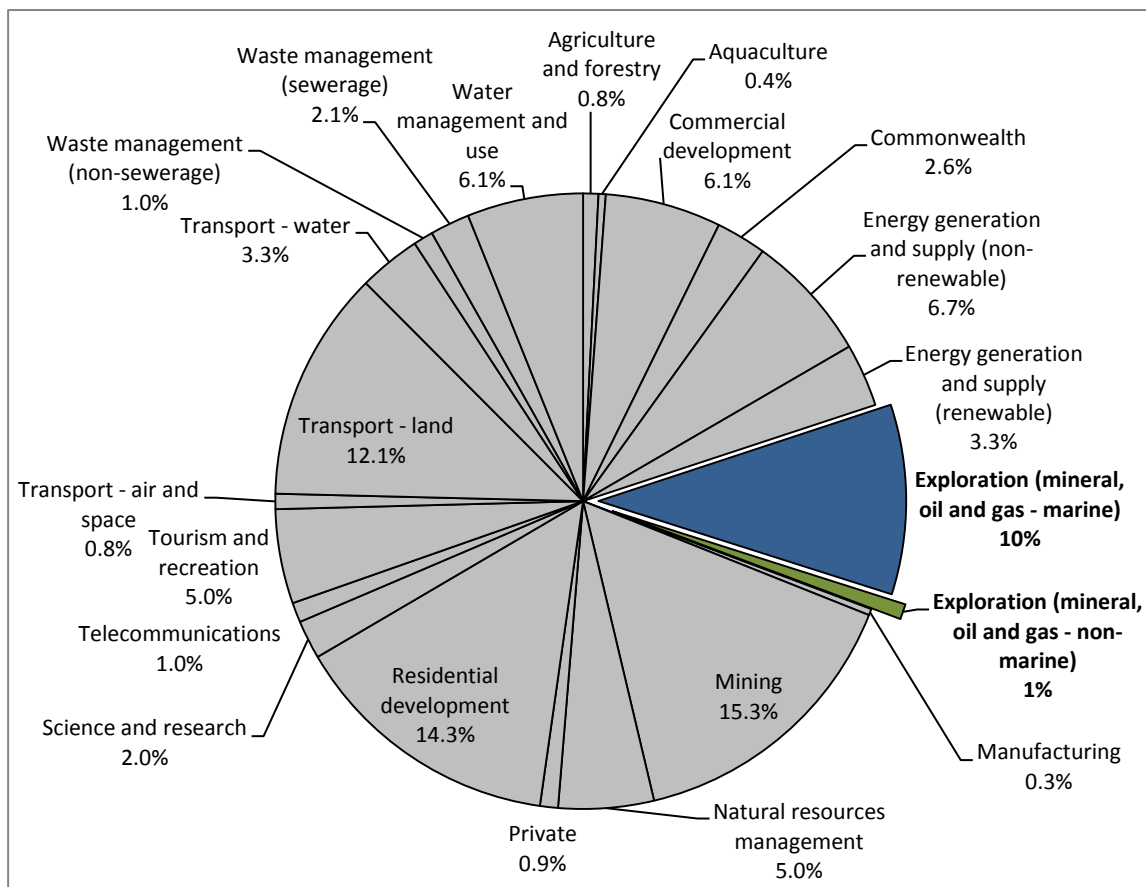


Figure 1: Industries which referred their activities for environmental impact assessments under the EPBC Act between 1 July 2007 and 30 June 2012. A total of 2117 referrals were received during this period.

Since the commencement of the EPBC Act in 2000, approximately 410 marine exploration (mineral, oil and gas - marine) referrals and 29 on-shore exploration (mineral, oil and gas - non-marine) referrals were received by the department. From the total of 439 referrals received, 13 exploration projects have been determined to be controlled actions, requiring assessment and approval under the EPBC Act. There has been one clearly unacceptable decision.

The majority of referral decisions for onshore and marine exploration activities have been deemed to be not a controlled action or not a controlled action – particular manner (see Figures 2 and 3). As a result, the majority of referrals do not require assessment and approval under the Act

The low number of controlled actions for marine exploration activities can be accounted for by proponents applying relevant EPBC Act national standards such as the Significant Impact Guidelines and the Seismic-cetacean interaction guidelines. The low number of controlled actions and referrals for on-shore activities (4 controlled actions and 29 referrals since 2000) suggests that these sorts of activities rarely have significant impacts on matters of national environmental significance, and are unaffected by the EPBC Act.

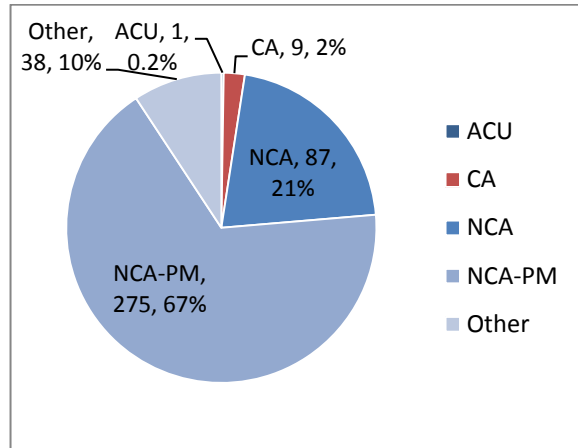
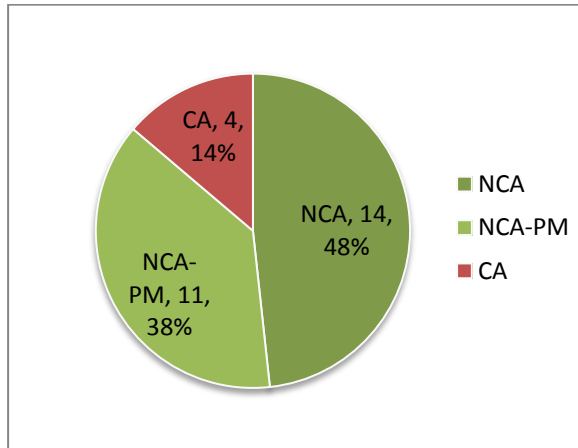


Figure 2: Referral decisions since 2000 (on-shore)

Figure 3: Referral decisions since 2000 (marine)

Key to acronyms in Figures 2 and 3 - ACU: Action clearly unacceptable; **CA:** Controlled action; **NCA:** Not a controlled action; **NCA-PM:** Not a controlled action – particular manner, and **Other:** Withdrawn or referral decision yet to be made.

The three case studies below illustrate the referral process. They also provide examples of the types of activities and protected matters considered in typical exploration referrals.

Case study: Murphy Oil seismic survey referral decision under the EPBC Act (Not a controlled action – particular manner)

On 28 December 2012, the Minister determined that a proposal by Murphy Australia Oil Pty Ltd to undertake a number of marine seismic surveys, in the petroleum exploration licence area WA 481-P, in the Perth Basin did not require further assessment provided it was undertaken in a particular manner (NCA-PM).

The proponent timed the proposed survey for January to May to avoid the migration of the Humpback whale (June to November) to and from calving grounds off the Kimberley Coast. The proposed survey still, however, posed several challenges. The endangered and migratory Blue Whale (*Balaenoptera musculus*) migrates northward from the Perth Canyon through the survey area during the survey period. Further, the proposed survey overlaps with foraging habitat and is in close proximity to breeding and resting sites for the vulnerable Australian Sea lion (*Neophoca cinerea*). Parts of the proposed survey would also take place in two Commonwealth Marine Reserves (Abrolhos and Jurien).

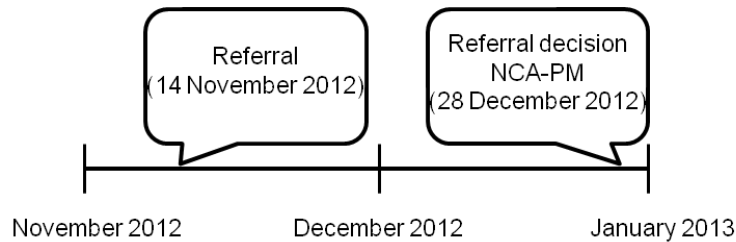
These issues were assessed during the referral process and the department developed management measures to protect listed threatened and migratory species and the environment of the Commonwealth marine area from significant impacts.

These measures included:

- application of Part A of the Seismic-Cetacean Interaction Guidelines (i.e. standard measures);

- a Marine Mammal Observer, with two Marine Mammal Observers required from March (the time of the Blue Whale northward migration); and
- night time precautionary measures over the migratory period, which would restrict night-time or low visibility acquisition if there are more than three Blue Whale instigated shutdowns or power-downs per day for three consecutive days.

Overall, the delegate of the Minister was satisfied with the measures agreed by Murphy Oil. Details of timeframe for the process are outlined below. The decision was 10 days late due to departmental and proponent consultation on the proposed particular manner.



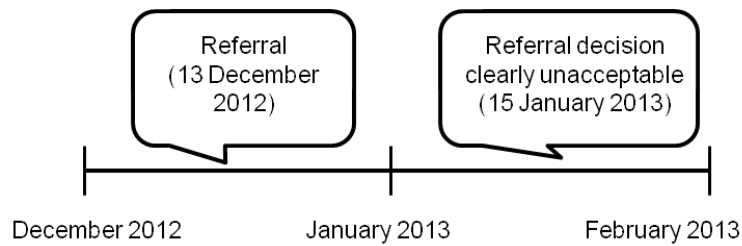
2012/6626: Murphy Australia Oil Pty Ltd/Exploration (mineral, oil and gas - marine)/Perth Basin /WA/Marine Seismic Survey in Permit WA-481P

Case study: Apache Energy Limited - Highlands 3D Seismic Survey (Clearly unacceptable)

On 15 January 2013, the Minister determined that a proposal by Apache Energy Limited to undertake a three dimensional marine seismic survey in Commonwealth and Western Australian waters, located in Exploration Permit WA-155-P and Petroleum Retention Lease TR/3 with ingress into surrounding areas, was clearly unacceptable.

The proposed seismic survey was scheduled to occur within and immediately adjacent to the Ningaloo Coast World Heritage property in habitat critical to the survival of loggerhead turtles (*Caretta caretta*) during the nesting and hatching period. Loggerhead turtles are a value of the Ningaloo Coast World Heritage property. The action as referred would impact on the breeding success of the Muiron Island population of loggerhead turtles. The impact could not be mitigated or compensated due to the constraints on location and timing of the survey. The action would, therefore, cause one or more of the World Heritage values of the property to be diminished. Approval of this action therefore was deemed to be inconsistent with the protection, conservation, presentation or transmission to future generations of the World Heritage values of the property – and so would be inconsistent with Australia’s World Heritage Management Principles. Allowing the action to be taken was also deemed to be inconsistent with the position taken by the World Heritage Committee.

The decision was made within the statutory timeframe. The timeframe for the process is outlined below.



2012/6680: Apache Energy Ltd/Exploration (mineral, oil and gas - marine)/Carnarvon Basin within Commonwealth waters, northwest of WAWA/Highlands 3D Marine Seismic Survey

Case Study: Iluka Resources Limited/Exploration (onshore) Yellabina Regional Reserve in South Australia (Not a controlled action – particular manner)

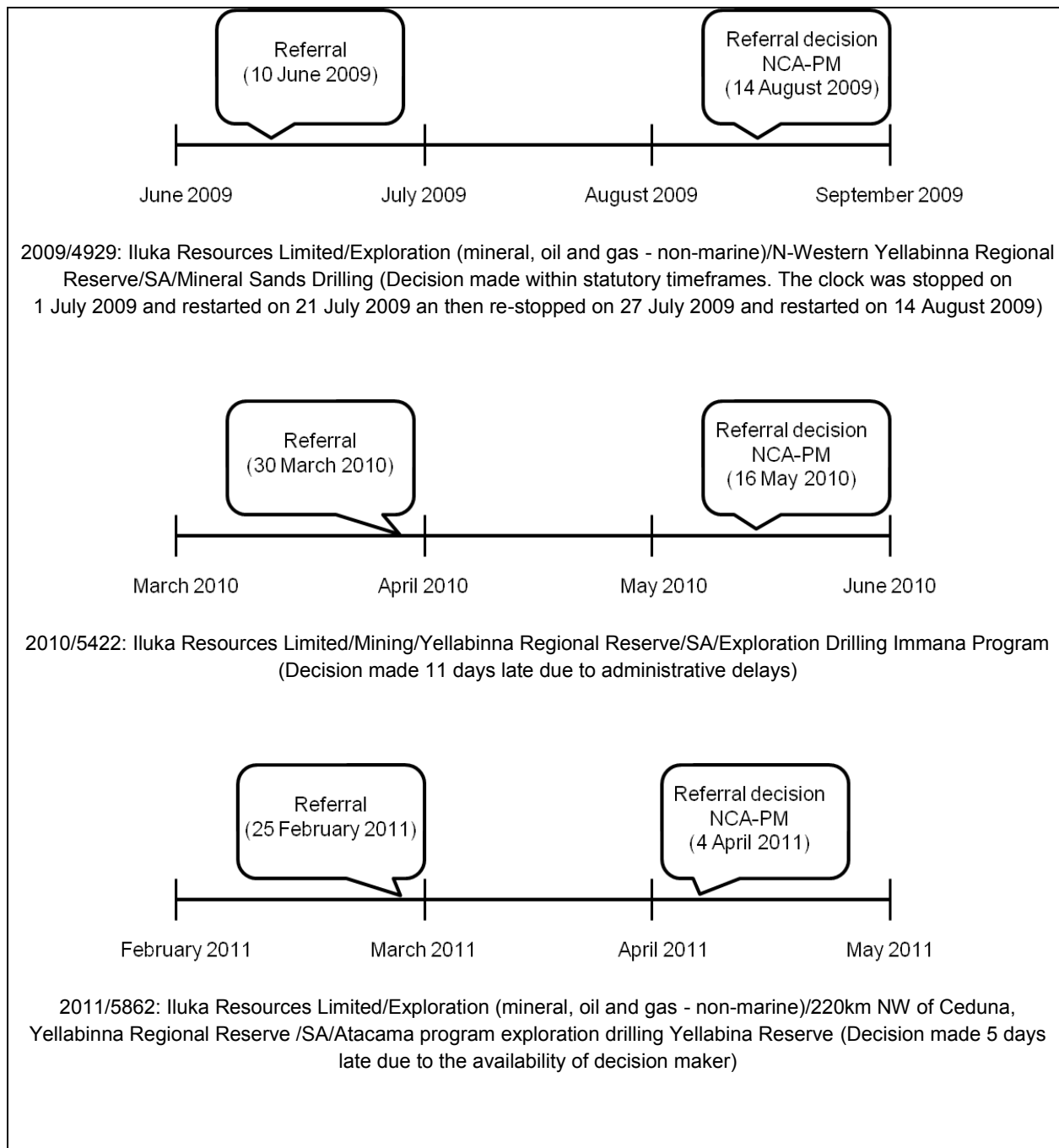
Three proposed actions by Iluka Resources Limited between June 2009 and April 2012 to undertake exploration drilling in the Yellabina Regional Reserve in South Australia, did not require further assessment under the EPBC Act, provided the actions were undertaken in a particular manner (NCA-PM). The exploration focused on discovering zircon rich mineral sands deposits within the Yellabina Regional Reserve which are at the southern edge of the Great Victorian Desert.

The primary matters of national environmental significance in the area are Sandhill Dunnart (*Sminthopsis psammophila*) and Mallee Fowl (*Leipoa ocellata*).

The company adopts a number of practices to minimise detrimental impacts:

- drilling tracks are constructed by rolling vegetation with a large metal roller, rather than clearing vegetation (this retains the rootstock and allows vegetation to quickly recover compared to clearing);
- tracks are disguised at access points to discourage illegal use;
- drilling equipment will move along tracks in a single pass (wherever possible);
- a scout will go ahead of the roller to detect and avoid any Mallee Fowl mounds;
- where possible, tracks will be constructed in areas less suitable as habitat for the Sandhill Dunnart (e.g. recently burnt areas); and
- equipment will be washed to minimise transfer of weeds and pathogens.

Iluka Resources Limited have a comprehensive environment management plan that outlines these and other measures. Representatives from the department attended several workshops with Iluka Resources Limited and the SA Government to review the environment management plan. This coincided with the SA Government using this example as a case study to move to an environmental outcomes based approach to regulating exploration, consistent with the approach used for mining. Overall, the delegate was satisfied with the measures adopted by Iluka Resources Limited and the environmental outcomes they were required to achieve by the SA Government. All three referrals were determined NCA-PM. Details of timeframes are outlined below.



1.2 Minimising referral delays and requesting additional information on referrals

At the referral stage, there is a statutory requirement to make a decision within 20 business days¹ of receipt of the referral as to whether a project requires assessment and approval under the EPBC Act (see Attachment A). The majority of exploration referral decisions were made within the statutory timeframe (20 business days). Where late decisions do occur they are generally caused by the need to (i) consider complex technical issues (ii) facilitate additional stakeholder consultation and (iii) seek additional information.

¹ EPBC Act, Section 75(5)

Where required, the referral clock is paused where there isn't sufficient information to reach a referral decision. In these instances, further information is often requested from the proponent². Additional information requests are usually to clarify the impacts, mitigation and avoidance measures on matters of national environmental significance. For example, further information has been requested on oil spill risks and management, survey timing, technologies and methodologies, clarification of impacts and mitigation measures for whales, fish, fisheries and turtle nesting.

It is important to note that request for additional information at the referral stage allows for critical analysis of the proposed action at an early stage of the EPBC Act process. In many cases this avoids the need for further assessment of the exploration activity under the EPBC Act, where the proponent clearly demonstrates that their proposed action will not have significant impacts on matters of national environmental significance.

1.3 Assessments under the EPBC Act

If a 'controlled action' has been determined then further assessment will be required prior to the Minister deciding whether to approve the project under the EPBC Act. Different types of proposals will require different levels of assessment (see Attachment B). Assessment methods include:

- assessment on referral information (assessment done solely on the information provided in the referral form);
- assessment on preliminary documentation (referral form and any other relevant material identified by the Minister as being necessary to adequately assess a proposed action);
- assessment by public environment report;
- assessment by environmental impact statement; and
- assessment by public inquiry.

Assessments can also be undertaken by accredited assessment mechanisms such as bilateral agreements. If a proposed action is covered by an assessment bilateral agreement, then that action is assessed under the accredited state/territory process.

Assessment methods available under the EPBC Act vary in complexity. For example, a proposal where the impacts are localised, easily predicted or where the impacts have already been adequately assessed under other legislation, could be assessed using referral information or more likely preliminary documentation. A proposal involving a large number of issues and that has wide public concern may require the more detailed assessment approach of a public environment report, an environment impact statement or a public inquiry.

The majority of assessments for marine and on-shore exploration activities are by preliminary documentation which reflects a lower level of complexity when compared to other assessment methods. The following table provides a summary of the assessment methods for the 13 referrals determined to be a controlled action. Common protected matters that are assessed for exploration proposed actions include; threatened species, migratory species and the commonwealth marine environment.

² EPBC Act, Section 75(6)

	Marine exploration (mineral, oil and gas)	On-shore exploration (mineral, oil and gas)
Referral Information	nil	1
Preliminary Documentation	6	2
Public Environment Report	1	1
Environmental Impact Statement	1	nil
Assessment under Bilateral Agreement	nil	nil
Withdrawn before assessment approach	1	nil
TOTAL	9	4

The following table indicates that about half of the referrals determined to be controlled actions have been withdrawn by proponents. Often in these cases proponents re-refer a modified action that has reduced impacts on matters of national environment significance.

	Marine exploration (mineral, oil and gas)	On-shore exploration (mineral, oil and gas)
Approval decisions	2	2
Active projects	1	1
Withdrawn or lapsed	6	1

The EPBC Act outlines the process and timing requirements for each type of assessment (see Attachment B). Statutory timeframes vary with the type of assessment method³.

- For assessment on referral information - the Minister must make a decision within 20 business days of receiving a finalised recommendation report.
- For assessment by environment impact statement, public environment report or preliminary documentation – the Minister must make a decision within 40 business days of receiving finalised documentation from the proponent.
- For assessment by a state/territory process - the Minister must make a decision within 30 business days of receiving an assessment report.
- For assessment by inquiry - the Minister must make a decision within 40 business days of receiving an inquiry report.

The number of late approval decisions for the exploration sector is small. Generally, the time taken to finalise environmental impact assessments is commensurate with the complexity of issues and the need to gather additional information on the environment and potential impacts. Much of the time taken for environmental impact assessments is allocated to gathering such information. Most of the actions that have been approved (with conditions) under the EPBC Act for exploration were completed in less than twelve months. If delays occur, they are generally caused by the need to (i) consider complex technical issues (ii) facilitate additional stakeholder consultation and (iii) seek additional information.

³ EPBC Act, Section 130(1B a-e)

2. CURRENT GUIDANCE FOR PROPONENTS UNDER THE EPBC ACT

The department works closely with proponents, state, territory and local governments, and other stakeholders, to ensure that the requirements of the environmental assessment process under the EPBC Act are understood. The department encourages proponents to discuss projects early in their development so that EPBC Act-related issues can be highlighted and taken into account in a project's decision making and planning. Effective and efficient assessments of proposed actions under the EPBC Act can be characterised by:

- proponents engaging early with the department to ensure that EPBC Act obligations are fully understood;
- proponents seeking to address EPBC Act requirements at the same time as state or territory requirements, to maximise the opportunity to use accredited state and territory assessment processes;
- projects using environmentally conscious design that avoids or minimises habitat impacts;
- proponents providing high-quality information to regulatory agencies;
- proponents engaging positively with the community; and
- project outcomes clearly maintaining and enhancing the environment, including, where appropriate, providing additional habitat for threatened species.

The department notes that while guidance material exists for proponents to self assess whether their proposed action will trigger the EPBC Act it appears that an assessment by the regulator is preferable.

2.1 Current guidelines under the EPBC Act

Guidelines in the form of policy statements are available to help proponents understand the EPBC Act and its requirements. Such documents provide procedural standards and provide clarity and certainty for proponents. Policy statements can be found on the department's website at www.environment.gov.au/epbc/publications/index.html#policy.

The *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* provides generic guidance about what constitutes a significant impact for each matter of national environmental significance. These guidelines also include additional guidance on offshore exploration (p 30) and an appendix on mineral exploration (p 29). Guidelines are also available for proponents working on or adjacent to Commonwealth land through *EPBC Act Policy Statement 1.2 Significant Impact Guidelines – Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies*.

The department has also published guidance entitled *EPBC Act Policy Statement 2.1 Interaction between offshore seismic exploration and whales* (Seismic-cetacean interaction guidelines) which is of particular relevance to the petroleum (oil and gas) sector. These guidelines provide industry with specific guidance while meeting clear community and Australian Government expectations for the protection of whales. Consistent with good regulation, this policy statement was developed in consultation with industry and other stakeholders and provides guidance to companies planning to undertake seismic exploration about their obligations under the EPBC Act. It also provides practical advice about mitigation measures that can be used to ensure the seismic activity is not likely to cause a significant impact on a matter of national environmental significance. Further, the guidelines allow best practice approaches to be put forward and generally avoids the need for further assessment.

The Seismic-cetacean interaction guidelines encourage companies to conduct surveys at different times of year to avoid impacting critical life-cycle events (e.g. breeding, feeding and calving), in biologically important locations. There is evidence that this approach is frequently adopted, when proponents nominate windows for their actions that avoid sensitive times. In some locations, however, proponents are seeking to avoid affecting other users (e.g. fishers) or there are limited windows for other reasons, such as suitable weather or the presence of other protected species. This can make it difficult to determine management measures that will avoid a significant impact on a matter of national environmental significance. As exploration activities move closer towards sensitive areas and habitat, it also makes it more difficult to remain under this significance threshold as required by the EPBC Act. The Seismic-cetacean interaction guidelines encourage early discussions with the department in the planning stages.

2.2 Petroleum Acreage Release

The government encourages investment in petroleum exploration through the annual release of offshore petroleum exploration acreage. The Petroleum Acreage Release is underpinned by Australia's stable economic environment and well-established regulatory framework for offshore petroleum activities.

The department provides advice to the Australian Government Department of Resources, Energy and Tourism for incorporation into the annual release of acreage for petroleum exploration and development. This advice is included in the acreage information and highlights for potential bidders the environmental sensitivities, if any, associated with specific acreage areas and informs the industry that activities in those areas may be subject to further assessment. Petroleum companies can factor environmental issues into their decision-making (including whether to bid for acreage) and planning. The advice reminds proponents that the awarding of petroleum acreage under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) is not a guarantee of approval under the EPBC Act. It also advises companies that production and exploration activities that may have a significant impact on environmentally sensitive areas are, in particular, more likely to require further assessment and an approval decision under the EPBC Act.

2.3 Commonwealth marine reserves

Commonwealth marine reserve plans provide certainty for stakeholders, detail the zoning arrangements for the reserves and provide a framework to ensure the reserves are managed effectively and efficiently.

In 2012, the government established 40 new Commonwealth marine reserves around Australia building on existing marine reserves established since in 1982. The new Commonwealth marine reserves add more than 2.3 million square kilometres to Australia's marine reserve estate, resulting in a total area of 3.1 million square kilometres of ocean being managed primarily for biodiversity conservation, fulfilling the government's commitment in the creation of a National Representative System of Marine Protected Areas by 2012.

The network of Commonwealth marine reserves represents a major achievement for the long-term conservation and sustainable use of Australia's oceans, making Australia a world leader in ocean conservation. The reserves will help ensure that Australia's marine environment remains healthy, productive and resilient for the benefit of future generations. The development of the network of marine reserves has been underpinned by a strong scientific information base, detailed analysis of potential socio-economic impacts and rigorous and on-going stakeholder consultation.

The Director of National Parks has finalised management plans under the EPBC Act for the Commonwealth marine reserves in the South-west, North-west, North, Temperate East and South-east Commonwealth Marine Reserves Networks, and for the Coral Sea Commonwealth Marine Reserve. The management plans for the new reserve network will come into effect in July 2014. Until then, transitional arrangements will be in place, which involve no 'on-the-water' changes for marine users and industries.

3. NATIONAL ENVIRONMENTAL REGULATION REFORM

The *Mineral and Energy Resource Exploration - Productivity Commission Issues Paper (December 2012)* discusses regulatory burdens for business through duplicative processes and processing delays. The government is committed to improving the efficiency of national environmental law, while maintaining high environmental standards.

On 24 August 2011, the Minister released the Government Response to the Independent Review of the EPBC Act (Government Response) as part of a broad package of reforms for Australia's national environment law.

The objectives of the reform package are to:

- deliver better environmental protection focusing on whole regions and ecosystems and faster environmental assessments;
- provide a consistent national approach to environmental impact assessments that removes duplication, cuts red tape; and
- provide better upfront guidance on legislation requirements, with more long-term certainty and transparency.

As part of its work to implement the reform package, the government has been leading a national reform process to deliver a simpler environmental protection system that has clearer standards and gives faster decisions to ensure our nation has a both a resilient environment and a strong economy.

Since August 2011, much work has been done to progress the Government Response, both within the Commonwealth and in partnership with state and territory governments and stakeholders. During 2012, the Commonwealth worked with states and territories on the viability of signing approval bilateral agreements, as a mechanism for improving the efficiency of environmental impact assessment. This proved to be complex and would have resulted in systems that would not have simplified the regulatory regime. As a result the Commonwealth is not progressing negotiation of approval bilateral agreements.

In December 2012, all governments, through the Council of Australian Governments (COAG), re-affirmed the commitment to broad environmental regulation reform that enhances efficiency and increases certainty for business, while maintaining high environmental standards. As a further step to improving processes relating to environmental regulation, COAG agreed that all jurisdictions would seek to eliminate duplication and to avoid sequential assessments and delayed approval processes and also to utilise common information requirements for both assessments and approvals.

3.1 Improving efficiency

There are a number of mechanisms in the EPBC Act to streamline the assessment and approval processes. Efficient regulatory structures are also dependent on clarity for proponents around requirements and processes. The government has committed to providing additional tools such as better guidance, training in key areas to create greater certainty, and support for decision making among proponents. There are a number of initiatives being produced by the department that have general application. As discussed earlier under “Current guidance for proponents under the EPBC Act”, there are also a number of materials that have direct application to exploration in marine environments.

3.2 Streamlining Commonwealth regulatory arrangements

There are some cases where national environment law overlaps with other Commonwealth regulatory arrangements, with the potential for duplication. For instance, management of the environment is regulated under both the EPBC Act and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act). The OPGGS Act applies to offshore petroleum operations beyond coastal waters (greater than three nautical miles from the low-tide coastline). The Commonwealth is examining mechanisms to streamline its own regulatory arrangements, with a focus on the oil and gas sector.

3.3 Offsets policy

The *EPBC Act environmental offsets policy* (policy) and *Offsets assessment guide* (guide) is a principal instalment in the Government Response to the Independent Review of the EPBC Act, providing guidance on how the EPBC Act works. The policy applies to offsetting requirements in terrestrial and aquatic (including marine) environments. The policy provides upfront guidance on the role of offsets in environmental impact assessments, and how the department considers the suitability of a proposed offset. It aims to improve environmental outcomes through the consistent application of best practice offset principles, provide more certainty and transparency, and encourage advanced planning of offsets.

Environmental offsets are often used as conditions of approval to compensate for the environmental impacts of a project. To date, there have been no offsets for purely exploration activities under the EPBC Act. A robust offset can make a substantial difference to the conservation of a species or heritage place. Examples of commonly used offsets include restoring habitat for threatened species or improving the condition of a heritage place. The policy and guide can be used by proponents to plan an offset proposal for a project. A capacity building strategy has also been implemented to train proponents and consultants in the use of the policy and guide.

3.4 Strategic approaches

The government is increasing the use of strategic assessments to improve certainty for business by reducing the need for project by project assessment. Strategic assessments are landscape scale assessments and unlike project-by-project assessments, which look at individual actions (such as mining, construction or operation of a pipeline or wind farm), they can consider a much broader set of actions.

For example, BHP Billiton Iron Ore and Hamersley Iron Pty Limited are undertaking strategic assessments covering their major expansion plans for iron ore mining in the Pilbara region of Western Australia for a period of up to 50 years, including associated infrastructure. If approved by the Minister, the assessment will provide clarity about management actions required for the protection of matters of national environmental significance. It will remove the need for individual exploration or mining projects to be referred for assessment.

As another example, the Australian and NSW Governments have signed an agreement to undertake a strategic assessment under the EPBC Act of new and expanded coal mining operations in the Upper Hunter River district of NSW over the next 30 years. Ten mining companies with exploration and mining leases in the district are participating and have agreed to fund the strategic assessment. A Biodiversity Plan will be prepared to identify priority conservation lands across the landscape and offset arrangements for mining projects. If endorsed and approved under the EPBC Act, the Biodiversity Plan will deliver upfront certainty for all stakeholders on biodiversity requirements for new and expanded mines. Mining projects will no longer need to be individually referred under the EPBC Act because of impacts on biodiversity related matters of national environmental significance.

Entering into a strategic assessment offers the potential to deal with cumulative impacts on matters of national environmental significance and to look for both conservation and planning outcomes on a much larger scale than can be achieved through project-by-project assessments. The process is designed to be flexible and provide the opportunity to reach a negotiated outcome for the benefit of both parties.

3.5 Bilateral agreements under the EPBC Act

The *Mineral and Energy Resource Exploration - Productivity Commission Issues Paper (December 2012)* makes reference to assessment bilateral agreements, which allow the Minister to accredit state or territory assessment processes for the purpose of the requirements of the EPBC Act. Chapter 3, Part 5 of the EPBC Act sets out the approach to bilateral agreements.

There are two types of bilateral agreements:

- an *assessment bilateral agreement* may declare that actions assessed in a specified manner by a state or territory need not be assessed under the EPBC Act, thus minimising duplication between Commonwealth and state or territory assessments; and
- an *approval bilateral agreement* may declare that actions taken under accredited state or territory management arrangements or authorisation processes do not need further Commonwealth approval under the EPBC Act.

Assessment bilateral agreements have been negotiated with each state and territory. The New South Wales agreement has expired, however it is expected to be renewed in 2013.

The power to make assessment bilateral agreements is set out in Chapter 3, Part 5 section 47. If a proposed action is covered by an assessment bilateral, then that action is assessed under the accredited state/territory process. After assessment, the proposed action still requires approval from the Minister under the EPBC Act⁴. This arrangement in effect allows a proponent to produce a single set of environmental assessment documentation and to undertake a single public consultation process. No exploration proposed actions have been assessed under a bilateral agreement.

Bilateral agreements do not have any effect in relation to an action in a Commonwealth area unless they expressly provide otherwise⁵. Commonwealth areas include Commonwealth waters, which are usually more than three nautical miles from the coastline⁶. At present, none of the bilateral agreements apply to Commonwealth areas.

CONCLUSION

The EPBC Act is the government's central piece of environment legislation, providing a legal framework to protect and manage matters of national environmental significance. To ensure that the requirements of the EPBC Act are understood, the department works closely with proponents to discuss projects early in their development so potential issues can be identified and ameliorated.

The department is implementing the government's environmental regulatory reform agenda. A key priority of the agenda is continuing work with state and territory governments to eliminate duplication, avoid delayed approval processes, and to utilise common information requirements for regulatory processes. The government has committed through the Government Response to the independent review of the EPBC Act to providing additional tools such as better guidance, training in key areas to create greater certainty, and support for decision making among proponents. The government is also reviewing mechanisms to streamline its own regulatory arrangements, with a focus on the oil and gas sector and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

In closing, the department's analysis suggests that the EPBC Act is unlikely to present a significant barrier to exploration; given to date that very few exploration activities require assessment under the EPBC Act (13 of 439 exploration referrals have required assessment and approval). There is potential to avoid significant impacts on matters of national environmental significance through good project design, and therefore further avoid the need to refer or undergo environmental impact assessment.

⁴ EPBC Act, Section 47(4) and Section 133

⁵ EPBC Act, Section 49(1)

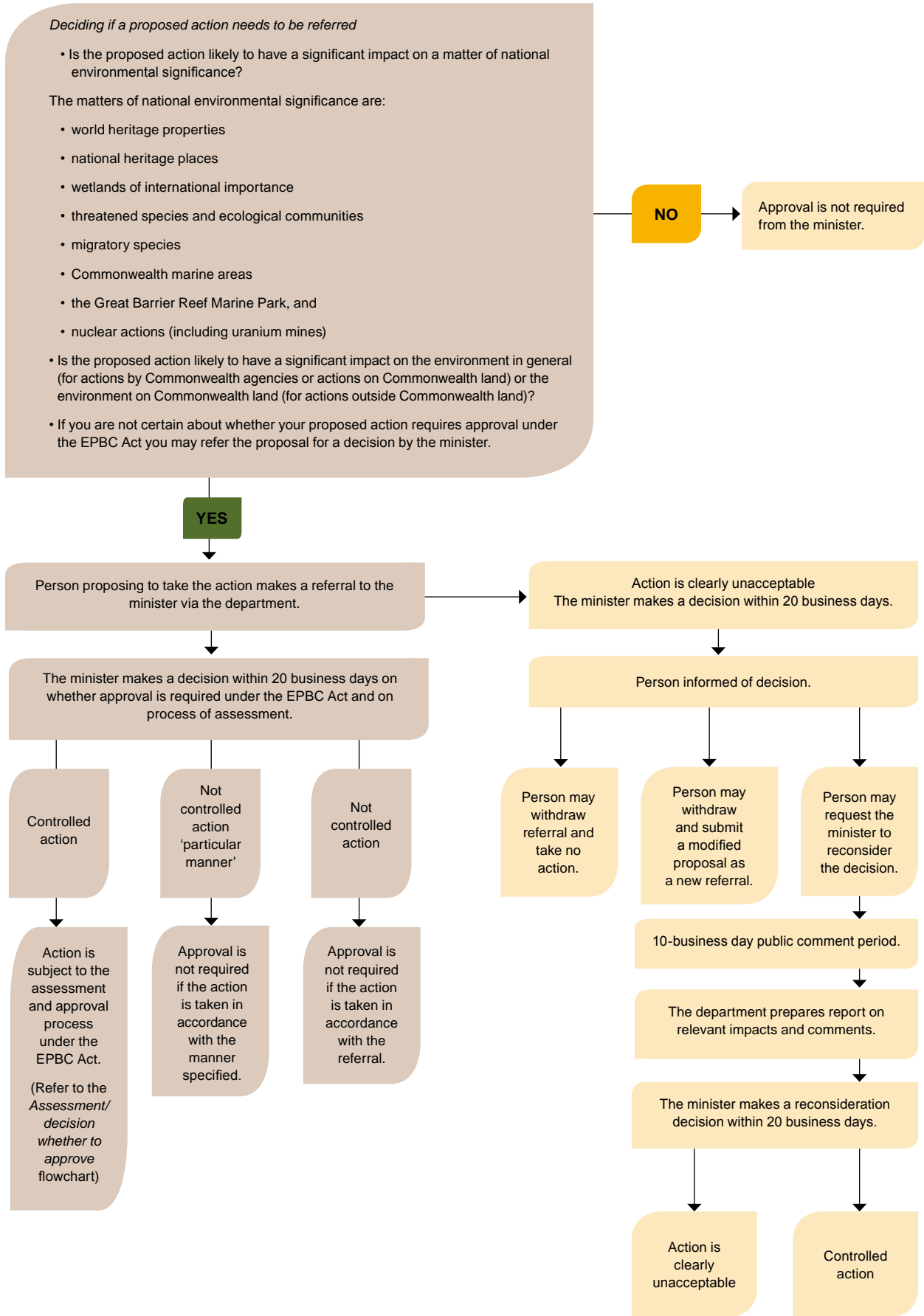
⁶ EPBC Act, Section 525

Attachments

Attachment A: EPBC Act environment assessment process – referral

Attachment B: EPBC Act environment assessment process – assessment/decision whether to approve

EPBC Act environment assessment process—referral



EPBC Act environment assessment process—assessment/decision whether to approve

