

## **DEWHA submission to the Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector.**

This is a submission to the Committee on behalf of the Department of the Environment, Water, Heritage and the Arts. This submission is directed at explaining regulation of the upstream petroleum sector from the perspective of the Australian Government's environmental responsibilities and the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*.

### **Background**

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the Act as matters of national environmental significance. Actions which are likely to significantly impact on those matters are prohibited, without the Commonwealth Environment Minister's approval under the EPBC Act.

The EPBC Act requires an environmental assessment, and opportunity for public comment, for the Commonwealth Minister to make an informed decision about whether to approve a proposed action. The Minister may approve a proposal subject to conditions.

The objectives of the EPBC Act are:

- To provide for the protection of the environment, especially matters of national environmental significance (NES),
- To promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources,
- To promote the conservation of Australian biodiversity,
- To provide for the protection and conservation of heritage,
- To promote a co-operative approach to the protection and management of the environment involving governments, the community, land holders and indigenous peoples,
- To assist in the cooperative implementation of Australia's international environmental responsibilities;
- To recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, *and*
- To promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

### **Upstream petroleum sector**

Many industry sectors undertake activities with the potential to impact on matters of National Environmental Significance and petroleum is one such sector. As discussed below, the EPBC Act provides for consistent and transparent regulation for activities from all industry sectors, which may impact on matters of NES.

The petroleum sector is increasingly operating in and near sensitive environments, such as Ningaloo Reef, Scott Reef and the Kimberley. The EPBC Act provides that these activities be subject to a rigorous and transparent environmental assessment

process if they are likely to have a significant impact on matters of NES. These assessments are conducted in accordance with strict statutory timelines which ensures prompt decision making.

As discussed below, the EPBC Act sets national standards (eg. Seismic-cetacean interaction guidelines) that are administered consistently throughout Australia, providing consistency and certainty to industry. The Act also has in place a framework that sets benchmarks for State and Territory processes and provides for accreditation of assessment and approval processes once they meet these national benchmarks.

The Act provides flexibility to industry – companies decide which activities they need to refer for consideration under the EPBC Act. The Act also provides flexibility for innovative approaches by the industry in developing mitigation measures and solutions to environmental issues. Petroleum is a well resourced, innovative industry sector, which often leads the way in this regard.

## **The Role of the EPBC Act**

### ***Guiding decision making and Planning***

DEWHA works closely with industry to ensure the requirements of the environmental assessment process under the EPBC Act are well understood and strongly encourages companies to discuss projects early in their development so issues can be highlighted for companies in their decision-making and planning. Guidelines in the form of policy statements are available to help proponents understand the EPBC Act and its requirements. Policy statements can be found on the Department's website at <http://www.environment.gov.au/epbc/publications/index.html#policy>

**Petroleum Acreage Release** – DEWHA provides advice to DRET for incorporation into the annual release of acreage for petroleum exploration and development. This advice is included in the acreage information and highlights 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 (whether to bid for acreage) and planning.

**Environmental assessments** – As discussed below, statutory timeframes under the EPBC Act are short. The decision on whether a referred action requires further assessment must be made within 20 business days of the referral being made. Depending on the type of assessment, the approval decision must be made within 20 to 40 business days on receipt of the final assessment report. For the 2007-2008 financial year approximately 90% of these decisions were made on time and delays were kept to a minimum.

The time taken for environmental assessments is generally commensurate to the complexity of the issues, the need to gather information on the environment and potential impacts and to develop the measures needed to protect the environment. Much of the time for environmental assessments is devoted to gathering this information. Much of this information gathering is the responsibility of the proponent and therefore any associated delays are outside the control of DEWHA.

Measures and solutions are often provided by the industry and this allows companies to be innovative and use best practice (eg. lighting designs to protect turtle beaches). Information on assessments and approvals is provided on the Department's website at <http://www.environment.gov.au/epbc/approval.html>

## **Underlying Policy Intent**

### ***International obligations***

Australia is a world leader on many environmental protection issues and our international obligations – to protect listed threatened and migratory species, world heritage, biodiversity, and Ramsar wetlands – are discharged through the EPBC Act.

Petroleum exploration activities often include seismic exploration in the Commonwealth marine area. Seismic exploration activities have the potential to impact whales and other cetaceans. The Australian Government has consistently taken a strong international stance on the need to avoid harm to whales. It is therefore appropriate to ensure that they are properly protected from oil and gas activities that have potential to impact on whale ecology. Any removal of such protections would undermine the Australian Government's efforts to protect whales in an international context.

### ***Consultative and transparent process***

Environmental assessment under the EPBC Act is a consultative process. The Act's objectives include promotion of a cooperative approach to the protection and management of the environment, involving governments, the community, land holders and indigenous people.

The EPBC Act specifically provides for consultation within and between governments. The Minister for the Environment must seek input from any colleagues with administrative responsibility relating to the action, prior to making his decision at both the referral and approval stage. These Ministers may make comments in relation to economic and social matters relating to the action and are not otherwise limited in what comments they may give. Those views must be considered in making an approval decision under the EPBC Act.

The EPBC Act provides a highly transparent and efficient process – all referrals and assessment reports are published and are available for public comment. This transparency makes industry responsive to community concerns and encourages innovation in developing mitigation measures.

### ***Are the approval processes clear and transparent?***

The EPBC Act uses best practice regulation processes, including strict timeframes and opportunities for public comment, to create an assessment and approval process which is efficient and transparent. Under the EPBC Act, only actions which are likely to have a significant impact on a matter of NES require approval. This necessarily limits regulation to those activities where it is appropriate for the Australian Environment Minister to play a role.

The assessment and approval process under the EPBC Act provides a number of options for the assessment of actions depending of their complexity, sensitivity and the quality of information provided by the proponent.

Once an action has been referred, the Minister has 20 business days to determine whether or not the action is a controlled action. If the Minister determines that the action is not a controlled action, the action can be taken without further assessment. This early decision point ensures that only actions which are likely to have a significant impact on a matter of NES are assessed, while providing a mechanism for proponents to be certain that their activities will not be in breach of the Act.

In addition, where a proponent can demonstrate that they will implement mitigation measures to ensure that their actions will not have a significant impact on a matter of NES the Minister can determine that the action does not require approval under the EPBC Act, provided it is taken as described in the referral, or with additional conditions, in a particular manner. The proponent can then take the action without further assessment. This provides a faster process for proponents who are able to plan their activities to avoid impacts on NES, whilst maintaining appropriate environmental protection from actions which have the potential to significantly impact the environment.

The EPBC Act also includes a number of options for assessing controlled actions, from assessment on referral information to inquiries. This ensures that the method of assessment (and the time the assessment takes) appropriately reflects the nature and complexity of the potential impacts, the sensitivity of the issues and the quality of the information provided by the proponent. Proponents generally plan actions which are likely to trigger the EPBC Act well in advance, and DEWHA's experience is that proponents usually allow enough time for the assessment and approval process when referring actions under the Act.

Each of the assessment processes provide opportunities for the public to comment on the assessment information. Relevant Ministers from both the State and Territory and Australian Governments are also invited to make comments. This ensures that all stakeholders have the opportunity to voice their views.

The EPBC Act plays an important role in providing environmental assessment of the activities of the Upstream Petroleum (Oil and Gas) Sector independently from agencies that perform an industry management role, involving policy development and which can also include industry promotion. The system makes it possible for appropriate Ministers to put forward views in support of industry without compromising the environmental assessment process.

### **Streamlining**

There are a number of mechanisms in the EPBC Act to streamline the assessment and approval processes under the EPBC Act. DEWHA has provided national leadership for this process through administering amendments made to the EPBC Act in 2006. Those amendments significantly reduced the regulatory burden of the Act, while increasing flexibility and certainty for industry.

In addition to the progression of bilateral agreements, DEWHA is exploring options with the States and Territories, as part of the COAG Regulatory Reform Agenda, to further streamline environmental assessment processes.

#### *Bilateral Agreements*

The Issues Paper makes reference to assessment bilateral agreements, which allow the Australian Minister for the Environment to accredit a state or territory's assessment process for the purpose of the requirements of the EPBC Act. This ensures that only one environmental assessment needs to occur. Assessment bilateral agreements are now in place or well advanced with all jurisdictions.

The EPBC Act also allows for approval bilateral agreements that accredit state and territory approval processes under the EPBC Act. There is currently an approvals bilateral agreement in place for the Sydney Opera House. DEWHA is also working with WA to develop an approvals bilateral agreement for the National Heritage listed Dampier Archipelago (including the Burrup Peninsula) and surrounding area.

Given that approvals bilateral agreements effectively delegate all aspects of the approvals process under the EPBC Act to states and territories for actions likely to have a significant impact on matters of national environmental significance, the standards to be met are necessarily rigorous. Because of this DEWHA considers places such as heritage sites or listed wetlands with thorough and precise management plans or arrangements offer the best opportunity for accreditation under the EPBC Act through an approvals agreement. Development of such place-based agreements may assist with the development of agreements which apply more widely by informing parties about the requirements for an approvals bilateral agreement. Information about Bilateral Agreements is provided on the Department's website at <http://www.environment.gov.au/epbc/assessments/bilateral/index.html>

#### *Joint Assessments*

The petroleum sector is one of the few whose activities regularly cross from Commonwealth to state or territory jurisdictions (eg. pipelines bringing gas to shore). The EPBC Act provides sufficient flexibility and allows coordination between Commonwealth and state environmental assessment processes, so companies have only needed to prepare one set of environmental assessment documentation and undertake one formal public consultation process.

#### *Strategic Assessments*

The EPBC Act also provides for the strategic assessment of a policy, plan or program (PPP). The Minister is able to 'pre-approve' classes of actions taken in accordance with a PPP. Strategic assessments provide greater certainty and efficiency where a number of people are planning to take similar actions within one region. They also provide for better environmental outcomes because the impacts of all of the actions can be considered and addressed in a holistic way. Strategic assessments also encourage people to consider and address matters of NES early in the planning process and therefore avoid the need for project approvals late in the process.

On 3 July 2008 at the meeting of the COAG, the Business Regulation and Competition Working Group (BRCWG), COAG agreed to the identification of opportunities for strategic assessments under the EPBC Act to avoid unnecessary

delays in development approval processes. COAG instructed the BRCWG to report back to COAG at its October meeting with a framework for identifying opportunities for strategic assessments. Information about strategic assessments is provide on the Department's website at

<http://www.environment.gov.au/epbc/assessments/strategic.html>

In February 2008, the Australian and Western Australian (WA) Governments signed an agreement to undertake a strategic assessment to assist in the selection and management of a suitable site for a common-user LNG processing Hub to service the Browse Basin Gas Reserves. This process proactively addresses what would otherwise be the negative cumulative impacts and economic inefficiencies associated with piecemeal LNG-related developments and provide greater certainty to industry, government and the community and secure long-term protection of the heritage and environmental values of the West Kimberley region. For this reason, the Petroleum and LNG industry with an interest in the browse basin reserves are supportive of the approach.

### *Bioregional Plans*

The marine bioregional planning program being undertaken through the EPBC Act is designed to provide greater certainty to industry and assist the Minister meet his statutory responsibilities in regard to the Commonwealth marine environment. Five marine bioregional plans are being developed for Australia's marine jurisdiction: the North-west, North, South-west, East and South-east.

In addition to listed threatened species and communities, listed migratory species and heritage areas, the Commonwealth marine environment itself is a matter of national environmental significance. The marine bioregional plans will identify what aspects of the Commonwealth marine environment in each marine region are regarded as important by the Australian Government. They will provide strategic guidance for the Australian Environment Minister, government decision-makers and industry operation in the marine area by:

- describing each marine region's conservation values, including sites of importance for protected species and communities and areas of ecological importance
- assisting proponents and decision-makers to determine whether or not proposals are likely to trigger the EPBC Act in terms of potential impacts on the Commonwealth marine environment
- providing additional and regionally specific guidance to proponents and decision-makers through, for example, provision of a regional context for national guidelines to help proponents consider whether their proposed action might result in a significant impact on matters of national environmental significance or conditions under which an activity might be conducted without necessitating a referral
- identifying regional priorities for action, based on policy objectives and an assessment of threats to conservation values.

Marine bioregional planning is also the process by which the Australian Government is identifying areas that are suitable for inclusion in Australia's National Representative System of Marine Protected Areas. Options for inclusion of suitable

areas and the arrangements for their management are being developed in consultation with key stakeholder organisations, including the petroleum industry.

Marine bioregional plans will also assist government identify important gaps in our understanding about the marine environment and its ecological processes and associated threats and to better target investment in improving knowledge and management.

### **Definition of significant impact**

The issues paper noted concern about the definition of *significant impact* under the EPBC Act. DEWHA acknowledges that determining whether an action is likely to trigger the EPBC Act because it is likely to have a significant impact on a matter of NES requires judgement and consideration of the particular circumstances of each case. For this purpose DEWHA has developed a number of policy statements to assist people in understanding when an action is likely to have a significant impact on a matter of NES.

*EPBC Act Policy Statement 1.1 Significant Impact Guidelines* provides generic guidance about what constitutes a significant impact for each matter of NES. These guidelines also include additional guidance on offshore exploration (p30). 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*.

Of particular relevance to the Petroleum (Oil and Gas) Sector, DEWHA has also published *EPBC Act Policy Statement 2.1 Interaction between offshore seismic exploration and whales*. These interaction guidelines provide industry specific guidance while meeting clear community and Australian Government expectations for the protection of whales. Of 124 offshore seismic surveys referred under the EPBC Act, 120 have operated in accordance with the measures detailed in the Guidelines, and which companies committed to, with only four surveys, planned for highly sensitive marine environments, requiring any further assessment (of which, one, was re-referred for a period when whales were less likely to be present and two were withdrawn).

Consistent with good regulation, this policy statement was developed in consultation with industry and other stakeholders and provides guidance to people planning to undertake seismic exploration about their obligations under the EPBC Act. It also provides practical advice about best practice mitigation measure that can be used to ensure the seismic activity is not likely to cause a significant impact on a matter of NES. Further, the Guidelines allow best practice approaches to be put forward and generally avoids the need for further assessment.

DEWHA believes that there is potential to develop policy statements for other offshore activities, such as the laying of pipelines and movement of vessels.

### ***Are the objectives of environmental ‘offset conditions’ placed on approvals clear and consistent?***

The *Draft EPBC Policy Statement 4.1 Use of environmental offsets under the Environment Protection and Biodiversity Conservation Act 1999* sets out the

Australian Government's current thinking on the use of environmental offsets. Environmental offsets provide compensation for those impacts arising from development proposals which can not be adequately reduced through avoidance and mitigation. The policy is being developed with the aim of ensuring a consistent, transparent, equitable and effective approach to the use of offsets under the EPBC Act. The draft policy reflects the Department's current experience with offsets and the legal requirements of the EPBC Act and forms the basis for current administrative practices and procedures. The draft policy statement is available to the public on the Department's website and is on track to be finalised by the end of the year. There have been no offsets for purely offshore activities so far under the EPBC Act.

### **Emerging issues**

Decommissioning of petroleum facilities is a potentially significant future issue for Australia. Australia has two key oil-gas provinces (Bass Strait and the North West Shelf) where many facilities will soon reach the end of their operating life. The attendant issues (including liability and impacts on the environment and other users eg. fishers) will need to be carefully considered by the Australian Government.

The assessment of decommissioning activities to date has been coordinated so only one assessment is undertaken for both the EPBC Act and the *Environment Protection (Sea Dumping) Act 1981*. Australia has international obligations under the London Protocol and UN resolutions (eg. decommissioning facilities in less than 100 metres of water and weighing less than 4000 tonnes, should be entirely removed), which are given effect to through the administration of these Acts.



## **Case Study – Petroleum exploration off South Australia and Victoria under the EPBC Act**

The Australian Government leads in the protection of whales at home, as well as abroad. The waters off Victoria and eastern South Australia contains critical feeding habitat for the endangered Blue whale, and migration and calving habitat for the endangered Southern Right whale. The area is also one of Australia's most prospective oil and gas provinces.

The EPBC Act requires petroleum companies to determine whether their exploration activities may have a significant impact on these and other listed threatened and migratory species and the Commonwealth marine environment and to gain the Environment Ministers approval if this is the case.

Guidance is provided to help inform this judgement in the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines*, and additional guidance is provided for seismic activities in *EPBC Act Policy Statement 2.1 Interaction between offshore seismic exploration and whales*.

Of the 15 seismic surveys planned to take place in this area between September 2007 and June 2008 and referred under the EPBC Act, over 90% proceeded as planned by the individual companies:

- 11 proceeded in accordance with the mitigation measures proposed by the company;
- 2 proceeded in accordance with additional measures, agreed between the company and the Department;
- 1 was determined a controlled action, requiring further environmental assessment, as the survey timing and location overlapped with Blue whale feeding and Southern right whale calving;
- 1 was withdrawn by the proponent.

This means that 13 of the 15 projects effectively received approval within 20 business days. The seismic guidelines provide a set of standard measures for seismic surveys (such as observing for whales and source shut-downs if whales approach within 500 m) where the likelihood of encountering whales is low, as well as a range of additional mitigation measures (such as dedicated observers and increased safety zones) where the likelihood of encountering whales is higher.

The restrictions on surveys are limited but enable appropriate protection for endangered whale species. If no whales are present, then the survey proceeds unimpeded and unrestricted.

The *EPBC Act Policy Statement 2.1 Interaction between offshore seismic exploration and whales* delivers a high degree of certainty to exploration companies and allows them to plan future campaigns with confidence.

The petroleum industry participated in the development of the seismic guidelines and the leading companies in the industry have been instrumental in trialling new technologies and solutions, such as passive acoustic monitoring (to detect the auditory signals of whales near a seismic vessel).