



Commonwealth of Australia

Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

I, Tanya Plibersek, Minister for the Environment and Water, provide these reasons for my decision under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) to grant an exemption to the Commonwealth as represented by the Department of Industry, Science and Resources (**the Industry department**) (or any other Commonwealth agency), and those acting on behalf of the Industry department (or other Commonwealth agency), from the application of all of the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the following action:

The taking of “**limited topside preparatory works and minimal flushing activities**” on the Northern Endeavour Floating Production, Storage and Offtake Facility (**FPSO**) and associated infrastructure, until a decision is made on whether or not to approve these activities under the EPBC Act.

Definitions:

Limited topside preparatory works and minimal flushing activities include:

1. Nitrogen purge, gas-freeing and cleaning of the topsides process equipment and systems.
2. Removal of bulk hydrocarbon inventory from vessels to enable controlled safe entry for disposal and testing of solids from the topside equipment and systems.
3. Liquid circulation for decontamination of the topside equipment and systems.

These activities do not include subsea flushing through flow lines in any form or any disconnection or decommissioning activities.

Legislation

SECTION 158 OF THE EPBC ACT PROVIDES:

158 EXEMPTIONS FROM PART 3 AND THIS CHAPTER

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.
- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
 - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
 - (b) give a copy of the notice to the person specified in the notice.

Background

1. On 17 February 2023, the Department of Industry, Science and Resources (**the Industry department**), wrote to the Department of Climate Change, Energy, the Environment and Water (**the department**) to seek a national interest exemption (**further exemption**) under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). The further exemption request is for "limited topside preparatory works and minimal flushing activities" on the Northern Endeavour Floating Production, Storage and Offtake Facility vessel (**FPSO**) and associated infrastructure (collectively, **the Facility**).
2. On 20 March 2023 the department provided me a brief on the Industry department's application for exemption.

3. On 20 March 2023 I decided to grant the exemption. This statement provides the reasons for my decision.

Evidence

4. The evidence or other material on which my findings were based was a brief from my department dated 20 March 2023 with the following attachments (**the departmental brief**).
5. The departmental briefing consisted of the following:
 - a. Application letter and its attachments received under section 158 of the EPBC Act for the further exemption;
 - b. Decision notice;
 - c. Statement of reasons;
 - d. Letter to the Resources Minister;
 - e. Decision notices for previous Northern Endeavour exemptions made on the dates:
 1. 12 December 2022;
 2. 31 July 2020;
 3. 28 September 2021;
 - f. Talking points;
 - g. EPBC Act section 158 extract;
 - h. Section 158 national interest exemption application letter covering 12 December 2022 – until the activities referred to the department are authorised or approved under the EPBC Act
 - i. Further information provided by the Industry department:
 1. 22 February 2023;
 2. 23 February 2023;
 - j. The EPBC Act referral for “lighthouse operations”, “short-term well injection” and Phase 1 decommissioning activities.
 - k. Referral Decision 24 November 2022
 - l. Statement of Reasons for current exemption.

Findings

6. Before making my decision to grant the exemption, I made the findings outlined below based on the evidence provided to me (noted above in this Statement).

Background to the application for exemption

7. The FPSO is moored in Australian Territorial Waters in the Timor Sea, approximately 550 km north-west of Darwin and approximately 160 km from Timor-Leste, which is close to Australia’s maritime boundary with Timor-Leste and Indonesia. The FPSO is a purpose-

built vessel designed to extract, process, store and offload oil extracted from the Laminaria and Corallina oil fields.

8. On 20 September 2019, the registered titleholder of the Facility, Timor Sea Oil and Gas Australia, and its associated companies, including the commercial owner of the Facility, the Northern Oil and Gas Australia Pty Ltd group of companies (**NOGA**), entered voluntary administration. The companies were placed into liquidation on 7 February 2020.
9. Following NOGA's liquidation, it became necessary for the Industry department to assume responsibility for the facility to ensure the safety and security of the Facility and the protection of the surrounding environment.
10. In response to this situation, the Industry department:
 1. engaged Upstream Production Solutions Pty Ltd (**UPS**) to undertake the "lighthouse operations" of the Facility on behalf of the Industry department from 2020 and "short-term well injections" from 28 September 2021, until mid-2022;
 2. engaged Petrofac Facilities Management Limited (**Petrofac**) to undertake "lighthouse operations" and "short-term well injections" on 30 March 2022. Petrofac assumed operational control from UPS on 30 September 2022; and
 3. contracted NOPSEMA to provide advice and assurance that UPS and Petrofac are undertaking the "lighthouse operations" and "short-term well injections" on the Facility in accordance with the accepted *Safety Case, Environment Plan* (Doc 01-HSE-PL12) and *Well Operations Management Plan* (Doc 01-OPS-PL01,), and in compliance with good oil field practice.
11. On 3 July 2020, the former Minister for Resources, Water and Northern Australia, wrote to the former Minister for the Environment seeking an exemption for "lighthouse operations" of the Facility.
12. On 31 July 2020, the former Minister for the Environment granted an exemption to the Industry department (then known as the Department of Industry, Science, Energy and Resources (**DISER**) or any other Commonwealth agency), and those acting on behalf of DISER (or other Commonwealth agency), until 31 December 2021 for these "lighthouse operations" (**first exemption**). These were defined as:

"essential operations such as critical inspection, monitoring, maintenance and repair work to manage and avert risks to personnel, the environment, and maritime safety and security... Lighthouse operations does not include well production, injection or crude offtake activities."
13. On 26 August 2021, the Head of Division (Liquid Fuels and Northern Endeavour Division, Industry department) wrote to seek an exemption under section 158 of the EPBC Act for "lighthouse operations" and "short-term well injections" (**second exemption**).
14. On 28 September 2021, the former Minister for the Environment granted a second exemption until 31 December 2022 under which:

1. the definition of the “lighthouse operations” at the Facility remained the same as under the previous exemption (as set out at paragraph 12 above); and
 2. the “short-term well injections” on the Facility and associated subsea infrastructure were defined as “*the pumping of water and flushing chemicals from the FPSO through the flowlines and into wells in order to flush any remaining crude oil from the flowlines*”.
15. On 8 November 2022, the Industry department wrote to seek a further exemption under section 158 of the EPBC Act for “lighthouse operations” and “short-term well injections” (**current exemption**).
16. On 12 December 2022, you granted the current exemption until a decision is made on whether or not to approve these activities (and the broader Phase 1 decommissioning referral) under the EPBC Act.

Section 158 – further exemption

17. On 17 February 2023, the Industry department requested the further exemption to enable it to undertake “limited topside preparatory works and minimal flushing activities” on to the Facility until a decision is made on whether to approve the Phase 1 decommissioning activities under the EPBC Act.
- a. The Industry Department requested an exemption from all the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to these activities.
18. On 27 October 2022 a valid EPBC Act referral for Phase 1 decommissioning was received by the department.
- a. The Phase 1 decommissioning referral includes “limited topside preparatory works and minimal flushing activities”, as well as “lighthouse operations”, “short-term well injection” and other decommissioning activities.
 - b. On 24 November 2022, the proposed Phase 1 decommissioning activities were determined to be a “controlled action” for the purposes of the EPBC Act.
19. As the current exemption has limited scope, the Industry department sought the further exemption to reduce the residual hydrocarbons on board and to undertake preparatory works and tests that are needed before Phase 1 decommissioning activities fully commence (should an EPBC Act approval be given for those activities).
20. The Industry department submitted that:
- c. it is imperative that “limited topside preparatory works and minimal flushing activities continue on the Northern Endeavour to ensure it can be prepared for disconnection and removed from the field at the earliest opportunity; and
 - d. the conduct of these activities will contribute to and reduce risks for the Commonwealth in terms of safety and the environment.

“Limited topside preparatory works and minimal flushing activities”

21. The request states that “limited topside preparatory works and minimal flushing activities” comprises:
- a. nitrogen purge, gas-freeing and cleaning of the topsides process equipment and systems;
 - b. removal of bulk hydrocarbon inventory from vessels to enable controlled safe entry for disposal and testing of solids from the topside equipment and systems; and
 - c. liquid circulation for decontamination of the topside equipment and systems.
22. On 22 and 23 February 2023, the Industry department clarified activities included in “limited topside preparatory works and minimal flushing activities” (Attachment I of the departmental brief referenced at paragraph [5]).
23. The Industry department considers that “limited topside preparatory works and minimal flushing activities” do not overlap with exempted “lighthouse operations” which is why the further exemption has been requested. If “limited topside preparatory works and minimal flushing activities” are undertaken without being covered by an exemption, then the Industry department (and their contractor) will contravene s 74AA of the EPBC Act which prohibits the taking of an action under referral or assessment and may contravene certain provisions of Part 3 of the Act.

Decommissioning

24. The Commonwealth, as represented by the Industry department, has committed to the decommissioning of the Facility which includes the disconnection of the FPSO. Beyond the current exemption and this further exemption request for “limited topside preparatory works and minimal flushing activities”, no exemption for other Phase 1 decommissioning activities is sought by the Industry department.
25. Phase 1 decommissioning activities that include flushing of the topsides and subsea equipment, suspension of the wells, waste removal (e.g., “de-mucking”) and disconnection of the FPSO and commencement of towing are not within the scope of current exemption and activities sought to be exempted under the further exemption.

Findings related to national interest

26. As outlined earlier in the statement, the “limited topside preparatory works and minimal flushing activities” form part of the Phase 1 decommissioning referral. As the Phase 1 decommissioning is still under assessment (and a decision has not been made on whether to approve the proposal), the “limited topside preparatory works and minimal flushing activities” cannot currently be undertaken without contravening section 74AA of the EPBC Act and risking a contravention of Part 3 of the EPBC Act.
27. Having regard to the background information, I considered and agreed with the department’s advice that if the “limited topside preparatory works and minimal flushing

activities” cannot be carried out while the Phase 1 decommissioning activities are under assessment (and prior to a decision being made on whether to approve those activities), this may hinder the proper management of the Facility necessary to manage the risks to personnel, maritime safety and security, the environment and Australia’s international relations.

28. I also accepted the department’s advice that the grant of an exemption in the terms set out in the notice, would allow the Industry department (or other Commonwealth agency) and contractors to commence the “limited topside preparatory works and minimal flushing activities” as soon as possible. This, in turn, would enable the specified persons to safely maintain and manage the Facility in a timely way and address the risks identified in paragraph [27].

Reasons

29. Under subsection 158(4), I may grant an exemption if I am satisfied that it is in the national interest to do so. Subsection 158(5) states that in determining the national interest, I may consider Australia’s defence, security or a national emergency, including an emergency to which a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) relates. However, this does not limit the factors that I may take into consideration.

30. Having regard to my findings outlined above, I determined that it was in the national interest to exempt the Industry department (or other Commonwealth agency) and those acting on behalf of the Industry department (or other Commonwealth agency) from all the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 26, 27A, 27B and 27C) and Chapter 4 of the EPBC Act in relation to the “limited topside preparatory works and minimal flushing activities” until a decision is made on whether to approve these activities (and the broader Phase 1 decommissioning proposal).

31. In deciding to grant the further exemption, I noted and agreed with the department’s advice that:

- a. a request for an exemption under section 158 must: be in writing, identify the specific person to whom the exemption would apply, identify the specific Part 3 or Chapter 4 provisions of the EPBC Act for which the exemption is sought, and identify the proposed action in sufficient detail to enable you to decide whether to grant an exemption, and that the application letter from the Industry department, and its attachments, satisfy the requirements just mentioned;
- b. consistent with the further exemption request (see paragraph [17]), it was not necessary to provide an exemption from the following provisions of Part 3 because these were clearly unlikely to be applicable:
 - 1.ss 12 and 15A (provisions relating to world heritage);
 - 2.ss 15B and 15C (provisions relating to national heritage);
 - 3.ss 16 and 17B (provisions relating to wetlands of international importance);

4.ss 21 and 22A (provisions relating to nuclear actions);

5.ss 24B and 24C (provisions relating to the Great Barrier Reef Marine Park);

6.ss 24D and 24E (provisions relating to water resources);

7.s.27A (provision relating to actions involving Commonwealth land); and

8.ss 27B and 27C (provisions relating to Commonwealth heritage places overseas);

c. in addition, it was not necessary to provide an exemption from s 26 of Part 3 because this is also clearly unlikely to be applicable, even though this section was not noted in the request.

32. As such, I have decided to grant the exemption, under subsection 158(3), from all of the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 26, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the “limited preparatory topside works and minimal flushing activities” for the Facility (as described above) until a decision is made on whether or not to approve “limited preparatory topside works and minimal flushing activities” under the EPBC Act.



Minister for the Environment and Water

20 / 3 / 2023