



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, 26, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the following action:

The continuation of “**lighthouse operations**” and “**short-term well injection**” in relation to the Northern Endeavour Floating Production, Storage and Offtake Facility (**FPSO**) and associated infrastructure, until a decision is made on whether or not to authorise or approve these activities under the EPBC Act.

Definitions:

Lighthouse operations includes essential operations such as critical inspections, 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, long-term injection or crude offtake activities.

Short-term well injection includes the pumping of water and flushing chemicals from the FPSO through the flowlines and into the wells in order to flush any remaining crude oil from the flowlines.

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. 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 8 November 2022, 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 "lighthouse operations" and "short-term well injection" activities at the Northern Endeavour Floating Production, Storage and Offtake Facility vessel (**FPSO**) and associated infrastructure (collectively, **the Facility**) moored in the Timor Sea.
2. On 25 November 2022, the department provided me a brief on the Industry department's application for exemption.

3. On 12 December 2022, I decided to grant the exemption and made this statement providing reasons for my decision.

Evidence

4. The evidence or other material on which my findings were based was a brief from my department dated 25 November 2022, 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 Industry department;
 - e. Decision notices for previous Northern Endeavour exemptions made on the dates:
 - i. 28 September 2021;
 - ii. 31 July 2020;
 - f. Talking points;
 - g. EPBC Act section 158 extract;
 - h. Section 158 national interest exemption application letter for the period covering 2021 to 31 December 2022;
 - i. Further information provided by the Industry department in writing;
 - j. The EPBC Act referral for “lighthouse operations”, “short-term well injection” and Phase 1 decommissioning activities; and
 - k. Letter from the department’s Sea Dumping Section to the Industry department.

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. Having regard to the departmental brief, including the application letter for the further exemption and the supporting information, I noted the following background information to the application for exemption:
 - a. 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.

- b. The Facility has been owned and operated by a number of companies since 1999 and until recently was regulated under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act)*, which is administered by the National Offshore Petroleum Safety and Environment Management Authority (**NOPSEMA**).
 - i. The environmental authorisation process of the OPGGS Act has been endorsed through the strategic assessment provisions of the EPBC Act. Therefore, when the Facility was regulated by NOPSEMA under the OPGGS Act, no further approval was necessary under the EPBC Act.
 - ii. As the Facility is no longer regulated by NOPSEMA under the OPGGS Act, it is subject to regulation under the EPBC Act.
- c. 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, in the process forfeiting their titles over the Laminaria and Corallina hydrocarbon fields.
- d. The liquidator disclaimed offshore assets including the Facility, associated subsea and sub-surface infrastructure, and the offshore petroleum production licenses covering the Facility.
- e. The EPBC Act now directly applies to activities at the Facility because there is no registered titleholder for the Laminaria and Corallina hydrocarbon fields, and therefore the OPGGS Act cannot apply.
- f. Following NOGA's liquidation, it became necessary for the Industry department to assume responsibility for "lighthouse operations" of the facility to ensure the safety and security of the Facility and the protection of the surrounding environment.
- g. In response to this situation, to undertake the "lighthouse operations", the Industry department:
 - i. engaged Upstream Production Solutions Pty Ltd (**UPS**) to undertake the "lighthouse operations" of the Facility on behalf of the Industry department from 2020 until mid-2022;
 - ii. engaged Petrofac Facilities Management Limited (**Petrofac**) to undertake "lighthouse operations" and "short-term well injections" on 30 March 2022 who assumed operational control from UPS on 30 September 2022; and
 - iii. contracted NOPSEMA to provide advice and assurance that the "lighthouse operations" undertaken by UPS on the Facility were in accordance with the previously accepted *Safety Case, Environment Plan* (Doc 01-HSE-PL12, as revised on 5 January 2017) and *Well Operations Management Plan* (Doc 01-OPS-PL01, as revised on 7 September 2017), and in compliance with good oil field practice.

- h. On 3 July 2020, the former Minister for Resources, Water and Northern Australia, wrote to the former Minister for Environment seeking an exemption for “lighthouse operations” of the Facility.
- i. On 31 July 2020, the former Minister for 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 the Industry department (or other Commonwealth agency), until 31 December 2021 for these “lighthouse operations” (**previous 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.”
- j. 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” (**current exemption**).
- k. On 28 September 2021, the former Minister for the Environment granted the current exemption until 31 December 2022 under which:
 - i. the definition of the “lighthouse operations” at the Facility remained the same as under the previous exemption (as set out at paragraph 7(i) above); and
 - ii. the “short-term well injections” on the Facility and associated subsea infrastructure are defined as *“the pumping of water and flushing chemicals from the FPSO through flowlines and into wells in order to flush any remaining crude oil from the flowlines”*.

Section 158 – further exemption

- 8. Having regard to the departmental brief, including the application letter for the further exemption and the supporting information, I made the following findings and considerations:
 - a. The COVID-19 pandemic and the complexities associated with the necessary contractor procurement have delayed the Industry department from determining and complying with the EPBC Act assessment and approval requirements applicable to the proposed decommissioning of the Facility including disconnection of the FPSO.
 - b. On 27 October 2022 a valid EPBC Act referral for “lighthouse operations”, “short-term well injection” and Phase 1 decommissioning was received by the department. The statutory decision was due on 24 November 2022.
 - c. The Industry department requested a further exemption for undertaking “lighthouse operations” and “short-term well injection” at the Facility, until no longer required to progress decommissioning. I considered that this would be until “lighthouse

operations” and “short-term well injection” activities are authorised or approved, per their EPBC Act referral 2022/09327. This is to ensure the safe management of the Facility until the Industry department has obtained authorisation or approval for the decommissioning of the Facility under the EPBC Act.

- d. The further exemption would exempt the application of Chapter 4 of the EPBC Act. This would allow the Industry department to continue “lighthouse operations” and “short-term well injection” whilst these activities are also a component of an EPBC referral that has not yet been approved or authorised.
- e. The Industry department has contracted NOPSEMA to provide advice on the revision of the existing *Safety Case, Environment Plan* and *Well Operations Management Plan* for the Facility. This reflects that Facility is no longer in production mode and ensures that the procedures are fit for purpose in accordance with industry best-practice.
- f. The scope of the contract between the Industry department and NOPSEMA includes the provision of advice on matters ranging from NOPSEMA’s normal regulatory functions to inspections, investigations and advice on enforcement action in the unlikely event it is required.
- g. NOPSEMA have confirmed that they are providing advice to the Industry department consistent with what would be required under the OPGGS Act per the streamlining arrangements under the EPBC Act that would have applied in normal circumstances.

“Lighthouse operations”

- h. The “lighthouse operations” include essential operations such as critical ongoing inspection, monitoring, maintenance and repair work to manage and avert risks otherwise posed by the Facility to the environment and maritime safety, and to the security of the Facility.
- i. There are some circumstances where the “lighthouse operations” may have a significant impact on national protected matters which could require approval or authorisation under the EPBC Act. For example, light emissions may impact on listed threatened species, listed migratory species or the marine environment, and inspection and maintenance operations could have a significant impact on the ‘environment generally’ which is the protected matter when an activity is undertaken on behalf of the Commonwealth.

“Short-term well injection” activities

- j. “Short-term well injection” is a process where water and flushing chemicals are pumped from the FPSO through the flowlines into the wells to flush any remaining crude oil from the flowlines. The purpose of this is to reduce potential residual hydrocarbon or chemical releases to the subsea environment after a facility ceases production.
- k. “Short-term well injection” continues to be necessary both as a potential emergency response, and also as part of subsea flushing.

- l. In an emergency, the operator may need to undertake “short-term well injection” when performing a “well kill” to mitigate the impacts of a subsea loss of containment event or major accident, such as the leakage of hydrocarbons from a well. “Short-term well injection” is necessary for an emergency well kill to ensure any leaks are controlled, and to prevent the continued release of crude oil into the environment.
- m. Subsea flushing is normally conducted after a facility ceases production. The Industry department confirmed that, as when the current exemption was sought, there remain approximately 1065 cubic metres of fluid in the flowlines (equivalent to 6698 barrels). While this fluid remains in the flowlines, there is the potential for a significant environmental impact should there be unplanned discharge from flowlines in a subsea loss of containment accident or major event.
- n. The ability to undertake “short-term well injection” activities is critical for reducing any risk, and minimising any impact, of the hydrocarbon and contaminant leakage into the ocean and harm to the marine environment.
- o. “Short-term well injection” activities are intended to be conducted in accordance with the previously accepted *Safety Case, Environment Plan and Well Operations Management Plan*, as currently drafted and as revised with advice from NOPSEMA.
- p. The *Environment Protection (Sea Dumping) Act 1981 (Sea Dumping Act)* regulates the disposal of waste in Australian waters and includes regulation of disposal activities affecting the seabed and its subsoil. “Short-term well injection” activities in this specific case do not require a permit under the Sea Dumping Act and, on 28 September 2022, the department confirmed this to the Industry department.

Decommissioning

- q. The Commonwealth, as represented by the Industry department, has now committed to the decommissioning of the Facility which includes the disconnection of the FPSO. No exemption for these activities is sought in the current application for the further exemption.
- r. On 27 October 2022, the Industry department submitted a referral to the department under the Parts 7 to 9 of EPBC Act for authorisation or approval of the proposed decommissioning of the Facility. The department made a decision on whether or not the referral was a controlled action on 24 November 2022.
- s. For the purposes of the EPBC Act referral, the proposed “Phase 1 decommissioning” includes:
 - i. The “lighthouse operations” and “short-term well injection” activities, both as defined in the current exemption, and being the activities sought to be exempt under the further exemption. “Lighthouse operations” will be conducted in accordance with the previously accepted *Safety Case, Environment Plan and Well Operations Management Plan*, as currently drafted and as revised with advice from NOPSEMA. (The referral does not however specifically refer to “short-term well injection” activities).

- ii. 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. These activities are not within the scope of current exemption and activities sought to be exempted under the further exemption.
 - iii. The request for the further exemption notes that “interim subsea flushing and topside flushing”, which are part of Phase 1 decommissioning activities, may be undertaken before an EPBC Act authorisation or approval for the referral. I noted that there was potential for the undertaking of an action that was under referral or assessment, before being authorised or approved, may contravene section 74AA of the EPBC Act.
- t. Having regard to this background information, I considered and agreed with the department’s findings that:
- i. the “lighthouse operations” and “short-term well injection” activities being undertaken by Petrofac on behalf of the Industry department are necessary to temporarily manage and maintain the Facility to ensure the maritime safety and security of the Facility and the protection of the surrounding environment, until the Industry department has determined and complied with the assessment and approval requirements applicable under the EPBC Act to the proposed decommissioning of the Facility;
 - ii. NOPSEMA will continue to provide advice and assurance that the “lighthouse operations” and “short-term well injection” activities are being undertaken by Petrofac in accordance with the applicable requirements of the previously accepted *Safety Case, Environment Plan and Well Operations Management Plan*, as currently drafted and as revised. NOPSEMA is currently advising the Industry department on the revision of the existing *Safety Case, Environment Plan and Well Operations Management Plan* for the Facility and this advice will ensure that they reflect best-practice management and will effectively manage impacts to the environment;
 - iii. if these activities are not undertaken, there would be unacceptable risks to personnel, maritime safety and security, and to the environment; and
 - iv. if these risks to personnel, maritime safety and security, and the environment materialise, there may be a risk of damage to the international relations between Australia, Indonesia and Timor-Leste, noting the proximity of the Facility to Australia’s borders with these nations.

Reasons

9. 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. However, this does not limit the factors that I may take into consideration.

10. Having regard to my findings outlined above, I agreed with the department that it would be in the national interest for the specified provisions of the EPBC Act to not apply to the “lighthouse operations” and “short-term well injection” activities. This would allow the operations to be temporarily undertaken to properly manage the Facility in a timely way and avoid the risks to personnel, the environment, maritime safety and security, and critically, Australia’s international relations with Indonesia and Timor-Leste.
11. I agree that the exemption should be granted for the “lighthouse operations” and “short-term well injection” activities until authorised or approved under the EPBC Act, which is projected to be around quarter 2 of 2023, to allow the Industry department to safely manage and maintain the Facility temporarily while the Industry department prepares for the FPSO’s disconnection and obtains separate approval or authorisation for the decommissioning under the EPBC Act.
12. I considered and agreed with the department’s advice that stopping “lighthouse operations” and “short-term well injection” to comply with the assessment and approval requirements of Part 3 and Chapter 4 of the EPBC Act may hinder the proper management of the Facility necessary to manage and avoid the risks to personnel, maritime safety and security, the environment, and Australia’s international relations.
 - a. I particularly noted that continuing the following works as part of the “lighthouse operations” and “short-term well injection” is critical to managing these risks:
 - i. safety equipment inspection, maintenance and repair including Safety of Life at Sea critical communications equipment maintenance;
 - ii. emergency response management, incident reporting and investigation;
 - iii. well integrity maintenance activities; and
 - iv. inspection, maintenance and repair of critical systems such as electrical systems, discharge and bilge pumps, tank systems and power generation systems.
13. For the above reasons, I determined that it was in the national interest that the relevant provisions of Part 3 and Chapter 4 not apply to the “lighthouse operations” and “short-term well injection” activities to be undertaken by the Industry department (or any other Commonwealth agency), and those acting on behalf of the Industry department (or other Commonwealth agency) until authorised or approved under the EPBC Act, which is expected around quarter 2 of 2023.
14. Such an exemption was necessary for the Facility to be properly managed to avoid the risks posed by the Facility to personnel, maritime safety and security, the environment, and critically, Australia’s international relations.
15. 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. the Industry department's further exemption request sought 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;
- c. consistent with the further exemption request, it was not necessary to provide an exemption from the following provisions of Part 3 because these were clearly unlikely to be applicable:
 - i. ss 12 and 15A (provisions relating to world heritage);
 - ii. ss 15B and 15C (provisions relating to national heritage);
 - iii. ss 16 and 17B (provisions relating to wetlands of international importance);
 - iv. ss 21 and 22A (provisions relating to nuclear actions);
 - v. ss 24B and 24C (provisions relating to the Great Barrier Reef Marine Park);
 - vi. ss 24D and 24E (provisions relating to water resources);
 - vii. ss 26 and 27A (provision relating to actions involving Commonwealth land);
and
 - viii. ss 27B and 27C (provisions relating to Commonwealth heritage places overseas).

16. 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 "lighthouse operations" and "short-term well injection" for the Facility (as described above) until a decision is made on whether or not to authorise or approve "lighthouse operations" and "short-term well injection" activities under the EPBC Act.



Tanya Perben

Minister for the Environment and Water

12 / 12 / 2022