Environmental Defenders Office

2 August 2024

Cross Government Policy Section
Offshore Strategy Branch - Oil and Gas Division
Department of Industry, Science and Resources

Submitted via: Consultation Hub

Dear Cross Government Policy Section,

Consultation on draft guidance for removal of oil and gas property and sea dumping of infrastructure in Commonwealth waters

Thank you for the opportunity to comment on the draft Australian Government guidance for removal of oil and gas property and sea dumping of infrastructure in Commonwealth waters (**draft guidance**). This draft guidance is particularly important given the significant volume of petroleum infrastructure in offshore waters.

Relevantly, Environmental Defenders Office (**EDO**) has previously made submissions to the Department of Industry, Science and Resources on reforms to the offshore oil and gas decommissioning framework,[1] as well as directly to NOPSEMA on the draft s 572 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPGGS Act**) maintenance and removal of property policy.[2] As expressed in those submissions, EDO's position is that the removal of property at the end of use should be the primary objective of the decommissioning framework, and 'base case' for assessment of decommissioning plans.

In this context, EDO's submission makes recommendations that the draft guidance should be amended to:

1. **Reflect the presumption of removal of infrastructure, as set out in the legislative regime; and**
2. **Incorporate Australia's obligations under the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972** (**the London Protocol**).

Current obligations under domestic and international law

As noted in the draft guidance, the OPGGS Act and *Environment Protection (Sea Dumping) Act 1981* (Cth) (**Sea Dumping Act**) regulate the decommissioning of offshore petroleum infrastructure. These Acts create the presumption that titleholders must remove infrastructure at the end of a project's operations. These domestic legal obligations echo Australia's international obligations under the London Protocol.

Allowing oil and gas infrastructure to remain in the ocean creates an ongoing risk for the marine environment, a reality reflected in the domestic legal regime established to minimise this risk. Under the OPGGS Act, the default position is that the titleholder must remove all structures, equipment or property which are not being used in connection with the authorised operations.[1]

[1] OPGGS Act, s 572.
[2] Ibid, s 572(6).

There is an exception for arrangements to be made which do not require the removal of property.[2] However, the requirement to remove property under the OPGGS Act is an ongoing obligation, applicable to all activities over the life of an offshore project,[3] and is expected to be considered by titleholders from the earliest stages of the offshore project development and activity planning.[4] NOPSEMA may only accept a surrendered title if it is satisfied the titleholder has plugged or closed off all wells made in the surrendered area under the permit.[5]

The Sea Dumping Act requires titleholders to seek permits to dump or incinerate controlled material – including platforms and vessels – or place an artificial reef in Australian waters.[6] It reflects Australia's obligations under the London Protocol, noting the aim of the London Protocol being the need to protect and preserve the marine environment.[7]

Guidance must reflect domestic law

The draft guidance is inconsistent with the legislative obligation on proponents to remove infrastructure and uses language that undermines the clear expectations set out in the legislative regime. Providing a list of categories of infrastructure which 'may be permitted to be left' significantly undermines the intention of the OPPGS Act and Sea Dumping Act. It indicates to titleholders that regulators may take a permissive approach to allowing infrastructure to remain, which is antithetical to the legislative intention that full removal should be the 'default' starting position and that wells must be plugged before a title holder can surrender its permit.

EDO **recommends** the draft guidance should be updated to better reflect the legislative requirement that all structures should be removed from the ocean following project completion, except in limited circumstances. It should also set out that regulators will act in accordance with that presumption.

Guidance should be updated to reflect international legal obligations

Two important elements of the London Protocol are missing from the draft guidance: the hierarchy of waste management and a clear expression of the precautionary principle.

First, the hierarchy of waste management options indicates an order of preference relevant to environmental impact for titleholders when decommissioning offshore infrastructure.[8] Disposal of waste, including in water, is the option listed last for the management of waste, behind (in order) re-use, off-site recycling, destruction of hazardous constituents and treatment to reduce or remove hazardous constituents. The application of this hierarchy is particularly important where a titleholder seeks to leave infrastructure on the seabed as there is a risk that it will leach harmful chemicals into the environment such as sulphur or mercury.[9] EDO **recommends** the draft guidance be updated to include explicit reference to the waste management options hierarchy in the London Protocol and should set out that it will be applied by regulators where titleholders propose to decommission infrastructure.

Second, the guidance should make clear that the precautionary principle, as defined under both the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the London Protocol,

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[3] Ibid, s 572(3).
[4] See, NOPSEMA Policy, Section 572 Maintenance and removal of property (9 December 2022) 6.
[5] OPGGS Act, s 270(3)(d).
[6] Sea Dumping Act, ss 10A, 10B, 10E, 18, and 19.
[7] London Protocol, art 2.
[8] London Protocol, Annex 2, [5].
[9] See Francesa Gissi, Darren Koppel et al, 'A review of the potential risks associated with mercury in subsea oil and gas pipelines in Australia' *Environmental Chemistry* (2022) < https://www.publish.csiro.au/en/pdf/EN22048> .

anticipates that risks may be present in the absence of scientific certainty, or where inconclusive evidence is present.[10] EDO **recommends** the precautionary principle be better reflected in the guidance, so that titleholders are made aware of their obligation to take preventative measures if there is a reason to believe harm could be caused to the environment at any point, including after wells are plugged and decommissioning has concluded -- for example, due to the risk of methane leaks.[11]

Emphasising this well-established environmental law principle demonstrates to titleholders that a removal approach is preferred, to prevent any unanticipated environmental harms arising in the future from decommissioned infrastructure.

For further information, please contact emma.buckleylennox@edo.org.au or (02) 9262 6989.

Yours sincerely,

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[10] EPBC Act s 391(2), London Protocol art 3.

[11] Lisa Vielstadte, Jes Karstens et al 'Quantification of methane emissions at abandoned gas wells in the Central North Sea' *Marine and Petroleum Geology* (December 2015) < https://www.sciencedirect.com/science/article/abs/pii/S0264817215300519>.