

Acceptance of the Scarborough 4D B1 Marine Seismic Survey Environment Plan

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1. On 1 December 2023, I, [REDACTED], Environment Manager – Offshore Projects & Seismic, within the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**), delegate of the Chief Executive Officer of NOPSEMA decided, pursuant to regulation 10 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Regulations**), to accept, the Scarborough 4D B1 Marine Seismic Survey Environment Plan (Revision 9, October 2023) (**Environment Plan**). The Environment Plan was submitted by Woodside Energy Scarborough Pty Ltd (ACN 650 177 227) and Woodside Energy (Australia) Pty Ltd (ACN 006 923 879) (**titleholders**), to enable the titleholders to undertake a new three-dimensional marine seismic survey (**MSS**)/baseline 4D MSS in the Northern Carnarvon Basin on the Exmouth Plateau located in Commonwealth waters 188 km north-west of Northwest Cape, Western Australia (**activity**).
2. The reasons for my decision are set out below. All references to a regulation (**reg**) are to the Regulations unless otherwise stated.

Legislative Framework

3. The legislation relevant to my decision is set out in **Attachment A**.

Background

4. On 11 October 2021, the titleholders submitted an Environment Plan (Revision 0, October 2021) to NOPSEMA in accordance with reg 9(1).
5. Having regard to the Environment Plan (which has been updated since my previous decision on 31 July 2023), I maintain the views I expressed in that decision in relation to regs 10A(a), 10A(b), 10A(c), 10A(d), 10A(e), 10A(f) and 10A(h) and for the same reasons. I adopt those reasons, with minor amendments, in the form set out below.
6. On 18 October 2021, the Environment Plan (Revision 0, October 2021) was published by NOPSEMA on its website for public comment, in accordance with reg 9AB. The period for public comment closed on 17 November 2021, with no public comments being received during this period.
7. On 22 November 2021, following the completion of the 30-day public comment process, the titleholders resubmitted the Environment Plan (Revision 0, October 2021) to NOPSEMA in accordance with reg 9(1).
8. Between 16 December 2021 and 6 October 2023, NOPSEMA issued five not reasonably satisfied notices requiring the titleholders to modify and resubmit the Environment Plan, pursuant to reg 10. In addition, NOPSEMA made four requests for further information during this timeframe, pursuant to reg 9A. The not reasonably satisfied notices identified areas where NOPSEMA considered the Environment Plan did not meet the criteria in reg 10A. The requests for further information outlined areas where

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further information was required about matters required by the regulations before a decision could be made against the reg 10A criteria. In response to these requests, the titleholders resubmitted eight environment plans which incorporated additional information pursuant to reg 9A(3) and modifications pursuant to reg 10. The Environment Plan the subject of this decision was received on 19 October 2023, and is identified as Revision 9, October 2023.

Materials

9. The materials which I considered in making my decision are set out in **Attachment B**. Where relevant to my decision, I identify these materials in my reasons below.

Decision Overview

10. The issue before me was whether the Environment Plan should be accepted under reg 10 of the Regulations. In making this decision, I have taken into account and accepted advice and recommendations from NOPSEMA's assessment team.
11. Prior to considering whether I was reasonably satisfied that the Environment Plan met the criteria in reg 10A, I considered whether the Environment Plan complied with Division 2.3, which sets out the matters which must be included in the Environment Plan.
12. I am satisfied that the Environment Plan contained the matters in Division 2.3. My reasons are set out at [17]-[33] below.
13. In accordance with reg 5G(2) of the Regulations, I must not accept an environment plan unless I am reasonably satisfied that the titleholder is compliant with subsection 571(2) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) in relation to the petroleum activity, and the compliance is in a form that is acceptable to NOPSEMA. On review of the titleholder's financial assurance declaration and confirmation forms, I was reasonably satisfied that the titleholders had demonstrated financial assurance in accordance with the requirements of reg 5G(2).
14. I then considered whether I was reasonably satisfied that the Environment Plan meets each of the criteria in reg 10A.
15. If I was reasonably satisfied that the Environment Plan met the criteria in reg 10A, I must accept it. However, if I was not reasonably satisfied that the Environment Plan met the criteria in reg 10A, I must:
- give the titleholders the opportunity to resubmit the Environment Plan; or
 - refuse to accept the Environment Plan; or
 - accept the Environment Plan in part for a particular stage of the activity; or
 - accept the Environment Plan subject to limitations or conditions applying to operations for the activity.
16. I considered that the criteria in reg 10A were all satisfied. My reasons are set out at [34]-[152] below.

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Findings

Does the Environment Plan comply with Division 2.3?

17. Reg 12 requires that an Environment Plan must include the matters set out in regs 13-16. As I was satisfied that the Environment Plan met regs 13-16 (for the reasons set out individually below), I was satisfied that reg 12 was met, and that the Environment Plan complied with Division 2.3.

Regulation 13 – Environmental Assessment

Regulation 13(1) - Description of the activity

18. Section 3 of the Environment Plan is titled 'Description of Activity' and included the following information:
- a. the description of the activity as a new three-dimensional (3D) marine seismic survey (**MSS**)/baseline 4D MSS that will be acquired in the Northern Carnarvon Basin on the Exmouth Plateau located in Commonwealth waters 188 km north-west of Northwest Cape (section 3.3), Western Australia in waters 800 to 1150 metres deep (section 3.3.2);
 - b. the location of the activity is clearly set out in the Environment Plan by figures and tables that include the coordinates for the operational area (9,200 km²) and active source area (5,650km²) of the MSS (section 3.3.1 and 3.3.2);
 - c. the activity will be undertaken using up to four project vessels powered by marine diesel oil (**MDO**); a seismic vessel (~110 m long), a support vessel (~65 m long) to be used to re-supply and other logistical and operational activities, a chase vessel (~22 m long) to manage interactions with shipping or fishing activities and a spotter vessel (~22 m long) for marine fauna observations, with representative vessel specifications for each type of vessel provided in the Environment Plan (section 3.5.5);
 - d. information considered relevant for the consideration of environmental impacts and risks (such as the operational details of the activity and proposed timetable) (sections 3.4 and 3.5), including:
 - i. the timing and duration of the activity, which is 24-hours/day over a period between the date the Environment Plan was accepted and 31 December 2023 (inclusive);
 - ii. the survey design, which includes sail lines with a maximum length of up to 105 km separated by approximately 450 m and either orientated at 24 deg/205 deg or 40.5 deg/220.5 deg (section 3.5);
 - iii. the source configuration, which is triple or dual source, while the frequency range of source arrays is 2 to 200 Hz;
 - iv. the approximate airgun array capacity, which is a maximum of 3150 cubic inches (cui) and the operating pressure of the airgun array, which is a maximum of 2,000 pounds per square inch (psi);

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- v. the tow depth of airgun array, which is a 6 to 8 m +/- 1 below the sea surface and the shot point interval of airgun arrays, which is 12.5 m (triple source) (every 5 to 6 seconds) or 18.75 m (dual source); and
 - vi. the hydrophone type, which is a maximum of 14 solid hydrophone streamers with an approximate length of 8,000 m, towed approximately 500 m behind the vessel, positioned an approximate distance of 50 to 100 m apart and fitted with active steering and streamer recovery devices. Further, the tow depth of hydrophone streamers, which is approximately 15 to 25 m below the sea surface and the towing speed, which is 4 to 5 knots (7.4 km/hour).
19. I was satisfied that this information provided a comprehensive description of the activity, with a large amount of detail in relation to each of the matters in reg 13(1).

Regulation 13(2) and (3) - Description of the environment

20. Regs 13(2) and (3) requires the Environment Plan to describe the existing environment that may be affected by the activity and include details of the particular relevant values and sensitivities (if any) of that environment. The Environment Plan addressed each of these matters in Section 4, Appendix C and Appendix H. In particular, the Environment Plan described and included the following information:
- a. that the environment that may be affected by the activity is defined by an operational and acquisition area in which the vessel and equipment used by the activity will be physically present (**Operational Area**), and an environment that may be affected (**EMBA**) is defined as the largest spatial extent where unplanned hydrocarbon release could have an environmental consequence, and which also encompasses the area over which acoustic emissions exceed behavioural impact thresholds (section 4.1);
 - b. that the regional setting of the area that may be affected by the activity, including under emergency conditions, is the North-west marine region (**NWMR**) as defined under the Integrated Marine and Coastal Regionalisation of Australia bioregions. The operational area lies within the Northwest Province and the EMBA partially overlaps with additional provincial bioregions of the NWMR including the Northwest Transition, Central Western Transition, Northwest Shelf Province, and Central Western Shelf Transition. The southern tip of the EMBA enters the South-west Marine Region, and Central Western Province provincial bioregion (section 4.2);
 - c. the Department of Climate Change, Energy, the Environment and Water's (**DCCEEW's**) Protected Matters Search Tool (**PMST**), which evidenced that that the activity or any part of the activity will not be undertaken in any part of a declared World Heritage Property or National Heritage Place, nor a declared Ramsar wetland, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**);
 - d. the listed threatened and migratory species identified by DCCEEW's PMST that may be affected by the activity, including under emergency conditions. In particular, there are 27 listed threatened species and 43 listed migratory species (or their habitat) that are either known to occur, may occur or are likely to occur in the Operational Area and/or EMBA (section 4.6 and Appendix C). Additionally, there are two conservation-dependent species (or their habitat) with a potential to occur within the Operational Area and/or EMBA, including the scalloped hammerhead shark and the southern bluefin tuna (section 4.6 and Appendix C);

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- e. the biologically important areas (**BIAs**) defined in DCCEEW's National Conservation Values Atlas (**NCVA**) for the listed threatened and migratory species in the area that may be affected by the activity, including under emergency conditions. In particular, there is:
 - i. a whale shark foraging BIA located 136 km south-east of the Operational Area that overlaps with the EMBA (section 4.6.1);
 - ii. interesting buffer BIAs for four marine turtle species (flatback, green, hawksbill and loggerhead) located more than 136 km south-east or east of the Operational Area that overlap with the EMBA (section 4.6.2);
 - iii. a migration BIA located 14 km south-east of the Operational Area and possible foraging BIA located 154 km south of the Operational Area for the pygmy blue whale that both overlap with the EMBA (section 4.6.3);
 - iv. a migration BIA located 138 km south-east of the Operational Area for the humpback whale that overlaps with the EMBA (section 4.6.3); and
 - v. a breeding and foraging BIA located 85 km south-east of the Operational Area for the wedge-tailed shearwater that overlaps with the EMBA (section 4.6.4);
- f. the habitat critical to survival (**HCTS**) defined in DCCEEW's NCVA for the listed threatened and migratory species in the area that may be affected by the activity, including under emergency conditions. In particular, there is HCTS for three marine turtle species (flatback, green and hawksbill) located more than 147 km south-east of the Operational Area that overlap with the EMBA (section 4.6.2);
- g. the values and sensitivities of the Key Ecological Features (**KEFs**) in the area that may be affected by the activity, including under emergency conditions. In particular, the Operational Area overlaps with the Exmouth Plateau KEF which is a distinctive geomorphic feature containing topographic features including terraces, canyons, and pinnacles and is thought to modify deep water flow and contribute to upwelling of deep nutrient-rich waters (section 4.8). Additionally, the Canyons linking the Cuvier Abyssal Plain and the Cape Range Peninsula KEF and the Continental slope demersal fish communities KEF overlap with the EMBA only (section 4.8);
- h. the Australian Marine Parks (**AMPs**) in the area that may be affected by the activity, including under emergency conditions. In particular, the Operational Area does not overlap with any AMPs but the EMBA overlaps with the Gascoyne AMP Multiple Use Zone (IUCN VI), National Park Zone (IUCN II) and Habitat Protection Zone (IUCN IV) (section 4.9);
- i. the social and economic features in the area that may be affected by the activity, including under emergency conditions, that included:
 - i. commercial fishing activities. In particular, there are Commonwealth managed fishery management areas (i.e. North West Slope Trawl Fishery and Western Deepwater Trawl Fishery), Western Australian state managed fishery areas (i.e. Pilbara Line Fishery, Marine Aquarium Fish Managed Fishery, West Coast Deep Sea Crustacean Managed Fishery and the Mackerel Managed Fishery) and areas where commercial fishing tour charters are permitted to operate in Western Australian state waters that overlap with the EMBA but not the Operational Area (section 4.10.2);

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- ii. traditional fishing activities. In particular, there are no known traditional or customary fishing areas that overlap with the Operational Area and EMBA (section 4.10.3);
 - iii. tourism and recreation activities. In particular, there are no recognised tourism or recreational areas that overlap with the Operational Area and EMBA (section 4.10.4);
 - iv. oil and gas activities. In particular, there is oil and gas infrastructure operated by other petroleum titleholders located within the EMBA but not the Operational Area (section 4.10.5);
 - v. commercial shipping activities. In particular, the Operational Area and EMBA does not overlap with any Australian Marine Safety Authority shipping fairways but does include areas that have previously been frequented by commercial shipping vessels (section 4.10.6); and
 - vi. defence activities. In particular, there are some designated defence practise and training areas that overlap with the Operational Area and EMBA (section 4.10.7);
- j. the cultural features and heritage values in the area that may be affected by the activity, including under emergency conditions, that included:
- i. First Nations cultural features and heritage values. In particular, the Operational Area and EMBA does not overlap with any known First Nations archaeological sites, but some intangible values for First Nations people and some marine ecosystems and species that First Nations people have cultural connections with may occur within these areas (section 4.10.1); and
 - ii. other cultural features and heritage values. In particular, the Operational Area and EMBA does not overlap with any known historic heritage sites of significance, but there are nine known historic underwater heritage sites recorded within the EMBA only (section 4.10.1).

21. In light of the matters identified immediately above, I was satisfied that the Environment Plan met the requirements in regs 13(2) and (3).

Regulation 13(4) - Requirements

22. I noted that the Environment Plan provided a detailed table at Appendix B identifying various Commonwealth acts and regulations that apply to the activity. Various parts of the Environment Plan, in particular sections 1.9 (Requirements), 4 (Environment), 6 (Impact and Risk Assessment), 6.8 (EPBC Act Assessment) and Appendix H (Master Description of Existing Environment), provide descriptions of the legislative requirements that apply to the activity and how they are relevant to the environmental management of the activity. The Environment Plan demonstrates that relevant legislative requirements will be met by directly addressing them in the demonstration of acceptable levels of impacts and risks (section 6). I was therefore satisfied that reg 13(4) was met.

Regulation 13(5) and (6) - Evaluation of environmental impacts and risks

23. Section 6 of the Environment Plan detailed the environmental impacts and risks, including those arising from potential emergency conditions whether resulting from accident or any other reason, for the activity which is provided in section 6 of the Environment Plan. The details of the environmental

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impacts and risks associated with the activity were included in Table 6-1 of the Environment Plan, and included:

- a. planned activities such as physical presence to marine users, routine acoustic emissions from seismic survey equipment and from project vessels, routine atmospheric and greenhouse gas emissions, routine discharge of bilge water, grey water, deck drainage water, sewage, and putrescible wastes and routine light emissions from external lighting on project vessels; and
 - b. unplanned aspects such as accidental hydrocarbon release due to vessel collision or from bunkering, unplanned discharge of deck spills or solid hazardous and non-hazardous wastes including dropped objects, vessel collision with or entanglement with marine fauna, loss of equipment and introduction and establishment of invasive marine species.
24. The Environment Plan contained an evaluation of all the impacts and risks, whether arising directly or indirectly, and including those arising from potential emergency conditions whether resulting from accident or any other reason, appropriate to the nature and scale of each impact or risk. The impact and risk analysis process is described in Section 2.6 and includes assigning a consequence rating (defined in Table 2-3) for all impacts and risks and a likelihood rating (defined in Table 2-4) for unplanned events, which together were used to categorise planned and unplanned activities into a rating for the acceptability of the impact or risk (defined in Table 2-6). A description was provided in Table 2-5 about how the titleholders demonstrate that the impacts and risks will be reduced to as low as reasonably practicable (**ALARP**). The outcome of the process for the impacts and risks identified in [23] is summarised in Table 6-1, with the impacts and risks generated by the activity identified in [23] being evaluated and demonstrated to be acceptable or broadly acceptable when taking into account the application of control measures and considering the extent, severity and duration of any planned or unplanned impacts to environmental receptors. The full evaluation of each individual impact and risk is provided in section 6 of the Environment Plan, including reference to appropriate modelling studies and scientific literature.
25. Examples of details of the control measures that will be used to reduce the impacts and risks of the activity to ALARP and an acceptable level that were included in the Environment Plan include control measures used to raise awareness to other marine users about the activity to manage on water interactions; people, procedures and equipment that will be used to mitigate the impacts of noise on marine fauna; equipment to be used, marine standards to be applied and emergency procedures in place to manage impacts from any vessel discharges, procedures to be used, standards to be applied and equipment to be used to avoid vessel strike with marine fauna.
26. In light of the matters above, I was satisfied that the requirements of reg 13(5) and (6) were met.

Regulation 13(7) - Environmental performance outcomes and standards

27. I considered the environmental performance outcomes and standards (**EPOs**), the environmental performance standards (**EPS**) and measurement criteria provided in section 6 of the Environment Plan and was satisfied that the:
- a. EPOs have been set which define performance for the management of the environment aspects of the activity. For example, EPO 2 Prevent adverse interactions between vessels and other marine users during the Petroleum Activities Program, EPO 9 No impact to water quality greater than consequence level of F (defined as no lasting effect < 1 month) or negligible impact, localised impact not significant to environmental receptors, EPO 10 No release of hydrocarbons to the marine environment due to a vessel collision during the Petroleum Activities Program, EPO 14 No vessel

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strikes with marine fauna (whales, whale sharks and turtles) during the Petroleum Activities Program, EPO 16 No introduction and establishment of invasive marine species into the Operational Area as a result of the Petroleum Activities Program; EPO 19 No impact to cultural features and heritage values, as stated in Table 4-21, greater than a consequence level of F (defined as no lasting effect < 1 month) from the Petroleum Activities Program.

- b. EPSs, which are statements of performance for the control measures, have been set for all control measures identified as being necessary to reduce the environmental impacts and risks of the activity to ALARP and acceptable levels. Examples of EPSs include PS 4.5 No operation of the seismic source within 25 km of the pygmy blue whale migration BIA, PS 4.2.1 Two dedicated MFOs per observing vessel (survey vessel and spotter vessel) will be employed to undertake observations for EPBC Act Policy Statement 2.1, PS 14.1 Compliance with EPBC Regulations 2000 – Part 8 Division 8.1 (Regulation 8.05 and 8.06) Interacting with cetaceans to minimise potential for vessel strike and PS 16.1 Project vessels will manage ballast water in accordance with Australian Ballast Water Management Requirements; and
- c. measurement criteria (e.g. records of equipment being present, evidence of compliance with regulations, standards and procedures, evidence of notifications being sent to marine users, records of completed inductions by all relevant marine crew) are provided that will allow the titleholders to determine whether each EPO and EPS is being met for the duration of the activity.

28. Based on the findings above, I was reasonably satisfied that the requirements of reg 13(7) are met.

Regulation 14 - Implementation strategy for the Environment Plan

29. In relation to the requirements in reg 14, section 7 of the Environment Plan details that:
- a. the implementation strategy includes a commitment in Section 7.9.4 to report to the NOPSEMA in relation to the titleholders' environmental performance for the activity monthly for recordable incidents and then within three months of completing the activity (reg 14(2));
 - b. the implementation strategy contains the key elements of an environmental management system (EMS) for the activity, which is described in Section 2.11. This includes specific measures to ensure that the environmental impacts and risks of the activity continue to be identified and reduced to ALARP and an acceptable level. This also includes measures to ensure that the control measures described in the Environment Plan are effective in reducing the environmental impacts and risks of the activity to ALARP and an acceptable level, and EPOs and EPSs set out in the Environment Plan are being met (reg 14(3)). Key examples of these measures include ongoing monitoring of compliance with environmental performance outcomes and environmental performance standards and environmental performance auditing. The Environment Plan review and management of change (MOC) processes are described in sections 7.6 and 7.7. The MOC process sets out appropriate triggers for change management and appropriately references reg 17;
 - c. the implementation strategy establishes a clear chain of command, setting out the roles and responsibilities of personnel in relation to the implementation, management and review of the Environment Plan, including during emergencies or potential emergencies (reg 14(4)). For example, section 7.3 outlines the organisation structure and the roles and responsibilities of key project team members including responsibilities for environmental performance monitoring and reporting (Table 7-1). The roles and responsibilities of key personnel involved in spill preparation and response are outlined in Appendix D;

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- d. the implementation strategy includes measures to ensure that each employee or contractor working on, or in connection with, the activity is aware of their responsibilities in relation to the Environment Plan, including during emergencies or potential emergencies, and has the appropriate competencies and training (reg 14(5)). For example, the titleholder has made commitments to inductions and pre-activity meetings to raise awareness of Environment Plan responsibilities in Section 7.5, which also outlines the measures that are in place for ensuring employee and contractor competency, including the necessary awareness, training and induction requirements to fulfil their duties;
- e. the implementation strategy provides for sufficient monitoring, recording, audit, management of non-conformance and review of the titleholder's environmental performance and the implementation strategy to ensure that the EPOs and EPSs in the Environment Plan are being met (sections 7.6 to 7.10) (reg 14(6)). For example, internal and external reporting obligations are identified and the titleholders commits to conducting a program of periodic monitoring, auditing and marine assurance for the duration of the activity and outcomes of these processes may lead to management review or change and revision;
- f. the implementation strategy provides for sufficient monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise), such that the record can be used to assess whether the EPOs and EPSs in the Environment Plan are being met (reg 14(7)), this record is stated to be in the daily seismic reports (section 7.9);
- g. the implementation strategy contains an oil pollution emergency plan (OPEP) that includes the following components: Woodside Oil Pollution Emergency Arrangements (Australia), which is a framework for response arrangements from shipping sourced spills in the Commonwealth waters consistent with the National Plan for Maritime Environmental Emergencies and for marine oil pollution incidents in WA State waters consistent with the WA State Hazard Plan for Maritime Environmental Emergencies; an Oil Spill Preparedness and Response Mitigation Assessment (Appendix D) and an Oil Pollution First Strike Plan (Appendix I) and provides for the updating of the plan (Section 7.8) (reg 14(8));
- h. the OPEP (Appendix D) includes adequate arrangements for responding to and monitoring oil pollution and includes:
 - i. the control measures necessary for timely response to an emergency that results or may result in oil pollution;
 - ii. the arrangements and capability that will be in place for the duration of the activity to ensure timely implementation of the control measures including arrangements of ongoing maintenance of response capability;
 - iii. the arrangements and capability that will be in place for monitoring the effectiveness of the control measures and ensuring that the EPSs for the control measures are met; and
 - iv. the arrangements and capability in place for monitoring oil pollution to inform response activities (reg 14(8AA));
- i. the implementation strategy includes arrangements for testing the response arrangements in the OPEP that are appropriate to the response arrangements and to the nature and scale of the risk of oil pollution for the activity (Section 7.12.1 and 2 and Appendix D) (reg 14(8A));

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- j. the arrangements for testing the response arrangements includes a statement of the objectives of testing, a proposed schedule of tests, mechanisms to examine the effectiveness of response arrangements against the objectives of testing, and mechanisms to address recommendations arising from tests. These tests are the titleholders' common arrangements for spill response across its Australian operating assets and activities (Table 7-8 and Figure 7-1) (reg 14(8B));
 - k. the proposed schedule of tests provides for:
 - i. testing the response arrangements when they are introduced;
 - ii. testing the response arrangements when they are significantly amended;
 - iii. testing the response arrangements not later than 12 months after the most recent test;
 - iv. if a new location for the activity is added to the Environment Plan after the response arrangements have been tested, and before the next test is conducted – testing the response arrangements in relation to the new location as soon as practicable after it is added to the plan; and
 - l. the implementation strategy provides for monitoring of impacts to the environment from oil pollution and response activities that is appropriate to the nature and scale of the risk of the environmental impacts and risks for the activity and is sufficient to inform any remediation activities (Appendix D) (reg 14(8D));
 - m. the arrangements established in Appendix D and Appendix I are consistent with the national system for oil pollution preparedness and response, as outlined in Woodside Oil Pollution Emergency Arrangements (Australia) (reg 14(8E));
 - n. the implementation strategy provides for appropriate ongoing consultation during the implementation of the petroleum activity with relevant authorities of the Commonwealth, a State or Territory and other relevant interested persons or organisations (reg 14(9)). In particular, Section 5.7 and Section 7.10.2.1 outline the arrangements for ongoing stakeholder consultation. The Environment Plan also provides for ongoing consultation with First Nations relevant persons in relation to the continuous identification, assessment, and consideration of cultural features and heritage values relevant to the petroleum activity throughout the life of the activity (Table 7-3); and
 - o. the implementation strategy complies with the Act, the Regulations and any other environmental legislation applying to the activity (as outlined in Section 1.9 and Appendix B) (reg 14(10)).
30. Based on the findings above, I was reasonably satisfied that the requirements of reg 14 are met.

Regulation 15 - Details of titleholders and liaison person

- 31. Section 1.7 of the Environment Plan, headed 'Details of Titleholders and Public Affairs Contact' relevantly:
 - a. includes a heading 'Titleholder' identifying Woodside Energy Scarborough Pty Ltd, and providing the relevant address and contact details, in addition to the ACN;

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- b. under the heading 'Nominated Liaison Person' includes the relevant address and contact details; and
- c. confirms that any changes to the details provided under Section 1.7 will be communicated in writing within 2 weeks or as soon as reasonably practicable.

32. In light of the inclusion of the above matters in the Environment Plan, I am satisfied reg 15 was met.

Regulation 16 - Other information in the Environment Plan

33. I considered that the Environment Plan met reg 16 as it contained:

- a. a statement of the titleholders' corporate environmental policy in section 1.8 and Appendix A;
- b. the information required under reg 16(b) relating to all consultations under reg 11A of any relevant person by the titleholders in Appendix F (which contains over 100 consultation communications) and the sensitive information part of the Environment Plan; and
- c. details of any reportable incidents in relation to the proposed activity in section 7.10.7.

Should the Environment Plan be accepted?

34. Reg 10 of the Regulations requires that when making my decision as to whether the Environment Plan should be accepted, refused or accepted in part or with conditions I must consider:

- a. the further information that the titleholders had provided under reg 9A(3). The information which I considered was contained in the various resubmitted environment plans, which resulted in the Environment Plan; and
- b. any public comments received under reg 11B(2) of the Regulations. No comments were received.

35. I understood that, pursuant to reg 11B(6)(b), I was unable to take into account any other public comments that had been received in relation to the activity. I have not done so.

36. Against this background (and having considered the materials at Attachment B), I made the following findings against each criteria.

Regulation 10A(a) - The Environment Plan is appropriate for the nature and scale of the activity

37. I noted that the Environment Plan includes a description of the scope and bounds of the activity. In particular, the Environment Plan provides details of the proposed location, spatial extent, timeframe, and duration of the activity and clearly defines the limits of the survey acquisition parameters for the activity (see above at [18]).

38. I considered that the Environment Plan contained a thorough description of the activity components with the greatest potential to generate impacts and risks to the environment throughout the activity duration. In particular, the Environment Plan thoroughly applies a logical process to identify and describe the activity components that may present sources of impact and/or risk to the environment. The Environment Plan also provides more detail on activity components with the greatest potential to generate impacts and risks to the environment, particularly the equipment that will be used to generate and measure acoustic signals during seismic acquisition. In this regard, the Environment Plan

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comprehensively describes the numbers and types of equipment and property that will be brought into the title areas and used to undertake the activity.

39. I also considered that the Environment Plan contained a thorough description of the environment that may be affected by the activity, including:
- a. matters protected under Part 3 of the EPBC Act. In particular, the Environment Plan applies a logical process to identify and describe the matters protected under Part 3 of the EPBC Act that overlap with the areas that may be affected by impacts and risks from the planned and/or unplanned aspects of the activity. The Environment Plan has utilised relevant information to adequately inform and support the descriptions, such as information available on DCCEE's website including plans of management, threat abatement plans, threatened species recovery plans and marine bioregional plans;
 - b. key physical, biological, social, economic, and cultural features, values (including heritage) and sensitivities of the environment of the Commonwealth marine area that overlap with the areas that may be affected by impacts and risks from the planned and/or unplanned aspects of the activity. The Environment Plan has utilised relevant references and information sources, such as contemporary peer reviewed scientific literature and other authoritative sources, to inform and support the descriptions.
 - c. First Nations cultural features and heritage values of the EMBA. In particular:
 - i. the description in the Environment Plan is supported by multiple sources of relevant and suitable information. For example, this includes (but is not limited to) a desktop review of publicly available literature for any records of previously identified First Nations cultural features and heritage values within the EMBA (Table 4-19) and information that the titleholders received during consultation with First Nations relevant persons in preparation of the Environment Plan (Table 4-20).
 - ii. during the assessment process, an expert report was obtained from Extent Heritage to assist NOPSEMA with determining whether the Environment Plan included a thorough description of First Nations cultural features and heritage values of the EMBA. Extent Heritage concluded that the location of the activity will occur in waters that are well beyond the inundated coastal plain First Nations people occupied during the Pleistocene and is likely to be beyond the view lines and extent that First Nations watercraft were likely to have travelled. According to the report, this indicates that there is no potential for any in-situ First Nations submerged terrestrial archaeological deposits within the Operational Area. The conclusions in the report are consistent with information presented in the Environment Plan that does not identify any known First Nations archaeological sites in the activity's Operational Area or EMBA which are located in Commonwealth waters;
 - iii. I also considered advice in the Extent Heritage report that the First Nations cultural features and heritage values may be considered as including physical, environmental and topographic features that have social, cultural, historical or spiritual values to First Nations people. For example, this could include traditional resources of the sea and marine species that may have totemic or other values to First Nations people, cultural connections of First Nations people and marine life potentially impacted by the seismic survey illustrated in the rock art at Murujuga, which includes representations of marine creatures including marine turtles and whales. I was satisfied that the description of First Nations cultural features and heritage values in the Environment Plan includes

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appropriate consideration of the potential scope of those features and values as noted in the Extent Heritage advice, as applicable for the nature and scale of the activity.

- iv. the description in the Environment Plan is also informed by the results from an ethnographic heritage assessment undertaken for the Scarborough project development footprint, which identified no ethnographic sites or values within the EMBA. I note that the ethnographic heritage assessment was undertaken by a limited group of traditional custodian representatives (i.e. Murujuga Aboriginal Corporation Circle of Elders) and for another purpose (i.e. providing an understanding of cultural values within the coastal, nearshore and offshore proposed Scarborough trunkline and associated works areas). I recognised that the results from the ethnographic heritage assessment cannot be relied upon as standalone evidence and only supplements the understanding of First Nations cultural features and heritage values in the EMBA and is considered in combination with other sources of information used to inform the description in the Environment Plan.
 - d. the Environment Plan includes sufficient information on legislative requirements that are relevant to the activity, and a demonstration of how they will be met. Notably, the Environment Plan includes an outline of the legislative requirements that are relevant to the activity and explains how they will be complied with throughout the life of the Environment Plan as part of the process that the Environment Plan applies for evaluating whether environmental impacts and risks of the activity will be of an acceptable level.
40. I also noted that the impact and risk assessment presented in the Environment Plan is commensurate to the magnitude of impacts and risks, and the level of analysis and evaluation is appropriate for the nature and scale of the activity and the severity of individual impacts and risks. For example:
 - a. the Environment Plan has identified and evaluated all environmental impacts and risks that may arise from the activity, whether arising directly or indirectly, and including those arising from potential emergency conditions whether resulting from an accident or any other reason;
 - b. evaluations of impacts and risks provided in the Environment Plan are specific for the nature and location of the activity and the environment receptors that may be affected; and
 - c. the Environment Plan applies more detail and rigour to the impact and risk assessments where there is a higher degree of scientific uncertainty in predictions of impacts and risks and/or severity of potential consequence of impacts and risks. The Environment Plan provides details of the additional studies that were undertaken by the titleholders to adequately support and inform those impact and risk evaluations, including underwater sound modelling (Appendix G) and oil spill trajectory modelling (Section 6.7).
41. I considered that there is a clear demonstration in the Environment Plan that the evaluation of impacts and risks informed the selection of suitable control measures appropriate for the nature and scale of the activity to either reduce the consequence/severity or likelihood of environmental impacts and risks.
42. In light of the above, I am reasonably satisfied that the Environment Plan is appropriate for the nature and scale of the activity.

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Regulation 10A(b) – The Environment Plan demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable

43. I noted that the Environment Plan applied a clear, systematic, defensible, and reproducible process for demonstrating how environmental impacts and risks will be reduced to ALARP. In particular, the process involves analysing the effectiveness of a range of control measures that will either reduce the consequence/severity or likelihood of impacts and risks and setting out reasoned conclusions for whether a control measure is adopted based on environmental benefit versus cost of implementing that control measure.
44. I considered that all reasonable control measures have been considered and evaluated by the titleholders, including control measures reflecting good industry practice. For higher order impacts and risks, I accepted that alternative, additional, or improved control measures by the titleholders had been evaluated.
45. I found that the evaluation of impacts and risks informed the selection of suitable control measures and that the Environment Plan included sufficient detail of the control measures. I considered the description of control measures in conjunction with EPSs, to understand how control measures are intended to perform and considered their effectiveness in reducing impacts and/or risks to ALARP for the duration of the Environment Plan.
46. I found that the Environment Plan appropriately considered, evaluated and incorporated information that was received during relevant persons consultation when demonstrating that impacts and risks will be reduced to ALARP (Section 6). I note that the Environment Plan evaluates and includes control measures that address impacts and risks on First Nations cultural features and heritage values, including those that relate to the women's only gender restricted material provided to NOPSEMA as part of the Environment Plan (see [120]), and I am satisfied that those impacts and risks will be reduced to ALARP based on that evaluation and those control measures that will be implemented.
47. I am satisfied that the Environment Plan provides well-reasoned and supported arguments as to how the adopted control measures will reduce the potential impacts and/or risks to the point that any additional or alternative control measures either are not feasible, fail to lower impacts and/or risks any further or are grossly disproportionate in cost compared to the environmental benefit gained based on the residual consequence of the impact or risk.
48. I am satisfied that the Environment Plan demonstrates that the environmental impacts and risks of the activity to threatened and migratory whales will be reduced to ALARP [49-50]. In this regard, I accepted that the evaluation of adoption of control measures relevant to threatened and migratory whales is based on environmental benefit and is systematic, defensible, and reproducible (section 6.6.2).
49. The Environment Plan, I am satisfied, adequately identifies and evaluates the potential impacts and risks from the activity to pygmy blue whales, humpback whales and deep diving species such as sperm and beaked whales, by being informed by the likelihood of species presence, distribution and behaviour within the area that may be affected by underwater noise emissions and supported with peer-reviewed literature and underwater noise propagation modelling. In particular, I noted that;
 - a. the evaluation of impacts and risks to threatened and migratory whales were informed by applying suitable control measures including those set out within EPBC Act *Policy Statement 2.1 – Interaction between offshore seismic exploration and whales (Policy Statement 2.1)*. The control measures applied are proportionate to the low likelihood of encountering high numbers of whales, noting that the Operational Area and EMBA do not overlap any BIAs;

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- b. the acoustic modelling considered realistic movement patterns and speeds for blue whales in the migration BIA (based on best available science) to determine the range over which auditory injury to blue whales from the survey may occur as a result of cumulative sound exposure. The TTS effect range is not predicted to extend into the pygmy blue whale BIA for migration (Koessler et al. 2021);
 - c. the Environment Plan also considered the best available information on blue whale distribution patterns from peer-reviewed literature (e.g. Thums et al. 2022), the NCVA and Conservation Management Plan for the Blue Whale that indicated possibility of blue whale presence in and around the Operational Area. In order to account for the possibility of blue whale presence, an additional control measure (being the inclusion of an additional whale detection platform in the form of a spotter vessel resourced with two trained and experienced marine fauna observers (**MFOs**) travelling 5 km ahead of the seismic survey vessel) was adopted so that whale detection is enhanced during the survey to a distance beyond which behavioural disturbance thresholds are reached, and shutdowns can be implemented to protect blue whales; and
 - d. the Environment Plan includes a commitment (C 4.3 and PS 4.3.1) that passive acoustic monitoring (**PAM**) observations will be undertaken on a 24-hour basis by two trained and experienced PAM operators and the PAM will be used to trigger shutdowns for any sperm and beaked whales detected in the 2 km shutdown zone during daylight and night/low visibility periods. The 2 km shutdown zone is considered appropriate as this distance exceeds predicted effect ranges for auditory injury for these species.
50. I agreed that the Environment Plan considered, evaluated, and detailed all reasonable control measures that could reduce impacts to threatened and migratory whales to ALARP. I considered that the Environment Plan provided supported reasons why the adopted controls for threatened and migratory whales reduce the potential impacts to the point that any additional or alternative control measures are either not feasible, or their cost would be grossly disproportionate to the benefit. Control measures adopted include:
- a. additional control measures for those species for which there is a higher potential for impacts, such as pygmy blue, sperm, and beaked whales;
 - b. Policy Statement 2.1 Part A measures will be implemented for all whale species including humpback whales, as well as some Part B measures in accordance with an increased likelihood of encounter with whales considering that the survey occurs in the distribution range of pygmy blue whales;
 - c. use of experienced MFOs and PAM operators on the vessel to detect whales and initiate shutdowns, including the use of PAM on a 24-hour basis to detect odontocete whales and a shutdown requirement applies if any sperm or beaked whale is detected within 2 km as is required by Policy Statement 2.1;
 - d. an increased observation zone that extends across the observable distance and immediate shutdown to apply to any pygmy blue whales and other large unidentified whales;
 - e. use of an additional spotter vessel to travel 5 km ahead of the seismic vessel at all times of the year to observe for whales and initiate shutdowns within the limits of visibility for any possible blue whale effectively reducing the potential for behavioural disturbance of blue whales to ALARP; and

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- f. adaptive mitigation measures to ensure that impacts and risks would continue to be managed to ALARP. Specifically, if there are three or more shutdowns over a 24-hour period for pygmy blue whales then seismic operations will cease during low visibility or at night-time and cannot resume at night-time until there has been a cumulative 24-hour period during which there has been less than three sightings/shutdowns.
51. I noted that analysis of impacts to threatened and migratory whales has been incorporated into the Environment Plan in Appendix F (Table 1) and section 6.6.2 and includes consideration of objections and claims raised in relation to the management of impacts to whales to reduce these to ALARP. Specifically in relation to the control measure for blue whales requiring a spotter vessel with two additional trained and experienced MFOs, although one part of the Environment Plan indicates this control measure will only be applied during the months of May and June (consultation records in Appendix F; Table 1), I am satisfied that the impact and risk assessment section (section 6.6.2, control measure C 4.6 and EPS 4.6) provides a sufficiently clear commitment to implement this control measure for the full duration of the seismic survey.
 52. I am reasonably satisfied that the Environment Plan met reg 10A(b) because the Environment Plan was able to demonstrate that the environmental impacts and risks of the activity will be reduced to ALARP.

Regulation 10A(c) - The Environment Plan demonstrates that the environmental impacts and risks of the activity will be of an acceptable level

53. Reg 10A(c) required that I be reasonably satisfied that the environmental impacts and risks of the activity will be of an acceptable level.
54. I found that that the Environment Plan applies a clear, systematic, defensible, and reproducible process for demonstrating how environmental impacts and risks will be of an acceptable level. The process involves evaluating impacts and risks in the context of how they comply or align with relevant internal and external policy settings, and information received during relevant persons consultation. I also considered relevant legislative requirements including but not limited to applicable plans of management, recovery plans, conservation advice and other guidance for matters protected under the EPBC Act, and the principles of ecologically sustainable development as defined under the EPBC Act.
55. I considered that the Environment Plan:
 - a. and the process that it applies for demonstrating that impacts and risks will be of an acceptable level is commensurate with the nature and scale of the activity and the severity of its impacts and risks. For example, the Environment Plan demonstrates that the process has driven the titleholders to apply more effort and rigour to evaluations where there is a higher degree of scientific uncertainty in predictions of impacts and risks and/or severity of potential consequence of impacts and risks;
 - b. includes appropriate and accurate content to demonstrate that the proposed activity is not inconsistent with a recovery plan or a threat abatement plan for a listed threatened species or ecological community;
 - c. appropriately identified, acknowledged and addressed areas of uncertainty in predictions of impact and risk. For example, the process that the Environment Plan applies for demonstrating how environmental impacts and risks will be of an acceptable level considers the uncertainty in the level of harm associated with individual impacts and risks and adopts a precautionary approach (e.g. conservative 'worst-case' approach) for those impacts and risks involving greater uncertainty;

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- d. provides reasoned conclusions that impacts and risks will be acceptable or managed to acceptable levels with the implementation of suitable control measures to either reduce the consequence/severity or likelihood of environmental impacts and risks (see [25] above for examples). In particular, the Environment Plan has regard for relevant scientific papers, recovery plans for listed threatened species and good practice guidance for the management of impacts and risks when making the case that impacts and risks will be managed to acceptable levels;
 - e. evaluates environmental impacts and risks associated with the activity, including but not limited to atmospheric emissions (including greenhouse gases) and light emissions generated by the activity, and the potential for the introduction of invasive marine species (IMS). With the implementation of monitoring and adopted control measures that consider relevant guidelines/requirements, such as Marine Order 97 – Marine Pollution Prevention – Air Pollution, the National Light Pollution Guidelines for Wildlife, and the Australian Ballast Water Management Requirements, I am reasonably satisfied that the environmental impacts and risks of the activity will be managed to an acceptable level.
56. I found that the Environment Plan adequately addressed the potential for the activity to directly or indirectly affect First Nations cultural features and heritage values of the EMBA. I noted that the evaluation of impacts and risks to cultural features and heritage values was informed by information that the titleholder gathered from First Nations relevant persons through the relevant persons consultation process in preparation of the Environment Plan (reg 11A). This included any relevant information provided from First Nations relevant persons in relation to the identification and management of cultural features and heritage values that may be present in the EMBA such as marine turtles, whales and other marine fauna, including species that may be of cultural significance to First Nations people. I considered the potential for underwater noise to disrupt migration, seasonal movement patterns and vocalisation/communication. In considering this, I took into account the following:
- a. marine mammals and especially cetaceans rely on sound for important life functions including individual recognition, socialising, detecting predators and prey, navigation and reproduction and underwater noise can affect marine mammals in various ways including interfering with communication (masking), behavioural changes, a shift in the hearing threshold, physical damage and stress;
 - b. there are no marine turtle or whale BIAs or habitats critical to survival in the areas that may be affected by the MSS underwater noise emissions above behavioural disturbance thresholds for these species; and
 - c. given the location, duration and timing of the activity and with control measures in place to mitigate underwater noise, impacts to cetaceans and marine turtles are likely to be restricted to temporary behavioural changes in individuals moving through the Operational Area and I am satisfied that biologically important behaviours will be able to continue for these species.
57. I found that the Environment Plan appropriately considered, evaluated and incorporated information that was received during relevant persons consultation when demonstrating that impacts and risks will be of an acceptable level (Section 6). I note that the Environment Plan evaluates and includes control measures that address impacts and risks on First Nations cultural features and heritage values, including those that relate to the women's only gender restricted material provided to NOPSEMA as part of the Environment Plan (see [120]), and I am satisfied that those impacts and risks will be of an acceptable level based on that evaluation and those control measures that will be implemented.

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58. I found above (at [50]) that the Environment Plan considered, evaluated, and detailed all reasonable control measures that could reduce impacts to threatened and migratory whales to ALARP. I noted that the Environment Plan defines acceptable levels of impact for threatened and migratory whale species in section 6.6.2 of the Environment Plan taking into consideration the titleholders' acceptability criteria that includes the Principles of ESD, the titleholders' corporate environmental policies, information received during relevant persons consultation and legislative requirements under the EPBC Act. This was incorporated into an EPO that is consistent with the requirements of relevant EPBC Act recovery plans (e.g. for blue whales) and conservation advice and requires the titleholders to "Undertake seismic acquisition in a manner that prevents injury to whales and minimises the potential for biologically significant behavioural disturbance."
59. For the reasons given above, and as follows, I accepted that the Environment Plan demonstrated that the environmental impacts and risks of the activity to threatened and migratory whales will be of an acceptable level because:
- a. the Environment Plan is not inconsistent with Commonwealth of Australia, Conservation Management Plan for the Blue Whale 2015–2025. In making this conclusion, I considered the Guidance on Key Terms within the Blue Whale Conservation Management Plan (2021) and Blue Whale Conservation Management Plan – FAQs published by NOPSEMA, Department of Sustainability, Environment, Water, Population and Communities, Marine Bioregional Plan for the North-west Marine Region, Department of the Environment, Water, Heritage and the Arts, EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales: Industry Guidelines (September 2008). I considered that the Environment Plan contained all Part A management measures as described in Policy Statement 2.1, as well as adoption of additional Part B measures, which reflected a precautionary approach by the titleholders to managing the risks and impacts of the activity;
 - b. the acceptable level of impact for underwater noise impacts on whales is compared to the predicted level of impact, which is derived from comparing noise modelling studies with published studies on the distribution and abundance patterns of whales to demonstrate that the environmental impacts of the activity will be managed to an acceptable level;
 - c. the noise modelling studies, including 'animat' modelling for blue whales (Section 6.6.2 and Appendix G), is based on appropriate and representative inputs in relation to the seismic sound source and blue whale movement patterns, and provides realistic effect ranges for mobile marine fauna such as blue whales;
 - d. areas of uncertainty in predictions are addressed by the control measures, including a commitment to cease acoustic emissions immediately if a blue whale (or possible blue whale) is detected within observable distances (these distances are extended beyond the distance at which noise can exceed thresholds known to cause behavioural disturbances). This will be achieved through use of an additional support vessel with two trained and experienced MFOs on board at all times during the survey for possible pygmy blue whales and in accordance with Policy Statement 2.1 for other whales;
 - e. the method applied to demonstrate that the environmental impacts and risks of the activity from acoustic emissions to threatened and migratory whales is based on a description of whale distribution, abundance and behaviour in the ensonified area, contemporary science on effects of noise on whales, source and location specific acoustic modelling, Policy Statement 2.1 control measures as well as consideration of other commonly used and known control measures for whale detection and mitigation and so is systematic, defensible, and reproducible;

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- f. the Environment Plan considers the potential for permanent and temporary threshold shifts in hearing, behavioural disturbance, and masking due to underwater noise exposure and any subsequent potential impact to individual fitness and population viability. The titleholders' evaluation for this topic is more detailed than for other environment receptors and so is commensurate to the predicted magnitude of impacts and risks to listed threatened and migratory whale species that may be encountered in the Operational Area;
 - g. the Environment Plan provides an evaluation of the potential impacts to planktonic food sources and potential foraging activity of pygmy blue whales within their distribution range. The activity is unlikely to have an unacceptable level of impact on whale foraging because the Operational Area is not located in a designated pygmy blue whale foraging area (Blue Whale Conservation Management Plan and Thums et al. 2022). Therefore, based on the low likelihood of foraging occurring in the area, the adoption of additional controls in the event whales are sighted, including increased observation and shutdown zones, and precautionary adaptive mitigation where greater than predicted numbers of pygmy blue or unidentified whales are detected, there is limited potential for impacts to biologically important behaviours of pygmy blue whales. Precautionary measures are in place to manage any potential impacts to an acceptable level;
 - h. the Environment Plan addresses impacts and risks from underwater noise to baleen and odontocete whales, including both mid-high frequency cetaceans and low frequency cetaceans. It details the modelling which predicts that noise levels associated with Permanent Threshold Shift (**PTS**) and Temporary Threshold Shifts (**TTS**) in hearing will not be exceeded, or the range to exceedance will be limited to the immediate proximity of the seismic source therefore indicating that shutdown zones of 2km will be effective in mitigating auditory injury. Further, the Environment Plan specifies detection and mitigation measures including pre-start surveys, extended shutdown zones for the seismic source, the use of qualified and experienced MFOs and passive acoustic monitoring operators to improve the efficacy of whale detection to inform management responses, use of a spotter vessel to extend the observation distance for whales to greater than the distance for predicted behavioural disturbance as well as night time and low visibility procedures; and
 - i. responses received from relevant persons in relation to impacts to threatened and migratory whales have been incorporated into the Environment Plan (Appendix F (Table 1) and section 6.6.2) or considered by the assessment team. I am reasonably satisfied that the titleholders had considered and addressed these responses, which included objections and claims related to the impact assessment of zooplankton as a source of food for pygmy blue whales, noise impacts on whales including hearing injury, behavioural disturbance and masking, concerns about the accuracy of the underwater acoustic modelling and access to supporting literature used in the evaluation, and that the Environment Plan demonstrates that the environmental impacts and risks of the activity to the threatened and migratory whales will be of an acceptable level.
60. I noted that the Environment Plan predicts, based upon scientifically supported predictions and the location of the activity outside of the BIA, that the likelihood of encountering pygmy blue whales in the area within which received noise levels may elicit TTS, PTS, behavioural disturbance, or masking is low but possible. Nevertheless, the Environment Plan:
- a. explains that PTS will be prevented by the seismic source being shut down well in advance of any whale approaching the PTS effect range;
 - b. predicts that it is unlikely that TTS or masking will occur due to; the conservative shut down protocols; routine and non-routine breaks in noise generation due to turns and other logistics

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requirements; results of the noise modelling combined with the movement of the seismic vessel and the predicted movements and behaviour of whales if present (mostly migrating, not breeding or foraging), all of which will reduce noise exposure periods. If greater than expected numbers of whales are observed in the survey area, or behaviours observed are different than expected (i.e. not migrating, indicating foraging or other behaviours, which would indicate an increased risk of TTS or masking effects) it is expected that the titleholders will initiate and follow its change and revision processes (which I consider in reg 10A(e) below);

- c. demonstrates that the potential impacts and risks of behavioural disturbance will be reduced to an acceptable level through the application of an immediate shutdown for all detections of pygmy blue whales or large unidentified whales. This shutdown measure will be supported by two trained MFOs who will maintain watch during all hours of daylight and good visibility conditions and two MFOs on an additional spotter vessel; and
 - d. includes triggers to cease night-time operations should higher than anticipated whale numbers be encountered in accordance with Policy Statement 2.1. This control measure will eliminate noise and associated impacts during periods when whales cannot be effectively detected.
61. For the reasons above at [59] and [60] I am satisfied that anthropogenic noise from the activity will be managed such that any blue whale can continue to utilise biologically important areas without injury and biologically important behaviour can continue and as a result the activity can be managed in a manner that is not inconsistent with the Conservation Management Plan for the Blue Whale.
 62. I note that relevant persons raised concerns about the animat modelling not being a suitable foundation for the environmental impact assessment of underwater noise impacts on blue whales and that, as a result, impacts may exceed the acceptable level of impact as defined in the Blue Whale Conservation Management Plan. I considered the matters raised and determined that the inputs and methods of the animat modelling were suitably conservative and representative to inform the evaluation of impacts. In addition, the commitment to an effective range of control measures as above adds an additional level of conservatism that will ensure impacts are managed to an acceptable level.
 63. I found that, through the adoption of the control measures described above (and at [50]), the Environment Plan demonstrated how the activity will be managed to ensure that environmental impacts and risks of the activity to the threatened and migratory whales will be of an acceptable level.
 64. For the above reasons, I am reasonably satisfied that the requirements of reg 10A(c) are met.

Regulation 10A(d) - The Environment Plan provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria

65. Sections 2 and 6 of the Environment Plan contain the EPOs, EPSs and measurement criteria.
66. The Environment Plan provides 16 EPOs that I considered:
 - a. are clear, unambiguous and address all environmental impacts and risks relevant to the activity (noting that one EPO may relate to multiple impacts and risks), including the combinations of all environment aspects and the cumulative impacts on all values and sensitivities that may be affected by the activity. For example, the Environment Plan contains discrete EPOs for impacts and risks to whales that address all identified impacts and risks and are directly linked to acceptable levels. I also note that the EPOs reflect the level of environmental performance set by recovery plans where relevant;

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- b. establish levels for environmental performance that are equivalent to or better than the predicted levels of environmental impact or risk that the Environment Plan has demonstrated are acceptable. For example, there is a discrete EPO for underwater noise that reflects the defined acceptable level of impact for pygmy blue whales which sets a level of performance for the management of the activity to ensure impacts do not impede the recovery of pygmy blue whales; and
- c. reflect levels of environment performance for management that are achievable, consistent with the principles of ecologically sustainable development and are compliant with relevant legislative requirements and the *Program Report – Strategic Assessment of the Environment management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environment Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006* (endorsed on 7 February 2014) (**Program**) requirements. In particular, EPOs that relate to the EPBC listed endangered blue whale are consistent with relevant context set out in the recovery plan, i.e. Conservation Management Plan for the Blue Whale.

67. The Environment Plan includes EPSs that:

- a. are directly linked to control measures determined through impact and risk evaluations to be necessary to ensure environmental impacts and risks are reduced to ALARP and to an acceptable level. For example, the EPSs can be directly linked to control measures that are relevant to the management of impacts to whales and are supported by clear measurement criteria that can be easily monitored;
- b. contain clear and unambiguous statements of environmental performance. The statements of environmental performance established by the EPSs describe how each of the adopted control measures will function and perform to effectively reduce environmental impacts and risks to ALARP and to an acceptable level;
- c. have clear measurement criteria defining how environmental performance will be measured for demonstrating that the defined levels of environmental performance are being met and impacts and risks are being reduced to ALARP and to an acceptable level. For example, log books demonstrating MFOs on duty during daylight hours and CVs demonstrating suitably competent passive acoustic monitoring operators.

68. I considered that the EPOs, EPSs and measurement criteria are all linked and complementary because they are consolidated in a table for each of the environmental aspects with EPSs and measurement criteria set out in relation to each EPO. Therefore, I accepted that they can easily be monitored for compliance, by both the titleholders and NOPSEMA, to ensure environmental impacts and risks are being reduced to ALARP and to an acceptable level.

69. For the above reasons, I am reasonably satisfied that the Environment Plan provides for appropriate EPOs, EPSs and measurement criteria, and reg 10A(d) was met.

Regulation 10A(e) - The Environment Plan includes an appropriate implementation strategy and monitoring, recording and reporting arrangements

70. I am satisfied that the Environment Plan included all of the details required by reg 14 (see [29]-[30] above). Reg 10A(e) required that I be reasonably satisfied that that strategy and the monitoring, recording and reporting arrangements were appropriate.

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71. The implementation strategy in the Environment Plan includes processes and systems for environmental performance monitoring, auditing, management of non-conformance, review, record keeping and reporting (both internally and externally). When implemented together, I am satisfied that these processes and systems provide for all impacts and risks to be identified and reduced to ALARP and acceptable levels for the duration of the Environment Plan. I therefore considered that the Environment Plan describes adequate and effective processes and systems to ensure that all impacts and risks continue to be identified and reduced to ALARP and acceptable levels.
72. I noted that the EMS includes measures to ensure that control measures in the Environment Plan continue to be effective in reducing impacts and risks to ALARP and acceptable levels, and monitoring arrangements are in place to determine whether, and ensure that, EPOs and EPSs are being met. The effectiveness of the EMS would be tested through implementation of system components, including the processes outlined within the arrangements that will be in place to ensure environmental risks and impacts will continue to be reduced to ALARP and acceptable levels. I considered that these measures are appropriate as they include fundamental 'do', 'check' and 'act' components of an EMS post-planning phase.
73. I am satisfied that the implementation strategy includes appropriate management of knowledge and change processes that provide for the titleholders to undertake monitoring for, and understand change in, both internal and external context relevant to the activity, implement processes to consider change in the context of environmental impacts and risks and regulatory requirements, and to have accepted changes implemented. In this regard, the implementation strategy in the Environment Plan outlines circumstances where additional risk assessments will be undertaken on an ongoing basis, including when new relevant scientific information/papers become available.
74. I noted that arrangements were in place for monitoring, recording, audit, management of non-conformance and review of the titleholders' environmental performance. For example, system components for monitoring and recording of information relevant to the activity are outlined, including routine reporting and notifications. The Environment Plan also provides for auditing and inspection of performance, including non-compliant incident investigation and tracking of close-out actions and arrangements are in place to allow monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise). I considered that these records can be used to assess whether the EPOs and EPSs in the Environment Plan are being met, and accepted that all of the arrangements were appropriate in the context of the nature and scale of the activity.
75. I also considered that the following aspects of the Environment Plan were notable:
 - a. the Environment Plan describes the titleholders' organisational structure for the activity and sets out roles and responsibilities of key personnel in a structured manner. The titleholders' emergency management structure is also detailed in the OPEP; and
 - b. the Environment Plan outlines measures for ensuring employee and contractor training and competency to ensure that these persons can fulfil their duties and maintain awareness of their responsibilities. In this regard, the Environment Plan identifies management system components that include contractor evaluation and management, employee training and competency development, and activity-specific induction of personnel as key measures.
76. These two matters demonstrated that appropriate arrangements were made for reporting and that appropriate measures were in place to ensure that those involved in the activity would be aware of what was expected of them.

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77. I considered that the OPEP was appropriate for the nature and scale of the activity, and that there were sufficient measures in place to respond to, and monitor, oil pollution in the event of an unplanned hydrocarbon spill. For example, development of a first strike plan that includes a suite of oil pollution monitoring techniques as well as oiled wildlife response arrangements. The OPEP also had in place the arrangements and capability:
- a. for the duration of the activity, to ensure timely implementation of the control measures, including arrangements for ongoing maintenance of response capability;
 - b. for monitoring the effectiveness of the control measures and ensuring that the EPSs for the control measures are met;
 - c. for monitoring oil pollution to inform response activities;
 - d. to undertake appropriate monitoring of impacts to the environment from oil pollution and response activities in consultation with the control agency; and
 - e. for testing of the response arrangements in the OPEP that reflect requirements of the regulations and are considered commensurate with the risk, including commitments to test spill response arrangements prior to commencing the activity.
78. The process for ongoing consultation described in the Environment Plan demonstrates that the titleholders will consult with relevant interested persons or organisations, and continue to consult with relevant persons, throughout the life of the Environment Plan as appropriate. For example:
- a. any significant changes to the activity will be communicated to relevant persons and in the event of an incident, such as an unplanned hydrocarbon spill, the titleholder will ensure stakeholders that may be affected are identified and engaged;
 - b. the titleholder will continue to accept feedback from relevant interested persons or organisations, including relevant persons, during the life of the Environment Plan, and assess the feedback for merit;
 - c. any relevant new information found to have merit will be assessed using the Environment Plan management of knowledge and change processes to ensure impacts and risks continue to be identified and managed to ALARP and acceptable levels; and
 - d. the titleholder has developed and committed to implementing a 'Program of Ongoing Engagement with Traditional Custodians' (refer to Appendix J of the EP) to demonstrate Woodside's commitment to ongoing engagement and support of Traditional Custodians' capacity to care for and manage Country, including Sea Country throughout the life of the activity.
79. Taking into account all of the matters identified at [70]-[78], I am reasonably satisfied that the requirements of reg 10A(e) were met.

Regulation 10A(f) - The Environment Plan does not involve the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act

80. As I stated above (at [20.c]), the PMST evidenced that neither the activity, nor any part of it, will be undertaken in any part of a declared World Heritage Property within the meaning of the EPBC Act. The

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Environment Plan notes that the closest World Heritage Property to the activity is the Ningaloo Coast World Heritage Property, located approximately 168 km south-south-east from the Operational Area. More significantly, the Ningaloo Coast World Heritage Property is located outside of the EMBA, which represents the largest spatial extent where unplanned events could have an environmental consequence on the surrounding environment.

81. In circumstances where the activity is not being undertaken in, and could not have any environmental impact upon, a World Heritage Property, I am reasonably satisfied that reg 10A(f) was met.

Regulation 10A(g) - The Environment Plan demonstrates that the titleholders has carried out the consultations required by Division 2.2A and the measures (if any) that the titleholders has adopted, or proposes to adopt, because of the consultations are appropriate

82. Reg 10A(g) has two components which the Environment Plan must demonstrate:
- a. first, that consultation has occurred as per the requirements in Division 2.2A of the Regulations. Division 2.2A requires that the titleholders consults with each 'relevant person' as defined in reg 11A(1), and imposes certain requirements for how that consultation is to occur (as specified in regs 11A(2)-(4)); and
 - b. second, that the titleholders adopted, or proposed to adopt, appropriate measures in light of those consultations.
83. Reg 11A provides that:
- (1) In the course of preparing an environment plan, or a revision of an environment plan, a titleholder must consult each of the following (a **relevant person**):
 - (a) each Department or agency of the Commonwealth to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant;
 - (b) each Department or agency of a State or the Northern Territory to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant;
 - (c) the Department of the responsible State Minister, or the responsible Northern Territory Minister;
 - (d) a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan;
 - (e) any other person or organisation that the titleholder considers relevant.
 - (2) For the purpose of the consultation, the titleholder must give each relevant person sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person.
 - (3) The titleholder must allow a relevant person a reasonable period for the consultation.
 - (4) The titleholder must tell each relevant person the titleholder consults that:

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- (a) the relevant person may request that particular information the relevant person provides in the consultation not be published; and
 - (b) information subject to such a request is not to be published under this Part.
- 84. The Act and Regulations do not define what constitutes 'consultation' for the purposes of reg 11A (and therefore satisfaction of reg 10A(g)(i)). However, there must first be identification of the relevant persons to be consulted, followed by consultation, the purpose of which is to ensure that the titleholder has ascertained, understood and addressed all the environmental impacts and risks that might arise from its proposed activity.
- 85. Whether the steps and actions taken by a titleholder amount to 'consultation' will vary depending upon the particular circumstances and must reflect the characteristics of the relevant persons affected by the titleholder's proposed activity. However, consultation does not require *every* opportunity to be afforded. It also does not mean that, where those being consulted do not consider they have been properly consulted, 'consultation' has not been carried out. Overall, I must be reasonably satisfied that consultation undertaken was appropriate and adapted to the nature of the relevant persons, and that reasonable opportunity to participate in the consultation during preparation of the EP was given.
- 86. NOPSEMA received a number of communications from relevant persons raising issues and/or expressing concerns with and objections to the Environment Plan. Those communications raised the same issues, concerns and objections as were raised during the consultation with the titleholders required by reg 11A, and are addressed in my reasons below regarding whether reg 10A(g) is met.
- 87. Section 5 of the EP provides descriptions of the consultation processes and the rationale used to determine who and how to consult with relevant persons, including the approach to provision of sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person and to allow the relevant person a reasonable period for the consultation.
- 88. Section 5 of the EP describes a clear process for the identification and broad capture of relevant persons in accordance with reg 11A(1). I considered that the process was appropriate as it included:
 - a. reference to multiple sources of information, such as publicly available materials (e.g. management plans for AMPs, Department of Agriculture, Fisheries and Forestry (**DAFF**) Fisheries Status Reports), review of databases and registers (such as commercial fishing catch and effort data), published guidance (such as AFMA consultation guidance), consultation for the Scarborough OPP, as well as advice from authorities and other relevant persons (such as advice from the Director of National Parks, and Native Title Representative Bodies);
 - b. consideration of published guidance developed by relevant persons detailing their functions, interests, or activities and how and when they wish to be consulted on activities. For example, the titleholder refers to guidance published by WAFIC in relation to consultation with commercial fishing licence holders in WA-managed fisheries where licence holders will only be affected by an unplanned event;
 - c. details and evidence of the steps taken by the titleholder to create awareness of the petroleum activity and the consultation process, to encourage potentially relevant persons that the titleholders may not be aware of, to make themselves known to the titleholders. For example, the titleholders published notices in national, state and local newspapers, hosted community reference group information sessions with the Karratha Community Liaison Group and the Exmouth Community Liaison Group, ran a geo-targeted sponsored social media campaign to local communities and held community information sessions in Roebourne, Broome, Derby,

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Exmouth, Kununurra and Karratha. In addition, the titleholder published consultation materials on its website, which included information regarding the purpose and approach to consultation, activity summaries and contact details. Links and/or a QR code for the website was included in published notices and social media campaigns; and

- d. details of how the titleholders made an assessment to determine whether an individual or organisation who has self-identified as a relevant person, is or is not, considered to be a relevant person for the purposes of reg 11A. This was appropriate having regard to each person's stated functions, interests and activities. The titleholders concluded that some self-identified organisations were not relevant persons, however I was satisfied that the rationale for this was appropriate, i.e. their respective functions, interests or activities were not affected by the activity, e.g. Friends of Australia Rock Art Inc. (**FARA**).

89. I considered that the nature of the activity, description of the environment and the possible impacts and risks of the activity have been appropriately taken into account by the titleholder in determining whether relevant persons were required to be consulted with. This is because:

- a. the titleholders have considered the nature and scale of the activity and all the possible impacts and risks of the activity when determining relevant persons; and
- b. the titleholders considered all the known environmental values and sensitivities within the full extent of the environment that may be affected by the planned and unplanned impacts and risks of the activity when determining relevant persons. For example, while most planned impacts are confined to offshore locations in the order of 200 km from the nearest coastline, the titleholder has conservatively applied oil pollution risk modelling to the identification of relevant persons within the area that may be affected by an unlikely spill event.

90. I also considered the content of section 5, Appendix F and the sensitive information part of the Environment Plan and that the titleholders' approach to the provision of sufficient information allowed the relevant person to make an informed assessment of the possible consequences of the activity on their functions, interests or activities and a reasonable period for the consultation was provided. I formed this view because:

- a. the EP includes a description of the approach to provision of sufficient information that takes into account the functions, interests or activities of relevant persons and the impacts and risks that may affect them. The titleholders' have tailored the information to suit the needs of the different types of relevant persons and provided information in a form which I am satisfied is readily accessible and appropriate for the relevant person being consulted, including fact sheets, presentations, verbal briefings, graphics and videos;
- b. the titleholders sufficiently informed relevant persons of the purpose of consultation, including advising relevant persons of titleholder obligations for consultation. This includes sharing the reasons for the consultation and providing a copy of NOPSEMA's 'Consultation on offshore petroleum environment plans' brochure as part of consultation;
- c. the information provided by relevant persons throughout the consultation process has assisted the titleholders to ascertain, understand and address all of the environmental impacts and risks that might arise from its proposed activity; and
- d. the titleholders' relevant persons consultation process in preparation of the Environment Plan commenced in August 2021, and has been ongoing for more than two years until October 2023. Within that period, it appears from the Environment Plan that comprehensive efforts were

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made by the titleholders' to engage with and consult all relevant persons specifically in relation to the activity, with evidence of multiple engagements with relevant persons including multiple opportunities for the relevant persons to provide information to the titleholders.

91. Having considered the detailed description of the consultation process in the EP, for the reasons set out in [87]-[89] above, I consider that the approach adopted by the titleholders for identifying relevant persons was appropriate. For the reasons set out in [90] above, I also considered that the titleholders have provided sufficient information which allowed for the relevant person to participate in informed consultation, and that a reasonable period for the consultation has been given to relevant persons. My more detailed reasons are set out below.

Relevant Persons under Regulation 11A(1)(a)-(c)

92. Relevant persons under reg 11A(1)(a)-(c) are each Commonwealth, State or Northern Territory Department or agency to whom the activity in the Environment Plan may be relevant, in addition to the Department of each responsible State Minister or Northern Territory Minister.
93. Table 5-3 of the Environment Plan identified Commonwealth and State Departments and agencies in the marine, environment and industry fields, and Section 5.8.1 provided further detail of the identification process, which I considered to be appropriate. The titleholders then made an assessment whether the activities to be carried out under the Environment Plan may be relevant to Commonwealth and State bodies. Of the 18 Commonwealth and State bodies identified, 15 were assessed as being 'relevant persons.' Reasons were provided why the 3 remaining bodies were not considered relevant persons. For example, the Ningaloo Coast World Heritage Advisory Committee was not considered a relevant person because the Operational Area and EMBA would not impact upon the area for which the Committee has responsibility. I agreed with and accepted the reasoning provided by the titleholders as to why these bodies were not consulted, namely, because the activity did not have the potential to impact the respective bodies' functions.
94. I noted that consultation with the relevant persons under reg 11A(1)(a)-(c) occurred, in accordance with GL1887 – Consultation with Commonwealth agencies with responsibilities in the marine area – January 2023, via email unless otherwise requested. Emails were sent to the relevant bodies on 13 May 2021, requesting responses by 14 June 2021. Emails were sent (with updated information) on 27 January 2023, requesting responses by 26 February 2023. Reminder emails were sent by the titleholders as this date approached.
95. I considered that sufficient information was provided to allow the relevant persons under reg 11A(1)(a)-(c) to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person. In particular, I noted that, in many of the cover emails for respective bodies, the titleholders provided a table of further information specific to the functions, interests or activities of the relevant person. For example, specific details of "Implications for Parks Australia interests" was sent to the Director of National Parks. Specific details of "Potential risks to commercial fishing and proposed mitigation measures" was sent to AFMA, and various other examples contained in the Environment Plan.
96. Finally, the consultation emails sent to each relevant person contained the following statement:

Please let us know if your feedback for this activity is sensitive and we will make this known to NOPSEMA upon submission of the Environment Plan in order for this information to remain confidential to NOPSEMA

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97. In light of the matters at [92]-[96], I am reasonably satisfied that consultations with relevant persons, as defined by reg 11A(1)(a)-(c) was completed as required by Division 2.2A (and therefore reg 10A(g)(i) was met).
98. I noted that most relevant persons under reg 11A(1)(a)-(c) provided no feedback or objections to the activity in response to the consultation requests. Where a response was received, it was in the nature of feedback, as opposed to objections against the activity. Where feedback was received, the Environment Plan has identified this and indicated what changes were made to the Environment Plan in response. For example, a large part of the feedback was that certain bodies should be notified of things when they occur or provided documents when available. The Environment Plan contains the details of this reporting or commits to providing these documents. I considered that these measures were appropriate, and therefore reg 10A(g)(ii) was met.
99. Considering the matters above, I am reasonably satisfied that, in relation to relevant persons as defined by reg 11A(1)(a)-(c), the Environment Plan demonstrates that the titleholders has carried out the consultations required by Division 2.2A and the measures (if any) that the titleholders have adopted, or proposes to adopt, because of the consultations are appropriate, as required by reg 10A(g).

Relevant Persons under Regulation 11A(1)(d)

100. Relevant persons under reg 11A(1)(d) are considered to be 'a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan.'
101. On 31 July 2023, I made a decision to accept a previous version the Environment Plan. At that time, I was not satisfied that reg 10A(g) had been met. However, I decided to accept the Environment Plan with conditions. Those conditions required the titleholders to engage in certain further steps to ensure that some deficiencies in the consultation I had identified were addressed. On 28 September 2023, the Federal Court set aside my previous decision, finding that reg 10A(g) required consultation to be complete before the Environment Plan can be accepted.
102. During the course of the proceedings in the Federal Court and up to 18 October 2023 when a modified Environment Plan was submitted for assessment after my previous decision was set aside, I note that the titleholders took actions and steps to meet the obligations which were imposed by the (invalid) conditions. NOPSEMA monitored the titleholders' compliance with those (invalid) conditions. Those steps and actions form part of the consultation that I have considered in deciding whether the requirements of reg 10A(g) have now been met.
103. I considered that the Environment Plan provided clear details of the processes that have been applied to identifying and determining who are relevant persons, as well as the processes undertaken for consulting with them. In particular, the Environment Plan correctly states that the terms "functions", "interests" and "activities" for the purpose of identifying relevant persons under reg 11A(1)(d) is to be interpreted and applied broadly by the titleholders in a manner consistent with the objects of the Regulations and the EPBC Act. The Environment Plan also utilised NOPSEMA's 'Consultation in the course of preparing an environment plan guideline' (N-04750-GL2086) (**NOPSEMA's Consultation guideline**) in defining the terms.
104. The Environment Plan identified and considered the following broad categories within the scope of reg 11A(1)(d):
 - a. commercial fisheries (Commonwealth and State) and peak representative bodies;

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- b. recreational marine users and peak representative bodies;
 - c. titleholders and operators;
 - d. peak industry representative bodies;
 - e. Traditional Custodians (individuals and/or groups/entities) and nominated representative corporations;
 - f. Native Title Representative Bodies (NTRBs);
 - g. historical heritage groups or organisations;
 - h. local government and recognised local community reference/liason groups or organisations;
 - i. other non-government groups or organisations; and
 - j. research institutes and local conservation groups or organisations.
105. I will first explain my conclusions on Traditional Custodians, nominated representative corporations and NTRBs, and then my conclusions on the other 8 'relevant persons' categories identified at [106].

Traditional Custodians, nominated representative corporations and NTRBs

106. I considered that the titleholders' methodology, as identified in the Environment Plan, allows for sufficiently broad capture of First Nations relevant persons through identifying which natural person(s) are to be approached and how the information will be given to allow each "relevant person" to assess the possible consequence of the proposed activities on their functions, interests or activities; so that consultation is not fixed to a rigid process. I considered that this methodology was consistent with the purpose and intention behind reg 11A to ensure that the titleholders had 'ascertained, understood and addressed all the environmental impacts and risks that might arise from its proposed activity'.
107. I also noted that the titleholders' methodology allows for First Nations people or groups with a connection to sea country to be identified and consulted as a relevant person as it is recognised that this may constitute an interest under reg 11A(1)(d)¹.
108. As with my previous decision, I was satisfied that the titleholders' process for relevant persons identification has provided for the broad capture of First Nations representative groups such as NTRBs and nominated representative corporations (e.g. Prescribed Body Corporates (**PBCs**)) by identifying and consulting with all relevant groups along the full extent of the coastline adjacent to the EMBA as relevant persons.
109. The consultation undertaken by the titleholders with First Nations relevant persons places an emphasis on directing consultation through representative groups (e.g. NTRBs and nominated representative corporations). Nevertheless, having regard to the information before me, I was satisfied that the titleholders made considerable efforts to ensure that individual relevant persons were identified or able to self-identify (by asking the NTRBs and PBCs to identify any persons and by wider media and public engagements to invite identification).

¹ Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193; (2022) 296 FCR 124 [67]-[68].

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110. I was reasonably satisfied that the consultation process provided for broad capture of ascertainable First Nations persons and organisations who may have their functions, interests or activities affected because:
- a. the titleholders asked the identified First Nations representative groups if they are aware of any individuals, who in accordance with Indigenous tradition, may have spiritual and cultural connections to the environment that may be affected by the activity that have not yet been afforded the opportunity to provide information that may inform the management of the activity, and no additional individuals were identified, although there were indications by one First Nations group that there 'may' be other relevant persons; and
 - b. opportunities were provided over at least a 10-month period for First Nations groups or individuals to self-identify as relevant persons in response to widely advertised community information sessions and public facing notices or advertisements, such as (but not limited to) geo-targeted social media campaigns and information stands at community festivals, and all individuals that self-identified were consulted as relevant persons.
111. The First Nations people and organisations that have been identified as relevant persons in the Environment Plan includes one NTRB, nine First Nations nominated representative corporations (e.g. PBCs) and one other First Nations group that made themselves known to the titleholders and self-identified as a relevant person (i.e. Save our Songlines (SOS) and individual representatives). I have considered the titleholders' consultations with the NTRB and nominated representative corporation relevant persons at [112] and the titleholders' consultations with SOS and individual representatives at [113].
112. In relation to the titleholders' consultations with NTRB and nominated representative corporation relevant persons, I considered the summary of consultation provided at Table 1, Appendix F and the full text consultation records provided in the sensitive information part of the Environment Plan. I was reasonably satisfied that the consultations required by Division 2.2A have been carried out with each of these relevant persons because:
- a. the methods applied to consultation with these relevant persons were appropriate and reasonably adapted to the nature of the interests of these relevant persons. In particular:
 - i. the titleholders' approach to consultation with these relevant persons was flexible and adaptive, such that the consultation was undertaken, to the extent it was reasonably practicable, according to the relevant person's preferred method of engagement. For example, when these relevant persons expressed interest in engaging in the consultation process and provided feedback on their preferred method for the consultation, the titleholders accepted that feedback and adapted their approach to engaging with them based on their preferred method which typically resulted in the provision of additional verbal briefings and/or presentations supported with information in pictorial or graphic form;
 - ii. the titleholders' adapted their approach to consultation in an appropriate manner to accommodate the provision of culturally restricted or sensitive information from these relevant persons. These relevant persons were made aware that they could request the establishment of cultural protocols with the titleholders for the purposes of sharing

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- information in a culturally appropriate and safe way if required, and of the NOPSEMA 'Draft policy for managing gender restricted information' (PL2098); and
- iii. the purpose of the consultation and the opportunity being afforded was communicated by the titleholders to these relevant persons using clear, simple and directly expressed terms that were aligned with the intent of consultation under reg 11A, being to enable the titleholder to better understand environmental impacts and risks that relevant persons consider that the activity will cause or lead to, and to refine or change the measures it proposes to address those impacts and risks. I note that relevant persons were provided with the NOPSEMA brochure 'Consultation on offshore petroleum environment plans: Information for the community' and made aware that the invitation to participate in consultation provides an opportunity for relevant persons to inform the titleholders of, and share with them, the nature of cultural interests that they may have within the environment that may be affected by the activity. The nominated representative corporations were also made aware that the invitation to consult was inclusive of all of their members;
- b. the titleholders' have provided sufficient information to these relevant persons to allow them to make an informed assessment of possible consequences of the activity on their functions, interests or activities. In particular:
- i. tailored information has been provided to these relevant persons in a readily accessible form and format. For example, simplified plain English consultation information sheets developed by Indigenous representatives for a Traditional Custodian audience were provided to the nominated representative corporations to share with their individual members, and the NTRB was provided with extracts of relevant sections of the Environment Plan containing First Nations cultural features and heritage values-related information;
 - ii. additional information was provided to these relevant persons in an iterative manner in response to all reasonable requests made during the consultation. For example, when these relevant persons raised queries, objections or claims regarding the adverse impacts of the activity during the consultation process, the full text consultation records in the sensitive information part of the Environment Plan demonstrate that the titleholders provided responses to these queries, objections or claims. Further to this, when these relevant persons made reasonable requests for additional support to assist them with understanding the information provided so they could make an informed assessment of consequence, the titleholders met these requests. For example, the titleholders offered funding for the attendance of independent environmental scientists at consultation meetings and offered to financially support the provision of independent third-party advice; and
 - iii. accurate and comprehensive information was provided to these relevant persons about the activity that was relevant and necessary to allow an informed assessment. The consultation details within the Environment Plan (including the full text records in the sensitive information part) demonstrate that the information that was provided to these relevant persons included clear details regarding the nature of the activity (e.g. location, timing, types of equipment etc.), the planned and unplanned environmental

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impacts and risks associated with the activity, the extent of the environment that may be affected by all environmental impacts and risks of the activity, the environmental values and sensitivities known to occur within the environment that may be affected by the activity, and the control measures that the titleholders' are proposing to implement to manage environmental impacts and risks to ALARP and acceptable levels;

- c. the titleholders' have allowed a reasonable period for the consultation with these relevant persons. In particular:
 - i. consultation has occurred with the NTRB over a period of more than 12 months (i.e. since July 2022) and with the nominated representative corporations over a period of approximately ten months (i.e. since January 2023);
 - ii. within that consultation period, the Environment Plan demonstrates that a substantial amount of effort was applied by the titleholders to afford opportunities to these relevant persons to share information and engage in two-way dialogue for the purposes of consultation under reg 11A. There has been an iterative process of information provision and various opportunities to provide feedback in writing or verbally at meetings. Where relevant persons were not responsive during the consultation process, the Environment Plan demonstrates that the titleholders made reasonable efforts to continue to engage with them to understand how their functions, interests or activities may be affected. In particular, consultation records in the Environment Plan (including the sensitive information part), show that the titleholders attempted to follow up with these relevant persons on multiple occasions, using multiple methods (e.g. phone calls, emails and/or face to face meeting attempts) and over a reasonable period (e.g. multiple months); and
 - iii. the Environment Plan also demonstrates that these relevant persons had numerous opportunities to identify First Nations cultural features and heritage values in the environment that may be affected by the activity and provide feedback on the proposed approach to managing the activity so that potential environmental impacts and risks on those features and values will be reduced to ALARP and acceptable levels. The consultation details within the Environment Plan (including the full text records in the sensitive information part) satisfy me that genuine attempts were made by the titleholders to understand the First Nations cultural features and heritage values identified by these relevant persons in the environment that may be affected by the activity. All First Nations cultural features and heritage values identified by these relevant persons have been appropriately incorporated into the Environment Plan to demonstrate how potential environmental impacts and risks on these features and values will be reduced to ALARP and acceptable levels (refer to Table 4-20, section 4.10.1 and section 6.10 of the Environment Plan). Where these relevant persons expressed interest in a particular environmental value such as (but not limited to) whales and marine turtles, the titleholders provided clear details about how they were proposing to manage the activity's environmental impacts and risks on those values and sought feedback from the relevant persons that resulted in the modification of some existing control measures and some additional control measures being adopted (refer to Table 1, Appendix F of the Environment Plan).

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113. In relation to the titleholders' consultations with Save Our Songlines (SOS) and individual representatives (i.e. Ms Alec and Ms Cooper), I considered the summary of consultation provided at Table 1, Appendix F and the full text consultation records provided in the sensitive information part of the Environment Plan. I was reasonably satisfied that the consultations required by Division 2.2A has been carried out with these relevant persons because:
- a. the methods applied to consultation with these relevant persons were appropriate and reasonably adapted. In particular:
 - i. the titleholder's approach to consultation with these relevant persons was undertaken according to their preferred method of engagement as far as reasonably practicable. For example, the titleholders' accommodated reasonable requests to meet with these relevant persons at their preferred location which included (but was not limited to) travelling to regional locations and attending a meeting on country at Hearson's Cove at the Burrup Peninsula on 14 March 2023. Following a request that the titleholders communicate with SOS and individual representatives Ms Alec and Ms Cooper through the Environmental Defenders Office, the titleholders did so. The meetings had agreed protocols, including in relation to sensitive information. I noted that there was a request made by the relevant persons for a meeting at Rosemary Island that was unable to be met by the titleholders. I have considered this matter further at [114], however am satisfied that, despite this request being unable to be met, the approach to consultation adopted by the titleholders facilitated consultation as required by reg 11A;
 - ii. the titleholders agreed to and conducted the consultation in accordance with the cultural protocols requested by these relevant persons. Only female representatives attended consultation meetings with these relevant persons and gender restricted information was managed to ensure that it was only received by and visible to female representatives of the titleholders; and
 - iii. the purpose of the consultation and the opportunity being afforded was communicated to these relevant persons in a way which satisfies me that the relevant persons had an understanding of the purpose of the consultation and the role which they would have in the two-way dialogue. Further, the full text consultation records in the sensitive information part of the Environment Plan demonstrate that these relevant persons engaged in the two-way dialogue with the titleholders, such as by asking questions and raising concerns directed to impacts and risks, responding to questions from the titleholders and making requests for further information or time to consider information that was provided to them during the consultation. I also noted that on 19 July 2023 and 3 August 2023, these relevant persons were provided with the NOPSEMA brochure 'Consultation on offshore petroleum environment plans: Information for the community'.
 - b. the titleholders' have provided sufficient information to these relevant persons to allow them to make an informed assessment of possible consequences of the activity on their functions, interests or activities. In particular:
 - i. tailored information has been provided to these relevant persons in a readily accessible form and format. These relevant persons were provided with activity specific consultation information sheets on 22 July 2022 and 2 December 2022 and provided with a link to the draft Environment Plan published on NOPSEMA's website on 2 December 2022. Further to this, information regarding the activity was delivered in

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verbal format (often supported with PowerPoint presentations that contained various pictorials and graphics) during numerous meetings that were attended by these relevant persons including on country on 14 March 2023, online on 25 July 2023, and in person on 12 September 2023 and 4 October 2023;

- ii. additional information was provided to these relevant persons in an iterative manner in response to all reasonable requests made during the consultation. When these relevant persons raised queries, objections or claims regarding the activity during the consultation process, the full text consultation records in the sensitive information part of the Environment Plan demonstrate that the titleholders provided responses to the queries, objections or claims. I noted that there were some cases where the titleholders did not provide all of the information that was requested during the consultation process (e.g. heritage survey reports that are the intellectual property of other Traditional Custodians). Despite this, I was still satisfied that the titleholders' provided these relevant persons with sufficient information because the Environment Plan (refer to Table, 1 Appendix F) appears to set out a reasonable justification for how sufficient information for the purposes of consultation has been provided without the provision of that particular information, and made every effort to meet the relevant persons' requests for additional information (see [114]); and
 - iii. accurate and comprehensive information was provided to these relevant persons about the activity that was relevant and necessary for allowing an informed assessment. The consultation details within the Environment Plan (including the full text records in the sensitive information part) demonstrate that the information that was provided to these relevant persons included clear details regarding the nature of the activity (e.g. location, timing, types of equipment etc.), the planned and unplanned environmental impacts and risks associated with the activity, the extent of the environment that may be affected by all environmental impacts and risks of the activity, the environmental values and sensitivities known to occur within the environment that may be affected by the activity, and the control measures that the titleholders' are proposing to implement to manage environmental impacts and risks to ALARP and acceptable levels. I noted that, during consultation meetings, these relevant persons engaged with information provided, asked targeted and specific questions about impacts and risks, and how they would be managed;
- c. the titleholders' have allowed a reasonable period for the consultation with these relevant persons. In particular:
- i. consultation has occurred with these relevant persons over a period of more than 12 months;
 - ii. I considered that the titleholders afforded many opportunities for these relevant persons to share information and engage in two-way dialogue. I noted that, after these relevant persons self-identified as relevant persons for the purposes of consultation under reg 11A in relation to the activity in June 2022, the titleholders and the relevant persons exchanged a high volume of emails, letters and phone calls regarding consultation for the activity. The titleholders made multiple offers and attempts to meet with these relevant persons over a period of more than six months until the first meeting took place in March 2023. In total, there were four meetings that took place between the titleholders and these relevant persons, and the Environmental Defenders Office were present during these meetings. During these meetings, the activity was

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discussed in detail and the relevant persons were encouraged to share with the titleholder any concerns that they had in relation to how the activity may affect their functions, interests or activities; and

- iii. the Environment Plan demonstrates that these relevant persons were afforded a number of opportunities to identify, and did identify, First Nations cultural features and heritage values in the environment that may be affected by the activity and provide feedback on the proposed approach to managing the activity so that potential environmental impacts and risks on these features and values will be reduced to ALARP and acceptable levels. I considered that the titleholders took a precautionary approach and, where any potential impact, risk or concern was raised, in a meeting or correspondence, the titleholder identified these, made genuine efforts to understand them and then addressed them in the EP, including whether any additional control measures were required to reduce impacts and risks to ALARP and acceptable levels (refer to Table 4-20 in section 4.10.1 and section 6.10 of the Environment Plan). For example, when these relevant persons expressed interest in a particular environmental value such as (but not limited to) whales and marine turtles, the titleholders provided clear details about how they were proposing to manage the impacts of the activity on these environmental values and sought feedback from the relevant persons during consultation. As a result of that two-way dialogue, the titleholders modified some existing control measures and some additional control measures were adopted (refer to Table 1, Appendix F of the Environment Plan).

114. I was aware that First Nations relevant persons raised feedback or concerns regarding the adequacy of the consultation process, and why they considered that consultation had not been completed. Whether or not a relevant person agrees that they have been adequately consulted is not determinative of whether I am satisfied reg 10A(g) is met. I need to consider all the facts and circumstances of the consultation. My consideration of the feedback and concerns regarding adequacy of the consultation was as follows:

- a. some First Nations relevant persons raised concerns about the information provided being too technical, sophisticated and lengthy or not suitable for a Traditional Custodian audience. Having considered the information that was provided, I found that the titleholder had provided these First Nations relevant persons with tailored information in a readily accessible form and format such as plain English consultation information sheets developed by Indigenous representatives for a Traditional Custodian audience. I also found that the titleholders provided opportunities for these relevant persons to receive additional support with facilitating their understanding of the information provided to them such as by funding the attendance of independent environmental scientists at consultation meetings, offering to financially support the provision of independent third-party advice (this was not taken up by any of these relevant persons), and making relevant project personnel and subject matter experts available to attend consultation meetings to assist with explaining information in further detail and answering any questions. I was satisfied that the way the information was presented, and the opportunities provided to clarify and explain the activity, were suitable and appropriate;
- b. some First Nations relevant persons raised concerns with the timeframe for consultation not being reasonable. I found that the shortest period for consultation (from when these relevant persons were contacted and an offer to meet made until the submission of the Environment Plan) was approximately ten months. Within the period that the titleholders allowed for consultation, there have been ongoing opportunities provided by the titleholders to First Nations relevant persons to identify themselves and provide information to the titleholders. I

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found that the concerns about the timeframes were raised by these relevant persons late in the consultation process after many months of engagement by the titleholders, including an iterative process of information provision and various opportunities to provide feedback in writing or verbally at meetings;

- c. some First Nations relevant persons raised concerns about their lack of capacity to engage in the consultation process in a meaningful way. This included requests for consultation protocols/agreements for the consultation in preparation of the Environment Plan made by some nominated representative corporations identified as relevant persons in the Environment Plan (e.g. Nganhurra Thanardi Garrbu Aboriginal Corporation (**NTGAC**), Yinggarda Aboriginal Corporation (**YAC**) and Ngarluma Yindjibarndi Foundation Ltd (**NYFL**)). The titleholders agreed to progress these agreements, though I note that none of the agreements were finalised at the time of Environment Plan submission. While the agreements were not yet finalised, the titleholders nevertheless facilitated meetings and discussions with these groups to enable them to identify and address any functions, interests or activities which may be affected by the proposed activity. For example, the Environment Plan contains evidence that these relevant persons were informed that the titleholders' can provide various forms of assistance to support participation in consultation (which was not taken up by all of these relevant persons), and that the titleholders provided relevant persons with various forms of additional assistance in response to reasonable requests (e.g. by covering the costs associated with meeting sitting fees, travelling to the desired meeting locations of the relevant persons, funding the attendance of independent environmental scientists at consultation meetings, and offering to financially support the provision of independent third-party advice which was not taken up by any relevant persons);
- d. some First Nations relevant persons stated that there may be other First Nations people with cultural heritage values in the environment that may be affected by the activity that had not had an opportunity to participate in consultation. I found these statements to be too general for me to place any weight on them. It was not stated how these relevant persons had identified other possible relevant persons, nor how the titleholders might identify and consult with them. I was reasonably satisfied that the titleholders had adopted a methodology of identifying relevant person which enabled the broad identification of First Nations relevant persons (see [106] to [110]), and that all First Nations relevant persons who could be ascertained were identified, or could have self-identified, and were consulted by the titleholders;
- e. a nominated representative corporation identified as a relevant person in the Environment Plan (i.e. Buurabalayji Thalanyji Aboriginal Corporation (**BTAC**)) informed the titleholders that they have cultural values including sea country interests in the environment that may be affected by the activity, but that BTAC has not yet developed these values into a format that can be articulated beyond their own culture. BTAC requested support from the titleholders to define and articulate its values in a manner that could be more clearly understood by the offshore sector, government and the community. I noted that the titleholders agreed to provide support for this, including by offering to fund an ethnographic survey in July 2023 and financial support for independent environmental management technical advice and anthropological technical advice that was not taken up by BTAC at the time that the Environment Plan was submitted for assessment in October 2023. Whilst the sea country interests and cultural values have not been articulated by BTAC at this time, the titleholders have identified that the activity may impact upon Thalanyji Sea Country, and have included control measures in the Environment Plan relating to reducing impacts and also made commitments to continue working with BTAC to identify values and manage impacts, where relevant. I was reasonably satisfied that sufficient

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information and a reasonable period had been provided to BTAC, and that the titleholder had adopted measures which were appropriate [119];

- f. the consultation records show that Ms Cooper requested a meeting at Rosemary Island in order to share further information in a culturally safe way. Although the titleholders declined a meeting at this location, I considered that the reasons for doing so (i.e. cultural sensitivities expressed by others) were reasonable. The titleholders offered a range of alternative locations for the meeting, including locations where Ms Cooper had previously requested meetings to share information, and also other alternative means by which Ms Cooper could share her information (e.g. Ms Cooper travelling to the island and recording her stories, the titleholders remaining offshore whilst Ms Cooper told her stories onshore, or circumnavigating around the island whilst Ms Cooper told her stories from the vessel). I note that Ms Cooper declined to share the further information at the alternative meeting locations proposed by the titleholders, and that none of the alternative means for Ms Cooper to share the further information were agreed by the titleholders and Ms Cooper (Table 1, Appendix F). I acknowledge that Ms Cooper felt disrespected that she could not provide information from Rosemary Island, however I was not satisfied that the titleholders not agreeing to travel to Rosemary Island, where many alternatives were offered, means that reg 11A was not met; and
 - g. as noted above, on some occasions, the titleholders did not provide information that was requested during the consultation process (largely documentary information such as reports and studies). I considered that the titleholders had provided sufficient information for the relevant persons to make an informed assessment. Where additional information was requested, it was additional information to that which I already consider to have been sufficient. Further, where the titleholder did not provide information, I considered that there were sound reasons for not doing so. For example, the titleholders did not provide heritage survey reports that were requested by SOS, including Ms Cooper, because the reports were the property of other Traditional Custodians and the titleholders did not have permission to share them. Instead, the titleholders provided the outcomes of these surveys (where publicly available), or offered alternatives to obtain the information (such as indicating that Ms Cooper may be able to request a copy from the First Nations group to whom it relates).
115. I note that a request was made by Ms Cooper to meet with NOPSEMA representatives at Rosemary Island. NOPSEMA declined this invitation. The legislative regime requires titleholders to consult with relevant persons and address the appropriateness of the measures it proposes to adopt in response to the consultation in the EP. The sharing of information directly with NOPSEMA would not accord with reg 11A.
116. For the reasons given above, I found that consultation as required by regs 11A(2) and 11A(3) with Traditional Custodians (individuals and/or groups/entities), nominated representative corporations and NTRBs had been undertaken. I acknowledge that some relevant persons may have a different view. However, I am satisfied on the information before me that a reasonable opportunity has been afforded to relevant persons to be consulted on the activity.
117. I note that there is evidence in the consultation records that the titleholders have advised First Nations relevant persons that they may request that particular information they provide is not published in accordance with reg 11A(4) and it is evident that these requests have been addressed by the significant volume of sensitive material that was not to be published with the EP.
118. I was, accordingly, reasonably satisfied that reg 10A(g)(i) was met.

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119. Having found that reg 10A(g)(i) was satisfied, I then considered whether the titleholders adopted, or proposed to adopt, appropriate measures in light of those consultations. I was reasonably satisfied that the measures adopted by the titleholders as a result of the consultations were appropriate for the following reasons:
- a. the Environment Plan includes a summary of any feedback, objections or claims raised by First Nations relevant persons in Table 1 of Appendix F, along with the titleholders' assessment of merits of any feedback, objections or claims and its response, and corresponding further measures;
 - b. the Environment Plan demonstrates the titleholder has considered any feedback provided from First Nations relevant persons regarding the proposed approach to management of the environmental impacts and risks of the activity relating to the protection of cultural features and heritage values;
 - c. the titleholder has adopted a range of control measures in response to the consultation with First Nations relevant persons to ensure that the activity's environmental impacts and risks to cultural features and heritage values will be of an acceptable level and reduced to ALARP. For example:
 - i. an additional control measure managing underwater noise impacts to marine turtles has been adopted given their importance as a totemic species to some First Nations relevant persons (C 19.3);
 - ii. an existing control measure that provided for managing underwater noise impacts to pygmy blue whales was modified to also apply to humpback whales given its importance as a totemic species to some First Nations relevant persons (C 4.1); and
 - iii. an additional control measure that relates to establishing and maintaining a publicly available website to include cetacean and marine turtle observations during the activity has been adopted (C 1.6).
 - d. the titleholder has also adopted further measures as a result of the consultations with First Nations relevant persons. In particular:
 - i. the 'Thalanyji Sea Country Management process' (Section 7.5) to identify cultural features and heritage values of the Thalanyji people within the EMBA through ongoing consultation with BTAC; and
 - ii. the 'Program of Ongoing Engagement with Traditional Custodians' (Appendix J) which sets out the titleholders' commitment to ongoing engagement and support of Traditional Custodians' capacity to care for and manage Country, including Sea Country. This measure was adopted to support the capacity and capability of nominated representative corporations with their participation in ongoing consultation so that potential impacts and risks on cultural features and heritage values can continue to be managed to ALARP and acceptable levels during the life of the activity.
120. I note that Ms Cooper met with female representatives of the titleholders on 12 September 2023. The information shared at this meeting was recorded in a transcript and contained gender-restricted material (women only). The transcript was provided to NOPSEMA as part of the Environment Plan, and communicated and stored in a way that was only accessible to female staff. The assessment team includes female representatives that reviewed this women's only gender-restricted material. After

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reviewing the records of consultation with Ms Cooper within the Environment Plan, and accepting the advice from the female representatives that the Environment Plan already contains the information about cultural features and heritage values of the environment that are explained within the gender restricted material, I am satisfied that the cultural features and heritage values raised by Ms Cooper during consultation have been identified in the Environment Plan (Table 4-20 in Section 4.10.1 of the Environment Plan), and addressed in the evaluation of impacts and risks with appropriate measures adopted to demonstrate that the impacts and risks will be reduced to ALARP and acceptable levels (section 6.10).

121. On the basis outlined above, I was reasonably satisfied that the measures adopted by the titleholders because of the consultations are appropriate, and reg 10A(g)(ii) was met.
122. Accordingly, for the reasons set out above, I am reasonably satisfied that consultation as per the requirements of reg 10A(g), insofar as they relate to Traditional Custodians (individuals and/or groups/entities) and nominated representative corporations and NTRBs has been satisfied.

Other 'relevant persons'

123. The Environment Plan clearly identifies who has been identified as a relevant person, includes details of the rationale the titleholders has used to determine who they consider fall within that definition and broadly describes the functions, interests or activities of those persons or organisations identified as relevant persons under reg 11A(1)(d). The Environment Plan includes reference to multiple sources of information used by the titleholders to assist in the identification of relevant persons, such as publicly available materials, review of databases and registers, published guidance, previous history and advice from authorities and other relevant persons.
124. Table 5-1 and Table 5-2 of the Environment Plan provide a comprehensive overview of the identification and assessment of the relevant persons falling within reg 11A(1)(d). I considered the nature of the activity, description of the environment and the possible impacts and risks of the activity have been taken into account when determining whose functions, interests and activities may be affected. For example:
 - a. the titleholders considered all of the known environment values and sensitivities within the full extent of the environment that may be affected by the planned and unplanned impacts and risks of the activity when determining relevant persons; and
 - b. the titleholders considered the nature and scale of the activity and all of the possible impacts and risks of the activity when determining relevant persons.
125. I am satisfied that the process of identifying these other relevant persons was sufficient and appropriate to the activity.
126. Having identified these relevant persons, I considered the information that had been provided to them in accordance with reg 11A(2). I considered that the information provided was sufficient, in particular:
 - a. the Environment Plan includes a description of the approach to provision of sufficient information that takes into account the functions, interests or activities of relevant persons and the possible consequences of the activity that may affect them;
 - b. the consultation provided relevant persons with the opportunity to provide input and engage in a genuine two-way dialogue. I noted that offers were made to meet and discuss with relevant

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persons and steps were taken by the titleholders to create awareness of the activity and to encourage potentially relevant persons to make themselves known to the titleholders;

- c. the titleholders tailored the information to suit the needs of the different types of relevant persons and provided information in a form that is readily accessible and appropriate for the relevant person being consulted. Further, the titleholders used different materials to support the provision of information that was suited to the relevant person being consulted, such as pictorials, graphics and maps; and
- d. the titleholders considered the views of relevant persons as to what level of information is "sufficient" to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interest or activities of the relevant person. In particular, the titleholders considered requests for additional information by certain relevant persons and provided such additional information in response to reasonable requests. Although there are examples where the titleholders did not provide certain relevant persons with additional information requested (e.g. scientific literature, copy of the latest version of the Environment Plan), I am satisfied that sufficient information was made available to the relevant person including: a link to the publicly available Environment Plan; the Consultation Information Sheet; numerous email responses tailored to a relevant person's objections and claims raised; as well as the measures the titleholders proposes to adopt as a result of the consultation undertaken.

127. I noted that the period for consultation was determined on a case-by-case basis. The Environment Plan described the approach taken to determining a reasonable period based on consideration of the relevant person's particular circumstances on a case-by-case basis and includes consideration of the nature, scale and complexity of the activity. I acknowledged that the titleholders considered relevant persons' views of what constitutes a reasonable period for consultation, considered requests for additional time by relevant persons, with additional time provided in response to reasonable requests. I also noted that the titleholders were proactive in sending reminders to relevant persons about impending dates for providing any response. Taking all of these matters into account, I am satisfied that a reasonable period for consultation had been given (as per reg 11A(3)).

128. I accepted that reg 11A(4) was satisfied because relevant persons were informed (in similar terms to those at [96] above), that they may request that particular information provided during consultation not be published and information subject to such a request was not published.

129. For the purposes of reg 10A(g)(ii), I found that:

- a. information gathered through the consultation process with the other relevant persons under reg 11A(1)(d) has been incorporated into the Environment Plan, and effectively informed the identification of environmental values and sensitivities to ensure impacts and risks are reduced to ALARP and acceptable levels. For example, information obtained from relevant persons has informed the identification of environmental values and sensitivities where relevant and information obtained from relevant persons has been considered in the evaluation of environmental impacts and risks, and in the titleholders' processes for demonstrating that the environmental impacts and risks of the activity will be reduced to ALARP and acceptable levels where relevant. This includes, but is not limited to, the provision of notifications to relevant persons and other marine users as agreed to during consultation, amendments made to the OPEP as a result of relevant persons' feedback received in the preparation of the Environment Plan, and a revised cumulative underwater noise impact assessment being undertaken in response to information received;

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- b. the titleholders' assessment of merit and all responses to objections and claims are reasonable and supported, and the measures adopted (if any) because of the consultation are appropriate. For example:
- i. in some cases, the titleholders' assessment of the merits of objections and claims did not result in the adoption of additional control measures because additional control measures were not reasonably practicable to implement and/or necessary to demonstrate that impacts and risks will be reduced to ALARP and acceptable levels. Those items that were the subject of objections and claims which NOPSEMA considered to be reasonable were required to be addressed through requests for information and opportunities to modify and resubmit. For example, in relation to controls for mitigating noise impacts to blue whales, the titleholders adopted additional control measures or improved performance standards which addressed the objections and claims of relevant persons.
 - ii. in other cases, the titleholders' assessment of the merits of objections and claims resulted in no additional control measures being adopted. As stated above at [43] I am satisfied that the titleholders have demonstrated that these other control measures were not reasonably practicable to implement and/or were not necessary to demonstrate that the impacts and risks of the activity will be reduced to ALARP and acceptable levels. For example, claims were raised about vessel collision risks on whale sharks and although no additional control measures were adopted, NOPSEMA considered this to be reasonable given the nearest biologically important area is more than 100 km from the operational area.

130. I was satisfied that the measures which the titleholders adopted following consultation were appropriate. Accordingly, I was reasonably satisfied that reg 10A(g)(ii) was met.

131. Considering the matters discussed above, I was reasonably satisfied that, in relation to relevant persons as defined by reg 11A(1)(d), the Environment Plan demonstrates that the titleholders have carried out the consultations required by Division 2.2A and the measures (if any) that the titleholders have adopted, or propose to adopt, because of the consultations are appropriate, as required by reg 10A(g).

Relevant persons under Regulation 11A(1)(e)

132. Reg 11A(1)(e) requires that the titleholders must consult with 'any other person or organisation that the titleholders consider relevant'. I noted that the titleholders consulted with the following 'other persons or organisations' that it considered to be relevant:

- a. The Shire of Exmouth and Exmouth Community Reference Group;
- b. The City of Karratha and the Karratha Community Liaison Group; and
- c. The Australian Marine Conservation Society (**AMCS**).

133. I was reasonably satisfied that consultations with these persons met the requirements in reg 11A(2)-(4). The Environment Plan demonstrates that consultation took the form of emails and presentations and were over a reasonable period (ranging from April 2022 until March 2023). The information provided to the relevant persons was sufficient. Once again, the information that was provided was tailored to the particular relevant person. For example, the information provided to AMCS included a detailed attachment explaining the specifics of the activity and the 'themes' in which AMCS may have an interest and also raised that information which is sensitive could be requested not to be published.

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The presentation to community members was also specific. For example, the Exmouth presentation contained information about traffic through the local airport associated with the activity.

134. Appendix F (Table 1) of the Environment Plan demonstrates that no feedback, objections or claims were raised by any of these relevant persons, and that control measures were not necessary. I agreed with the conclusions in this table. No substantive responses were received (as opposed to queries), which required the titleholders to consider additional measures.
135. I also acknowledged the ongoing consultation commitment in the Environment Plan. I considered this was an appropriate measure which would ensure that any future feedback, objections or claims which may arise from such persons would be assessed and reported.
136. I was, therefore, reasonably satisfied that reg 10A(g) was met in relation to 'relevant persons' as defined by reg 11A(1)(e).

Regulation 10A(h) - The Environment Plan complies with the Act and the regulations.

137. I was required to be reasonably satisfied that the Environment Plan complied with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**Act**). I was satisfied that the Environment Plan was compliant, noting in particular:
 - a. the requirements under s 571 of the Act, that the titleholders maintain financial assurance sufficient to give the titleholders the capacity to meet costs, expenses and liabilities arising in connection with, or as a result of the activity. The titleholders has provided a financial assurance confirmation form which I was satisfied was acceptable and demonstrated that the titleholders will maintain financial assurance in relation to the activity (and therefore complied with s 571);
 - b. the requirements under s 572, relating to the maintenance and removal of equipment. I noted that the Environment Plan includes commitments for avoiding the loss of streamers/dropped objects and for recovering accidentally lost streamers/dropped objects. I was reasonably satisfied that this demonstrated that the activity does not allow for any equipment or property to be left on the seabed at the completion of the petroleum (and therefore complied with s 572);
 - c. the consultation process has assisted the titleholders to meet their obligation under s 280 of the Act which requires that it must carry out the activity in a manner that does not interfere with navigation, fishing, conservation of resources of the sea and seabed, other offshore electricity infrastructure and petroleum activities, and the enjoyment of native title rights and interests (within the meaning of the *Native Title Act 1993*) to a greater extent than is necessary for the reasonable exercise of the titleholders' rights and obligations.
138. Turning to the Regulations, for the reasons set out above (at [17]-[33]), I am satisfied that the Environment Plan addressed the content requirements of regs 13-16 with enough clarity, consistency and detail commensurate to the nature and scale of the activity.
139. I observed that the Environment Plan also stated as follows:
 - a. that the titleholders would report all reportable incidents to the regulator (orally) as soon as possible to NOPSEMA, but within two hours of the incident or of its detection, with a written report to follow in a form consistent with Form FM0831 – Reportable Environmental Incident;

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- b. that the titleholders will notify NOPSEMA no later than 15 days after the end of the calendar month using the NOPSEMA Form – Recordable Environmental Incident Monthly Summary Report of any recordable incident; and
- c. that the titleholders will notify NOPSEMA of the commencement of the petroleum activities at least ten days before the activity commences and will notify NOPSEMA within ten days of completing the activity.

140. I am reasonably satisfied that the Environment Plan contained information necessary to be compliant with regs 26, 26A, 26AA and 29 of the Regulations. I also considered the titleholders' Environment Knowledge Management System enabled storage of records, and for them to be made available, as required by regs 27 and 28.

141. Based on the above, I am reasonably satisfied that the requirements of reg 10A(h) are met.

Other Considerations

Principles of Ecological Sustainable Development

142. The Regulations provide that their object is to ensure that any activity or greenhouse gas activity carried out in an offshore area is carried out in a manner consistent with the principles of ecologically sustainable development (**ESD**) set out in s 3A of the EPBC Act. I am satisfied that the Environment Plan was consistent with the principles of ESD. In this regard, the Environment Plan:

- a. included the titleholders' evaluation of the socio-economic, cultural and ecological features of the EMBA by the activity and consultation with relevant persons. The Environment Plan demonstrates an integrated approach to considering all environmental features, including relevant social, cultural and economic features that make up the definition of environment in reg 4. Further, the Environment Plan includes an evaluation of the potential impacts and risks of the activity on First Nations cultural features and heritage values, commercial fisheries, traditional fisheries, tourism and recreation, commercial shipping, oil and gas and defence activities. I considered that these matters were consistent with ensuring that this decision-making process should effectively integrate both long-term and short-term economic, environment, social and equitable considerations;
- b. detailed the titleholders' evaluation of environmental impacts and risks, the reasons and evidence in support of how the impacts and risks will be of an acceptable level and the scientific uncertainty associated with predictions of environmental impacts and risks (see [55] and [59]). I noted that the Environment Plan detailed additional control measures in relation to whales as a precautionary approach given the uncertainty of possible impacts, and considered that the Environment Plan also included effective management measures to ensure the activity will not result in serious or irreversible environmental harm. Accordingly, I considered the Environment Plan was consistent with the 'precautionary principle' within the meaning of s 3A(b) of the EPBC Act;
- c. identifies the measures adopted by the titleholders to minimise the environmental impacts and risks of the activity. The titleholders applied the mitigation hierarchy, such that where avoidance was not possible, control measures were adopted to ensure impacts and risks are managed to ALARP and an acceptable level. I considered this was consistent with the principle that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

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- d. included the titleholders' evaluation of environmental impacts and risks to the biodiversity and ecological values of the Commonwealth marine area, including EPBC Act listed threatened and/or migratory species, and the EPOs defined in the Environment Plan. I noted that the titleholders' defined acceptable levels of impact and risk for biodiversity and ecological values at levels that are below the significant impact criteria defined in Significant Impact Guidelines 1.1 – Matters of National Environment Significance for matters protected under Part 3 of the EPBC Act. Further, I found that the environmental impact and risk evaluations and EPOs collectively demonstrate that the activity will be managed so that impacts and risks to biological diversity and the ecological integrity of the Commonwealth marine area will be of an acceptable level;
- e. undertook a robust evaluation of environmental impacts and risks using appropriate impact assessment tools (such as acoustic modelling) to provide the basis for assessing higher order impacts and risks and demonstrating that impacts and risks will be managed at or below the acceptable level;
- f. contained an assessment against relevant requirements of statutory instruments to demonstrate that the activity would not be inconsistent with these instruments; and
- g. demonstrated that the activity will not have a significant impact on MNES protected under the EPBC Act, including World Heritage properties, National Heritage properties, Ramsar wetlands of international significance, listed threatened species and communities, listed migratory species, Commonwealth marine areas, and the Great Barrier Reef Marine Park.
- h. recognised that the titleholders are required to bear the costs relating to environmental management of the activity, to ensure that environmental impacts and risks are managed to ALARP and to an acceptable level. I considered that the onus is on the titleholders to protect ecological services and capital associated with the EMBA of the activity, and that, to the extent that the valuation principle is relevant for an individual activity, the Environment Plan demonstrates compliance and is consistent with Australian government legislation and policy requirements relating to environmental management.

The Program: protected matters under Part 3 of the EPBC Act

- 143. The Program endorsed under s 146 of the EPBC Act outlines the environmental management authorisation process for offshore petroleum and greenhouse gas activities administered by NOPSEMA and requires NOPSEMA to comply with Program responsibilities and commitments.
- 144. In implementing the Program, NOPSEMA conducts assessments of Environment Plans against the requirements of the Program, which include meeting the acceptance criteria and content requirements under the Regulations (which I have detailed above). Specific Program commitments relating to protected matters under Part 3 of the EPBC Act are outlined in Table 2 of the Program report and must be applied during decision making with respect to offshore projects and activities.
- 145. As I have noted above, the only Part 3 EPBC Act protected matters are listed threatened species and migratory species. I considered that the activity under the Environment Plan:
 - a. will not result in unacceptable impacts on any of the species and is not inconsistent with EPBC Act Part 13 Statutory Instruments as identified in Section 6.8 of the Environment Plan. I note my findings above (see [55 - 66]) where I have considered these documents when determining the acceptability

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of the Environment Plan where impacts to listed threatened species and ecological communities may arise;

- b. has control measures in place to ensure that impacts to the Commonwealth marine area will be of an acceptable level having regard to EPBC Act Part 13 Statutory Instruments as identified in Section 6.8 of the Environment Plan, Guidance on Key Terms within the Blue Whale Conservation Management Plan (2021) published by DCCEE, Commonwealth of Australia, Director of National Parks, Australian Marine Parks - North-west Marine Parks Network Management Plan 2018, Department of Sustainability, Environment, Water, Population and Communities, Marine Bioregional Plan for the North-west Marine Region; and Department of the Environment, Water, Heritage and the Arts, EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales: Industry Guidelines (September 2008) (see [53]-[63]); and
- c. has control measures in place to ensure that the decision to accept the Environment Plan will not result in an unacceptable impact to a migratory species or an area of important habitat for a migratory species having regard to the documents identified in [b] (see [53-63]).

The Program: cumulative Environmental impacts

146. In the context of the Program, cumulative impact refers to the direct and indirect impacts of several different activity actions that may influence the natural environment or other users within a locality or region which, when considered together, have a greater impact on the offshore marine environment than each action or influence considered individually.
147. I considered the potential for cumulative environmental impacts to the Commonwealth marine area as required by the Program. I am reasonably satisfied that the environmental impacts of the activity combined with existing and proposed future pressures on the Commonwealth marine area, particularly to noise sensitive receptors including threatened and migratory whales, would be of an acceptable level because:
 - a. the Environment Plan has evaluated the potential for cumulative impacts to relevant environmental receptors in the Commonwealth marine area that may be affected by the activity and adopts suitable control measures. In assessing the potential for cumulative environmental impacts, the Environment Plan has considered multiple noise exposures from the activity combined with other previous and proposed future noise generating activities in the region with overlapping temporal and/or spatial noise exposure extents; and
 - b. the Environment Plan has evaluated the potential for cumulative impacts to cetaceans from multiple noise exposures over the duration of the activity, as well as previous and potential future marine seismic surveys over consecutive seasons in areas that are considered biologically important for marine mammal species. The cumulative impact assessment concludes that impacts resulting from cumulative exposure to underwater noise are more likely for species that may remain within, or adjacent to, the operational area for extended periods of time due to biologically important behaviours. Precautionary control measures have been adopted to ensure potential cumulative impacts to threatened and migratory whales are managed to ALARP and an acceptable level.
 - c. the Environment Plan identifies that the confirmed start and end dates for the activity will be considered in conjunction with other proposed activities that are part of the Scarborough project to ensure consideration of possible concurrent and cumulative impacts.

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The Program: indirect consequences of an action

148. Under the Program, NOPSEMA must have regard to relevant EPBC Act policies, including *EPBC Act Policy Statement - 'Indirect consequences' of an action: section 527E of the EPBC Act (indirect consequences policy)*. NOPSEMA considers the policy to determine where indirect consequences may be considered an 'impact' of an activity under s527E. This consideration is on a case-by-case basis against the circumstances of the activity in accordance with the criteria set out in the policy.
149. In assessing the Environment Plan, I had regard to the indirect consequences policy, in relation to indirect greenhouse gas (**GHG**) emissions. I gave consideration as to whether the activity is a substantial cause of GHG emissions from the processing, consumption, and combustion of Scarborough gas, and are facilitated to a major extent by the activity, within the contemplation of the titleholders and are a reasonably foreseeable consequence of the activity.
150. Having regard to the indirect consequences policy, and the assessment teams' findings and conclusions, I agreed that:
- a. The activity does not directly involve the recovery of petroleum. Rather the purpose of the activity is to acquire a new marine 3D / Baseline 4D seismic survey over the Scarborough and Jupiter fields, as part of an appraisal program for reservoir management;
 - b. the extraction of gas for onshore processing is not included in the activity, and as such is not authorised by the Environment Plan, if accepted;
 - c. further activities, including drilling, completions, and installation of infrastructure, are required prior to the point any gas can be extracted and transported for gas processing and sale, and will themselves be subject to a separate assessment and approval process; and
 - d. extraction and supply of gas for processing and subsequent sale, transport, consumption & combustion will require a future approval through an environment plan for operations.
151. Future activities require their own separate environment plan approvals, including consideration of the indirect consequences policy and appropriate coverage of 'impacts' of any activity based on the case specific circumstances. In the case of the Environment Plan, there is no resource extraction component to the activity and future regulatory approvals are required prior to any activity with a resource extraction component occurring. Given this, I consider that emissions from gas processing, consumption and combustion of Scarborough gas are not facilitated to a major extent by the activity and would not be considered a substantial cause of emissions generated in the future from processing, consumption, or combustion of gas.

Conclusion

152. For the reasons set out above, I was reasonably satisfied that the EP met the following criteria set out in sub-regulation 10A of the Environment Regulations and should therefore be accepted:
- a. the EP is appropriate for the nature and scale of the activity; and
 - b. the EP demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and
 - c. the EP demonstrates that the environmental impacts and risks of the activity will be of an acceptable level; and



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- d. the EP provides for appropriate EPOs, EPSs, and measurement criteria; and
- e. the EP includes an appropriate implementation strategy and monitoring, recording and reporting arrangements; and
- f. the EP does not involve the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act; and
- g. the EP demonstrates that:
 - i. the titleholder has carried out the consultations required by Division 2.2A; and
 - ii. the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate; and
- h. the EP complies with the Act and the Regulations.

Signed

Environment Manager, Offshore Projects & Seismic - NOPSEMA

8 December 2023

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Attachment A – Legislative Framework

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

9 Submission of an environment plan

- (1) Before commencing an activity, a titleholders must submit an environment plan for the activity to the Regulator.

9AA Checking completeness of submitted environment plan

Within 5 business days after an environment plan is submitted to the Regulator under regulation 9, resubmitted in response to an invitation under regulation 9AC or resubmitted under subregulation 11C(2), the Regulator must decide provisionally whether the plan includes material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan).

Note: The provisional decision is not a decision whether to accept the plan.

9AB Publishing environment plan and associated information

If the Regulator's provisional decision under regulation 9AA is that the environment plan includes material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan), the Regulator must publish on the Regulator's website as soon as practicable:

- (a) the plan with the sensitive information part removed; and
- (b) the name of the titleholders who submitted the plan; and
- (c) a description of the activity or stage of the activity to which the plan relates; and
- (d) the location of the activity; and
- (e) a link or other reference to the place where the accepted offshore project proposal (if any) is published; and
- (f) details of the titleholders' nominated liaison person for the activity.

Note: If the plan is a seismic or exploratory drilling environment plan, the Regulator must also publish an invitation for public comment on the plan: see regulation 11B.

9A Further information

- (1) If a titleholder submits an environment plan, the Regulator may request the titleholder to provide further written information about any matter required by these Regulations to be included in an environment plan.
- (2) The request must:
 - (a) be in writing; and
 - (b) set out each matter for which information is requested; and

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- (c) specify a reasonable period within which the information is to be provided.
- (3) In providing information requested by the Regulator, the titleholders must resubmit to the Regulator the environment plan with the information incorporated, whether or not the titleholders also provides the information separately.
- (4) The Regulator must have regard to information that was requested by the Regulator, and provided by the titleholders in a resubmitted environment plan within the period specified or within a longer period agreed to by the Regulator.

10 Making decision on submitted environment plan

- (1) Within 30 days after the day described in subregulation (1A) for an environment plan submitted by a titleholders:
 - (a) if the Regulator is reasonably satisfied that the environment plan meets the criteria set out in regulation 10A, the Regulator must accept the plan; or
 - (b) if the Regulator is not reasonably satisfied that the environment plan meets the criteria set out in regulation 10A, the Regulator must give the titleholders notice in writing under subregulation (2); or
 - (c) if the Regulator is unable to make a decision on the environment plan within the 30 day period, the Regulator must give the titleholders notice in writing and set out a proposed timetable for consideration of the plan.
- (1A) For the purposes of subregulation (1), the day is:
 - (a) the day the Regulator publishes the plan (with the sensitive information part removed) under regulation 9AB; or
 - (b) if the environment plan is a seismic or exploratory drilling environment plan—the day the Regulator receives the documents under paragraph 11B(3)(b) and, if relevant, paragraph 11B(3)(c).

Note 1: Those paragraphs are about documents that must be given to the Regulator after the end of a 30-day period for public comment on a seismic or exploratory drilling environment plan. Regulation 11B requires the Regulator to consider certain public comments on a seismic or exploratory drilling environment plan in making a decision to take action under this regulation.

Note 2: A seismic or exploratory drilling environment plan is taken to have been withdrawn (so the Regulator need not act under this regulation in relation to it) if the Regulator does not receive the documents under paragraph 11B(3)(b) and, if relevant, paragraph 11B(3)(c): see subregulation 11B(7).

- (2) A notice to a titleholders under this subregulation must:
 - (a) state that the Regulator is not reasonably satisfied that the environment plan submitted by the titleholders meets the criteria set out in regulation 10A; and

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- (b) identify the criteria set out in regulation 10A about which the Regulator is not reasonably satisfied; and
 - (c) set a date by which the titleholders may resubmit the plan.
- (3) The date referred to in paragraph (2)(c) must give the titleholders a reasonable opportunity to modify and resubmit the plan.
- (4) Within 30 days after the titleholders has resubmitted the modified plan:
 - (a) if the Regulator is reasonably satisfied that the environment plan meets the criteria set out in regulation 10A, the Regulator must accept the plan; or
 - (b) if the Regulator is still not reasonably satisfied that the environment plan meets the criteria set out in regulation 10A, the Regulator must:
 - (i) give the titleholders a further notice under subregulation (2); or
 - (ii) refuse to accept the plan; or
 - (iii) act under subregulation (6); or
 - (c) if the Regulator is unable to make a decision on the environment plan within the 30 day period, the Regulator must give the titleholders notice in writing and set out a proposed timetable for consideration of the plan.
- (5) If the titleholders does not resubmit the plan by the date referred to in paragraph (2)(c), or a later date agreed to by the Regulator, the Regulator must:
 - (a) refuse to accept the plan; or
 - (b) act under subregulation (6).
- (6) For subparagraph (4)(b)(iii) and paragraph (5)(b), the Regulator may do either or both of the following:
 - (a) accept the plan in part for a particular stage of the activity;
 - (b) accept the plan subject to limitations or conditions applying to operations for the activity.
- (7) A decision by the Regulator to accept, or refuse to accept, an environment plan is not invalid only because the Regulator did not comply with the 30 day period in subregulation (1) or (4).

10A Criteria for acceptance of environment plan

For regulation 10, the criteria for acceptance of an environment plan are that the plan:

- (a) is appropriate for the nature and scale of the activity; and
- (b) demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and

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- (c) demonstrates that the environmental impacts and risks of the activity will be of an acceptable level; and
- (d) provides for appropriate environmental performance outcomes, Environmental performance standards and measurement criteria; and
- (e) includes an appropriate implementation strategy and monitoring, recording and reporting arrangements; and
- (f) does not involve the activity or part of the activity, other than arrangements for Environment monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act; and
- (g) demonstrates that:
 - (i) the titleholders has carried out the consultations required by Division 2.2A; and
 - (ii) the measures (if any) that the titleholders has adopted, or proposes to adopt, because of the consultations are appropriate; and
- (h) complies with the Act and the regulations.

11A Consultation with relevant authorities, persons and organisations, etc

- (1) In the course of preparing an environment plan, or a revision of an environment plan, a titleholders must consult each of the following (a relevant person):
 - (a) each Department or agency of the Commonwealth to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant;
 - (b) each Department or agency of a State or the Northern Territory to which the activities to be carried out under the environment plan, or the revision of the environment plan, may be relevant;
 - (c) the Department of the responsible State Minister, or the responsible Northern Territory Minister;
 - (d) a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan;
 - (e) any other person or organisation that the titleholders considers relevant.
- (2) For the purpose of the consultation, the titleholders must give each relevant person sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person.
- (3) The titleholders must allow a relevant person a reasonable period for the consultation.
- (4) The titleholders must tell each relevant person the titleholders consults that:

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- (a) the relevant person may request that particular information the relevant person provides in the consultation not be published; and
- (b) information subject to such a request is not to be published under this Part.

Division 2.3—Contents of an environment plan

12 Contents of an environment plan

An environment plan for an activity must include the matters set out in regulations 13, 14, 15 and 16.

13 Environment assessment

Description of the activity

- (1) The environment plan must contain a comprehensive description of the activity including the following:
 - (a) the location or locations of the activity;
 - (b) general details of the construction and layout of any facility;
 - (c) an outline of the operational details of the activity (for example, seismic surveys, exploration drilling or production) and proposed timetables;
 - (d) any additional information relevant to consideration of Environmental impacts and risks of the activity.

Note: An environment plan will not be capable of being accepted by the Regulator if an activity or part of the activity, other than arrangements for Environment monitoring or for responding to an emergency, will be undertaken in any part of a declared World Heritage property—see regulation 10A.

Description of the environment

- (2) The environment plan must:
 - (a) describe the existing environment that may be affected by the activity; and
 - (b) include details of the particular relevant values and sensitivities (if any) of that environment.

Note: The definition of environment in regulation 4 includes its social, economic and cultural features.

- (3) Without limiting paragraph (2)(b), particular relevant values and sensitivities may include any of the following:
 - (a) the world heritage values of a declared World Heritage property within the meaning of the EPBC Act;
 - (b) the national heritage values of a National Heritage place within the meaning of that Act;

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- (c) the ecological character of a declared Ramsar wetland within the meaning of that Act;
- (d) the presence of a listed threatened species or listed threatened ecological community within the meaning of that Act;
- (e) the presence of a listed migratory species within the meaning of that Act;
- (f) any values and sensitivities that exist in, or in relation to, part or all of:
 - (i) a Commonwealth marine area within the meaning of that Act; or
 - (ii) Commonwealth land within the meaning of that Act.

Requirements

- (4) The environment plan must:
 - (a) describe the requirements, including legislative requirements, that apply to the activity and are relevant to the environmental management of the activity; and
 - (b) demonstrate how those requirements will be met.

Evaluation of Environmental impacts and risks

- (5) The environment plan must include:
 - (a) details of the environmental impacts and risks for the activity; and
 - (b) an evaluation of all the impacts and risks, appropriate to the nature and scale of each impact or risk; and
 - (c) details of the control measures that will be used to reduce the impacts and risks of the activity to as low as reasonably practicable and an acceptable level.
- (6) To avoid doubt, the evaluation mentioned in paragraph (5)(b) must evaluate all the environmental impacts and risks arising directly or indirectly from:
 - (a) all operations of the activity; and
 - (b) potential emergency conditions, whether resulting from accident or any other reason.

Environmental performance outcomes and standards

- (7) The environment plan must:
 - (a) set environmental performance standards for the control measures identified under paragraph (5)(c); and
 - (b) set out the environmental performance outcomes against which the performance of the titleholders in protecting the environment is to be measured; and

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- (c) include measurement criteria that the titleholders will use to determine whether each environmental performance outcome and environmental performance standard is being met.

14 Implementation strategy for the environment plan

- (1) The environment plan must contain an implementation strategy for the activity in accordance with this regulation.
- (2) The implementation strategy must:
 - (a) state when the titleholders will report to the Regulator in relation to the titleholders' environmental performance for the activity; and
 - (b) provide that the interval between reports will not be more than 1 year.

Note: Regulation 26C requires a titleholders to report on environmental performance in accordance with the timetable set out in the environment plan.

- (3) The implementation strategy must contain a description of the Environment management system for the activity, including specific measures to be used to ensure that, for the duration of the activity:
 - (a) the environmental impacts and risks of the activity continue to be identified and reduced to a level that is as low as reasonably practicable; and
 - (b) control measures detailed in the environment plan are effective in reducing the environmental impacts and risks of the activity to as low as reasonably practicable and an acceptable level; and
 - (c) environmental performance outcomes and standards set out in the environment plan are being met.
- (4) The implementation strategy must establish a clear chain of command, setting out the roles and responsibilities of personnel in relation to the implementation, management and review of the environment plan, including during emergencies or potential emergencies.
- (5) The implementation strategy must include measures to ensure that each employee or contractor working on, or in connection with, the activity is aware of his or her responsibilities in relation to the environment plan, including during emergencies or potential emergencies, and has the appropriate competencies and training.
- (6) The implementation strategy must provide for sufficient monitoring, recording, audit, management of nonconformance and review of the titleholders' environmental performance and the implementation strategy to ensure that the environmental performance outcomes and standards in the environment plan are being met.
- (7) The implementation strategy must provide for sufficient monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise), such that the record can be used to assess whether the Environmental performance outcomes and standards in the environment plan are being met.

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- (8) The implementation strategy must contain an oil pollution emergency plan and provide for the updating of the plan.
- (8AA) The oil pollution emergency plan must include adequate arrangements for responding to and monitoring oil pollution, including the following:
- (a) the control measures necessary for timely response to an emergency that results or may result in oil pollution;
 - (b) the arrangements and capability that will be in place, for the duration of the activity, to ensure timely implementation of the control measures, including arrangements for ongoing maintenance of response capability;
 - (c) the arrangements and capability that will be in place for monitoring the effectiveness of the control measures and ensuring that the environmental performance standards for the control measures are met;
 - (d) the arrangements and capability in place for monitoring oil pollution to inform response activities.
- (8A) The implementation strategy must include arrangements for testing the response arrangements in the oil pollution emergency plan that are appropriate to the response arrangements and to the nature and scale of the risk of oil pollution for the activity.
- (8B) The arrangements for testing the response arrangements must include:
- (a) a statement of the objectives of testing; and
 - (b) a proposed schedule of tests; and
 - (c) mechanisms to examine the effectiveness of response arrangements against the objectives of testing; and
 - (d) mechanisms to address recommendations arising from tests.
- (8C) The proposed schedule of tests must provide for the following:
- (a) testing the response arrangements when they are introduced;
 - (b) testing the response arrangements when they are significantly amended;
 - (c) testing the response arrangements not later than 12 months after the most recent test;
 - (d) if a new location for the activity is added to the environment plan after the response arrangements have been tested, and before the next test is conducted—testing the response arrangements in relation to the new location as soon as practicable after it is added to the plan;
 - (e) if a facility becomes operational after the response arrangements have been tested and before the next test is conducted—testing the response arrangements in relation to the facility when it becomes operational.

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- (8D) The implementation strategy must provide for monitoring of impacts to the environment from oil pollution and response activities that:
 - (a) is appropriate to the nature and scale of the risk of environmental impacts for the activity; and
 - (b) is sufficient to inform any remediation activities.
- (8E) The implementation strategy must include information demonstrating that the response arrangements in the oil pollution emergency plan are consistent with the national system for oil pollution preparedness and response.
- (9) The implementation strategy must provide for appropriate consultation with:
 - (a) relevant authorities of the Commonwealth, a State or Territory; and
 - (b) other relevant interested persons or organisations.
- (10) The implementation strategy must comply with the Act, the regulations and any other environmental legislation applying to the activity.

15 Details of titleholders and liaison person

- (1) The environment plan must include the following details for the titleholders:
 - (a) name;
 - (b) business address;
 - (c) telephone number (if any);
 - (d) fax number (if any);
 - (e) email address (if any);
 - (f) if the titleholders is a body corporate that has an ACN (within the meaning of the Corporations Act 2001)—ACN.
- (2) The environment plan must also include the following details for the titleholders' nominated liaison person:
 - (a) name;
 - (b) business address;
 - (c) telephone number (if any);
 - (d) fax number (if any);
 - (e) email address (if any).

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- (3) The environment plan must include arrangements for notifying the Regulator of a change in the titleholders, a change in the titleholders' nominated liaison person or a change in the contact details for either the titleholders or the liaison person.

16 Other information in the environment plan

The environment plan must contain the following:

- (a) a statement of the titleholders' corporate environmental policy;
- (b) a report on all consultations under regulation 11A of any relevant person by the titleholders, that contains:
 - (i) a summary of each response made by a relevant person; and
 - (ii) an assessment of the merits of any objection or claim about the adverse impact of each activity to which the environment plan relates; and
 - (iii) a statement of the titleholders' response, or proposed response, if any, to each objection or claim; and
 - (iv) a copy of the full text of any response by a relevant person;
- (c) details of all reportable incidents in relation to the proposed activity.

Environment Protection and Biodiversity Conservation Act 1999

3A Principles of ecologically sustainable development

The following principles are principles of ecologically sustainable development:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, Environment, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent Environment degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

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Attachment B

- a. The Environment Plan, comprising:
 - i. Scarborough 4D B1 Marine Seismic Survey Environment Plan (Revision 9, October 2023);
 - ii. Scarborough 4D Baseline (B1) Marine Seismic Survey (MSS) Oil Pollution First Strike Plan (Revision 0, August 2021); and
 - iii. Sensitive Stakeholder Information Report – Scarborough 4D B1 Marine Seismic Survey Environment Plan (Revision 9, October 2023).
 - iv. Material referenced in the Environment Plan that was important evidence for making the case that impacts and risks will be managed to ALARP and acceptable levels.
- b. The Program
- c. Policies and guidelines:
 - i. NOPSEMA Assessment policy (N-04000-PL0050);
 - ii. NOPSEMA Environment plan assessment policy (N-04750-PL1347);
 - iii. NOPSEMA Financial assurance for petroleum titles policy (N-04730-PL1780);
 - iv. NOPSEMA Environment plan decision making guideline (N-04750-GL1721);
 - v. NOPSEMA Financial assurance for petroleum titles guideline (N-04730-GL1381);
 - vi. NOPSEMA Consultation with Commonwealth agencies with responsibilities in the marine area guideline (N-06800-GL1887);
 - vii. NOPSEMA Consultation in the course of preparing an environment plan (N-04750-GL2086);
 - viii. Department of the Environment, Water, Heritage and the Arts, Significant Impact Guidelines 1.1 – Matters of National Environment Significance, EPBC Act Policy Statement (2013);
 - ix. Department of Agriculture, Water, and the Environment, 'Indirect consequences' of an action: section 572E of the EPBC Act (2013); and
 - x. Department of the Environment, Water, Heritage and the Arts, EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales: Industry Guidelines (September 2008);
- d. Guidance:
 - i. NOPSEMA Environment plan content requirements guidance note (N-04750-GN1344);
 - ii. NOPSEMA Petroleum activities and Australian Marine Parks guidance note (N-04750-GN1785);
 - iii. NOPSEMA Oil pollution risk management guidance note (N-04750-GN1488);
 - iv. NOPSEMA Operational and scientific monitoring programs information paper (N-04750-IP1349);

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- v. NOPSEMA Acoustic impact evaluation and management information paper (N-04750-IP1765);
 - vi. Department of the Environment, Engage Early – Guidance for proponents on best practice Indigenous engagement for Environment assessments under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (February 2016)
 - vii. The Interim Engaging with First Nations People and Communities on Assessments and Approvals under Environment Protection and Biodiversity Conservation Act 1999 (interim guidance) (2023);
- e. Procedures:
- i. NOPSEMA Environment plan assessment standard operating procedure (N-04750-SOP1369).
- f. Other relevant documents and records:
- i. relevant plans of management, recovery plans, conservation advice and other guidance for matters protected under the EPBC Act including:
 - A. Commonwealth of Australia, Conservation Management Plan for the Blue Whale 2015–2025 including Guidance on Key Terms within the Blue Whale Conservation Management Plan (2021) and Blue Whale Conservation Management Plan – FAQs published by NOPSEMA.
 - B. Commonwealth of Australia, Director of National Parks, Australian Marine Parks - North-west Marine Parks Network Management Plan 2018.
 - C. Department of Sustainability, Environment, Water, Population and Communities, Marine Bioregional Plan for the North-west Marine Region; and
 - ii. Aboriginal cultural heritage advice in relation to the proposed Scarborough 4D B1 Marine Seismic Survey, Report prepared by Extent Heritage Pty Ltd for NOPSEMA, 18 October 2022
 - iii. the scientific literature cited in the Environment Plan
 - iv. Findings and Conclusions of the assessment team as recorded in NOPSEMA's Regulatory Management System
- g. Relevant persons correspondence received post-submission of the Environment Plan