**From:** [redacted]
**Sent:** Tuesday, 14 March 2023 12:04 PM
**To:** Sue McCarrey <sue.mccarrey@nopsema.gov.au>; Communications (Shared Mailbox) <feedback@nopsema.gov.au>
**Subject:** Re: Consultation in the course of preparing an Environment Plan guideline



Dear Ms McCarrey

Re: Consultation in the course of preparing an Environment Plan guideline

Surfrider Foundation Australia welcomes the opportunity to provide feedback on NOPSEMA's guideline for "Consultation in the course of preparing an Environment Plan."

NOPSEMA must fully protect the rights won by Dennis Tipakalippa in his landmark challenge to Santos and the regulator.

NOPSEMA must not weaken consultation requirements for offshore oil and gas companies.

In keeping with the global scientific consensus, we do not support the expansion of oil and gas production, and we urge NOPSEMA to take steps to ensure Australia does not approve new oil and gas projects, or ignore warnings about limiting global warming to 1.5 degrees.

Offshore oil and gas projects have a national climate impact and NOPSEMA consultation must recognise the interests of all Australians

The Tipaklippa judgement was clear: oil and gas companies must identify and consult with persons who have functions, interests or activities that may be impacted by a proposal.

Offshore oil and gas projects release millions of tonnes of greenhouse gases directly into the atmosphere, directly contributing to climate change. These impacts are not limited to a project's so-called environment that may be affected (EMBA).

To ensure that these environmental and climate impacts are appropriately identified and mitigated, NOPSEMA must consider relevant persons, interests, functions and activities in the broadest possible sense.

The term 'relevant persons' must incorporate climate and environmental organisations whose mandate relates to climate change risks and protection of the environment in Australia.

These groups are entitled to be consulted about the climate impacts of every offshore oil and gas project in Australia.

NOPSEMA must require oil and gas companies to provide thorough consultation records and recordings

There is a risk that proponents will minimise or make misleading statements about the risks and impacts of a proposal in order to influence consultation in a manner favourable to receiving approval.

The Tipaklippa judgement, and the public reporting about subsequent conduct of Santos in relation to misleading statements made to Tiwi people make clear that NOPSEMA must treat content submitted by proponents with caution.

NOPSEMA should require oil and gas companies to provide it with comprehensive records relating to all aspects of consultations, including recordings and transcripts of consultation sessions, meeting notes, and unedited, comprehensive correspondence.

To ensure oversight and privacy, NOPSEMA should hold these records and use them to identify omissions, and verify the claims made by oil and gas companies.

Proponents must co-design consultation process with persons, communities and other groups

There is an obvious power imbalance between 'relevant persons' and gas and oil mining companies, which have access to vast resources, both financial and otherwise. Additionally proponents have an interest in consultation occurring quickly, and quietly.

This imbalance of power makes it particularly important that NOPSEMA has included a requirement in the Guideline to work with each relevant person to ensure that the consultation process is adapted to the nature of the relevant person and their interests and we commend that requirement. NOPSEMA should ensure that in assessing the consultation process, it has regard to whether the process for consultation was agreed through a genuine co-design process, including whether that process was undertaken in accordance with cultural protocol and in a sensitive and appropriate manner, when consulting with First Nations people or communities.

Relevant persons may require resources to be made available by the proponent to meaningfully participate in the consultation, which may be financial, access to expertise or data, by way of example. Further, relevant persons must be entitled to multiple rounds of discussions within the consultation process, be that face to face, online or in other forms and where a period of time is imposed on the consultation process, it should be readily extended, as necessary, to ensure that relevant persons have as long as they need to fully participate in the process.

Relevant persons must also be able to request additional information from proponents during the course of consultation, and be able to request additional time to review materials and access independent experts to help them review material from oil and gas companies. Requests for such information should be accommodated wherever possible, because inadequate access to information could undermine the consultation process.

Additionally NOPSEMA should require proponents to provide reasons fully justifying any decision not to provide additional information during consultation, and provide reasons fully justifying any decision not to provide information in full.

NOPSEMA must establish a process to intervene in consultation where a proponent is acting in bad faith

Currently, NOPSEMA and persons being consulted rely on oil and gas companies to be truthful during the consultation process. But as stated above, oil and gas companies have an interest in consultation occurring quickly and quietly, so their project can speed through the approval process.

Oil and gas companies cannot be trusted to be their own police. This was an issue raised in the public reporting of Santos' recent consultation with Tiwi Islanders as mentioned above.

While we appreciate that NOPSEMA's role is to review and assess the consultation process after it is completed, NOPSEMA should ensure there is a clear process for relevant persons to raise concerns and make complaints directly to NOPSEMA during a consultation process.

NOPSEMA should also be prepared to intervene when a relevant person complains that a proponent is engaging in tick a box consultation, rather than genuine two way engagement as required.

Sincerely,

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[redacted]
Yaegl Country
We acknowledge the traditional custodians of this land & pay our respects to Elder's past, present & emerging. Always was, always will be Aboriginal Land.

**Surfrider Foundation Australia**
*Protecting waves & beaches is our business (since 1991)*
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