

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Resources, Energy and Tourism Portfolio

Supplementary Budget Estimates

18 October 2012

Question: SR24
Topic: Offshore Oil and Gas Exploration - Kangaroo Island
Proof Hansard Page: Written

Senator Wright asked:

1. On 15 October 2012, Bight Petroleum submitted a referral under the EPBC Act to explore for oil and gas off the west coast of Kangaroo Island. The company is also required to submit an Environment Plan under the Offshore Petroleum and Greenhouse Gas Storage Act (OPGGGS), to the new national regulator NOPSEMA. As part of the Environment Plan, operators are required to consult with stakeholders. NOPSEMA guidance states that sufficient information and time scale must be provided for informed consultation and operators must demonstrate how relevant feedback is taken into account. Bight Petroleum's EPBC referral documentation contains a cursory response to significant concerns raised by the Kangaroo Island council and residents. Is this the kind of approach the department was envisaging when it put in place the new NOPSEMA regime?
2. As part of the Environment Plan operators are required to submit to NOPSEMA, operators are required to demonstrate that they have reduced environmental risks to as low as reasonably practicable. Bight Petroleum intends to undertake seismic surveys off the west coast of Kangaroo Island between January and May next year. This is one of only three areas in Australian waters where blue whales are known to feed. Blue whales will likely be present in the area at that time, along with many other protected whale species, such as sperm whales which also feed in that area. January till May is also the period of busiest activity for the southern blue fin tuna fishery in the region. It is very hard to see how this could be deemed to be reducing the risk to the environment to as low as reasonably practicable. What guidance and advice is NOPSEMA required to seek from wildlife and other environmental experts (both inside and outside government) in relation to these kinds of matters when assessing Environmental Plans?
3. Can the department clarify what advice it sought, from wildlife and other environmental experts both inside and outside government, before releasing the lease areas off Kangaroo Island back in the 2010 acreage release, given that this area is known to be significant for a whole range of listed marine species and given the importance of this area to local communities for fishing and ecotourism?
4. Can the department clarify what public consultation processes it undertook before releasing EPP41 and EPP42 in the 2010 acreage release? In particular, please detail any consultation undertaken with Kangaroo Island community.
5. Can the department clarify the decision-making processes which led to lease areas EPP41 and EPP42 being granted to Bight Petroleum in the middle of the public consultation process for the South-West Marine Reserve Network?
6. Similarly, can the department clarify what advice it sought, from wildlife and other environmental experts both inside and outside government, before releasing this year in the 2012 acreage release the lease area off Robe, SA, known as S12-4, which is currently open for bidding by oil and gas companies? This lease area covers the entire central section of the

Bonney Upwelling area, another of the 3 blue whale feeding sites in Australian waters (the other two being KI and Perth Canyon), and is also important for a whole range of listed marine species.

7. Recent acreage releases have seen a steady expansion in the number of important whale habitat areas being opened up for oil and gas exploration. Is the Department considering any reforms to the current regulatory system around offshore petroleum which would:
 - a. require the sensitivities of marine environments and local communities to be fully understood and assessed prior to areas being released for exploration; and
 - b. give local communities a say in the acreage release process?

Answer:

1. Environmental approvals for offshore petroleum activities in Commonwealth waters are governed by the provisions of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Environment Regulations), and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as appropriate. This framework ensures environmental protection whilst allowing development of an internationally competitive and sustainable industry.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has responsibility for regulation of environmental management under the *Offshore Petroleum and Greenhouse Gas Storage Act* (OPGGSA) for petroleum activities, and the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) is responsible for evaluating Bight Petroleum's referral under the EPBC Act. Consequently, the Department of Resources, Energy and Tourism (RET) has no responsibility for the evaluation of Bight Petroleum's EPBC Act referral, and has not done so.

As at 5 November 2012, Bight Petroleum has not yet submitted an Environment Plan (EP) to NOPSEMA for the Lightning 3D marine seismic survey, but is required to have an accepted EP in place prior to commencing the activity.

RET expects that in order to meet their obligations and demonstrate compliance with the Environment Regulations, Bight Petroleum, the activity operator, will undertake consultation in line with the requirements of the Environment Regulations prior to submitting its EP. It is a matter for Bight Petroleum to consider the timeframes associated with any consultation.

Under sub-regulation 16(b) of the Environment Regulations, an EP must contain a report on all consultations between the operator and any relevant person undertaken in the course of preparing the EP and must contain the following:

- a summary of each response made by a relevant person
- an assessment of the merits of any objection or claim about the adverse impacts of each activity to which the EP relates
- a statement of the operator's response, or proposed response, if any, to each objection or claim
- a copy of the full text of any response by a relevant person.

NOPSEMA is not responsible for conducting consultation on the activities proposed in the Environment Plans submitted to it. NOPSEMA will assess the adequacy of the consultation processes undertaken by Bight Petroleum and its responses to the issues raised in their consultation process. The environment plan will not be accepted unless these matters are assessed to meet the requirements of the OPGGSA and the Environment Regulations.

2. NOPSEMA is not required to seek external advice on the content of any individual environment plan. NOPSEMA assessments are undertaken by an assessment team with the appropriate skills and technical competencies. The assessment team will have (or where required, may seek external assistance) an appropriate combination of technical and operational expertise and experience to perform their allocated roles, and may also take into consideration any other information deemed relevant, including publically available environmental data. NOPSEMA's approach to undertaking assessments is contained in the Environment Plan Assessment Policy which is available on the NOPSEMA website (www.nopsema.gov.au).
3. Prior to the 2010 acreage release, thorough consultation with relevant Commonwealth and State Government agencies was undertaken for every area proposed, including those offshore South Australia, to identify any environmental, social, economic, and native title issues. Details on matters specific to certain areas, such as marine animal migratory routes, that potential explorers need to take into account when assessing and determining how to explore an area, were available to potential bidders within the special notices section of the Acreage Release information package provided as part of the acreage release in 2010. This also included information on the potential for areas to be declared as, or adjacent to, multi-use marine parks and for the need to comply with management plans for these areas should release areas and marine parks overlap.

Inclusion of areas in the Release does not automatically mean that petroleum exploration, or future development, will occur in an area. For a company to be awarded an exploration permit, they must lodge a comprehensive bid detailing the exploration work they propose to undertake in the area, along with evidence of their financial and technical capability to facilitate the work. Assessment of bids is a competitive process against publically available criteria; an explorer will only be granted a permit if they can satisfy decision-makers that they have the technical and financial ability to carry out exploration activities.

Petroleum activities can only occur if a company holds a valid title, which in itself provides holders with an exclusive right to *apply* for further approvals to conduct safe petroleum operations in the area including environmental approvals.

If an exploration permit is granted, it could be a several years before any physical exploration activities occur in the area and will be subject to the appropriate regulatory approvals being in place under the OPGGSA and associated Regulations, and the EPBC Act.

4. Decisions to release areas are made by the Joint Authority which is both the Commonwealth and State Governments together. As such, prior to inclusion, all areas proposed for release are subject to an assessment process involving thorough consultation with Commonwealth and State agencies to identify interests in the region. The State Departments provide their comments on area and is also responsible for the facilitation of consultation with stakeholders whose activities may be affected by future petroleum exploration in the proposed areas. Any concerns raised are taken into consideration before making a final decision on release areas.

Concerns that may be raised during the consultation process are taken into account by the Joint Authority in finalising areas for inclusion in the release. Details on issues specific to certain areas, such as marine animal migratory routes, that potential explorers need to take into account when assessing and determining how to explore an area, were available within the Special Notices section of the Acreage Release information package provided as part of the acreage release in 2010.

The Minister for Resources and Energy has responded to all correspondence from residents of Kangaroo Island to explain what the process is for consultation under the OPGGSA. Due to its confidential nature the Department cannot provide its Minister's correspondence or identify the parties concerned.

5. The process of identifying areas for acreage release is part of an ongoing program which pre-dates the process for identifying the South-west marine reserve network.

The Government has identified a reserve network that protects representative key features and habitat while accommodating to the extent possible economic and social interests. SEWPaC was consulted at each key decision point in the identification of acreage release areas. Potential bidders were made aware of environmental matters that may affect their future activities within the Special Notices section of the acreage release package.

6. As mentioned above (question 3) prior to all acreage releases, extensive consultation is undertaken to relevant Commonwealth and State Government agencies to identify any environmental, social or economic issues. The potential bidders are provided details on matters specific to each acreage release area which need to be taken into account when assessing and determining how to explore an area - such as migratory routes of marine species within the acreage release information package. This also includes the potential for areas to be declared or adjacent to multi-use marine parks and for the need to comply with management plans for these areas should release areas and marine parks overlap.

Again, it should be noted that after an area is released and an exploration title awarded, titleholder activities are subject to stringent environmental standards and reporting requirements set out in the legislation and regulations for the activities, including the OPGGSA and regulations, and the EPBC Act as required.

7. a) Following the acreage release, and assessment of bids for the acreage release areas an exploration title can be awarded. However before exploration activities can begin titleholder is subject to stringent environmental assessment and reporting requirements set out in the legislation and regulations for the activities, including the OPGGSA and regulations, and the EPBC Act as required. The release of areas itself does not have an impact on the environment, and given the vast areas involved and the lack of specificity of activities prior to release it would not be possible to undertake a detailed environmental assessment to be undertaken at that time.

At the beginning of this year, commencement of the NOPSEMA demonstrates how the Australian Government is continuing to strengthen our regulatory framework. NOPSEMA provides independent scrutiny of all petroleum exploration and development activities in Commonwealth waters. It also publishes summaries of approved Environment Plans. Public input into these plans occurs through consultation undertaken by the titleholder (the adequacy of this consultation evaluated by NOPSEMA), and also through the public consultation processes of the EPBC Act on matters of National Environmental Significance (NES).

b) Prior to releasing acreage, the Australian Government consults with the relevant state department for particular release areas. The state departments are requested to provide their comments as well as facilitating consultation with stakeholders whose activities may be affected by future petroleum exploration in the proposed areas including native title at a local level. Any concerns raised are taken into consideration before making a final decision on release areas. It is more appropriate that operators, before proposing specific activities in specific locations undertake detailed consultation, including with local communities as prior to this stage the Government does not have details on the specific activities, their location and timing and therefore the potential impacts.