National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)

Strategic Assessment Review Taskforce

Single Stage Regulation Impact Statement (RIS)

OBPR Reference: 16191

Context

1.1. In 2013, the Government made an election commitment to streamline environmental approvals by delivering a "one-stop-shop for environmental approvals ensuring projects can commence as soon as possible but without compromising environmental standards."

1.1.1. The Government proposed that NOPSEMA would be the sole, designated assessor for environmental approvals within its jurisdiction.[1] This includes offshore petroleum and greenhouse gas storage activities in Commonwealth waters and designated waters where powers have been conferred.

1.1.2. The Government also proposed the establishment of a 'one-stop-shop', administered by State and Territory governments for onshore environmental approvals. This is being progressed separately through the Council of Australian Governments.

1.1.3. This Regulatory Impact Statement (RIS) is relevant only to implementation of streamlining environmental approval processes in Commonwealth waters, and designated waters where environmental management powers have been conferred to NOPSEMA.

1.2. NOPSEMA was established as an independent statutory authority by the OPGGS Act on 1 January 2012.

1.2.1. A Commonwealth Government agency, NOPSEMA is the regulator of environmental management law under the OPGGS Act.

1.2.2. Its jurisdiction covers Commonwealth waters and, where the relevant State or Territory has conferred powers to it, designated (State/Territory) waters. Currently, no environmental management powers have been conferred to NOPSEMA.

1.2.3. It is the regulator for occupational health, environment and safety and well integrity of petroleum activities, and has the delegated functions for regulation of environmental management of greenhouse gas storage activities.

1.3. On 25 October 2013, the Minister for Industry, the Hon. Ian Macfarlane MP, the Minister for the Environment, the Hon. Greg Hunt MP, and the CEO of NOPSEMA, Ms Jane Cutler, (the Parties) agreed to undertake a Strategic Assessment under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) of the offshore petroleum and greenhouse gas environmental management authorisation process.

1.3.1. The Parties entered into a formal Strategic Assessment Agreement, as provided for under s146 of the EPBC Act, as a means to implement the Government's election commitment to establish NOPSEMA as the sole designated assessor for offshore environmental approvals.

[1] The Coalition's Policy for Resources and Energy, September 2013.

1.3.2. The Department of Industry established an Offshore Environmental Streamlining Taskforce (the Taskforce) consisting of officers from the Departments of Industry and Environment, NOPSEMA, and technical support from industry and academia, to undertake the Strategic Assessment.

1.4. The Strategic Assessment includes three key documents:

1.4.1. The Program Report: which describes NOPSEMA's environmental management authorisation process and commitments in relation to matters protected under Part 3 of the EPBC Act (the Program);

1.4.2. The Strategic Assessment Report: which provides an assessment of how the Program delivers equivalent environmental outcomes to those achieved under the EPBC Act (the Strategic Assessment); and

1.4.3. The Supplementary Report: documenting public consultation undertaken in the course of the Strategic Assessment process.

1.5. At the conclusion of the Strategic Assessment, the Minister for the Environment will consider whether to endorse the Program under the EPBC Act, and then whether to approve classes of actions undertaken in accordance with the Program.

1.5.1. The Minister for the Environment will decide whether to endorse the Program by mid February 2014, and approve classes of actions by 28 February 2014.

1.5.2. If the Minister endorses the Program and approves classes of actions, NOPSEMA will be the sole designated assessor for offshore petroleum activities undertaken in its jurisdiction. This will deliver on the Government's election commitment (Paragraph 1.1.1 refers).

1.6. The offshore petroleum and greenhouse gas environmental management authorisation process described in the Program is administered by NOPSEMA under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (OPGGS(E) Regulations).

1.6.1. The Program describes the OPGGS(E) Regulations as proposed for amendment to implement streamlining reforms. This regulatory model proposed was developed by the Taskforce and agreed by officials on 13 November 2013 at the second meeting of the Streamlining Offshore Petroleum Environmental Approvals Steering Group.

1.6.2. The Taskforce is also implementing the outcomes of the Government's 2012 review of the OPGGS(E) Regulations to ensure they represent leading practice for objective-based environmental management regulation. This includes changes to the OPGGS(E) Regulations.

1.6.3. This RIS is relevant only to changes in regulation required as a consequence of the streamlining exercise. The Department has engaged separately with the Office of Best Practice Regulation (OBPR) on implementation of the 2012 review of the OPGGS(E) Regulations (OBPR ID: 2013/16159 refers).

1.7. Detailed information regarding this Strategic Assessment process under Part 10 of the EPBC Act and amendments to the OPGGS(E) Regulations, including the draft Program Report, draft Strategic Assessment Report and draft regulations released for consultation in November/December 2013, is available at www.industry.gov.au/streamlining.

Element 1 - Assessing the Problem

1.8. As at 1 January 2014, there are over 400 active petroleum titles in Commonwealth waters. A title gives the titleholder the exclusive right to apply to undertake petroleum activities.

1.8.1. For the purposes of this RIS, it is assumed there are 61 businesses currently conducting petroleum activities in Commonwealth waters. It is further assumed that an average of 72 offshore petroleum activities take place per year. These assumptions are based on information from NOPSEMA and the Department of Environment for the level of activity in the sector over the past five years.

1.9. It is difficult to quantify the number of petroleum activities that take place every year, as such activities often form part of larger projects. However, it is possible to provide an indication by quantifying the number of environment plan submissions to NOPSEMA, and the number of referrals submitted to the Department of the Environment under the EPBC Act. It should be noted that in many cases an environment plan or referral will apply to more than one petroleum activity, and the scope of each may not be the same, making direct comparison difficult.

1.9.1. Over the past 5 years, using information provided by NOPSEMA and the Department of the Environment, it is estimated that there was an average of 70 exploration activities per year, and 2.4 development activities per year.

1.10. The Australian petroleum industry is a significant contributor to the Australian economy. Total assets exceeded $220 billion in 2011/12. The industry contributed almost $9 billion in taxes, excise and royalties on revenue of just over $38 billion in 2011/12.[2] Investment in the Australian petroleum industry averaged $35.6 billion per year over the past four years.[3] Investment in the offshore oil and gas sector accounts for a large proportion, but not all of that investment. The onshore gas sector, including the export facilities in Queensland, is also active, with capital projects over that time. Exact figures of capital expenditure in the offshore area are difficult to determine. However, a reasonable figure for average annual investment in the offshore oil and gas sector over the past four years, when accounting for the actual investment over that period on current projects (such as Gorgon, Wheatstone, Icthys, Pluto, Prelude etc) would be in the order of $26 billion per year.

1.10.1. The industry in Australia comprises a broad range of companies, from small local and regional exploration firms to large Australian companies such as Woodside and BHP Billiton, and medium to large international companies such as INPEX, Osaka Gas, Total, Apache, Chevron, Shell and BP. Commonly, these companies enter into 'joint

[2] Australian Petroleum Production & Exploration Association, www.appea.com.au.

[3] Source: ABS 5625.0 (Directly supplied by ABS).

venture' arrangements for exploration and development of offshore resources due to the size of investment required to operate in Australia.

1.10.2. Small, medium and large firms undertaking exploration and development activities in areas where there is the potential to impact on matters of national environmental significance may be subject to both processes.

1.11. There is duplication in the development, assessment, approval, compliance, monitoring, reporting and enforcement of the environmental impacts of offshore petroleum activities in Commonwealth waters. This duplication has resulted because there are two separate, but overlapping schemes that currently apply:

1.11.1. If a proponent is seeking to undertake an offshore petroleum and greenhouse gas activity, they must prepare an Environment Plan for assessment and authorisation under the OPGGS Act and the OPGGS(E) Regulations.

1.11.2. In addition, there is an onus on proponents to ensure that their activities are not in breach of the provisions of the EPBC Act. If an activity is likely to have a significant impact on matters of national environmental significance or another EPBC Act protected matter (e.g. Commonwealth Land), the proponent must 'refer' the activity to the Department of the Environment for a decision as to whether it is a controlled action and, if it is, approval from the Minister for the Environment under the EPBC Act. This requires a separate referral and assessment process.

1.11.3. The nature of activities includes, but is not limited to, seismic surveys, exploration and production drilling, facility construction and operation (i.e. for petroleum extraction), and decommissioning.

1.12. Where a proponent has referred an activity to the Department of the Environment, four outcomes may result. The Minister for the Environment or his/her delegate:

1.12.1. Determines the activity will have a significant impact on a protected matter, deems it a "controlled action", and further assessment under the EPBC Act is required before approval. If approved, conditions may (and commonly) apply to that approval.

1.12.2. Determines the activity will not have a significant impact on a protected matter, deems it a "not controlled action", and no further assessment under the EPBC Act is required.

1.12.3. Determines the activity will not have a significant impact on a protected matter, deems it a "not controlled action: particular manner", and no further assessment under the EPBC Act is required as long as the activity is undertaken in accordance with the conditions ("particular manner").

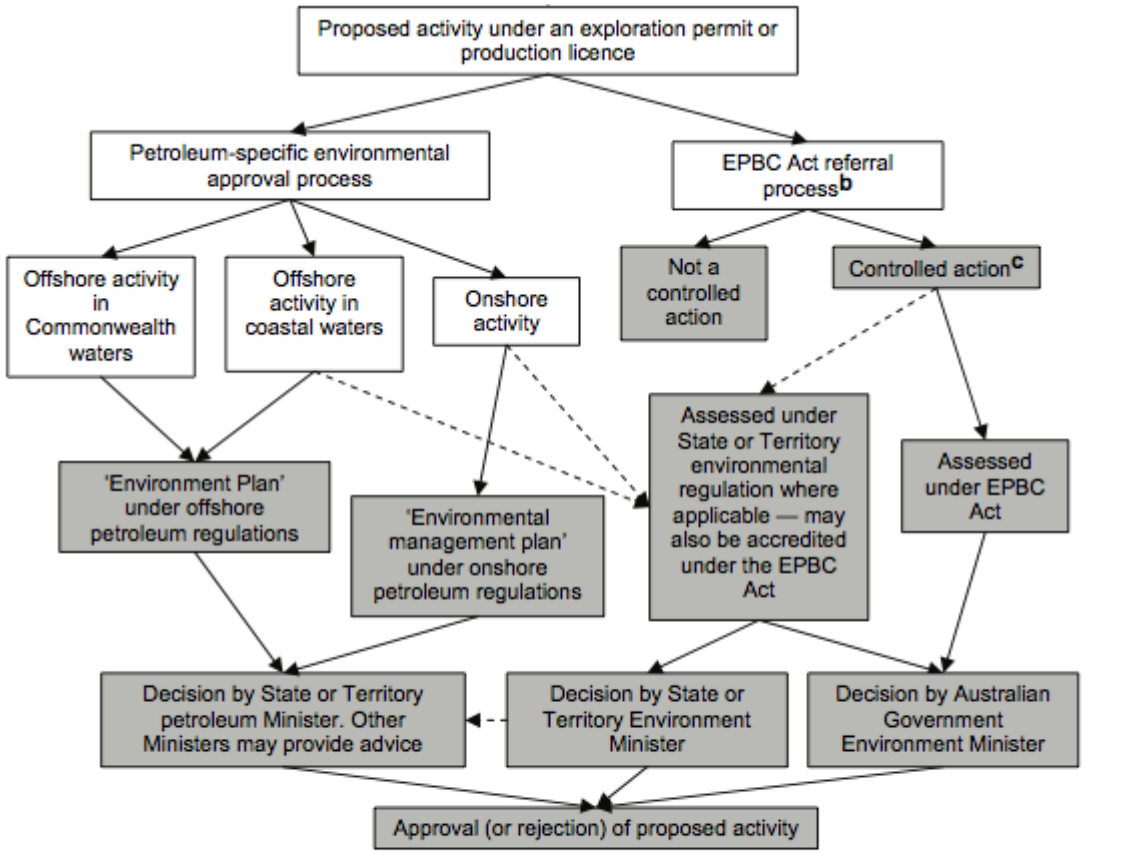
1.12.4. Determines the activity is clearly unacceptable and cannot proceed.

1.13. In the first three cases, regardless the Department of the Environment's decision and conditions, proponents must also prepare an Environment Plan for every activity for

submission, assessment, and acceptance by NOPSEMA under the OPGGS(E) Regulations. Proponents must then comply with the Environment Plan, as well as any conditions placed on an EPBC Act approval and any prescribed "particular manners" conditions. This may also result in inconsistencies in regulatory requirements (paragraph 1.16 refers).

1.14. The figure below, sourced from the 2009 Productivity Commission Review of Regulatory Burden in the Upstream Petroleum (Oil and Gas) Sector (the 2009 PC Review) demonstrates the complexity and confusion that also results from the application of two regulatory regimes for the sector.

Figure 1 – Environmental Approval Processes



[a] Shaded boxes indicate a specific regulatory requirement or decision stage and a dashed arrow indicates a decision stage that may not always be required. [b] The EPBC Act refers to the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth). [c] A controlled action is one that is likely to have a significant impact on a matter of National Environmental Significance under the EPBC Act.

Figure sourced from 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector.

1.15. The form and detail of information required for an environment plan (set out in the OPGGS(E) Regulations) and a referral to the Department of the Environment (set out in guidelines and policy documents under the EPBC Act) are similar.

1.15.1. Both include a description of the environment, the potential impacts and risks that the proposed activity may pose to the environment, avoidance and mitigation measures that the proponent proposes to employ to minimise those impacts,

contingency plans in the event of an incident (i.e. oil spill) as a result of the activity, and details on remediation of the environment both in the event of a spill and following completion of the activity.

1.15.2. These processes are similar, but not identical, and the regulator for each is different, with NOPSEMA regulating the process under the OPGGS(E) Regulations and the Department of the Environment regulating the process under EPBC Act, resulting in inconsistency of expectations and assessments. Industry stakeholders have indicated in consultation that there is duplication of effort to prepare documents and in liaising with regulators to provide context and detailed understanding as well as to amend documents in order to achieve approval (where appropriate).

1.16. Industry stakeholders have identified inconsistency in regulatory requirements and conditions as a particular issue. As noted in paragraph 1.13, conditions may be placed on decisions and approvals under the EPBC Act, and those conditions may be inconsistent with requirements that apply under the OPGGS(E) Regulations. This has, for example, resulted in inconsistent regulatory requirements for oil spill contingency planning.

1.16.1. A common approval condition under the EPBC Act is for a company to prepare an oil spill contingency plan (also known as an oil pollution emergency plan), that must be approved by the Minister for the Environment, or at the very least must meet certain standards that are prescribed in the condition.

1.16.2. At the same time, all companies are required to prepare an oil spill contingency plan under the OPGGS(E) Regulations in accordance with specific criteria laid out in those regulations.

1.16.3. Industry feedback indicates that the requirements prescribed in EPBC Act conditions are not consistent with the OPGGS(E) Regulations. As a result, companies must prepare two documents in relation to oil spill contingency planning for two different regulators, causing confusion and with potential consequences in the event of an incident if there are inconsistencies in compliance requirements.

1.16.4. Industry has also advised that “particular manner” determinations have also required the proponent to prepare oil spill contingency plans. While these requirements require approval by the relevant authority (NOPSEMA), industry reports cases where the requirements also detail particular contents for the oil spill contingency plan which may contradict subsequent OPGGS(E) Regulations.

1.17. The impact of duplication between these regimes, and in particular inconsistent regulatory requirements, such as the example above, means that companies must meet separate ongoing compliance standards and reporting requirements.

1.17.1. As the terms of an environment plan decision under the OPGGS(E) Regulations and EPBC Act decision are not identical, there is burden on industry in ensuring compliance with and reporting against both.

1.17.2. Reporting requirements under the OPGGS(E) Regulations require monthly reporting of general monitoring and annual reports against performance against outcomes and commitments made and approved in an environment plan in relation to discharges and impacts of the activity on the environment. Under the EPBC Act, reporting requirements are commonly outlined in conditions to decisions and relate to monitoring of the environment to ensure the activity is not having an unacceptable impact.

1.17.3. While these reporting requirements are not identical, they overlap in many regards for a large majority of projects and present a burden of reporting on similar or identical primary source data in different ways to meet the expectations of both regimes.

1.18. The 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector (the 2009 PC Review) identified and described this overlap between schemes, noting that they can result in duplication of regulatory requirements. The Review notes two reasons for which this is an unnecessary burden:

1.18.1. First, very few referrals under the EPBC Act require further assessment – Department of Environment data provided to the Taskforce indicates that 177 exploration activities in Commonwealth waters have been referred under the EPBC Act. Of these, only one was found to be clearly unacceptable. Of the remaining 176 referrals, 153 were deemed not to require assessment, 17 were withdrawn prior to any decision, and six required assessment under the EPBC Act. Of those six, four were withdrawn and one submission lapsed. One was assessed and approved.

1.18.2. Despite the low incidence of activities that require assessment, companies must consider whether they need to refer these activities to the Department of the Environment to ensure that they will not be in breach of their requirements and proceed with the projects. Based on data provided by NOPSEMA for the last two years, it is estimated that 20 per cent of activities are currently referred.

1.18.3. Second, industry participants reported to the Productivity Commission that the level of detail and requirements under the OPGGS(E) Regulations to prepare, comply with and report against an environment plan, were sufficient for the petroleum regulator to assess potential environmental impacts. These participants suggested that it was unnecessary to require involvement of the Environment Portfolio as well as the OPGGS(E) Regulations as there was no additional benefit to the environment.[4]

1.19. The findings of the 2009 PC Review have been supported by subsequent independent reviews, including the Independent Review of the EPBC Act and the Report of the Montara Commission of Inquiry and the 2013 Productivity Commission Research Report - Major Project Development Assessment Processes (2013 PC Report).

[4] Productivity Commission (2009), Review of Regulation Burden on the Upstream Petroleum (Oil and Gas Sector), Research Report, Canberra, p 141.

1.19.1. The Independent Review of the EPBC Act (the Hawke Review), released in 2011, examined ways to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards. It noted that there are significant interactions between the EPBC Act and the OPGGS(E) Regulations and recommended the Australian Government consider streamlining the relationship between the OPGGS(E) Regulations and the EPBC Act to maximise regulatory efficiency while retaining strong environmental safeguards.

1.19.2. The 2010 Report of the Montara Commission of Inquiry[5] and the draft 2013 Productivity Commission Report on Mineral and Energy Resource Exploration[6] also recommended that the Government streamline these regimes.

1.19.3. The 2013 PC Report noted that the building blocks of a sound regulatory system are already in place in Australia. The Commission went on to note there is still substantial scope to improve Australia's development assessment and approval processes. The Commission points to this offshore streamlining project as a noteworthy example of how regulators within the same jurisdiction can cooperate on assessment and approval matters.[7]

1.20. As noted in the 2009 and 2013 PC Reviews, regulatory delays can have a significant impact as companies commonly seek regulatory approval under the EPBC Act for development projects before making final investment decisions. These approvals therefore directly impact on a company's decision whether to proceed with the project, and when.

1.20.1. The industry body, the Australian Petroleum Production and Exploration Association (APPEA), supports and has advocated this through member surveys, studies and submissions to various government reviews in relation to regulatory burden associated with environmental assessment, approval, compliance and reporting processes.

1.21. APPEA is the peak national body representing Australia's oil and gas exploration and production industry. It has more than 80 full member companies across the offshore and onshore sector, accounting for an estimated 98 per cent of Australia's petroleum production. It also represents more than 250 associate member companies that provide goods and services to the oil and gas industry.[8]

1.21.1. In September 2008, in a submission to the Productivity Commission, APPEA noted duplication between the two regimes and suggested the Commonwealth Environment Minister recognise the environmental assessments under the OPGGS Act, especially for exploration activities. APPEA's submission noted, in particular:

[5] Department of Resources Energy and Tourism (RET)(2010). Report of the Montara Commission of Inquiry.

[6] Productivity Commission (2013), Mineral and Energy Resource Exploration, Draft Inquiry Report, Canberra.

[7] Productivity Commission Research Report , 2013, Major Project Development Assessment Processes, Page 146 and box 6.4.

[8] APPEA (2014), 'About APPEA', www.appea.com.au/about-appea (accessed 13 January 2014).

- "Each year the industry drills, on average, around 60 new exploration wells, refers a majority for assessment under the EPBC Act and for all but a few since the commencement of the Act, has received a "not controlled" determination" – meaning assessment was not required.[9]

1.21.2. More recently, in its 2013 public report *Cutting Green Tape – Streamlining Major Oil and Gas Project Environmental Approvals Processes in Australia* (Green Tape Report), APPEA argued duplicative and overlapping environmental regulatory requirements can threaten the full potential of economic returns to the community from this sector through project delays, uncertainty and the foregoing of market windows and investment opportunities[10].

1.21.3. APPEA also noted regulatory compliance costs can substantially impact on cash flows leading to some marginal activities becoming unviable or ceasing to operate.[11] This is consistent with the 2009 PC Review's findings that unnecessary approvals costs add to the existing barriers for entry of smaller companies into the petroleum sector, potentially reducing opportunities for competition and innovation[12] and the impetus for development delivered by exploration activities.

1.22. APPEA's submission to the Taskforce[13] notes its support for "the Government's commitment to create a 'one-stop-shop' for offshore petroleum environmental assessments" and that "the Draft Strategic Assessment Reports are therefore a significant step in the right direction." The Productivity Commission in its 2013 report on Major Project Development Assessment and Approvals pointed specifically to the offshore streamlining Strategic Assessment as an example of good co-operation between regulatory agencies.

1.23. The current regime poses a burden not only on the oil and gas industry, but also on key stakeholders that interact with that industry, particularly in the course of consultation on relevant environmental management plans and arrangements. These include tourism and fishing operators, and non-government organisations (NGOs) including environmental NGOs.

1.23.1. In the course of consultation on the streamlining process, several industry and NGO stakeholders noted the regulatory burden of the current regime on other sectors in their interactions with the offshore petroleum industry.

1.24. The National Seafood Industry Alliance (NSIA) commented specifically on this matter in its submission to the taskforce:

1.24.1. The NSIA brings together the Commonwealth, National State and Territory peak industry bodies in the Commercial Fishing and Aquaculture industries to provide national representation to the federal government.

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[9] APPEA (2008), Submission to the Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, p 23.

[10] APPEA (2013). Cutting Green Tape – Streamlining Major Oil and Gas Project Environmental Approvals Processes in Australia. Canberra.

[11] APPEA (2013) ibid.

[12] Productivity Commission (2009) op. cit.

[13] All submissions that were not marked 'confidential' can be accessed at www.industry.gov.au/streamlining.

1.24.2. The NSIA's submission noted that it and its members are "increasingly inundated with information on large numbers of oil and gas sector activities." The submission provides detailed comments on the proposals, concluding that "to assist in streamlining the approvals process processes, NSIA endorse NOPSEMA as the single independent regulator for these issues."

1.25. Environmental NGOs[14] broadly recognised the Government's commitment and agenda to reduce regulatory burden by streamlining processes, but raised concerns in relation to the policy and whether the proposed arrangements would ensure adequate environmental protection.

1.26. The Government's commitment is to streamline processes and reduce regulatory burden *while maintaining environmental safeguards*. The implementation of this election commitment through a strategic assessment (paragraph 1.32 refers) will therefore ensure that the same level of environmental protection will be achieved. In addition, while the definition of the environment is consistent between the EPBC act and the OPGGS(E) Regulations, the amended OPGGS(E) Regulations will now include an explicit reference to matters of national environmental significance.

1.27. It is not clear that the current situation, where two regulatory regimes apply, provides additional environmental protection or benefits compared with the proposed system where only the OPGGS(E) Regulations apply. Further, the benefits of reducing regulatory overlap and duplication is one obvious source of unnecessary burden for proponents of major projects. The Productivity Commission notes that the size of the costs caused by delays to major projects points to potentially substantial gains if efficient ways to save time can be found.[15]

1.27.1. Industry feedback suggests there are cases where conditions applied under EPBC Act approvals or decisions that an activity may proceed in a "particular manner" is that these requirements impose obligations without resulting in improved environmental outcomes (paragraph 1.16 refers).

1.27.2. The OPGGS(E) Regulations are broader in scope in that they apply to all impacts and risks on the environment, and not just significant impacts or risks on particular matters in the environment.

1.27.3. The OPGGS(E) Regulations applies the same fundamental test of whether potential impacts and risks to the environment are "acceptable" before an activity may proceed.

1.27.4. The Strategic Assessment, and Strategic Assessment Report identifies in detail how the OPGGS(E) Regulations provide for the protection of the relevant matters identified in the EPBC Act to ensure that the streamlining exercise improves the efficiency of the regime while maintaining the same environmental outcomes.

[14] These included the Australian Network of Environmental Defenders' Offices, the International Fund for Animal Welfare, the Wilderness Society, and the Australian Marine Conservation Society.

[15] Productivity Commission Research Report , 2013, Major Project Development Assessment Processes, page 13

Element 2 - Objectives of Government Action

1.28. The Government's intent is to streamline existing environmental approvals of offshore petroleum and greenhouse gas storage activities in Commonwealth waters, as well as in designated State or Territory waters where those jurisdictions' powers have been conferred to the Commonwealth and to make NOPSEMA the sole designated assessor for these activities, in line with the Government's 2013 election commitment (paragraph 1.1 refers).

1.29. In line with this objective, this proposal aims to provide greater certainty for business, accelerate approval times and support investment decisions and Australia as an attractive investment destination while ensuring strong environmental safeguards are retained that both ensure:

1.29.1. Offshore petroleum activities are carried out in a manner consistent with the principles of ecologically sustainable development.

1.29.2. Protection of matters under Part 3 of the EPBC Act.

1.30. This proposal also aims to contribute to the Government's deregulation policy agenda and its commitment to reduce regulatory burden for individuals, business and community organisations by $1 billion per year.

Element 3 - Options that may achieve the objectives

1.31. In October 2013, the Government decided to undertake a Strategic Assessment of NOPSEMA's environment management authorisation process to achieve its election commitment to streamline approvals in Commonwealth waters and, where the relevant jurisdiction has conferred powers, in designated (State and Territory) waters.

1.31.1. The 25 October 2013 Strategic Assessment Agreement (paragraph 1.3 refers), signed by the Minister for Industry, the Minister for the Environment, and the CEO of NOPSEMA, affirms this decision.

1.32. A Strategic Assessment is a statutory process authorised by the EPBC Act (Part 10 of the EPBC Act refers). The process, as set out in the EPBC Act, is a broad assessment, as opposed to a case by case assessment, that in this case will assess the impacts of NOPSEMA's processes against the standards and requirements of the EPBC Act.

1.32.1. The purpose of a strategic assessment is to provide the Minister for the Environment with information to make two decisions: to endorse a policy, plan or program (in this case 'the Program' which describes NOPSEMA's processes); and to approve certain actions or classes of actions (in this case offshore petroleum and greenhouse gas activities).

1.32.2. The Minister for the Environment must not endorse NOPSEMA's processes or approve actions unless the Strategic Assessment meets the requirements under the

EPBC Act. This process delivers the same level of environmental protection under the NOPSEMA process as that achieved under the EPBC Act.

1.33. The Minister for Industry and the Minister for the Environment will make the final decisions regarding implementation of this reform in February 2014.

1.33.1. The Minister for Industry will decide whether to approve the amendments to the OPGGS(E) Regulations

1.33.2. The Minister for the Environment will decide whether to endorse the Program, to be implemented by NOPSEMA including through the OPGGS(E) Regulations, and whether to approve actions taken in accordance with the Program, effectively removing the requirement for companies to seek EPBC Act approval for offshore petroleum activities.

1.34. On 15 November 2013, the OBPR advised the Taskforce in writing that a RIS would be required for the "Streamlining Offshore Petroleum Environmental Approvals". The OBPR further advised a single stage, single option details RIS focusing on delivering on the government's election commitment would be acceptable.

1.35. In accordance with this advice, and in accordance with section 7.86 of the OBPR Handbook (July 2013):

1.35.1. The agency has prepared a single-stage RIS, and as no decision has been previously announced, an options-stage RIS is not required.

1.35.2. As this is a single stage RIS, the checklist (which is in relation to an options-stage RIS) is not relevant and has not been included.

Description of proposal

1.36. The Program (paragraphs 1.4.1 and 1.6.1 refer) will replace the current dual approvals system. It will apply to all offshore petroleum and greenhouse gas activities authorised in the OPGGS Act and undertaken in Commonwealth waters, as well as designated waters where powers have been conferred to NOPSEMA.

1.36.1. This will benefit over 60 oil and gas companies, as well as all other stakeholders who interact with those companies in relation to the petroleum activities in Australia.

1.37. The Program is comprised of two environmental assessment paths: the Environment Plan (EP) and Offshore Project Proposal (OPP).

1.38. Titleholders are already required to submit an EP for assessment and acceptance by NOPSEMA prior to commencing any offshore petroleum or greenhouse gas storage activity. The activity must not commence unless NOPSEMA has accepted the EP. This requirement remains unchanged.

1.39. The OPP will be introduced in the OPGGS(E) Regulations. It will capture development projects that may have an impact on a matter protected under Part 3 of the EPBC Act and

would otherwise have been a controlled action and subject to assessment processes under the EPBC Act.

1.39.1. The OPP process can be used for all petroleum activities, but will only be mandatory for development activities (as per the definition of 'offshore project' in the proposed regulations – see item 23 in the Exposure Draft). Generally, development activities that would currently be subject to EPBC assessment will undergo OPP assessment instead.

1.39.2. It will not be mandatory to submit an OPP for exploration and other non-development activities. As many exploration activities currently undergo EPBC Act assessment, this will be a saving to industry. Exploration and other non-development activities will continue to require an approved EP to proceed.

1.39.3. An Offshore Project Proposal will be required for all new development activities that do not have a prior EPBC Act decision under Parts 7 or 9. Additional or new stages of existing developments will not be subject to the mandatory Offshore Project Proposal provisions, but will require an accepted Environment Plan in place before any new stage of an activity can commence.

1.40. This means, for development activities, proponents will no longer need to consider whether an activity may have a significant impact, and will not have to refer the proposed activity to the Department of the Environment under the EPBC Act. Instead, proponents will need to prepare and submit an OPP to NOPSEMA for assessment, to demonstrate that impacts and risks to the environment will be acceptable.

1.41. This means, for exploration activities, proponents will no longer need to consider whether an activity may have a significant impact, and will not have to refer the proposed activity to the Department of the Environment under the EPBC Act. Proponents will not need to prepare or submit an OPP.

1.42. For both development and exploration activities, proponents will need to prepare and submit an EP to NOPSEMA (as is currently the case), which will need to demonstrate that impacts and risks to the environment are reduced to as low as reasonably practicable, and are acceptable.

1.43. The EP process will ensure there is no unacceptable impact to the environment as a result of the proposal. EPs (and OPPs) are developed under an 'objective-based' regulatory regime for environmental protection.

1.43.1. Objective-based regulation places the onus and duty of care for environmental protection on proponents seeking to undertake an offshore petroleum activity. This is not self-regulation by industry, as industry must demonstrate to NOPSEMA – and NOPSEMA must assess and accept or not accept – that it has reduced the risks of an impact to as low as reasonably practicable. These environmental impacts and risks must also be of an acceptable level.

1.43.2. The outcome of an objective based regime is that proponents consider the costs and implications to the environment as part of their investment decisions. In this regard, objective-based regulation encourages continuous improvement rather than minimum compliance. It ensures flexibility in operational matters to meet the unique nature of different projects, and avoids a 'lowest common denominator' approach to regulation.

1.43.3. Proponents must consider and identify the acceptable outcomes for all environmental matters, including matters of national environmental significance must be identified, and the activity approved must include a clear demonstration of how those outcomes will be delivered. This is in contrast to requirements under a prescriptive regulatory regime, where the proponent only takes into consideration those matters specifically identified by the regulation, with the level of investment commensurate to that need to meet the minimum standard of protection the regulator prescribes.

1.43.4. Objective-based regulation is well established in the regulation of occupational health and safety, and environmental management. It is modelled from international examples, in particular the United Kingdom's regulatory regime for offshore petroleum, and reviewed periodically. In particular, the independent 2010 Montara Commission of Inquiry reviewed and confirmed the appropriateness of objective-based regulation for the sector.

Element 4 - Impact Analysis

Costs

1.44. There are two broad groups of costs that have been included when calculating the impact on affected industry participants: costs/savings related to business activities associated with the regulatory regime itself (direct costs); and costs/savings associated with the impact of delay/acceleration of regulatory processes and decisions on project investment timing (delay costs). Each of these matters has been considered in Element 4.

Direct costs

1.45. Much of the work associated with preparing an EPBC referral duplicates work undertaken to produce an EP. Some costs are currently shared between the two processes, while others will be saved with the removal of EPBC requirements. It has been established, in discussions with NOPSEMA and industry participants, that:

1.45.1. The reports commissioned to produce project specific baseline environmental data and to assess the risks associated with the activity are used in both processes;

1.45.2. Costs associated with controlled actions for exploration projects will cease, and fall for development projects;

1.45.3. The compliance costs (e.g. staffing, consultancy etc.) associated with an EPBC Act referral for development projects will fall;

1.45.4. Travel to Canberra to brief the Department of Environment during the referral assessment process for both development and exploration projects will cease. NOPSEMA offices are located in Perth and Melbourne, both of which are business centres for the offshore oil and gas industry.

1.45.5. A single regulator will also remove the need for duplicate industry briefing and reduce the risk to industry of divergent understanding of issues between the Department of the Environment and NOPSEMA.

1.46. The Taskforce has undertaken targeted industry consultation to estimate costs and savings associated with the streamlining reform. The information provided indicates that clear and substantial savings will be achieved, although the exact savings can be difficult to estimate, and some data is commercial-in-confidence or anecdotal in nature.

1.46.1. Further information, on assumptions and cost calculation is at Appendix A. This includes:

- Key general assumptions
- Costing assumptions
- Consultation on assumptions
- Business Cost Calculator (BCC) assumptions
- Detailed BCC costing and data input explanations

1.47. Broadly, the proposal will benefit industry and other stakeholders by ensuring there is one regulatory point of contact. Currently, industry and other stakeholders must consult with both NOPSEMA and the Department of the Environment to seek clarification on regulatory requirements, proposed and ongoing activities, and their impacts on petroleum activities on the environment. Under the proposal, NOPSEMA will be the sole regulator for these activities and the single point of contact for industry and other stakeholders, including the public.

1.48. As NOPSEMA will be the sole regulator for environmental management of petroleum activities, this will also increase consistency in decision-making. As noted above (paragraph 1.16 refers), the current regime allows for and has resulted in inconsistent decision-making, particularly in relation to the specific conditions and requirements placed on proponents.

1.48.1. Direct feedback from industry in the course of consultation on the impacts for this RIS indicated that such inconsistencies are a concern. Industry stakeholders specifically identified increased consistency in decision-making as a benefit of streamlining.

1.49. The proposed model will result in a single timeline for environmental assessments, as opposed to the separate timelines that currently occur under the EPBC Act and OPGGS(E) Regulations. For development activities, proponents will need to prepare and submit an OPP before they may submit an EP. These processes are not separate, however. It

will be an integrated process over a single timeline as the requirements for an OPP feed into the more detailed requirements for an EP.

1.49.1. In the OPP for a development project the proponent must, for example, identify environmental performance outcomes and demonstrate that achievement of those outcomes will ensure potential environmental impacts and risks will be acceptable.

1.49.2. Once the OPP is accepted, the proponent must then, in its EP, build on those environmental performance outcomes, develop an implementation strategy to achieve those outcomes, and demonstrate that risks will be reduced to as low as reasonably practicable as well as acceptable.

1.49.3. The proposed amendments to the regulations will also provide that proponents do not have to present the same information to NOPSEMA twice. This provision, in addition to synergies in the acceptance criteria for OPPs and EPs, will allow for the integration of assessment processes where appropriate.

1.49.4. Industry consultation in the course of developing the model supported the premise that there will be benefit and efficiencies through integration of the overall process in this manner, as part of a single timeline.

1.50. The proposed model will remove the risk of conflicting approval requirements. As noted in paragraph 1.16, and confirmed by industry feedback (paragraph 1.48.1 refers), current arrangements can and do result in conflicting requirements on proponents.

1.50.1. Under the proposed model, it will no longer be possible to place EPBC Act decision and approval conditions on industry, removing the risk of conflict with EP requirements.

1.50.2. Furthermore, the proposed OPP process does not provide for NOPSEMA to place conditions on approvals. This means it will not be possible to place conditions on an OPP that could conflict with an EP.

1.50.3. Finally, the requirements for OPP and EP are both set out in regulations and have been drafted to ensure consistency, as demonstrated in the exposure draft of the amendment regulations released for public consultation in December 2013. These provisions remain unchanged following consultation, with the exception of an additional requirement that has been added to both (thus maintaining their consistency).

1.51. The proposed model will also lead to an overall reduction in the costs to industry, government and the community. This is indicated in the analysis of specific compliance cost savings below, which describe the saving to industry and the not-for-profit sector. Generally, however, there will be an overall reduction in costs through:

1.51.1. Reduced compliance costs for industry (see Table 1 on page 19), and benefits as described above in relation to having a single regulatory point of contact, consistent decision making, an integrated assessment timeline and no further risk of conflicting

approval requirements. Feedback from industry in developing the proposal, during the public consultation process (refer to Consultation section below) and in determining compliance costs supports this view.

1.51.2. Reduced cost and imposition on the community, including the not-for-profit sector, primarily in relation to having a single regulatory point of contact in relation to environmental management for offshore petroleum, but also in relation to streamlined consultation processes with industry (paragraph 1.76.2 refers). Feedback from non-industry stakeholders has indicated there will be cost benefits in streamlining processes. However, environmental stakeholders also expressed a preference to retain the current burden rather than remove EPBC Act requirements.

1.51.3. Reduced administrative costs to government associated with savings in administrative costs in EPBC Act assessments. Costs of OPP assessment will be fully cost recovered through a cost recovery fee on industry. EP assessment and compliance is already fully cost recovered through cost recovery levies.

Delay costs

1.52. More broadly, the proposed model will increase business certainty and confidence. In consultation during the preparation of this RIS, industry participants have advised that the largest benefit for industry will be an increase in the certainty and confidence in the process, as well as the reduction in timeframes for major environmental approval.

1.53. The cost of delay in the offshore oil and gas sector varies significantly across projects and activities. Several reports have undertaken calculations to estimate the impact of a delay on a project. The 2013 PC Report, notes that "…. the size of the costs caused by delays to major projects points to potentially sizeable gains if efficient ways to save time can be found". The report goes on to note that cost estimates relating to an unnecessary delay are borne by the project proponent (from delayed profits) and the wider community (through delayed [and reduced where delay costs are uplifted and credited against future liabilities] royalty and tax revenue). Delay may also result in higher financing and commercial costs.[16]

1.53.1. Consultation identified timeframes for approval as an average of two months to develop a relatively simple an initial EPBC Act referral and that an environmental impact statement under the EPBC Act likely to result in a 12 – 13 month referral process. It was considered that implementation of the streamlining proposals as suggested in the strategic assessment will reduce these timeframes to a six month process, providing considerable benefit to industry. In consultation, some industry participants suggested time savings in the order of two to three months for the average development project. Others suggested up to six months.

[16] Research Report: Major Project Development Assessment Processes, Productivity Commission, November 2013, Box7.9, p 202.

1.53.2. The Productivity Commission, however, noted that the availability and value of published information about the timeliness of development assessment and authorisation processes is limited.[17]

1.53.3. Deloitte Access Economics, however, prepared a Cost Benefit Analysis for the then Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC)[18], in which Deloittes calculated a delay figure using data provided by DSEWPaC on the 142 projects that were delayed due to late decisions by DSEWPaC. Deloittes' analysis showed that these delays ranged from only one day (10 per cent) to over a year (one per cent), with an average delay of around one month (22.7 business days). Deloittes went on to note that it is generally not small projects that are delayed.[19]

1.53.4. Several proponents also noted that streamlining of environmental approvals is expected to reduce overall burden on companies to free up resources for other business processes, including occupational health and safety.

1.54. Streamlining environmental approvals is expected to enhance Australia's profile as an attractive investment destination. Industry feedback indicates that the increased certainty that comes with having a single environmental regulatory regime will support improved project scheduling, procurement processes, and reduce contracted risk. Several proponents also noted the reform will mean they are better able to demonstrate the value of a project to both management and key investment partners.

Costs estimated using the Business Cost Calculator

1.55. The following discussion addresses specific compliance costs within the scope of the BCC.

1.56. Using the BCC, the inferred compliance saving from this streamlining reform is an annual average $10.3 million across all offshore project types. Table 1.1 describes the average annual administrative and substantive compliance costs that contribute to the total average annual compliance cost savings.

1.56.1. The expected annual average compliance costs savings associated with not requiring an OPP for exploration activities is $8.4 million. This is a saving for industry as these activities will no longer require referral, assessment or approval under the EPBC Act.

[17] Productivity Commission Research Report: Major Project Development Assessment Processes, November 2013.

[18] Deloitte Access Economics, Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the EPBC Act, DSEWPaC, April 2011.

[19] Ibid. page 7.

Table 1.1: Average annual change in compliance costs[20]

Sector / Cost categories	Business	Not-for-profit	Individuals	Total by cost category
Administrative costs	–$8,359,697	–$668,276	—	–$9,027,973
Substantive compliance costs	–$1, 259,138	—	—	–$1,259,138
Total by sector	–$9,618,835	–$668,276	—	–$10,287,111

1.57. The expected annual average compliance costs savings associated with the streamlined process were derived by calculating the estimated saving to business, both in terms of direct costs and the costs of delays to investment (paragraph 1.65.1 refers). This was done by calculating and removing all compliance activities for EPBC Act matters and then re-including those costs associated with the OPP under the streamlined process. A detailed description of how the results were calculated is detailed in Appendix A.

1.58. In interpreting the RIS, it should be noted that the costs associated with an EPBC Act referral vary considerably. Projects can vary in their scale, complexity, geographical location, the identified environment and type.

1.58.1. At least one industry participant indicated that the costs for an EPBC Act referral used in the BCC calculations are only a third of the costs they typically incur. Comments received by some other industry participants indicated that the figures may be low but within the range of costs incurred.

1.58.2. Industry participants further stated that referral costs tend to be particularly significant where particular manner decisions generate controls that are placed on the project after the referral has been submitted, that are not industry standard for perceived impacts to matters of national environmental significance.

1.59. In calculating the figures, the Taskforce sought costs information from industry that took into account labour costs (i.e. number of staff required for a task, time taken to prepare various reports and submissions, $/hr), economic, and other costs including on-costs, travel costs, consultancy fees and the costs associated with the requirement for wider consultation with stakeholder to be undertaken.

1.59.1. It is also the noted that for offshore activities the costs are typically higher than those incurred for an equivalent activity onshore[21] due to factors such as access and

[20] Note: The formal regulatory burden and cost offsets table to meet reporting requirements for this RIS is Table 2.

[21] See the Resources Industry Training Council study into automation technology: *"Rise of the Machines? Adoption of automation technology in the Australian resources industries and its implication for vocational education and training and higher education*" (2012): http://www.ritcwa.com.au/LinkClick.aspx?fileticket=Fx-PV2FK8no%3D&tabid=135.

engineering challenges, and this may result in higher values being reflected in some cost categories.

1.60. The projected savings apply across the oil and gas sector, demonstrating an overall reduction in compliance costs and burden as a result of streamlined regulatory processes. Particular activities or activity types may experience a greater or lesser saving. As noted by industry peak body APPEA in the course of consultation, there is significant varying in the scale and location of offshore petroleum activities in Australia.

1.61. The not-for-profit sector will also benefit from streamlined arrangements. The associated savings arise from the removal of duplicative consultation and submission processes under two separate regulators. As discussed in 1.51.2, a single regulator also provides a single point of contact and information for parties with an interest in offshore environmental regulation. The benefits to the not-for-profit sector are estimated at $670,000 per annum.

1.61.1. The assumptions used to calculate the estimated saving to the not-for-profit sector were supported as being reasonable in consultation. However, an environmental NGO highlighted that this should not be interpreted as an endorsement of the policy reform more broadly.

Delay costs calculation

1.62. The delay costs/savings associated with an accelerated assessment and approvals process was calculated on two component inputs:

1.62.1. An average delay/acceleration of 27.7 business days (11.1 per cent of a business year) was adopted. Although this is slightly higher than the average delay calculated by Deloittes (see paragraph 1.53.3)[22], it better reflects feedback received from industry.

1.63. In its 2013 research report on Major Project Development Assessment Processes, the Productivity Commission analysed the indicative costs of a one-year delay to an offshore Liquefied Natural Gas (LNG) project. In doing so, the Productivity Commission used a discounted cash flow methodology and data sourced from several stakeholders, including the Australian Petroleum Production and Exploration Association, who supplied data for output volumes, and construction, operating and decommissioning costs. The project cash flows were discounted to the present day using an assumed cost of capital (i.e. discount rate) of 8–12 per cent per year.

[22] Deloitte Access Economics (2011), Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the Environment Protection and Biodiversity Conservation Act 1999), page 7.

The illustrative project modelled by the Productivity Commission assumed construction costs of $11.3 billion. It is worth noting that, contrary to the Productivity Commission's advice that this amount reflects an investment size commensurate with the large projects currently being developed in the sector, it is more likely at the lower end of the 'large project' scale, particularly given the following:

Project	Construction Costs
Gorgon	+ $55 billion
Icthys	+ $35 billion
Wheatstone	~ $29 billion

1.64. The cost of a delay for an offshore LNG project can be measured by the impact on its net present value (NPV); a cost that is borne by the project proponent (from delayed profits) and the wider community. The Productivity Commission's analysis shows that the NPV of the project analysed ranged from $7 billion to $19.8 billion, depending on the assumptions used. A delay to the project could see a reduction in the projects NPV of between $0.5 and 2.0 billion respectively for a one year delay.

1.64.1. The Department of Industry has used actual project data to test the results of the Productivity Commissions' modelling. While a similar discount rate of 10 per cent was used, output volume, cost data, and ultimately the NPV of the project differ from that analysed by the Productivity Commission. The Department of Industry observed that despite these differences, there was a similar impact on the projects NPV, approximately 10 per cent as opposed to the Productivity Commissions 9 per cent, resulting from a one year delay.

1.65. The Department of Industry's analysis demonstrates that the methodology used by the Productivity Commission is an accurate way of calculating the costs of a one-year delay to an offshore LNG project. The Taskforce has therefore used the Productivity Commission's central estimate as the basis for determining the savings that could be achieved by reducing regulatory delay. The workings of those calculations follow:

Calculating the economic costs of regulatory delay

The Productivity Commission calculated that a one-year delay to a major offshore LNG project could reduce its net present value (NPV) by between $0.5 and 2.0 billion. Given the size of the LNG projects currently being developed in the sector, the Taskforce has determined that it is more appropriate to estimate the economic cost of regulatory delay using a reduction in NPV estimate of $1.8 billion (at the upper end of the Productivity Commissions estimates, noting that the project analysed is comparatively small to those currently being progressed).

Using the Productivity Commission's analysis and assuming there will be an average of 3 projects per year, the delay cost of 1 year would be:

3*$1.8 billion or $5.4 billion

Industry discussion has suggested that streamlining could potentially reduce the time for an assessment by between 2 and 3 months. The Deloittes analysis, based on a wide range of onshore and offshore projects, including urban development, infrastructure, mining and gas sectors, suggested 22.7 business days as the average delay time. The Taskforce has taken a more conservative approach than that of industry, while noting the Deloittes analysis, and adopted 27.7 business days as the average timesaving. The basis for Delloittes' empirical evidence is set out at paragraph 1.53.3.

Accordingly, the $5.4 billion has been reduced in line with the reduction in time. 27.7 business days as a proportion of the business year (calculated by Deloittes as 250 business days, after allowing for weekends and public holidays) is 11.1 per cent. Applying this reduced time saving to the $5.4 billion results in a cost associated with a delay of 27.7 days as follows.

$5.4 billion*11.1 % = $598,320,000

The Taskforce has been cautious in suggesting that all investments will benefit from a shortened approval process. Preferring a conservative approach, the taskforce has assumed that only 50 per cent of investments will benefit from the timesaving. Using the Productivity Commission's estimates an estimated delay cost saving of:

$598,320,000/2 = $299,160,000

This figure represents the estimated economic costs of regulatory delay for three projects, spread over the life of the projects. It should be noted that the figure of $598,320,000 was that which was applied to the costs calculated at Table 2.

1.66. It is important to note that these estimates relate to costs borne by the project proponent (from delayed profits) and the wider community (through delayed, and lost where the additional costs are uplifted and offset against royalty and tax revenue). Delay may also result in higher financing costs and commercial risks.

1.67. In its Submission to the 2013 Productivity Commission Report, the then Department of SEWPaC (now the Department of the Environment), based on a sample of 17 projects of varying type and complexity, found average approval times of 37 months. In most cases, for major projects, most of the assessment time can be attributed to the proponent undertaking studies and preparing assessment documentation. For example, proponents spent an average of 20 months (from an average of 37 months from referral to approval) preparing environmental impact statements and collecting public comments.[23]

1.67.1. The potential for acceleration in assessment and approvals through streamlining offshore environmental assessments is therefore significant, potentially in the realm of months. Further, the size and nature of offshore development projects, almost all of which are in the tens of billions in capex, means that acceleration of just one project will have significant economic benefits.

[23] Research Report: Major Project Development Assessment Processes, Productivity Commission, November 2013, box 8 page 21.

1.68. Table 1.2 includes an estimate of the economic cost of delay over the life of projects, which is dependent on the commencement of three projects each year. The BCC was not used to calculate these costs. Instead, the Taskforce used analysis undertaken by the Productivity Commission.

Table 1.2: Estimate of the economic cost of delay over the life of projects

Sector / Cost categories	Business	Not-for-profit	Individuals	Total by cost category
Delay costs	–$299,160,000	—	—	–$299,160,000
Total by sector	–$299,160,000	—	—	–$299,160,000

1.69. The Taskforce has tested the logic, assumptions, and outcomes underpinning these estimated delay costs, as well as the resulting cost estimates, with industry and officers within the Australian Government Bureau of Resources and Energy Economics. These stakeholders have indicated these estimates are reasonable.

1.70. Exploration delays can also have a significant impact on development projects, as the latter relies on the former.

1.71. The Productivity Commission (2009) Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector noted that the long-run costs associated with a one-year delay in approval of exploration activity were estimated at a 9 per cent reduction in the NPV of an ensuing project.[24]

1.71.1. However, the exact delay costs associated with exploration projects are difficult to quantify. It is difficult to obtain baseline data to determine the broader impact of a delay in an exploration drilling campaign, for instance due to costs associated with having a drill rig sitting idle at $1 million per day.

1.71.2. While the delay costs for exploration projects are not quantified, it is important to note that any acceleration of approvals for exploration activities will increase the overall saving to industry.

1.72. As discussed above, the economic cost of delay/savings for development projects is estimated at $299,160,000 (for three projects over their economic life). It should be noted that this is a conservative estimate.

1.73. To fit within the approach for the government's broader regulatory reform program the Taskforce was required to adopt the OBPR approach to averaging which applied a straight line average to the $598,320,000 and then summed the first 10 years. This results in an

[24] Productivity Commission (2009), Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Research Report

average annual compliance cost, as calculated for the Regulatory Burden and Cost Offset Estimate Table for this Regulatory Impact Statement, of $120 million.

Table 2: Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from Business as usual)				
Costs ($m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	-$119,310,835	-$668,276	$ -	-$119,979,111
Cost offset ($m)	Business	Community Organisations	Individuals	Total by Source
Agency	$0	$0	$0	$0
Within portfolio	$0	$0	$0	$0
Outside portfolio	$0	$0	$0	$0
Total by Sector	$0	$0	$0	$0
Proposal is cost neutral?	No			
Proposal is deregulatory	Yes			
Balance of cost offsets	-$119,979,111			

Risks

1.74. This streamlining reform will not capture all of the potential benefits.

1.74.1. Opportunities to capture further benefits from streamlining environmental assessment process between State and Commonwealth waters and for onshore activities remain, particularly for those projects that extend from Commonwealth waters, through State/Territory waters and onshore.

1.74.2. This streamlining reform provides an important initial step in capturing these additional efficiencies.

1.74.3. It should be noted that, due to the difficulty in sourcing data and testing the impact of the new process on matters such as the expedition of assessments and approvals, the Taskforce applied a very conservative approach to the cost of delays. The delay cost savings to industry and the community could therefore be significantly understated.

1.75. The transition to the new arrangement may also create challenges as participants adjust to the new arrangements.

1.75.1. Administrative arrangements are currently being established between NOPSEMA, the Industry and Environment Departments to ensure that industry and interested

stakeholders are provided effective and efficient guidance and advice. Final arrangements will be in place within six months of endorsement and approval.

1.76. In addition, industry has noted that the efficiency of NOPSEMA's internal processes and procedures could be improved.

1.76.1. This is an area of ongoing reform. The NOPSEMA Advisory Board provides advice and makes recommendations to the Commonwealth Minister, State and North Territory Ministers and the Standing Council on Energy and Resources (SCER) on the performance by NOPSEMA of its functions and policy and strategic matters.

1.76.2. The Board also gives advice and recommendations to the Chief Executive Officer of NOPSEMA about operational policies and strategies to be followed by NOPSEMA in the performance of its functions.

Element 5 - Consultation

1.77. Stakeholder consultation and expertise has been central to the policy and process to develop the proposed model for streamlining.

1.77.1. The Terms of Reference for the Strategic Assessment was finalised and agreed following four weeks public consultation: in September 2013, officials from the then Department of Resources, Energy and Tourism conducted targeted face-to-face stakeholder consultation with industry, fishing and environmental NGOs, as well as government departments.

1.77.2. As noted above (paragraph 1.3.2 refers), membership of the Taskforce itself was not restricted to government, and included expertise from the petroleum industry and academia.

1.78. On 22 November 2013, the Minister for the Environment and the Minister for Industry released the Draft Program Report and Draft Strategic Assessment Report for public consultation. The public comment period was advertised in national newspapers on Saturday 23 November 2013, and submissions closed on 20 December 2013.

1.79. On 6 December 2013, the Taskforce released an Exposure Draft of amendments to the OPGGS(E) Regulations to implement the Program. Comments on the draft regulations closed on 20 December 2013.

1.80. Thirteen information sessions on the Draft Program and Strategic Assessment Reports and the proposed environment regulations were held in Hobart, Melbourne, Adelaide, Perth and Canberra during the weeks of 25-29 November and 9-12 December 2013. A total of 308 individuals representing industry, NGOs, the fishing industry and government attended.

1.80.1. Invitations for these sessions and regular updates were sent to stakeholders through the Taskforce stakeholder list (approx. 350 subscribers), Australian Petroleum News (approx. 1200 subscribers), and NOPSEMA's stakeholder information alert system (approx. 880 subscribers). Notices were also published on the Department of Industry, the Department of the Environment, and NOPSEMA's websites.

1.80.2. Each session involved a question and answer segment where comments and questions of clarification were put to the Taskforce. Industry sessions focussed on reduction of regulatory burden, while eNGO/government sessions focussed on environmental standards, public interest and transparency.

1.80.3. The consultations demonstrated broad support for the reform which is seen as a workable model. Variations in the preferences of individual groups were at the margins of the reform and reflected the spectrum of circumstances and specific interests of the groups represented. Environmental NGOs' responses were more conservative, focusing on ensuring continued maintenance of environmental standards. The need for further information on transition arrangements, compliance and enforcement to support industry's transition to the new arrangements was also noted and is being addressed by the taskforce.

1.81. The comments received throughout the consultation process are not expected to result in a significant change to the regulatory model and, as a consequence, are not expected to change the cost analysis outcomes set out in this RIS.

1.82. A total of 38 written submissions were received by 24 December 2013. A table outlining stakeholder feedback from information sessions and submissions, and the Taskforce's recommended response to the feedback, is at Appendix B.

1.82.1. Major themes identified throughout the submissions include:

- Environmental protection under the Program;
- NOPSEMA's capacity to undertake the commitments in the Program;
- The decision making process for OPPs and EPs;
- Consultation and transparency provisions; and
- Compliance and enforcement provisions.

1.82.2. Industry stakeholders were broadly supportive of the policy and proposed mechanisms to achieve streamlining of environmental management regulation for offshore petroleum and greenhouse gas storage activities, with most submissions seeking clarification on matters of detail associated with the proposed model.

1.82.3. Environmental stakeholders raised concerns surrounding the policy and proposed amendments, but also expressed 'consultation fatigue' in relation to the burden of being consulted with by the petroleum industry in the preparation of both environment plans and EPBC Act referrals.

1.82.4. The table at Appendix B describes and responds to all key issues raised in submissions.

1.83. Overall, the consultation indicates broad industry stakeholder support for streamlining environmental approvals while maintaining existing environmental safeguards.

1.84. As noted above, environmental stakeholders in particular have raised concerns in relation to the protection of the environment under the proposed arrangements, and the impact of streamlining on the environment. While these concerns are understandable, the Taskforce notes that the Strategic Assessment Report, as prepared under Part 10 of the EPBC Act, demonstrates that the proposed arrangements will not have an impact on protection of the environment when compared with business as usual under current arrangements.

1.84.1. In addition, the benefits of objective-based regulation (paragraph 1.43 refers) will ensure the protection of the environment under the proposed arrangements.

1.84.2. It is also noted that the Minister for the Environment will decide, in accordance with Part 10 of the EPBC Act, whether to endorse NOPSEMA's processes.

1.85. The Taskforce consulted directly with industry in relation to cost estimates and the BCC. The assumptions input to the BCC were developed using data provided by industry and environmental not-for-profit organisations through formal and informal consultation, as well as data from the Department of the Environment and NOPSEMA. The Taskforce then tested the assumptions developed.

1.85.1. Paragraphs 1.58.1-1.58.2 refer to industry views on these costs. Generally, industry advised that the compliance costs and savings identified were reasonable, noting the variability associated with referral costs.

Element 6 - Conclusion

1.86. If the Program is endorsed and classes of actions are approved by the Minister for the Environment, the Government will have delivered on its commitment to streamline environmental approval processes and reduce duplication for offshore petroleum and greenhouse gas storage activities in Commonwealth waters, and in State or Territory waters where powers have been conferred to NOPSEMA.

1.87. Further, because NOPSEMA's decision-making processes are based entirely in law. The regulator cannot make decisions on any basis other than those enshrined in law that has passed both houses of Parliament.

1.88. This will, as described in paragraphs 1.47 to 1.53:

1.88.1. Ensure one regulatory point of contact for industry;

1.88.2. Increase consistency in decision making;

1.88.3. Ensure only one assessment timeline;

1.88.4. Remove the risk of conflicting approval requirements;

1.88.5. Create an overall reduction in the costs to industry, government and the community;

1.88.6. Increase business certainty and confidence; and

1.88.7. Raise Australia's profile as an attractive investment destination.

Element 7 - Implementation and Review

1.89. Following the consultation period, the Department of Industry and NOPSEMA will submit the Program, a Supplementary Report and the revised Strategic Assessment Report to the Minister for the Environment for consideration for endorsement of the Program by mid February 2014 and approval of classes of actions by 28 February 2014 in accordance with the provisions of Part 10 of the EPBC Act.

1.90. If approved, the Program will be implemented through changes to the OPPGS(E) regulations (refer paragraph 1.6.1). Minor amendments will be made as appropriate in response to feedback provided during the stakeholder consultation period.

1.91. NOPSEMA will provide an annual report on the Program, highlighting the decisions made under the Program, the findings of compliance inspections, environmental incidents reported by titleholders and any investigations underway for the previous year.

1.91.1. The report will be provided to the Minister for Industry and Minister for the Environment and published on the NOPSEMA website.

1.92. Under the OPGGS Act, NOPSEMA is subject to operational reviews to assess the effectiveness of NOPSEMA in bringing about improvements in offshore petroleum environmental management, as well as other matters in relation to its functions. The first review is due to take place in 2016, and subsequent reviews will occur every 5 years. The report of the review is to be provided to the Minister for Industry.

1.93. Under the Strategic Assessment, implementation of the Program will be subject to monitoring, reporting and evaluation. In particular, there will be a review of the Program against the requirements of the EPBC Act after 12 months of operation. The review report is to be submitted to the Minister for Industry and Minister for the Environment. Subsequent reviews will take place every five years.

1.93.1. The purpose of this and subsequent reviews will be to assess the performance of the Program against Program objectives, including ensuring that impacts on matters protected under Part 3 of the EPBC Act are not unacceptable.

1.93.2. The first review will include a detailed evaluation of a sample of all decisions made by NOPSEMA to ensure appropriate consideration of matters protected under Part 3 of the EPBC Act.

1.93.3. The review findings will be provided to the Minister for Industry and the Minister of the Environment within six months of the review's commencement.

Appendix A: SUMMARY - Costing Assumptions

1. Key Assumptions

- If the Program is endorsed and classes of action approved, the changes to streamline offshore environmental approvals will reduce the overall approval timeframes and increase certainty for proponents.
- The business costs of offshore development are higher than that of onshore/terrestrial development. As a consequence, the savings associated with streamlined approvals are likely to be higher than for equivalent activities onshore.
- The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) currently requires all business to complete an Environmental Plan (EP). This remains unchanged and therefore un-costed.
- The Offshore Project Proposal (OPP) is developed earlier and requires detail akin to an Environmental Impact Statement. The time required to complete an OPP is therefore expected to be less that the EPBC Act approval process.
- Allowing the submission of an OPP for exploration and other non-development activities to be optional will deliver significant saving to industry while maintaining strong environmental safeguards.

2. Costing Assumptions

- All results and inputs are expressed in 2013 dollars.
- All results are expressed as 'average annual'.
- The level of EPBC referral activity (by type of referral) is based on the average annual activity of the past five years (2009 to 2013 inclusive). No adjustments have been made for future growth (i.e. it is assumed that activity over the next ten years will be the same as the average annual activity in the past five years).

3. Consultation on Assumptions

- Preliminary estimates calculated were based on data provided by industry, Non-Government Environmental Organisations, the Department of Environment, NOPSEMA and the experience of the member of the Offshore Environmental Streamlining Taskforce, which includes individuals working in the industry and who have a working knowledge of the process and prepared documentation to support referrals and assessments under the EPBC Act and NOPSEMA assessment processes.
- For industry costings data, the Taskforce requested data from and discussed the proposed costings with:
- APPEA, as the industry peak body representing 80 oil and gas industry companies and over 250 associate member companies that provide goods and services to the industry.
- Six companies representing a cross section of small, medium and large operators as well as a cross section across exploration and development activities.

- The Taskforce asked industry for the following information:
- A typical example of costings for environmental approvals for petroleum activities in Commonwealth waters.
- Details of how many exploration and development activities have occurred in the past 5 years.
- Details of whether industry would seek regulatory approval through the OPP process for exploration activities, given it is not mandatory.
- The costs of complying with the EPBC Act for a typical development project, and then a typical exploration project, including duration, number and type of staff, consultancies, travel, delay costs, substantive compliance costs and other costs.
- Industry provided data at different levels of detail and with a focus across different activities. The Taskforce tabulated the data and averaged the input received to protect confidentiality and manage cost differences between entities.
- The Taskforce then sought feedback on the averaged costs used in the compliance cost calculations with industry stakeholders in a series of discussions as cost assumptions and calculations were revised. The final input data reflects those discussions.
- Agreed data was also provided by the Departments of Industry and Environment, NOPSEMA, and the environment NGO sector (in particular in relation to not-for-profit costs).
- Again, the Taskforce sought agreement on the average costings and resulting assumptions in finalising the figures for the compliance cost calculator and broader content in the RIS.

4. Business Cost Calculator Assumptions

The business cost calculator (BCC) requires that all costs are categorised as either:

- Notification;
- Education;
- Permission;
- Purchase cost;
- Record keeping;
- Enforcement;
- Publication and documentation;
- Procedural;
- Other.

With the exception of 'purchase cost', all of the above are entered as labour costs, and are a function of staff numbers, hours etc. '

Purchase cost' (defined as a product or a service) is a function of the number of times purchased and the cost per purchase.

The required inputs are outlined below:

Labour cost (i.e everything except purchase cost)	**Purchase cost**
Number of businesses affected	Number of businesses affected
Number of staff per business performing activity	Number of times purchased per year
Number of times activity performed per year per staff	Cost of service/product per year
Avg. time of each staff to do activity (in hours)	
Labour cost ($/hr)	

While the numbers need to be entered into the BCC in the above manner, the RIS is required to report the compliance costs in the below manner:

Average Annual Compliance Costs (from Business as usual)				
Costs ($m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector				
Cost offset ($m)	Business	Community Organisations	Individuals	Total by Source
Agency				
Within portfolio				
Outside portfolio				
Total by Sector				
Proposal is cost neutral?				
Proposal is deregulatory				
Balance of cost offsets				

The RIS costings have been calculated with both of the above requirements in mind. In order to simplify the calculations, all labour costs have been assumed to be 'permission costs', or 'administrative costs'. All non-labour costs (which primarily include consultancies and flights) are categorised as 'purchase costs' and 'substantive compliance costs'.

The numbers have been entered into the business cost calculator as follows:

- Exploration
  - EPBC labour costs;
  - EPBC substantive costs.
- Development
  - EPBC labour costs;
  - EPBC substantive costs;
  - OPP labour costs;
  - OPP substantive costs.

The net compliance cost savings are calculated from the above as follows:

Net compliance cost impact =

OPP labour costs + OPP substantive costs – EPBC labour costs – EPBC substantive costs

The exploration EPBC costs provided here do not represent total costs. They are the costs that would be saved if the EPBC process was removed. They exclude duplication synergies with the Environmental Plan (EP) process. This process is to remain unchanged as a result of the regulatory amendments, and it is understood that some of the compliance for an EPBC referral is reused in an EP. As it is understood that no exploration activities will undergo an OPP under the proposed regulations, the above EPBC costs represent the net savings to exploration activities.

The development EPBC costs do represent total costs. The OPP labour costs are the same as EPBC labour costs, with a lower average time for each staff to do a required activity. Information provided to the Taskforce by NOPSEMA[25], industry participants (including APPEA)[26] and eNGOs[27] suggests that the time saving is approximately 45 per cent.

Under the OPP substantive costs, consultancies costs are assumed to be the same under the OPP process as the EPBC process. Flights to Canberra are assumed to be a saving, while an additional cost included here is the cost recovery fee payable by industry to NOPSEMA to assess OPP applications.

[25] NOPSEMA was established in January 2012

[26] The taskforce engaged directly with a range of small, medium and large industry participants to understand average costs associated with environmental approval processes.

[27] The Taskforce engaged with several eNGOs to understand the average costs associated with their engagement in environmental approvals processes under the EPBC Act. This included the cost of preparing submissions.

5. Detailed BCC explanations

Data input to the BCC

	Exploration		Development			
ACTIVITY	EPBC Labour Costs	EPBC Substantive	EPBC Labour Costs	EPBC Substantive	OPP Labour Costs	OPP Substantive
COST CATEGORY	Purchase costs	Permission	Purchase costs	Permission	Purchase costs	Permission
COST TYPE	Labour (internal)	Service (outsourced)	Labour (internal)	Service (outsourced)	Labour (internal)	Service (outsourced)
No. OF BUSINESSES AFFECTED	48	48	13	13	13	13
NO. OF TIMES SERVICE PURCHASED PER YEAR:		1.78		0.18		0.18
SERVICE COST PER ACTIVITY ($):		$14,359.15		$212,967.00		$199,167.00
No OF STAFF PER BUSINESS PERFORMING THE ACTIVITY	1		1		1	
NO. OF TIMES EACH STAFF DO ACTIVITY (HOURS):	1.78		0.18		0.18	
AVG. TIME OF EACH STAFF TO DO ACTIVITY (HOURS):	281.75		3878.7		2137.5	
LABOUR COSTS ($/HOUR)	$297.00		$297.00		$297.00	

Number of businesses affected by the activity

- These numbers were drawn directly from the Department of Environment's EPBC Proposals - offshore oil and gas, seismic database. Because the OPP is required for all development businesses but is voluntary for exploration activities the OPP figures assume the number of businesses affected by the activity is equal to the number of development businesses.

Number of staff per business performing activity

- For the purposes of the BCC calculation this figure was assumed to be one (a representative aggregate person that captures all of the staffing categories).

Number of times activity performed per year per staff

- Deriving this figure involved a number of steps.
- The total number of development and exploration activities referred under the EPBC Act was drawn directly from the Department of Environment's EPBC Proposals - offshore oil and gas, seismic database.
- Using this data, industry intelligence and advice from NOPSEMA on the number of EP applications received since its inception in 2012, it was assumed that approximately 20 per cent of all exploration activities are referred under the EPBC Act. From this the total the number of exploration activities could be determined.
- In determining the number of times an activity was performed it was recognised that although only 20 per cent of exploration activities are not referred there is still some compliance burden for the other 80 per cent who will undergo some work to determine whether a referral is required in their case.
- The OPP figure was calculated using the same assumptions as for a EPBC development activity.

Avg. time of each staff to do activity (in hours)

- Deriving this figure also involved a number of steps. The total number of internal staff (working hours) was calculated using detailed costing data provided by industry.
- Firstly the sum of the total number of internal staff (working hours) across all EPBC referral activities was divided by the sum of the length of phase (working days) across all EPBC referral activities, adjusted to give you the total number of internal staff per phase.
- The adjustment factor recognises that a proportion of the work required to prepare an EPBC Act referral for an exploration project can be reused in the NOPSEMA EP process.
- The length of phase differs between development and exploration referrals and also between the application process and assessment phase for both controlled and non-controlled actions. Using figures provided by industry and assuming there are 250 working days per year, the BCC calculation assumes:

For a Development Activity:

- The application process takes 125 days (6 months of a working year) to complete
- The assessment phase takes 62.5 days (3 months of a working year) to complete

For an Exploration Activity:

- The application process takes 83.3 days (4 months of a working year) to complete,
- The assessment phase is assumed to be same as for a development activity.

- The average time of each staff to do the activity (in hours) is then the sum of the total number of internal staff (working hours) per phase required for the EPBC application process and assessment phase, for both controlled and not controlled actions, minus the total number of internal staff (working hours) required for the NOPSEMA EP process.

For an OPP:

- Using estimates provided by NOPSEMA, the BCC assumes there is labour saving of approximately 45 per cent when preparing an OPP when compared to a development activity.
    - The application process is assumed to be the same as for a development activity adjusted by a factor of 54 per cent.
    - The assessment phase is assumed to be same as for a development activity adjusted by a factor of 54 per cent.
- This is derived by assuming it would take 7.5 months to develop an OPP (the mid-point in time between 6-9 months for a business to develop a simple EPBC referral (no public report or EIS statement) and dividing this by the average estimated time it takes a business to prepare a simple development referral under the current EPBC process (derived using data from the Department of Environment's EPBC Proposals - offshore oil and gas, seismic database).
- Based on advice from industry, the BCC assumes that businesses will not prepare an OPP for exploration activities under the new regime.

Average labour cost ($/hr) (wage + non-wage)

The BCC has used the detail data provided by industry to determine the average labour cost ($/hr) (wage + non-wage) associated with submitting an EPBC Act referral. The costing encompasses both the application and the assessment phases. It is calculated by taking the number of staff (measured as total staff working days) the business has allocated to each phase and multiplying this by their staff costs per day (including on-costs). These costs are then summed across staffing categories (i.e. administration, management, environmental scientists, lawyers, engineers etc.). The average of the total cost was then calculated to give the internal staff average cost per working day. This was then divided by eight (a standard working day) to derive the $/hr figure. The hourly labour figure for all

business was then averaged to derive the average labour cost ($/hr) (wage + non-wage) of $297 used in the BCC for all activities.

The Taskforce received detailed staff costings from a number of 'mid-sized' petroleum businesses engaged in both exploration and development activities. Several other businesses covering smaller scale operations through to industry leaders also provided costings and guidance on the scope of the effort required when referring an activity. It is typically the case that smaller operators who do not have significant in-house resources tend to face higher costs for a referral, while those dominant in the sector have achieved a degree of scale and internal efficiency that means they are able to respond to the demands of the referral requirements more cost effectively.

Industry advice suggests this is an underestimation of the true cost. At least one proponent strongly argues the figures were far too low. Larger firms agreed the numbers were perhaps under representative, but agreed them to be a reasonable 'ball-park' figure.

Number of times service purchased per year

- This is assumed to be equal to the number of businesses affected divided by the average annual number of EPBC referrals in the past five years for all activities (data drawn from the Department of Environment's EPBC Proposals - offshore oil and gas, seismic database).

Service cost per activity ($)

- The service cost per activity has been calculated using detailed costings data provided by industry participants.
- Consistent with the BCC Handbook, July 2013, the cost recovery fee payable by industry to NOPSEMA to assess applications is not costed.

For the OPP

- Consultancies costs are assumed to be the same as for a development activity EPBC referral.
- The BCC figures assume that flights to Canberra normally associated with the EPBC referral application process and assessment phase will not be required for an OPP.

6. Detailed BCC Calculated Results

Exploration	
Exploration EPBC Labour Costs	$ 7,149,597.84
Exploration EPBC Substantive Cost:	$ 1,226,845.78
Total Exploration Activity Compliance Costs	$ 8,376,443.62
Development	
Development EPBC Labour Costs	$ 2,695,618.93
Development OPP Labour Costs	$ 1,485,519.75
Development EPBC Substantive Cost	$ 498,342.78
Development OPP Substantive Cost	$ 466,050.78
Total Development Activity Compliance Costs	$ 5,145,532.24
Development OPP Labour Costs + Development OPP Substantive Cost (A)	$ 1,951,570.53
Total Exploration Activity Compliance Costs + Development EPBC Labour Costs + Development EPBC Substantive Cost (B)	-$ 11,570,405.32
A + B	-$ 9,618,834.79
Not-for-Profit	-$ 668,275.82

Explanation for Adjustment to BCC Result to Account for OPP Activity Costs

$ 13,521,975.85	BCC generated total compliance costs savings. Includes OPP activity costs.
$ 11,570,405.32	Removes sum of OPP activity cost from BCC calculation to derive actual BCC total compliance cost figure.
$ 9,618,834.79	Removes new regulatory impost incurred by introduction of OPP process from total business compliance costs saving
$ 10,287,110.61	Recognises estimated not-for-profit sector compliance cost savings

Appendix B: Summary of issues / comments raised during public consultation and Taskforce response

Issues and discussion		Action
1.1	Environmental protection under the Program	
1	**Protection of matters protected under Part 3 of the EPBC Act**[28] A number of submissions commented on the protection of matters under Part 3 of the EPBC Act under the Program. Submissions from industry supported the Program and its ability to deliver environmental outcomes equivalent to those achieved under the EPBC Act while environmental NGOs raised concerns. Concerns raised related to: • perceived lack of explicit and specific commitment in the Program to EPBC Act objects, statutory documents and relevant international agreements; • level of legal protection afforded by the Program (through the Regulations); • ability of the program to achieve protection without specific and detailed prescriptions; • explicit and vigilant application of the precautionary principle; and • delegation of approval powers away from the Minister for the Environment in relation to Protected Matters. Several other submissions identified other legislation and treaties relevant to protection of the marine environment and queried whether these were integrated into the Program.	The Taskforce has: • added information to Part B(Section 8), Part C and Appendix A of the Program Report in relation to protection of matters under Part 3 of the EPBC Act • added information to Chapter 7 of the Strategic Assessment

[28] Submissions often refer to protection of 'matters of national environmental significance' (MNES). However, the Program also aims to protect Commonwealth land which is not a MNES in terms of the EPBC Act. The Program therefore collectively refers to these and MNES as matters protected under Part 3 of the EPBC Act (or 'Part 3 Protected Matters') which incorporates MNES and Commonwealth land. Where comments in submissions refer to MNES (Appendix 1), this is deemed equivalent to 'Part 3 Protected Matters'.

Issues and discussion		Action
	<u>Response</u> The Taskforce considers that the Strategic Assessment Report, prepared in accordance with the Terms of Reference, demonstrates how the Program provides for environmental outcomes equivalent to those achieved under the EPBC Act. The Taskforce notes that the Program addresses protection of Part 3 Protected Matters in some detail (refer to Section 1.7, Section 8, Part C and Appendix A); it makes commitments and describes how they will be protected, including through reference to statutory obligations and documents, such as plans of management, listing statements and recovery plans. The Strategic Assessment Report (Chapters 4, 5 and 7, in particular) also describes in some detail how matters under Part 3 of the EPBC Act will be protected under the Program. The Taskforce also points out that to the Strategic Assessment Report, which specifically addresses the how the Program addresses the objects of the EPBC Act, principles of ESD and the precautionary principle (in Chapter 4). While the Taskforce considers these matters have been sufficiently addressed, it suggests that some concerns may arise from lack of familiarity among some environmental NGOs with the objective-based approach to regulation under the Program as opposed to the prescriptive approach under the EPBC Act. On the other hand industry stakeholders are familiar with and have confidence in the objective based approach. The objective-based approach to regulation under Program is discussed both in the Program Report (Section 3) and Strategic Assessment Report (Chapters 3 and 8). Objective-based regulation requires titleholders to achieve particular environmental outcomes, but does not prescribe the specific method or means to do so. It places the duty on the titleholders to meet and demonstrate they have met these outcomes. Chapter 7 of the Strategic Assessment Report describes scenarios (case studies) to illustrate how objective-based regulation under the Program ensures environmental protection. The Taskforce is of the view that the objectives-based approach is in fact a key strength of the Program, and has the potential to improve environmental outcomes, including protection of Part 3 matters. Objective-based regulation allows flexibility to ensure adaptive management, innovation in methodology and continuous improvement in achieving acceptable environmental outcomes. It also ensures the relevance, currency and ongoing appropriateness of regulatory controls. The Taskforce, however, acknowledges the concerns raised, and has added further detail about the protection of matters under Part 3 of the EPBC Act to the Program and Strategic Assessment Report, to ensure all stakeholders are satisfied. *Other matters* With respect to the other issues raised, the Taskforce emphasises that NOPSEMA has no formal legislative responsibility for other	Report in relation to protection of matters under Part 3 of the EPBC Act.

Issues and discussion		Action
	international treaties and/or legislation relating to the environment. Consequently the Program itself does not refer to these, although the Strategic Assessment Report (section 5.6) notes them as part of the broader context of the Program. The Taskforce also points out that the content requirements of Environment Plans and Offshore Project Proposals under the Program mean that any permits and/or responsibilities and commitments required by the titleholder be described, and any actions identified. The Taskforce suggests that NOPSEMA will continue to liaise with other agencies with regard to these matters, but is of the view that no change is required to the Program or Strategic Assessment Report. *Submissions that referred to this issue: 3, 6, 7, 10, 14, 15, 18, 19, 21, 28, 35, 38.*	
2	**NOPSEMA capabilities to assess impacts on Protected Matters** A number of submissions questioned if NOPSEMA has the necessary level of corporate and technical experience required for environmental assessments under the EPBC Act, noting NOPSEMA was only established as an independent statutory authority under the OPGGS Act on 1 January 2012. Some submissions queried how NOPSEMA would raise adequate funds to remain effectively resourced going forward. Submissions also specifically queried NOPSEMA's capability to assess potential impacts on matters of national environmental significance (MNES), particularly acoustic impacts on cetaceans and the maintenance of access to environmental expertise through DoE. <u>Response</u> As noted in Issue 27 (Cost Recovery), NOPSEMA operates on a full cost recovery basis, which ensures it has the resources to maintain appropriate and specialist environmental expertise. NOPSEMA also has the ability to seek external expertise on a case-by-case basis. The Program provides that NOPSEMA will enter into administrative arrangements with the Department of the Environment to ensure appropriate information sharing for implementation of the Program. The Taskforce notes that as of January 2014 NOPSEMA and the Department of the Environment have already commenced work in relation to implementation activities. *Submissions that referred to this issue: 3, 21, 22.*	The Taskforce has clarified specific sections (4.4, 5.2, 9.3) of the Strategic Assessment Report as set out in Issue 27 (Cost Recovery).

Issues and discussion		Action
1.2	Cumulative impacts	
3	**Cumulative impacts should be explicitly and transparently considered in the Program** Submissions noted a number of issues regarding the consideration of cumulative impacts during Offshore Project Proposal and Environment Plan development: **Due consideration** Concerns were raised that cumulative impacts may not be adequately considered as there is no specific regulatory requirement to do so. The Environmental Defender's Office of Western Australia stated that "*Under the Program, an OPP can be obtained prior to all information relevant to the particular project being obtained but there may be no way at that stage to accurately assess what the cumulative effects of the project might be until further work is done."* It was also suggested that Offshore Project Proposals may not consider the full range of associated activities and therefore not consider the full range of risks and impacts. Submissions recommended that the regulations should make it explicit that cumulative impact assessment must be undertaken and that assessments should consider impacts over the life of the activity and over a region, for example in relation to multiple simultaneous discharges. It was also recommended that NOPSEMA should have the power to assess cumulative impacts, request that cumulative impacts are assessed if not present in the submission, and publicly report on cumulative impacts. One submission also recommended that social and economic impacts be included as a part of cumulative impact assessment. **Review** Submissions also recommended ongoing review, consideration and reporting of cumulative impacts. One submission suggested that ongoing reassessment of cumulative impacts should be considered for Offshore Project Proposals and Environment Plans, and setting and monitoring environmental outcomes can address this. *"A regular review of cumulative impacts under the Offshore Project Proposal and the power to issue directions about future Environment Plans' impact on particular concerns may address this,"* was suggested by the Environmental Defender's Office of Western Australia.	The Taskforce has added information on how the Program takes into account cumulative impacts to Section 4.3 and Appendix 4 of the Strategic Assessment Report.

Issues and discussion		Action
	Guidance Submissions indicated there is a need for guidance around cumulative assessment with specific consideration afforded to the measurement of cumulative impacts, consideration of impacts over time (i.e. for the life of the activity), seasonal timing, consecutive and simultaneous activities, and all associated activities including marine traffic and monitoring. In addition, there were strong statements around the need to consider how cumulative impacts will be assessed and measured in an agreed manner before inclusion in Regulation as without this clarity the effectiveness of streamlining may be affected. **Data** Submissions noted existing limitations on access to adequate data for cumulative impact assessment. Data sharing issues were also limiting availability of data for cumulative impact assessment purposes. The key point raised was that due to commercial and technical constraints, individual titleholders cannot reasonably be expected to have detailed knowledge of the environmental status and activities that are occurring in neighbouring leases, and therefore are essentially unable to effectively determine the cumulative impacts of the proposed activity nor to comprehensively describe the receiving environment. It was recommended that the development of information on data standards, data coordination, centralised data management and the release/sharing of non-commercially sensitive data is necessary. There were also concerns raised that titleholders will not have access to sufficient information to consider cumulative impacts because the data is not available. <u>Response</u> The Taskforce notes the concerns in relation to consideration of cumulative impacts under the Program. Additional information on cumulative impacts has been included in the Strategic Assessment Report. More broadly, the Taskforce recognises the consideration of cumulative impacts in environmental impact assessments is a challenge nationally and internationally for regulators, policy makers and proponents. The Program specifically refers to the matter of cumulative impact assessment in Sections 4.5.1 and 5.1.1 of the Program Report. The Program presents a positive step forward for effective consideration of potential cumulative impacts associated with offshore petroleum and greenhouse gas activities. The objective-based regime requires proponents to demonstrate continuous improvement. This ensures that ongoing impacts must continue to be identified and reduced to ALARP (as low as reasonably practicable) via appropriate monitoring activities. ALARP requires that control measures continue to be effective in ensuring that impacts and risks will remain within acceptable	

Issues and discussion		Action
	levels and those environmental performance outcomes will continually be met. This objective-based framework means that the Regulations do not need to have a specific reference to cumulative impacts. A benefit of the Program is that NOPSEMA, as the single national regulator, will assess Offshore Project Proposals earlier in their development stream. This will ensure appropriate consideration of lifecycle and cumulative impacts through the implementation of the Offshore Project Proposal process. The Taskforce acknowledges that there are limitations in the data currently available across the offshore petroleum sector, and agrees that data is important to facilitate detailed cumulative impact assessments. The Taskforce encourages industry to pursue data sharing opportunities to ensure access to relevant information. Data is discussed further in the Environmental Data section below (Issue 4). *Submissions that referred to this issue: 3, 6, 7, 11, 12, 22, 28, 37*	
1.3	Environmental data	
4	**Baseline environmental data** A number of submissions, as well as comments from industry stakeholders during information sessions, noted the lack of a central repository for environmental and other data that could be of use in determining a baseline for environmental conditions and to inform ongoing monitoring of the environment over time. It was noted that adequate information and data helps to ensure the appropriate assessment and management of potential impacts and risks on the environment, particularly in the long term and in relation to considering cumulative impacts (refer to Issue 3). Further, submissions suggested that, under the Program, the Government would lose its ability to compel a proponent to provide and make certain environmental data associated with a proposal public. <u>Response</u> The Taskforce recognises the importance of baseline data and supports collection and publication of data to improve understanding of the marine environment for all stakeholders. It is important to note, however, that the EPBC Act does not currently require proponents to	The Taskforce has recommended that the Department of Industry pursue this matter via the Energy White Paper.

Issues and discussion		Action
	publish data. The Taskforce acknowledges the benefit that would be achieved through improvement in collection, availability and access to data by stakeholders. Sharing of data would reduce the cost to industry of baseline information acquisition and enable a more sophisticated data set for the assessment of environmental impacts and risks. The Taskforce recommends that the Department of Industry pursue this as a policy issue through the Energy White Paper process. *Submissions that referred to this issue: 12, 14, 21, 22, 38.*	
1.4	Decision-making processes	
5	**Definitions and parameters for decision-making** Some submissions suggested changes to the way the Program references and defines environment, matters of national environmental significance (MNES), and the principles of Ecologically Sustainable Development (ESD). These submissions proposed that the principles of ESD, including the precautionary principle, should form part of the acceptance criteria for both Offshore Project Proposals and Environment Plans (through reference in the definition of ALARP), to improve clarity and help ensure strong environmental safeguards are maintained. Submissions also suggested that: • certain terms should be defined in Regulations to provide additional clarity in decision-making, including: 'reasonably satisfied', 'appropriate', 'significant impact', 'acceptable' and 'unacceptable' • for the definition of 'environment' to be amended to refer specifically to MNES, and that this change would ensure threatened and migratory species in particular are adequately protected under the endorsed Program • clarification on how social and economic factors, as referenced in the definition of 'environment', are taken into account in decision-making processes be provided	The Taskforce has included an explicit reference to Part 3 matters of the EPBC Act as part of the description of the environment required for an Offshore Project Proposal and Environment Plan in the OPGGS(E) Regulations.

Issues and discussion	Action
• references in the Program be changed from 'critical habitat' (as defined and given legal meaning under the EPBC Act – s207A) to threatened and migratory species to 'biologically important habitat', due to the fact that many more species have such habitats identified in marine bioregional plans. Response The definition of the 'environment' in the Program mirrors the EPBC Act. Many other terms used in the Program such as ALARP, reasonably satisfied, and acceptable have legally accepted meanings with a basis in case law. These deliberately have not been defined to avoid the risk of unintentionally narrowing their definition or creating the circumstances for unintended legal consequences. The Taskforce has, however, included an explicit reference to Part 3 matters of the EPBC Act as part of the description of the environment required for an Offshore Project Proposal and Environment Plan. The principles of ESD are defined in the OPGGS(E) Regulations. The Program's acceptance criteria (Section 5.1) requires that an Environment Plan must comply with all requirements of the OPGGS Act and OPGGS(E) Regulations; therefore, if an Environment Plan meets the acceptance criteria, it must meet the principles of ESD as required in the Regulations. ESD principles are also a consideration of an Offshore Project Proposal, where the key consideration is about the acceptability of the whole of the project including the appropriateness of the 'nature and scale' of the project, environmental evaluation and performance outcomes, and public consultation. The Program provides for the development of guidance material by NOPSEMA to provide further clarity, where required, on terms relied on in the Program that are demonstrated to need further definition. Such guidance will operate similarly to current EPBC Act guidelines (e.g. on significance). The Program has mandated reviews, which provide for analysis of the effectiveness of the Program's operation. These reviews will also identify areas where guidance should be developed. The Taskforce does not consider it necessary to change 'critical habitat' to 'biologically important habitat' as the Program uses the language of the EPBC Act and its supporting policy guidance documents. On balance, the Taskforce considers that the case for amendments to references and definitions in the Program has not been made. The Taskforce has, however, amended the OPGGS(E) Regulations to included specific reference to Part 3 Protected Matters in the description of the environment requirements for both the Offshore Project Proposal and Environment Plan processes. *Submissions that referred to this issue: 1, 3, 5, 7, 8, 21, 22, 27, 29, 31.*	

Issues and discussion		Action
6	**Assessment and decision-making through public inquiry** Three submissions noted the capacity under the EPBC Act for the Minister for the Environment to decide that assessment of a controlled action should be by public inquiry. Several submissions suggested that this approach could be a form of review. It was also suggested that the ability to call a public inquiry of this nature should be retained or provided to NOPSEMA under the Program. Response A public inquiry assessment approach under the EPBC Act is where the Minister for the Environment assigns a commissioner to investigate a matter. The commissioner determines the assessment process they will use – which may be the equivalent of an environmental impact statement (EIS) – and usually invites submissions from the public. This method of assessment has seldom been used under the EPBC Act. EPBC Act guidance material states a public inquiry is *"appropriate where impacts are likely to be outside the control of a single proponent"* and it is necessary or desirable to have a commissioner oversee the assessment process. A public inquiry assessment approach is not considered necessary as NOPSEMA regulates the actions and environmental consequences of individual titleholder's activities. Furthermore, the Program establishes an Offshore Project Proposal process that provides for a detailed early assessment of an individual proponents project. An Offshore Project Proposal mandates public consultation and is early notification of a project. The Offshore Project Proposal is roughly equivalent to an EIS under the EPBC Act. On this basis the Taskforce has not included the suggestion for assessment, decision-making and/or review to be conducted through public inquiry. *Submissions that referred to this issue: 10, 19, 21.*	The Taskforce has not taken any further action on this issue.
7	**Independence of NOPSEMA as decision-maker** Industry stakeholders generally supported the transfer of decision-making power to NOPSEMA for matters protected under Part 3 of the EPBC Act. Environmental stakeholders indicated a preference that the decision remains with the Minister for the Environment. One submission also suggested that the final decision remain with the Minister for the Environment while assessment functions could be	The Taskforce has not taken any further action on this issue.

Issues and discussion		Action
	transferred to NOPSEMA. Some submissions expressed concern that the proposed regulatory framework may result in unintended consequences, noting NOPSEMA is not privy to broader national interest knowledge held at the Ministerial level and that it does not have a mandate to make decisions that balance environmental as well as economic and social considerations. One submission suggested that there was not a separation of powers as NOPSEMA was both assessor and decision–maker and that this posed a risk for decision-making, while another recommended that environmental assessment processes need to be independent of government departments. <u>Response</u> Several government inquiries have noted duplication of environmental assessments for the offshore oil and gas industry. The Program removes this duplication by setting out environmental standards and commitments equivalent to the EPBC Act that NOPSEMA must meet in undertaking its assessment processes. In response to concerns over the independence of the decision-maker, the Taskforce notes that NOPSEMA is an independent statutory authority. NOPSEMA has been established under the OPGGS Act with the clear purpose of separating the policy and resource promotion aspects of the offshore petroleum industry from the environmental, safety and well integrity regulation of that industry. This model is consistent with international regulatory practice for high-hazard industries. The Department of the Environment will remain responsible, under the EPBC Act, for policy matters such as species listings, recovery plans, conservation and policy advices (all required to be considered by the Program). If the Program is endorsed and approved under the EPBC Act monitoring and compliance of the Program will remain the responsibility of the Department of the Environment. The Taskforce has not amended the Program or Strategic Assessment Report in response to submissions on the independence of NOPSEMA as a decision-maker. *Submissions that referred to this issue: 10, 13, 17, 22, 33.*	

Issues and discussion		Action
8	**Processes and information required for decision-making** A significant number of submissions sought clarity on the implications of the requirement to consider documents that are prescriptive in nature (such as EPBC Recovery Plans and Management Plans) and not developed by NOPSEMA. It was noted that these requirements may lead to industry confusion, duplication and ad-hoc and subjective regulation. Submissions from environment stakeholders suggested that Environment Plans should include more information. In particular, they suggested that the Program should specifically require Environment Plans to include information on the environmental track record of the titleholder; whether the impacts of the activity are likely to be unknown, unpredictable or irreversible; and the source, date and reliability of all information. Submissions also noted that: • Environment Plans, like Offshore Project Proposals, should discuss alternative options for conducting activities • NOPSEMA should only approve Environment Plans for 12 months at a time, and should not approve 'strategic', or diverse, multi-year Environment Plans • EPBC Act Policy Statement 2.1 is outdated and should be revised • NOPSEMA did not have sufficient expertise in marine ecology and that a Memorandum of Understanding would be required between NOPSEMA and the Department of the Environment to provide access to their expertise. <u>Response</u> The Department of the Environment will remain responsible for developing plans and guidance in accordance with its responsibilities under the EPBC Act and the Australian Government's international treaty obligations. Section 10.3.2 of the Program refers to EPBC Act plans, policies and guidance that are relevant to the offshore oil and gas industry. The Program states that NOPSEMA will develop guidance material and undertake assessments with regard to these relevant policy documents. Appendix A of the Program commits NOPSEMA to consider particular plans or advices, such as plans of management and recovery plans, which are a statutory requirement of the EPBC Act. The assessment processes outlined in the Program draw on NOPSEMA's current assessment and decision-making framework which is a	The Taskforce has updated Section 5.2 of the Strategic Assessment Report to clarify current arrangements and how they apply to the Program.

Issues and discussion		Action
	merit based assessment system that challenges and analyses the titleholder's case presented in their Environment Plan. NOPSEMA, as a regulator, is dedicated specifically to the offshore oil and gas industry. The purpose of NOPSEMA's establishment was to develop an agency that has good knowledge of the industry and the ability to meet environmental and safety commitments. As the dedicated petroleum regulator, NOPSEMA is aware of a proponent's track record in achieving environmental objectives and their ongoing compliance. NOPSEMA adapts compliance and enforcement activities based on risk and a range of other matters, including a proponent's environmental record. Information on this is available on NOPSEMA's website. The Program describes the Environment Plan and Offshore Project Proposal processes. These are different assessment paths based on activity type. As described in the Strategic Assessment Report, the Offshore Project Proposal assessment captures development activities. As such, the Offshore Project Proposal provides for an early publication, notification, and assessment process. Public notification enables stakeholders to provide information on a range of matters, including alternatives to the proposal and a proponent's environmental record. In an Offshore Project Proposal a proponent is able to consider alternatives because its submission is at an early stage in the project's development. The requirement for consideration of alternatives is a fundamental principle of environmental impact assessment and is already applied. This requirement is consistent with current EPBC assessment processes. The Environment Plan process in this regard remains unchanged. The Taskforce notes that such a change would increase duplication as an Environment Plan is required as a later step (following an Offshore Project Proposal). It is considered that duplicating the requirements of an Offshore Project Proposal at the Environment Plan stage does not provide material benefit. The Taskforce notes several submissions raised the issue of 'consultation fatigue' and additional requirements have potential to add to this issue. The Environment Plan process provides for stakeholder engagement of 'relevant persons'. These persons may make submissions on relevant matters such as feasible alternatives or a proponent's environmental record. The Program provides for receipt of Environment Plans to be notified on the NOPSEMA website. Refer to Issue 24 for detail on NOPSEMA's expertise and personnel. The Taskforce considers that there is merit in further clarifying current arrangements in the Strategic Assessment Report. However, the Taskforce has not adopted the suggestions put forward in submissions. *Submissions that referred to this issue: 4, 7, 15, 19, 21, 22, 27, 28, 36.*	

Issues and discussion		Action
1.5	Offshore Project Proposal Process	
9	**Requirements for an Offshore Project Proposal** A large number of submissions sought clarification on a proponent's obligations to submit an Offshore Project Proposal, including for exploration activities, new activities, and decommissioning activities. Several submissions, in particular from environmental stakeholders, recommended that an Offshore Project Proposal should be required for exploration activities as well as development activities, while others suggested the requirement for an Offshore Project Proposal should be based on the significance of potential impacts. Submissions also suggested further clarity was required regarding the ability for proponents to submit an Offshore Project Proposal for exploration activities. Some stakeholders recommended that NOPSEMA have the right to require an Offshore Project Proposal for exploration activities on a case-by-case basis, or that NOPSEMA and the proponent should at least consult on the question for exploration activities. Submissions sought clarity on whether a decommissioning activity would require an Offshore Project Proposal, noting the Offshore Project Proposal content requirements refer to decommissioning activities, but those activities are not part of the draft definition of an 'offshore project'. Submissions also sought clarification on the definition of 'offshore project', highlighting inconsistencies between the amendment Regulations, Program and draft Strategic Assessment Report. It was suggested that 'development' could also be defined. Clarification was sought regarding greenhouse gas activities under the Program and one submission supported their inclusion. <u>Response</u> Separate Offshore Project Proposal and Environmental Plan assessment streams are fundamental to the streamlining process. The Offshore Project Proposal must describe the whole lifecycle (including activities that will be likely to take place such as development drilling, construction, operation and decommissioning) of the proposed project and include a mandatory period of public consultation. Subsequent Environment Plans will be required for all activities encompassed in the project.	The Taskforce has clarified the definition of an 'offshore project' in the amendments to the OPGGS(E) Regulations.

Issues and discussion		Action
	Proponents may also elect to submit an Offshore Project Proposal for an activity that is not part of a development project, to take advantage of the key steps, including public consultation. The Program states that NOPSEMA will provide guidance about matters proponents may wish to consider in deciding whether to submit an Offshore Project Proposal for exploration activity. An Offshore Project Proposal submission can be scaled to be appropriate to the nature of the proposed development and the receiving environment in which it is to take place while still meeting all the content requirements prescribed by the OPGGS(E) Regulations. The Program states that NOPSEMA will prepare guidance on meeting the regulatory requirements for Offshore Project Proposals. Requiring an Offshore Project Proposal for all activities, such as seismic surveys, will increase regulatory burden and is not considered necessary to ensure high environmental standards are maintained. Prior to the Strategic Assessment, under the EPBC Act, proponents made a decision whether to refer actions based on their own assessment of significance; the result was that not all offshore oil and gas projects were referred. Requiring an Offshore Project Proposal for all such projects would therefore increase the regulatory burden and not in any way improve environmental outcomes. The Taskforce has clarified the definition of an 'offshore project' in the amendments to the Environment Regulations. *Submissions that referred to this issue: 4, 5, 7, 9, 12, 15, 18, 19, 22, 25, 27, 30, 31, 36,38.*	
10	**OPP process and streamlining: changes to, or additional activities** Some submissions expressed concern that the Offshore Project Proposal process may, in certain scenarios, increase regulatory burden, to the detriment of streamlining. Submissions sought clarity on Offshore Project Proposal requirements for new activities planned in relation to an existing Offshore Project Proposal approval. They generally recommended that such new activities should not require a new Offshore Project Proposal, or should only do so if the new activities were extensions to existing projects where the environmental risk or impact may be unacceptable. Submissions noted the potential for activities that would not have been referred under the EPBC Act to require an Offshore Project Proposal under the Program, particularly in the case of minor offshore drilling campaigns and additional drilling (tie-backs) as part of an existing project. It was also suggested that the content requirements for an Offshore Project Proposal could be more onerous than current	The Taskforce has: • amended the requirement for an Offshore Project Proposal to apply to only new development activities in the OPGGS(E)

Issues and discussion		Action
	EPBC Act requirements, in particular for smaller projects. Submissions highlighted that the Program does not provide for revision or amendment of an Offshore Project Proposal, and sought clarification on whether changes in an activity requiring an Offshore Project Proposal would mean a new or additional Offshore Project Proposal was required. It was suggested that this would be more onerous than current EPBC processes. <u>Response</u> The distinction between an Offshore Project Proposal and an Environment Plan in the Program ensures those activities with the potential for higher environmental impacts undergo early public consultation through the Offshore Project Proposal process. All activities, including those with lower potential environmental impacts will undergo an Environment Plan assessment. The Offshore Project Proposal and Environment Plan pathways have an activity basis that is linked to the types of activities authorised by title under the OPGGS Act. The purpose of this is to remove ambiguity. Under the EPBC Act, proponents are required to make a decision whether to refer actions based on their own assessment of significance. This can result in uncertainty for industry about when to refer, and over regulation because proponents submitted 'precautionary' referrals. Having an activity based trigger removes the ambiguity about which process applies and increases overall efficiency by reducing 'double-handling'. The Taskforce notes the concerns raised in submissions relating to new development activities planned, but which are connected to existing projects. The Taskforce acknowledges that some minor development activities may have been required to have an Offshore Project Proposal under the draft Program that may not have otherwise been referred under the EPBC Act. The Taskforce has considered this issue at length, discussing it and potential solutions with a number of industry participants throughout the consultation period. As a result of these discussions, the scope of activities that will be mandatory for an Offshore Project Proposal has been amended. An Offshore Project Proposal will be required for all new development activities that do not have prior EPBC Act Part 9 approval. Additional or new stages of existing developments will not be subject to the mandatory Offshore Project Proposal provisions, but will of course, require an accepted Environment Plan in place before any new stage of an activity can commence. The Taskforce considers that an Offshore Project Proposal revision mechanism is not required. NOPSEMA's compliance mechanism is through Environment Plans. A final Environment Plan may be revised from the original Offshore Project Proposal that was submitted for the activity; in this case, if there is a difference between an initial Offshore Project Proposal and Environment Plan, the Environment Plan must explain these differences, and demonstrate how performance outcomes are appropriate (with reference to modifications from the	Regulations. • provided further clarification in Section 5.2 of the Strategic Assessment Report. The Taskforce also notes that NOPSEMA is preparing guidance for proponents about Offshore Project Proposal assessment process. This will specify information requirements for an Offshore Project Proposal appropriate to nature and scale of the activity.

Issues and discussion		Action
	original Offshore Project Proposal). The Taskforce recognises there may be some transitional uncertainty about the Offshore Project Proposal process for proponents. Further clarification has been provided in the Strategic Assessment Report and NOPSEMA will include further information on this matter in its guidance. *Submissions that referred to this issue: 9, 11, 15, 24, 27, 29, 30, 33, 34.*	
11	**Offshore Project Proposal process and streamlining: Offshore Project Proposal and Environment Plan processes** Submissions questioned whether having both an Offshore Project Proposal process and an Environment Plan process requirements would increase the level of assessment and regulatory burden compared with current arrangements. Submissions also sought clarification on the possibility of parallel assessment of Offshore Project Proposals and Environment Plans, noting that the amendment Regulations as drafted would not allow for parallel processing as an Environment Plan must not be submitted unless an Offshore Project Proposal has been accepted. <u>Response</u> Streamlining under the Program offers benefits of a single independent regulator, and a legal framework under the Program which is objective-based. While parallel assessment of an Offshore Project Proposal and Environment Plan is not possible, proponents are encouraged to think strategically about how to approach the Offshore Project Proposal to maximise flexibility under the model and how the preparation of an Offshore Project Proposal can contribute to and streamline the development and assessment of subsequent and related Environment Plans. As described in item 10 above, the Taskforce considers the certainty provided by having a clear activity based definition about when an Offshore Project Proposal applies, combined with NOPSEMA guidelines about information requirements for an Offshore Project Proposal delivers a net regulatory reduction benefit. *Submissions that referred to this issue: 9, 11, 15, 24, 27, 29, 30, 33, 34.*	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
12	**Detailed Offshore Project Proposal processes and guidance** Submissions sought clarification on certain process matters for Offshore Project Proposals, and made recommendations for NOPSEMA guidance development and content. Submissions sought clarification on the level of detail required in an Offshore Project Proposal, including whether performance outcomes and management controls would need to be identified. Submissions also questioned whether the provision allowing NOPSEMA to request additional information on an Offshore Project Proposal inferred that proponents would only have one opportunity to provide further information before a complete resubmission would be required. It was recommended that, if this is the case, clarification was needed on whether public consultation would be required for a second Offshore Project Proposal submission. Submissions recommended Offshore Project Proposal guidance, including guidance on framing environmental performance outcomes, should be made available by the date of commencement of the Regulations. It was also recommended that NOPSEMA guidance address implications. <u>Response</u> The Program specifies content requirements for an Offshore Project Proposal in Section 4.2. This includes the need to identify environmental performance outcomes for the activities that will be carried out for the project. There are two decision points required from NOPSEMA: – Prior to public consultation – to confirm the Offshore Project Proposal meets requirements and contains sufficient information to allow for the public to make meaningful comment. – Following public consultation – to confirm the Offshore Project Proposal addresses comments from the public comment period and meets the acceptance criteria. NOPSEMA may request further written information about any matters to be included in the Offshore Project Proposal following the public consultation period. The Regulations do not prohibit proponents from having more than one opportunity to provide further information.	The Taskforce notes that NOPSEMA guidance will outline Offshore Project Proposals in detail.

Issues and discussion		Action
	Once NOPSEMA has made a decision to refuse to accept an Offshore Project Proposal and publish a statement of reasons on its website, opportunity for proponents to provide further information has passed, and a new offshore project proposal is required. The Program commits NOPSEMA to preparing guidance for proponents about the Offshore Project Proposal process that address this matter. *Submissions that referred to this issue: 11, 27, 29, 30, 33.*	
13	**Offshore Project Proposal decision** Submissions from a number of environmental stakeholders raised concerns that proponents may manipulate an open-ended ability to resubmit Offshore Project Proposals and recommended that there should be a provision for a final rejection of a project, or a 'clearly unacceptable decision' as exists under the EPBC Act. Some stakeholders questioned whether NOPSEMA could issue a definite 'no' decision (for both Offshore Project Proposals and Environment Plans). Submissions from industry stakeholders questioned whether an Offshore Project Proposal acceptance would provide the certainty required for proponents to make investment decisions, as EPBC Act decisions currently commonly provide this level of certainty. <u>Response</u> The Offshore Project Proposal process has been developed to capture offshore projects that may have an impact on a matter protected under Part 3 of the EPBC Act. An Offshore Project Proposal will be able to encompass multiple activities as part of a development project, and its whole lifecycle, although it can apply to discrete activities (e.g. one-off seismic surveys) where proponents opt in to the Offshore Project Proposal process. An Offshore Project Proposal is indented to provide certainty to proponents for the purposes of investment decision-making. An Offshore Project Proposal is a demonstration that a proposed project will not have an unacceptable impact on the environment, including matters protected under Part 3 of the EPBC Act. It can be used for all petroleum activities and is mandatory for development projects. An Offshore Project Proposal deemed 'not acceptable' by NOPSEMA is equivalent to 'clearly unacceptable' under EPBC Act. While an Offshore Project Proposal is intended to provide investment certainty, approval of an Offshore Project Proposal alone does not	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
	give the proponent approval for any activity to take place; an accepted Environment Plan must be gained before any activity can commence. The Taskforce is confident the Offshore Project Proposal acceptance under the Program provides the certainty equivalent to that provided under the EPBC Act referral process for financial investment decision-making. *Submissions that referred to this issue: 3, 33.*	
1.6	Consultation	
14	**Adequacy of streamlining consultation process** Submissions noted the short timeframes associated with consultation on the Program, draft Amendment Regulations and draft Strategic Assessment Report. Other comments noted that information sessions did not have broad enough regional coverage and that there was confusion arising from conducting consultation on both the Regulations and the Program, as well as website technology issues. <u>Response</u> The Taskforce does not accept the timing and timeframe concerns that have been raised in these submissions. The consultation timeframes were set as required under the EPBC Act, and in line with the Ministerial statement with a clear intention not to consult over the Christmas holiday period. The project timeframe is driven by the Government's commitment to strengthen Australia's productivity and international competiveness through delivery of a streamlined framework for environmental approvals processes for offshore petroleum projects. The Taskforce, established on 21 October 2013, placed a heavy emphasis on communication, with regular updates to interested parties through direct contact (email and telephone) and the Department of Industry'swebsite. The Department sent bulletins using multiple extensive mailing lists sourced from within the Department of Industry, the Department of the Environment and NOPSEMA. The Taskforce also held 13 information sessions covering Hobart, Melbourne, Adelaide and Perth during November and December 2013. In addition, the Taskforce held teleconferences with regional stakeholders in advance of the consultation period to facilitate maximum access to and availability of information within the timeframe available.	The Taskforce has clarified public consultation as part of the planned reviews of the Program in Chapter 10 (Section10.2) of the Strategic Assessment Report.

Issues and discussion		Action
	The Taskforce also notes that efforts to streamline the regulatory requirements of the EPBC Act and the OPGGS Act began in 2009 following the Productivity Commission Review of Regulatory Burden in the Upstream (Oil and Gas) Sector. In relation to the Strategic Assessment in particular, the Taskforce notes consultation also took place on the draft Terms of Reference in September 2013. Finally, the Taskforce notes that the Program will be subject to review after one year, and then every five years. The outcome of periodic reviews will be made public. Chapter 10 of the Strategic Assessment Report refers to arrangements for these reviews. *Submissions that referred to this issue: 5, 6, 13,19, 22, 27.*	
15	**Consultation on streamlining implementation phase** A range of submissions suggested further consultation was required in relation to the implementation of streamlining. One submission suggested that NOPSEMA have consultation sessions as part of the preparation of guidance notes and establish a multi-stakeholder advisory panel for ongoing input into the process. <u>Response</u> The Taskforce has not changed the current position in the Program and Strategic Assessment Reports on this matter. However the Taskforce notes the importance of ongoing consultation and engagement with stakeholders in the development of guidance and implementation of Regulations, as part of good business practice. The Taskforce also notes that NOPSEMA is developing a communications and implementation strategy in relation to the Program, and suggests that NOPSEMA consider the suggestion to utilise consultations as part of guidance development and a multi-stakeholder advisory panel as mechanisms of ongoing consultation during the streamlining implementation phase. *Submissions that referred to this issue: 5, 24, 31, 33.*	The Taskforce has taken no further action on this matter. The Taskforce has suggested that NOPSEMA consider holding consultations and developing a multi-stakeholder advisory panel for ongoing input to Program implementation.
16	**Public consultation requirements for Offshore Project Proposals** Submissions presented various views on the public consultation requirements for Offshore Project Proposals, stating that either the	The Taskforce has revised Chapter 5 (Section 5.3) of the

Issues and discussion		Action
	proposed four-week minimum was not enough in any circumstance, or that a maximum consultation period be prescribed under the Program, with some suggesting that this should be four weeks. Submissions also requested clarification on the proposed Regulations and whether the proponent can negotiate the length of consultation with NOPSEMA. Industry stakeholders at information sessions also raised concerns about the uncertainty of timeframes if NOPSEMA were able to determine the length of the consultation beyond four weeks. <u>Response</u> The Taskforce considers that early and effective consultation is an expectation of government and community for social licence to operate. The four-week minimum prescribed in the Program was designed to be equivalent to the minimum required under the EPBC Act for assessment of activities that are likely to have an impact on Protected Matters. In relation to suggestions that a maximum consultation timeframe be prescribed, the Taskforce points to the intention of the Program: to provide for a consultation period, of at least four weeks, but one that is commensurate to the nature and scale of the project, potential risks, and potential impacts. While a maximum timeframe based on known potential impacts and risks of projects may provide certainty for industry, it may not provide for adequate consultation for all proposed projects in the future. The flexible approach of the Program was also designed to provide incentive for early consultation as part of Offshore Project Proposal, which, in consultation with NOPSEMA and demonstrated, might result in a requirement for the minimum four-week public consultation. NOPSEMA is developing specific guidance for Offshore Project Proposals and will also update its existing consultation guidance in relation to this matter. NOPSEMA will ensure that through these documents it provides a clear indication of potential consultation timeframes that may be appropriate for Offshore Project Proposals in different circumstances, to ensure appropriate opportunity for comment for all stakeholders. On balance, it is the view of the Taskforce that the minimum four-week consultation period is appropriate, with no maximum set for consultation. In order to increase clarity, the process for determining the consultation period for a specific project has been further developed in the Strategic Assessment Report. *Submissions that referred to this issue: 3, 5, 10, 15, 19, 25, 29, 39.*	Strategic Assessment Report to clarify processes and consultation requirements under the Program for Offshore Project Proposals.

Issues and discussion		Action
17	**Providing for 'public interest' access to consultation.** A number of submissions sought clarification and expansion of the definition of 'relevant persons', to ensure that the 'public interest' is represented in the assessment process. Some also requested full public consultation for all Environment Plans. One submission suggested narrowing the definition of 'relevant persons'. <u>Response</u> The Taskforce notes that early and effective consultation is an expectation of governments and the community as part of maintaining social licence to operate for industry. However given concerns about 'stakeholder fatigue' from both environmental groups and industry there is a need to ensure consultation processes are efficient. From the Taskforce's perspective this means that public interest access to offshore assessment and decision-making must meet society's expectations but be efficient at the same time. Consultation arrangements for the Program are described in Chapter 5 of the Strategic Assessment Report. The Taskforce is of the view that on balance, the arrangements described are appropriate and that no change is required to the Program or Strategic Assessment report. The reasons for this are as follows. First, the Offshore Project Proposal process provides for four weeks minimum public consultation for assessment of all activities that are likely to have an impact on matters protected under the EPBC Act, in line with the minimum requirement under the EPBC Act. Secondly, in relation to Environment Plans, concern about absence of public access may arise from the definition of 'relevant persons' (as defined in the Environment Regulations) and doubts about whether interest groups qualify under the definition. However the Taskforce points out that environmental NGOs, who have provided submissions on this issue, can and have previously qualified as 'relevant persons' for the purpose of Environment Plan consultation. The Taskforce also notes the extent and effectiveness of consultation, as a Titleholder must submit a report to NOPSEMA on all consultations between the operator and any relevant person. This must include an assessment of the merits of any objection or claim and the Titleholders response. NOPSEMA is unable to accept an Environment Plan unless these requirements are met. *Submissions that referred to this issue: 3, 5, 6, 10, 13, 19, 21, 22, 27, 28, 29.*	The Taskforce has not actioned any change to existing provisions.

Issues and discussion		Action
18	**Risk of stakeholder 'consultation fatigue'** Submissions from all stakeholder groups (industry, fishing industry, environmental NGOs and government) noted the general and increasing volume of consultation required in relation to offshore petroleum exploration and development and described it as 'consultation fatigue'. It was suggested that this could possibly increase under the Program. A number of submissions suggested government funding for environmental NGOs may assist in managing stakeholder fatigue. Submissions also suggested that the streamlining process presents an opportunity to make improvements in the traditional consultation process, by suggesting a more strategic approach be adopted rather than commenting on individual Environment Plans. The work between the industry peak body, the Australian Petroleum Production and Exploration Association (APPEA) and fishing interests was identified as a process that could lead to the development of a framework for effective engagement with fishing stakeholders. Response The Taskforce is of the view that early engagement is a clear expectation of government and community to maintain a social licence to operate for industry, and is good business practice. The Taskforce agrees that development of strategic and efficient approaches to consultation will be of clear benefit to both industry and stakeholders and encourages both parties to pursue such arrangements under the Program. The Taskforce notes that NOPSEMA guidance on consultation is to be updated to reflect the amendments to the Regulations and introduction of the Offshore Project Proposal process. The Taskforce recommends that NOPSEMA consider its role in encouraging strategic and streamlined consultation, as appropriate, for example through the development of frameworks for engagement in relation to the implementation of the Program (see also Issue 15 – consultation arrangements for implementation). *Submissions that referred to this issue: 13,15, 23, 24, 28, 29, 33.*	The Taskforce has amended Chapter 5 (Section 5.3) of the Strategic Assessment Report to make reference to the use of strategic consultation under the Program. The Taskforce has also recommended that NOPSEMA encourage effective, strategic and streamlined consultation in updated guidance.

Issues and discussion		Action
1.7	Transparency	
19	**Notifications and publication of documents** Comments on transparency varied between stakeholder groups. Industry submissions raised concerns in relation to the potential requirement to publish commercial-in-confidence information as part of an Offshore Project Proposal. They also suggested that there was an increase in regulatory burden where additional information is to be included in Environment Plan summaries. Environmental NGOs and fishing industry stakeholders sought increased transparency through full publication of Environment Plans with relevant data and supporting evidence to also be provided. Several submissions from all groups recommended that NOPSEMA provide notifications of proposals, revisions and decisions via an electronic system that relevant persons could register to receive. <u>Response</u> The Program provides for full publication of Offshore Project Proposals in line with expected transparency arrangements for matters that are likely to have an impact on a matter protected under Part 3 of the EPBC Act. Further, the new notification provision and expanded Environment Plan summary contents both seek to ensure adequate information is provided in the public domain about how environmental outcomes are being achieved under the Program as under the EPBC Act. The Program promotes transparency in these processes through notification requirements, clear acceptance criteria, and publication of information. Section 5.4 of the Strategic Assessment Report and sections 4.5 and 5.5 of the Program Report provide details of these processes. The Taskforce believes that these requirements deliver an appropriate level of transparency while maintaining protection of commercially sensitive information and managing regulatory burden. The Taskforce supports the suggestion that NOPSEMA provide notifications via an electronic system, and notes that NOPSEMA is investigating various mechanisms for effective notification as part of its implementation strategy.	The Taskforce has recommended that NOPSEMA pursue an electronic notifications system.

Issues and discussion		Action
	Submissions that referred to this issue: 5, 11, 18, 21, 22, 27, 28, 29.	
20	**Feedback to agencies providing inputs** One submission noted that it is not always clear how information provided to a Titleholder in the course of consultation is incorporated into resulting Environment Plans. The submission sought amendment or clarification such that Titleholders should be required to provide written feedback to stakeholders following consultation. Response The Taskforce considers that the ongoing relationship between titleholders and 'relevant persons' is paramount in ensuring the effectiveness of the Program, but is the responsibility of the titleholder. The Taskforce notes that where agencies or stakeholders request written feedback from titleholders, good practice would indicate that a titleholder should provide such feedback. The Taskforce considers that this is a matter best addressed through guidance and ongoing engagement between the titleholder and relevant persons, and recommends that NOPSEMA incorporate this issue into its updated guidance. *Submissions that referred to this issue: 14.*	The Taskforce has recommended NOPSEMA address the issue of provision of responses to relevant persons in updated guidance.
21	**Publication of statements of reasons for decisions** A number of submissions sought the publication of statements of reasons for all decisions – for both accepting and refusing to accept Offshore Project Proposals and Environments Plans. The submissions suggested that these statements should be made available on request as a minimum. Response Transparency arrangements under the Program are discussed in Chapter 5 of the Strategic Assessment Report. As the Strategic Assessment Report points out, as the Program is an objective-based regime, whereby the acceptance criteria effectively provide 'statements of reason' where an offshore proposal or Environment Plan is accepted. This is because the regulator makes its decision on the basis that all the criteria have been met by the submission. This is in combination with publication of the whole Offshore Project	The Taskforce has amended Chapter 5 (Section 5.2) of the Strategic Assessment Report to provide more information in relation to statements of reasons and the relevance of acceptance criteria in

Issues and discussion		Action
	Proposal or the Environment Plan summary. In the event that an Offshore Project Proposal is refused acceptance, NOPSEMA will publish a notification and statement of reasons for the decision. If an Environment Plan is refused acceptance, NOPSEMA will publish a notification of the decision. The Taskforce believes that these arrangements are appropriate and commensurate with the EPBC Act, in relation to matters protected under Part 3. Chapter 5 of the Strategic Assessment Report has been updated for clarity. *Submissions that referred to this issue: 5, 22, 28.*	the event that a proposal or plan is accepted.
1.8	NOPSEMA Processes	
22	**Use of condition-setting powers** Environmental stakeholders suggested that NOPSEMA, in relation to its decision-making for matters protected under Part 3 of the EPBC Act, should be specifically empowered to make conditions about these matters. Submission 22 also suggested that NOPSEMA's lack of application of condition-setting powers is limiting the ability to drive industry innovation and risk reduction, and should be used if the objective-based regime does not achieve environmental improvement. More generally, stakeholders suggested that condition-setting for Environment Plans should be subject to consultation with the proponent (as is the case under the EPBC Act). Response NOPSEMA has the regulatory ability to accept an Environment Plan either in part, or with limitations or conditions (Section 5.6.6 of the Program Report; Regulation 10(6)). The use of this regulatory power is detailed in NOPSEMA's Environment Plan Assessment Policy, available on NOPSEMA's website.[29]	The Taskforce has taken no further action on this matter.

[29] http://www.nopsema.gov.au/assets/Policies/N-04700-PL0930-Environment-Plan-Assessment-Policy.pdf

Issues and discussion		Action
	NOPSEMA's general policy is that the titleholder should be able to address any requirement considered necessary for effective management of environmental risks and impacts in their Environment Plan submission, and not rely on the regulator to set conditions. However, it is acknowledged that this may not be the case in all circumstances, and NOPSEMA has, from time to time, exercised its powers under Regulation 10(6). In determining whether to accept a submission in part with limitations or conditions, NOPSEMA, as a matter of good practice, engages with the titleholder on the proposed decision. *Submissions that referred to this issue: 22, 27.*	
23	**NOPSEMA decision-making** Stakeholders suggested certain modifications and clarifications for the decision-making process, including that NOPSEMA take account of public comments in an Offshore Project Proposal acceptance decision, and that the Program should clarify that an Environment Plan will not be 'accepted' where an impact on a threatened species habitat is not acceptable. A further submission suggested that NOPSEMA should consult with the relevant state or territory government in its assessment and decision-making processes, as provided for in the EPBC Act. <u>Response</u> Offshore Project Proposal Consultation The proponent of an offshore project proposal is required to address all comments raised regarding their proposed activity, and provide a full transcript to NOPSEMA of all consultations. The Offshore Project Proposal also places the onus of addressing public submissions on the proponent by requiring that they assess the merits of any objections or claims made in the submissions and provide a statement of the response to any claims, including any changes to the proposal as a result of the submissions. NOPSEMA will not accept an Offshore Project Proposal if the assessment of the submissions, and the proposed response by the proponent is not adequate.	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
	Environment Plan Acceptance An Environment Plan must describe the environment in which the proposed activity will be taking place, including any environmental sensitivity. This broad definition of the environment includes not just threatened species, but also key components of their habitat. The Environment Plan must also detail how the relevant elements of the environment may be impacted by the proposed activity and what control measures will be in place to reduce the impacts to acceptable levels. NOPSEMA cannot accept an Environment Plan unless the demonstrations required by the acceptance criteria are met, including that impacts and risk will be reduced to acceptable levels. Consultation with state/territory agencies In the preparation of an Environment Plan, a titleholder must consult with each agency of a state/territory to which the activities may be relevant; and with the department of the responsible state/territory Minister. The results of this consultation are required to be documented in the Environment Plan. NOPSEMA can and does consult with relevant state/territory agencies in relevant circumstances. There are administrative arrangements (in the form of Memoranda of Understanding or other agreements) in place with a number of jurisdictions, which are reviewed and updated from time to time. *Submissions that referred to this issue: 19, 20, 36.*	
24	**Verification process for information provided by a proponent** Submissions suggested that NOPSEMA must consider whether the proponent's determination of risk (and significance) is acceptable to NOPSEMA and that reporting requirements under the Program rely on self-reporting by proponents. While it was noted that NOPSEMA administers a monitoring and inspection process, it was recommended that there be a process of verifying data submitted. <u>Response</u> NOPSEMA's Environment Division is staffed by suitably qualified and experienced personnel across a range of disciplines including science	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
	and regulatory policy. They have extensive experience in environmental management in the petroleum sector enabling them with the appropriate skills to critically analyse information provided in Titleholder submissions and reports. In addition NOPSEMA also retains the capacity and statutory ability to either independently verify information and claims contained in titleholder submissions, or request that the Titleholder provide further evidence in support of the information or claims. *Submissions that referred to this issue: 3, 29.*	
1.9	Compliance and enforcement	
25	**Penalties for Protected Matters compared to EPBC Act.** Several submissions expressed concern that the penalties under the Program were reduced compared to those in the EPBC Act, and that the provisions under the OPGGS Act were not sufficient as they had no focus on matters of national environmental significance (MNES). <u>Response</u> Part B (Section 6) of the Program Report and Chapter 6 of the Strategic Assessment Report describe compliance and enforcement under the Program. NOPSEMA has a wide range of graduated response options available to it under the Program. NOPSEMA can also facilitate enforcement under the EPBC Act. The Taskforce also notes that, if the Program is endorsed and actions or classes of actions approved under Part 10 of the EPBC Act, the penalties under the EPBC Act still apply where the proponent is found to have incurred a significant impact on a matter protected under Part 3 of the EPBC Act and is not acting in accordance with the endorsed Program. This means that, contrary to the assertion that penalties would be reduced under the Program, penalties under the Program and the EPBC Act will continue to apply. The Taskforce acknowledges that this issue was not clearly explained in the Strategic Assessment report and has reviewed and amended the text to clarify this.	The Taskforce has clarified Chapter 6 (Section 6.1) of the Strategic Assessment Report to reflect that EPBC Act penalties continue to apply if a proponent does not act in accordance with the Program and, as a result, cause a significant impact on a matter protected under Part 3 of the EPBC Act.

Issues and discussion		Action
	Submissions that referred to this issue: 3, 10, 19, 21, 22, 28.	
26	**Public reporting of compliance and enforcement for Protected Matters** Submissions suggested that the reporting of compliance and enforcement action in relation to environment performance is not currently sufficiently detailed and should be more transparent as NOPSEMA will have additional enforcement responsibilities relating to EPBC Act Protected Matters under the Program. <u>Response</u> The Taskforce is of the view that performance reporting is consolidated and more readily accessible under the Program. NOPSEMA publishes annual industry performance reports and quarterly KPI update reports on its website outlining key matters in relation to industry's performance against regulatory requirements. NOPSEMA also includes compliance and enforcement reporting as part of the published Annual Report. Chapter 9 of the Strategic Assessment Report refers to reporting arrangements. The Taskforce also notes that the Program will be subject to review after one year, and then every five years, in relation protection of matters under Part 3 of the EPBC Act, including relevant compliance and enforcement. The outcome of these reviews will be made public. Chapter 10 of the Strategic Assessment Report refers to arrangements for these reviews. Further, both the NOPSEMA Annual Report and annual plan are published documents. The annual plan is a statutory requirement for NOPSEMA to publish an operational plan for its activities over the forward 12 months. The Annual Report is also a statutory requirement for NOPSEMA to publish reporting on its general activities over the previous 12 months. *Submissions that referred to this issue: 3, 28.*	The Taskforce has: • amended Chapter 9 (Section 9.1) of the Strategic Assessment Report to include reference to industry performance reporting. • amended Chapter 10 (Section 10.2) of the Strategic Assessment Report to clarify that the outcome of Program reviews will be made public.

Issues and discussion		Action
1.10	Cost recovery	
27	**Adequacy of NOPSEMA resourcing** Several submissions from both environmental and industry perspectives noted the importance of NOPSEMA being adequately resourced to ensure it can implement and deliver the commitments of the Program and to ensure there are no unnecessary delays to assessments during the transition phase and in the longer term. NOPSEMA, in its submission, also noted that it must be able to levy all Environment Plans to ensure efficient and effective regulation. Submissions also: • questioned whether NOPSEMA had adequate expertise and resourcing, and • suggested that NOPSEMA's levies may need to be increased to ensure adequate resourcing. <u>Response</u> The Taskforce notes that NOPSEMA is a fully cost-recovered agency. Its activities and functions are funded through levies on the petroleum industry and/or a fee-for-service arrangement. This ensures that NOPSEMA's resourcing is consistent with the level of regulatory activity required and provides the flexibility to manage the changing requirements presented by the implementation and management of the Program. The arrangements for levies are provided for under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* and the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004. Specifically, assessments of Environment Plans are funded through an Environment Plan activity levy, and compliance inspections are funded through an Environment Plan compliance levy. The specific levy amounts under these arrangements are set out and approved by the Australian Government on a regular basis through a Cost Recovery Impact Statement (CRIS). The CRIS development process must include stakeholder consultation. For the proposed Offshore Project Proposals, a fee-for-service will apply according to time required to undertake assessment. NOPSEMA already applies a fee-for-service arrangement for early engagement on Safety Cases under the Offshore Petroleum and Greenhouse Gas	The Taskforce has: • clarified Sections 4.4 and 5.2 of the Strategic Assessment Report to explain NOPSEMA's cost recovery arrangements under the Program, in particular to ensure strong environmental safeguards. • clarified Section 9.3 of the Strategic Assessment Report to address transitional

Issues and discussion		Action
	Storage (Safety) Regulations 2009. NOPSEMA will issue guidance in relation to the proposed fees for Offshore Project Proposal assessment by the end of February 2014 (prior to commencement of the amended Regulations). In relation to NOPSEMA's human resourcing, the Taskforce notes that the cost recovery model ensures NOPSEMA has the resources to ensure access to and maintenance of appropriate and specialist environmental expertise, and the ability to seek external expertise on a case-by-case basis. The Program also provides that NOPSEMA will enter into administrative arrangements with the Department of the Environment to ensure appropriate information sharing for implementation of the Program. The Taskforce notes that as of January 2014 NOPSEMA and the Department of the Environment have commenced preparatory work in relation to implementation activities. *Submissions that referred to this issue: 8, 22, 25, 33, 35.*	matters including NOPSEMA's ability to call upon external expertise in the course of exercising its functions.
1.11	Environment Regulations review	
28	**Implications of change from 'Operator' to 'Titleholder'** NOTE: This change is to implement a policy outcome of the 2012 Environment Regulations Review and is not for consideration as part of the Strategic Assessment. A concern raised by several submissions was the potential for unintended consequences arising from the transfer of responsibility from the 'operator' to a 'titleholder', in relation to activities undertaken across multiple title areas held by different titleholders. In particular, submissions raised the potential for the unintended consequences this may have for multi-client seismic operators, with concerns the new process would require multiple Environment Plans to be submitted for a single survey and would not allow for gaps in seismic schedules to be easily filled. <u>Response</u> The proposed amendments to the Environment Regulations include a change from 'operator' to 'titleholder' as the responsible entity for submission of, and compliance with, an Environment Plan (and also more generally responsibility for compliance with the requirements of	Taskforce to clarify titleholder/operator transition in the Explanatory Statement supporting the regulatory amendments.

	Issues and discussion	Action
	the Environment Regulations). The concept of an 'operator' will be removed from the Environment Regulations. The Regulations do not prevent a single activity being carried out across multiple title areas, as the Regulations are activity-based, rather than title-based. In these cases, the titleholder for each title area could sign their name to a single Environment Plan for the activity to be submitted to the Regulator on behalf of all the titleholders (with the name and contact details for each titleholder included in the Environment Plan). The Taskforce intends to clarify this in the Explanatory Statement supporting the regulatory amendments, which will be released publicly at the end of February 2014. The majority of multi-client surveys are undertaken using a combination of petroleum special prospecting authorities (SPAs) and petroleum access authorities (AAs) held by the survey operator. Under the proposed regulatory amendments holders of SPAs and/or AAs, as 'titleholders' for the purposes of the Regulations, will be responsible for submission of Environment Plans for activities undertaken under those titles. In practice, this will mean the process for submitting Environment Plans for multi-client surveys undertaken under those titles will be simplified, as no separate nomination of an operator for the activity will be required. This process is further supported by amendments allowing applicants for SPAs and AAs to submit Environment Plans for acceptance prior to the grant of the title. This will ensure that if an addition to a survey is proposed, the proponent may submit or revise an Environment Plan once they have lodged an application for the SPA or AA with the National Offshore Petroleum Titles Administrator (NOPTA). Further, if the plan is accepted by NOPSEMA prior to grant of the title, the survey can proceed as soon as the SPA or AA is granted. This will maintain the flexibility to add additional areas to a multi-client seismic survey. *Submissions that referred to this issue: 15, 27, 29, 33.*	
29	**Ambiguity of definitions, requiring further explanation and guidance from NOPSEMA** A number of submissions requested greater clarity and clear consistency between the Strategic Assessment Report, the Program, the amended Regulations and existing processes for key concepts such as: 'offshore project', 'Offshore Project Proposal', 'development project', 'Brownfield', 'Greenfield', 'whole-of-lifecycle', 'acceptable level', and 'credible scenario'. <u>Response</u> The Taskforce notes the request for greater clarity and consistency of key terms in the Program, Strategic Assessment Report and the	Taskforce to clarify definitions in the amended Environment Regulations and Explanatory Statement supporting the

Issues and discussion		Action
	amended Environment Regulations. The Taskforce will address and clarify definitions in the amended Environment Regulations where appropriate and further information will also be provided in the Explanatory Statement. These documents will be released publicly by the end of February 2014. Please refer to Issue 5 for information of definition of terms. *Submissions that referred to this issue: 11, 15, 27, 29, 30, 31.*	regulatory amendments.
30	**Definition of 'petroleum activity'** NOTE: This change is to implement a policy outcome of the 2012 Environment Regulations Review and is not for consideration as part of the Strategic Assessment. A number of submissions sought further clarification about the proposed definition of "petroleum activity", arguing the new definition is still quite broad and ambiguous, and may capture work program commitments. The submissions stated the definition of 'petroleum activity' should be limited to that of exploration and production activities undertaken directly for the purpose of exploring for or producing hydrocarbons, primarily seismic surveying and the drilling of wells. Several of the submissions sought the specific exclusion of certain low risk activities in the definition. The activities suggested included geotechnical/geophysical surveys, environmental and oceanographic surveys, and airborne surveys. <u>Response</u> The review of the Environment Regulations considered the definition of 'petroleum activity' with a view to clarifying and reducing the scope of the definition, to ensure it would not potentially capture ordinary maritime activities. This amendment is also linked to the policy decision to transfer responsibility for compliance with the Environment Regulations from the 'operator' to the 'titleholder' (discussed above in Issue 28), to ensure the titleholder is responsible for managing the environmental impacts and risks created by the activities they undertake, and reflecting the titleholder's responsibility for compliance with environmental obligations under the OPGGS Act. The new definition removes the reference in the current Regulations to 'any activity relating to petroleum exploration or development which may have an impact on the environment', significantly narrowing the scope of the definition. The new definition also links	Taskforce to clarify definitions in the amended Environment Regulations and Explanatory Statement supporting the regulatory amendments.

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	petroleum activities directly to the rights conferred on a titleholder under the OPGGS Act by a title, or obligations imposed on a titleholder by or under the OPGGS Act. The Department of Industry considered a list of indicative exclusions from the definition, including proposed exclusions provided by industry in the course of consultations on the review. However, many of the proposed exclusions would already fall outside the scope of the amended definition; therefore to expressly include them would create regulatory uncertainty as to the definition itself. The Taskforce considers that the new definition of 'petroleum activity' sufficiently reduces the scope for inclusion of activities that should not require an Environment Plan under the Regulations, and therefore has not included a list of exclusions within the definition. The Taskforce intends to further clarify this in the Explanatory Statement supporting the regulatory amendments, which will be released publicly at the end of February 2014. This will also include an explanation of the application or otherwise of the definition to work program commitments. *Submissions that referred to this issue: 11, 15, 24, 25, 27, 29, 30, 31, 33, 34,36.*	
31	**Monitoring discharges** NOTE: This change is to implement a policy outcome of the 2012 Environment Regulations Review and is not for consideration as part of the Strategic Assessment. Several submissions expressed concern at the removal of prescriptive requirements regulating discharges of produced formation water. On the other hand, other submissions supported the removal of the prescriptive requirements. The latter submissions, however, noted the potential for the regulator to push goals beyond what is accepted 'good oilfield practice' around the world. <u>Response</u> The regulations relating specifically to the measurement and management of petroleum discharged in produced formation water did not reinforce the principles of reduction of environmental impacts and risks to ALARP or an acceptable level. The monitoring of all discharges, including produced formation water, is required under the amended sub-regulation 14(7), which requires a titleholder to provide for monitoring of all emissions and discharges sufficient to assess whether the environmental performance outcomes and standards in the Environment Plan are being met. In accordance with the acceptance criteria for an Environment Plan, arrangements relating to discharges of produced formation water will be sufficient if they demonstrate that discharges will be managed to ALARP and an acceptable level.	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
	Submissions that referred to this issue: 10, 15, 21, 24.	
32	**Incident notification requirements** NOTE: This change is to implement a policy outcome of the 2012 Environment Regulations Review and is not for consideration as part of the Strategic Assessment. A submission suggested the existing requirement to notify the regulator of all reportable incidents within two hours was unrealistic and that the Environment Regulations be amended to align with the Safety Regulations, where the notification requirement is "as soon as practicable" after the incident. Specific request for clarification around the timing of written notifications was also made. A further submission asked what arrangements would be in place to ensure NOPSEMA is available 24 hours a day, 7 days a week to receive oral notifications of reportable incidents. <u>Response</u> The titleholder must orally notify the regulator within two hours of any incident relating to an activity that has caused, or has the potential to cause, moderate to significant environmental damage, and provide a written report to the regulator within three days. This will ensure quick and appropriate action in the event of a reportable incident, which will in turn provide the public with confidence that an incident is being managed appropriately. On this basis, it is not appropriate to reduce the current incident notification requirement. The Taskforce notes that NOPSEMA has an incident response phone number (prominent on NOPSEMA's website), which is manned by a duty officer 24 hours a day, 7 days a week. *Submissions that referred to this issue: 11, 30, 36.*	The Taskforce has taken no further action on this matter.
33	**Revision of Environment Plans for decreased environmental risk** A submission recommended a titleholder way wish to submit a proposed revision of an Environment Plan if there has been a significant decrease in an existing environmental impact or risk.	The Taskforce has taken no further action on this matter.

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	Response The Environment Regulations require a titleholder to submit a proposed revision of an Environment Plan where there is any significant new environmental impact or risk, or an increase in an existing environmental impact or risk, not already provided for in the Environment Plan in force for the activity. Additionally, a titleholder must submit to the regulator a revision of the Environment Plan at least every five years. In circumstances where there is a decrease in risk (but not a new risk), the in-force Environment Plan would address the nature of that risk, albeit at a higher level. Requiring a titleholder to submit a proposed revision of an Environment Plan for a decrease in risk will increase the regulatory burden on industry, without delivering a measurable improvement in environmental standards. Therefore, the Taskforce does not propose an amendment to the Regulations to this effect. *Submissions that referred to this issue: 7.*	
1.12 Reporting		
34	**Reporting of all environmental damage** A submission recommended that the Program require notification of all environmental damage. The submission expressed concern that the Program requires notification of incidents 'only in relation to moderate to significant environmental damage', and recommended there be an obligation to notify all environmental damage. The submission noted, however, that damage other than moderate to significant need not be notified with the same urgency. Response The Program already requires notification of all reportable incidents (reportable incident, for a titleholder undertaking an activity, means an incident relating to the activity that has caused, or has the potential to cause, moderate to significant environmental damage). In addition to the notification requirements for incidents in relation to moderate to significant environmental damage, titleholders must provide a monthly report of 'recordable incidents'. A 'recordable incident' is any instance in which the titleholder has breached an environmental performance outcome or standard under an accepted Environment Plan. The report must contain a record of all	The Taskforce has not actioned any change to current provisions.

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	recordable incidents during the month, all material facts and circumstances concerning the incidents, any action to avoid or mitigate adverse environmental impacts, corrective action that has been or will be taken, and action taken to prevent similar incidents in the future. A titleholder must also prepare and submit a report detailing its environmental performance for an activity no less than annually. The Taskforce is confident that the Program, as currently drafted, provides an adequate level of notification for environmental damage. *Submissions that referred to this issue: 3.*	
1.13	Cross-jurisdictional issues	
35	**Integration of the Program with state assessment processes (state waters and land)** Submissions from industry expressed concern about the integration of the NOPSEMA offshore streamlining process and state assessment processes for state waters, as well as the broader bilateral COAG environmental approvals streamlining processes for linked land-based activities. It was suggested that unless these issues were resolved there could be duplication and added complexity, which would increase the cost and time associated with projects. Submissions sought further information and clarification around how cross-jurisdictional approval processes will be managed. One submission also suggested that the alignment of state-based assessments with the EPBC Act impact-based approach (compared to the activity-based approach of the Program) could add to the regulatory burden and that this aspect needed careful consideration. This issue was identified as critical to the success of the streamlining reforms by a number of submissions, which argued for a longer implementation lead-time to ensure the impacts on business from the transition were minimised. Integration in relation to implementation of compliance requirements of the EPBC Act and OPGGS(E) Regulations was also identified as a specific issue. <u>Response</u> The Strategic Assessment is one step of a multi-pronged government approach to streamlining of environmental approvals. The one-stop-shop Commonwealth–state/territory streamlining reform, which as a Council of Australian Governments (COAG) process, is necessarily	The Taskforce has reviewed and clarified Section 4.3 of the Strategic Assessment Report. The Taskforce also recommends that the Department of Industry and the Joint Authority continue to encourage states and the Northern Territory to consider conferral of environmental

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	more complex and time consuming. This means that the full benefits will be gradually realised as each tranche of streamlining is completed. The intention, however, is to achieve the best offshore streamlining outcome possible and it has been progressed as a stand-alone initiative to achieve timely and tangible progress for the offshore industry sector as a priority. Integration with other related processes, including alignment of regulatory approaches, will remain a challenge for all parties – but one that will be subject to further discussions with industry as these processes progress. States may currently confer powers to NOPSEMA under the OPGGS Act in relation to state waters and this would add to the effectiveness of offshore streamlining. The Program anticipates this possibility and has been developed to enable this, should it occur, with as little regulatory impact as possible. The Taskforce notes the concerns raised and has reviewed the Program and Strategic Assessment Reports in relation to this issue, to ensure clarity. Other responses relevant to this issue can be found in Transitional Arrangements (Issue 36, 37) and Compliance and Enforcement (Issue 25, 26). *Submissions that referred to this issue: 11, 15, 17, 22, 27, 29, 33, 35, 36, 38.*	management functions.
1.14	Transitional arrangements	
36	**Delayed implementation of the Program** Many industry stakeholders sought clarification of matters relating to the implementation of the Program, noted the scale and complexity of the proposed regulatory amendments and recommended a delayed implementation of these provisions, to ensure the greater understanding of the Program and minimise any unintended consequences. <u>Response</u> The Taskforce notes that streamlining offshore environmental approvals will reduce regulatory burden on industry while maintaining existing environmental safeguards, in accordance with the Government's agenda to provide a one stop shop for environmental approvals,	The Taskforce has not actioned any changes in relation to this issue.

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	as well as its broader deregulation agenda. The Taskforce also notes the Government's commitment to streamline offshore environmental approvals by March 2014. The Ministerial announcements and the Strategic Assessment Agreement indicate the Government's commitment to completing the Strategic Assessment by end February 2014. The Taskforce is continuing to work towards this commitment. *Submissions that referred to this issue: 15, 17, 24, 27, 29, 31, 33, 35.*	
37	**Further clarity and guidance is required about transition and implementation matters** Several industry submissions identified a number of aspects of implementation and transitional arrangements as a source of significant uncertainty, which they suggest require further clarification in the Program or as part of NOPSEMA guidance. These included: • the transfer of EPBC Act conditions to NOPSEMA from existing EPBC Act approvals; • compliance and enforcement arrangements between the Department of the Environment and NOPSEMA); and • arrangements for 'brownfields' projects approved prior to the EPBC Act. A number of submissions also sought continued engagement with the Taskforce or NOPSEMA to assist with implementation and to develop shared expectations. <u>Response</u> The Taskforce notes that, under the Program, NOPSEMA has committed to developing and updating a suite of guidance documents to assist industry and other stakeholders to understand the Program and assist in the transition period. The Taskforce notes that NOPSEMA's approach to the preparation of guidance seeks to involve stakeholders, as appropriate, in order to ensure their continuous relevance and improvement. The Taskforce also notes that NOPSEMA will continue undertake information sessions and workshops with industry, as required, to ensure industry preparedness for implementation.	The Taskforce recommends that the Department of the Environment clarify transitional matters in relation to existing EPBC Act approvals and conditions. The Taskforce also notes NOPSEMA is preparing guidance outlining implementation and transitional arrangements.

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	In relation to existing EPBC Act conditions and approvals, the Taskforce recommends that the Department of the Environment provide information to industry and other stakeholders in relation to compliance and enforcement for existing EPBC Act approvals and conditions. *Submissions that referred to this issue: 15, 17, 24, 27, 29, 31, 33, 35.*	
1.15	Review	
38	**Review of NOPSEMA decisions and procedural fairness** A number of submissions mentioned the issue of lack of availability of procedural review of NOPSEMA decisions (e.g. Environment Plan withdrawal) in the context of procedural fairness. Response The Taskforce notes that the opportunity for procedural review of regulatory decisions under the Program exists and is the same as that under the EPBC Act. This matter is already addressed in the Strategic Assessment Report. Section 5.5 of the Strategic Assessment Report states that procedural reviews can be sought under the *Administrative Decisions (Judicial Review) Act 1977*. Industry stakeholders would have standing to bring proceedings under this Act if they consider that they are aggrieved by a NOPSEMA decision. The Taskforce notes that neither the Program nor EPBC Act has the facility for an independent 'merit' review of decisions. *Submissions that referred to this issue: 20, 29.*	The Taskforce has reviewed and clarified Section 5.5 of the Strategic Assessment Report with respect to this issue.
39	**Need for extended standing provisions to provide for public access** Several submissions from environmental NGOs suggested that there was a need for the Program to have extended standing provisions, as is the case for the EPBC Act. Without this, they suggested, access to a review of decisions by public interest groups would be limited. Response	The Taskforce has not actioned any changes in relation to this issue.

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	The Strategic Assessment Report discusses judicial review and standing in Section 5.6, which points out that while the Program does not have extended standing as for the EPBC Act, current approaches by courts to standing of environmental groups in relation to the *Administrative Decisions (Judicial Review) Act 1977* have been liberal. Environmental groups have been able to receive standing when they have been able to establish an organisational eminence in the particular field and a close connection between the issue in dispute and the organisation's activities. The Taskforce suggests that it may be indicative of standing that many environmental NGOs have established themselves as 'relevant persons' under the OPGGS Act in terms of consultation on Environment Plans by the offshore industry. This has been based on their expertise in and information they collect on marine conservation and related matters (refer also to discussion re 'relevant persons' in relation to consultation on Environment Plans). The Taskforce is therefore of the view that extended standing is not required under the Program. *Submissions that referred to this issue: 10, 19, 21, 22, 28.*	
40	**Review of Program operation** Several submissions from both industry and environmental NGOs, commented about the importance of reviewing the Program. Some mentioned the need for further clarification and others mentioned the need for public consultation to be part of a program review. <u>Response</u> The Taskforce notes that Part D of the Program Report and Section 10 of the Strategic Assessment Report outline the agreed arrangements for review of the Program. These include: • a review of the Program after 12 months operation, submitted within 18 months of endorsement. The findings of this review will be provided to the Minister for Industry and the Minister for the Environment. The aim will be to refine management arrangements and standards and ensure that the Program's commitments to matters protected under Part 3 of the EPBC Act are being delivered, • a review of the program every five years to assess progress in achieving objectives, and	The Taskforce has: • Reviewed text of Chapter 10 in the Strategic Assessment Report to ensure clarity. • Reviewed Part D (Section 11) of the Program Report to ensure clarity. • Recommended

Issues and discussion		Action
	• an annual report detailing all relevant decisions made under the Program. The Taskforce considers that the arrangements as set out in the Strategic Assessment Report and Program are adequate. The Taskforce has reviewed the text of the Strategic Assessment reports to ensure clarity. *Submissions that referred to this issue: 6, 15, 22.*	that DoE undertake public consultation as part of the review of the Program.
1.16	Opportunities for further streamlining	
41	**Assessment of 'significant' risks and impacts rather than 'all' risks** A large number of submissions noted that the Program requires consideration of all impacts and risks, while the EPBC Act is limited to matters that may have a significant impact on Protected Matters. Some submissions recommended that the Program only require consideration of significant impacts and risks, while others recommended that the Program adopt a 'nature and scale' approach such that low risks and impacts could be addressed routinely through management systems, with only 'significant' risks and impacts requiring a detailed level of assessment (whether as part of an Offshore Project Proposal or Environment Plan). It was also suggested that monitoring be risk-based and consistent with nature and scale. <u>Response</u> The OPGGS Act and the OPGGS(E) Regulations described in the Program set out NOPSEMA's responsibilities to ensure compliance with environmental management requirements. To implement these responsibilities the OPGGS(E) Regulations require titleholders to assess all impacts and risks to the environment. These include, but are not limited to, 'significant' impacts and risks, and EPBC Protected Matters of the environment. The Program does not set a significance threshold in relation to environmental impacts and risks, but instead adopts a 'nature and scale' approach.	The Taskforce has amended the OPGGS(E) Regulations to clarify the assessment of impacts and risks in Offshore Project Proposals and Environment Plans.

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	The Taskforce acknowledges that the 'nature and scale' approach under the Program may not have been well understood, and has amended the OPGGS(E) Regulations to clarify that the assessment of impacts and risk in an Offshore Project Proposal and Environmental Plan are to be appropriate to the nature and scale of those impacts and risks. The Taskforce also notes suggestions that the regulations include a 'major environmental event' (MEE) definition analogous to the 'major accident event' (MAE) definition in the OPGGS (Safety) Regulations. Such a definition would facilitate a more structured 'nature and scale' approach, but is not feasible under the OPGGS(E) Regulations because the nature of an 'environmental event' would differ depending on the type of activity and also the particular receiving environment. For this reason, the OPGGS(E) Regulations will not include an MEE concept. However, the Taskforce suggests that the peak industry body, APPEA, work to develop a framework that could assist industry stakeholders in adopting a 'nature and scale' approach in identifying, assessing and managing environmental risks and impacts. Regarding monitoring and evaluation, NOPSEMA adapts compliance and enforcement activities based on risk and a range of other matters, including a proponent's environmental record. Information in this regard is available on NOPSEMA's website. *Submissions that referred to this issue: 7, 11, 15, 24, 27, 29.*	
42	**Conferral of state and territory powers to NOPSEMA** Submissions noted that NOPSEMA's powers only apply to offshore petroleum and greenhouse gas activities undertaken in Commonwealth waters, and to state and territory waters where functions have been conferred. It was recommended that relevant states and territories confer powers to NOPSEMA in order to achieve 'true' streamlining for offshore activities. <u>Response</u> The Taskforce agrees that further benefits will arise where relevant states and territories confer powers to NOPSEMA. This issue is also discussed in Cross-jurisdictional Issues (Issue 35). *Submissions that referred to this issue: 35, 36.*	The Taskforce has taken no further action on this matter.

Issues and discussion		Action
43	**Alignment of Offshore Project Proposal/Environment Plan requirements to ensure efficiency** Submissions noted that administration of the Offshore Project Proposal and Environment Plan processes by NOPSEMA would need to ensure these are aligned to realise the full benefits of reduced duplication. In particular, information provided for the purpose of an Offshore Project Proposal should not be required for an Environment Plan, and stakeholder engagement requirements could be reviewed if an activity has already been subject to an Offshore Project Proposal acceptance. <u>Response</u> The Taskforce notes the submissions on streamlining the Offshore Project Proposal and Environment Plan processes. An Environment Plan is a subsequent step and is required after an Offshore Project Proposal has been accepted, as stated in the Program and required under the OPGGS Act. NOPSEMA will have full 'line of sight' through a project's assessment commencing with an Offshore Project Proposal through to an Environment Plan's assessment. The benefit of an Offshore Project Proposal is that both NOPSEMA and proponents can gain an early understanding of key issues and agree on information requirements and standards. This approach is anticipated to reduce assessment timeframes at the submission of the final Environment Plan. The Taskforce notes the potential for significant alignment of the Offshore Project Proposal and the Environment Plan, as the structure, decision-making process and information requirements are compatible. In addition, consultation requirements by an Offshore Project Proposal should inform titleholders as to relevant persons for Environment Plan preparations. (Refer also to Issue 11) *Submissions that referred to this issue: 7, 24, 35.*	The Taskforce notes that NOPSEMA guidance will outline Offshore Project Proposals in detail.
1.17	Separate policy issues	
44	**Acreage release process** Several submissions identified the acreage release process as an important process with a bearing on environmental outcomes. Submissions sought the opportunity to comment on proposed areas for release and for greater transparency in relation to the data	The Taskforce recommends that Offshore Resources Branch in the

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	underpinning the process. Response Acreage release falls outside the Terms of Reference of this Strategic Assessment. However, the Taskforce notes the importance of the acreage release process in the offshore petroleum sector and its development. The Taskforce considers that there may be scope for greater community engagement in the acreage release process. The Taskforce notes that a five year acreage release strategy is being developed by the Department of Industry. The Taskforce recommends that the Offshore Resources Branch in the Department of Industry consider the scope for consultation as part of the acreage release strategy and process. *Submissions that referred to this issue: 22, 5, 33.*	Department of Industry, in consultation with Geoscience Australia consider the merits of public consultation in the acreage release process.
45	**Financial assurance provisions** Submission 11 suggested that financial readiness should be tiered to reflect risk, and submission 5 suggested that titleholders should contribute to a 'trust fund' to cover costs of any initial emergency actions and as a consequence to minimise delays. Response The Taskforce notes that these comments relate to financial assurance and polluter pays provisions under the OPGGS Act, and that the Department of Industry is pursuing regulatory amendments to implement these provisions. These matters fall outside the Terms of Reference for this Taskforce, which has passed the comments to the relevant area within the Department of Industry. *Submissions that referred to this issue:11, 5.*	The Taskforce recommends that the Offshore Resources Branch in the Department of Industry consider the submissions' comments in its deliberations on the matter.
46	**Delegation of approvals for greenhouse gas activities to NOPSEMA**	The Taskforce recommends that the

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	A submission noted that NOPSEMA has delegated powers for environmental approvals in relation to greenhouse gas activities and requested clarification about whether this will be retained after 30 June 2014. Response NOPSEMA's greenhouse gas environmental approvals role is well referenced in the Program. The Taskforce notes, however, that the current responsibility for approvals relating to greenhouse gas activities has been delegated to NOPSEMA by the Minister for Industry, and that this delegation is not currently permanent. The matter of delegation is one for the Minister for Industry. *Submissions that referred to this issue: 38.*	Resources Division in the Department of Industry consider the submissions' comments in its deliberations on the matter.
1.18	Case studies	
47	**Minor technical issues in Chapter 7 of the SAR** APPEA requested technical clarifications in the detailed content of Chapter 7 of the Strategic Assessment Report. The submission specified four specific matters: • The scenario for World Heritage properties (Section 7.2) refers to Whale Sharks, and suggests consideration of Policy 2.1 (cetaceans). Whale Sharks are not cetaceans. • The scenario for National Heritage Places (Section 7.3) refers to production drilling in the heading, and then refers to exploration drilling in the main body of the scenario. • The scenario for Commonwealth Marine Areas (Section 7.7) indicates additional or higher level scrutiny for activities near Western Kangaroo Island Marine reserve would apply, in a way that could be interpreted as inferring a 'buffer zone'. The submission recommends that additional or higher scrutiny should not extend beyond the boundaries of marine reserves. • The Commonwealth land scenario (Section 7.8) should use a less unique example than Cartier Island as it is not a typical example.	The Taskforce has revised Chapter 7 of the Strategic Assessment Report.

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	Response The Taskforce has amended Chapter 7 of the Strategic Assessment Report for technical accuracy. The Taskforce agrees Whale Sharks are not cetaceans. However, several cetacean species also occur within the Ningaloo Coast World Heritage property which is why Policy Statement 2.1 is referenced. The Strategic Assessment Report has been amended to clarify that there are also cetaceans within the Ningaloo Coast World Heritage property, and that robust justification and controls to demonstrate that impacts and risks to Whale Sharks will be within acceptable levels will be required. The Taskforce agrees this is an error. The scenario is for a production drilling activity. The Strategic Assessment Report has been corrected. The Taskforce agrees that there is no buffer zone in place around reserves, and the Strategic Assessment Report does not refer to any buffer zones. However, the demonstration of 'as low as reasonably practicable' must take into account the environment, including reserves and other features that are of varying distances from a proposed activity. A higher level of scrutiny for projects in close proximity to Commonwealth marine reserves is consistent with the application of the 'nature and scale' acceptance criteria in relation to the receiving environment. The Taskforce maintains that the Commonwealth land scenario is appropriate as a demonstration scenario. The Strategic Assessment Report will also note, however, that the majority of impacts to other areas of Commonwealth land are likely to be onshore from tier three spill based sources. *Submissions that referred to this issue: 15.*	