



Commonwealth of Australia

Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

I, Sussan Ley, Minister for the Environment, provide these reasons for my decision under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), to grant an exemption to the Commonwealth as represented by the Department of Industry, Science, Energy and Resources (**DISER**) (or any other Commonwealth agency), and those acting on behalf of DISER (or other Commonwealth agency), from the application of all of the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the following **action**:

The taking of “**lighthouse operations**” in relation to the Northern Endeavour Floating Production, Storage and Offtake Facility and associated infrastructure until 31 December 2021.

Definitions:

Lighthouse operations includes essential operations such as critical inspections, monitoring, maintenance and repair work to manage and avert risks to personnel, the environment and maritime safety and security, with the advice and assurance of NOPSEMA that the operations are being undertaken in accordance with the previously-accepted *Safety Case and Well Operations Management Plan* and *Environment Plan* and in compliance with good oil field practice. Lighthouse operations does not include well production, injection or crude offtake activities.

Legislation

SECTION 158 OF THE EPBC ACT PROVIDES:

158 EXEMPTIONS FROM PART 3 AND THIS CHAPTER

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
 - (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
 - (3) The Minister may, by written notice, exempt a specified person from the application of a specified provision of Part 3 or of this Chapter in relation to a specified action.
 - (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
 - (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
 - (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
- (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
 - (b) give a copy of the notice to the person specified in the notice.

Background

1. On 3 July 2020, the Honourable Keith Pitt, Minister for Resources, Water and Northern Australia, wrote to me to seek an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for the Commonwealth as represented by the Department of Industry, Science, Energy and Resources (**DISER**) (or any other Commonwealth agency), and those acting on behalf of DISER (or other Commonwealth agency), to take "lighthouse operations" on the Northern Endeavour Floating Production, Storage and Offtake Facility and associated infrastructure (**FPSO**), moored in the Timor Sea.
2. On 28 July 2020, the Department provided me a brief on Minister Pitt's application for exemption.
3. On 31 July 2020, I decided to grant the exemption and made this statement providing reasons for my decision.

Evidence

4. The evidence or other material on which my findings were based was a brief from my Department dated 28 July 2020, including its attachments (the **Departmental brief**). That brief attached the application from Minister Pitt on behalf of DISER.
5. The attachments to the Departmental brief were as follows:
 - a. Application letter from Minister Pitt
 - b. Decision notice
 - c. Statement of reasons
 - d. Letter to Minister Pitt
 - e. EPBC Act section 158 extract
 - f. Talking points
 - g. Further information provided by DISER

Findings

6. Before making my decision to grant the exemption, I made the findings outlined below based on the evidence provided to me (noted above in this Statement).

Background to the application for exemption

7. Having regard to the Departmental brief and the letter from Minister Pitt, I noted the following background information to the application for exemption.
 - a. The FPSO is moored in Australian Territorial Waters in the Timor Sea, approximately 550km north west of Darwin and approximately 160km from Timor-Leste. The FPSO is a purpose-built vessel designed to extract, process, store and offload oil extracted from the Laminaria and Corallina oil fields.
 - b. The FPSO has been owned and operated by a number of companies since 1999 and until recently was regulated under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) administered by the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA).
 - i. The environmental authorisation process of the OPGGS Act has been endorsed through the strategic assessment provisions of the EPBC Act. Therefore, when regulated by NOPSEMA under the OPGGS Act, no further approval is necessary under the EPBC Act. As the FPSO is no longer regulated by NOPSEMA under the OPGGS Act, it is subject to regulation under the EPBC Act.
 - c. On 20 September 2019, the registered titleholder of the FPSO, Timor Sea Oil and Gas Australia, and its associated companies, including the commercial owner of the FPSO, the Northern Oil and Gas Australia Pty Ltd group of companies,

entered voluntary administration. The companies were placed into liquidation on 7 February 2020.

- d. The liquidator disclaimed offshore assets including the FPSO, associated sub-sea and sub-surface infrastructure, and the offshore petroleum production licenses covering the FPSO. DISER has advised the Department that the FPSO had deteriorated in condition as regular maintenance activities were not able to be effectively undertaken.
 - e. Following liquidation, it became necessary for DISER to undertake the “lighthouse operations” to ensure the safety and security of the FPSO and the protection of the surrounding environment, particularly given the proximity of the FPSO to Australia’s borders with Indonesia and Timor-Leste.
 - f. In response to this situation, to undertake the “lighthouse operations”, DISER has engaged:
 - i. Upstream Production Solutions Pty Ltd (UPS) to undertake the “lighthouse operations” of the FPSO on behalf of DISER.
 - ii. NOPSEMA to provide advice and assurance that the “lighthouse operations” by UPS on the FPSO are being undertaken in accordance with the previously accepted *Safety Case and Well Operations Management Plan* and *Environment Plan*, and in compliance with good oil field practice.
 - g. DISER plan to have a long-term strategy to manage the FPSO by the end of 2020, which may involve the recommencement of operations, disposal or decommissioning of the FPSO. The most likely option is the complete decommissioning of the FPSO commencing in 2021. Once the strategy and proposed operations are confirmed, DISER will update its approach to environmental management and re-assess the applicable requirements under the EPBC Act.
8. Having regard to this background information, I considered and agreed with the Department’s findings that:
- a. the “lighthouse operations”, being undertaken by UPS on behalf of DISER, with advice and assurance from NOPSEMA, are necessary to temporarily manage and maintain the FPSO to ensure the maritime safety and security of the FPSO and its personnel and the protection of the surrounding environment, until DISER has settled on the long-term strategy for the FPSO;
 - b. if the operations are not undertaken, there would be unacceptable risks to maritime safety and security, and to the environment;
 - c. if these risks to the environment, maritime safety and security materialise, there may be a risk of damage to the international relations between Australia, and Timor-Leste and Indonesia, noting the proximity of the FPSO to Australia’s borders with Indonesia and Timor-Leste.

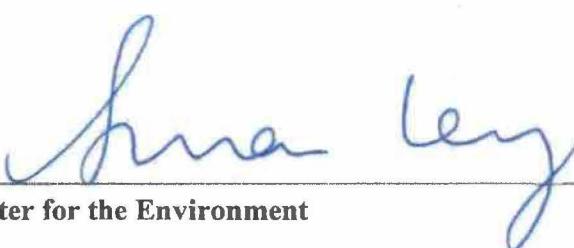
Reasons

9. Under subsection 158(4), I may grant an exemption if I am satisfied that it is in the national interest to do so. Subsection 158(5) states that in determining the national interest, I may consider Australia's defence or security or a national emergency. However, this does not limit the factors that I may take into consideration.
10. Having regard to my findings outlined above, I agreed with the Department that the exemption is necessary as it would be in the national interest for the specified provisions of the EPBC Act to not apply to the "lighthouse operations" to allow the operations to be temporarily undertaken to properly manage the FPSO in a timely way and avoid the risks to personnel, the environment, maritime safety and security, and critically, the risk of damaging Australia's international relations with Indonesia and Timor-Leste.
 - a. I agreed that the exemption should be granted for the "lighthouse operations" until 31 December 2021 to allow DISER to settle on a long-term strategy to manage the FPSO.
11. I considered and agreed with the Department's advice that stopping "lighthouse operations" (including critical maintenance works) to comply with the assessment and approval requirements of Part 3 of the EPBC Act may hinder the proper management of the FPSO necessary to manage and avoid the risks to the environment, maritime safety and security, and Australia's international relations.
 - a. I particularly noted that continuing the following works as part of the "lighthouse operations" are critical to managing these risks:
 - i. Safety equipment inspection, maintenance and repair including Safety of lives at Sea critical communications equipment maintenance.
 - ii. Emergency response management, incident reporting and investigation
 - iii. Well integrity maintenance activities
 - iv. Inspection, maintenance and repair of critical systems such as electrical systems, discharge and bilge pumps, tank systems and power generation systems.
12. For the above reasons, I determined that it was in the national interest that the relevant provisions of Part 3 and Chapter 4 not apply to the "lighthouse operations" to be undertaken by DISER (or any other Commonwealth agency), and those acting on behalf of DISER (or other Commonwealth agency) as such an exemption was necessary for the FPSO to be properly managed to avoid the risks posed by the FPSO to the environment, maritime safety and security, and critically, Australia's international relations.
13. In deciding to grant the exemption, I noted and agreed with the Department's advice that:
 - a. Minister Pitt's letter sought an exemption from all the provisions of Part 3 and Chapter 4, other than those relating to Great Barrier Reef Marine Park, Nuclear

Actions, water resources involving coal seam gas and large coal mines, and Ramsar Wetlands of International Importance (Attachment A);

- b. however, it was not necessary to provide an exemption from the following provisions of Part 3 as these were also clearly unlikely to be applicable: ss 12 and 15 (offences relating to world heritage), ss 15B and 15C (offences relating to national heritage), ss 26 and 27A (offences relating to actions involving Commonwealth land) and ss 27B and 27C (offences relating to Commonwealth heritage places overseas).

14. As such, I decided to grant the exemption, under subsection 158(3), from all of the provisions of Part 3 (other than sections 12, 15A, 15B, 15C, 16, 17B, 21, 22A, 24B, 24C, 24D, 24E, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the "lighthouse operations" on the FPSO (as described above) until 31 December 2021.


Minister for the Environment

31/7/2020