



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 (**the Industry department**) (or any other Commonwealth agency), and those acting on behalf of the Industry department (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, 26, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the following **action**:

The taking of “**lighthouse operations**” and “**short-term well injection**” in relation to the Northern Endeavour Floating Production, Storage and Offtake Facility and associated infrastructure (**FPSO**) until 31 December 2022.

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. Lighthouse operations does not include well production, long-term injection or crude offtake activities.

Short-term well injection includes the pumping of water and flushing chemicals from the FPSO through the flowlines and into the wells in order to flush any remaining crude oil from the flowlines.

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 26 August 2021, the Department of Industry, Science, Energy and Resources (**the Industry department**), wrote to the Department of Agriculture, Water and the Environment (**the department**) 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 Industry department (or any other Commonwealth agency), and those acting on behalf of the Industry department (or other Commonwealth agency), to undertake "lighthouse operations" and "short-term well injection" on the Northern Endeavour Floating Production, Storage and Offtake Facility and associated infrastructure (**FPSO**) moored in the Timor Sea, until 31 December 2022 (**Application Letter**).

2. On 17 September 2021, the department provided me a brief on the Industry department's application for exemption.
3. On this date, 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 17 September 2021, with the following attachments (**the departmental brief**):
 - a. Application Letter (Section 158 National Interest Exemption Application Letter from the Industry department) dated 26 August 2021
 - b. Draft Decision Notice
 - c. Draft Statement of Reasons
 - d. Draft Letter to the Industry department providing the Decision Notice
 - e. Current Exemption decision notice dated 31 July 2020
 - f. Talking points
 - g. EPBC Act section 158 extract
 - h. Previous Section 158 National Interest Exemption Application Letter dated 3 July 2020 for Current Exemption (**Application for the Current Exemption**)
 - i. Further information to the Previous Section 158 National Interest Exemption Application Letter for Current Exemption provided by the Industry department on 29 June 2020

Findings

5. 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

6. Having regard to the departmental brief, including the Application Letter and the supporting information, 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)*, which is 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 the FPSO was regulated by NOPSEMA under the OPGGS Act, no further approval was necessary under the EPBC Act.
 - ii. 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.
- e. Following liquidation, it became necessary for the Industry department to assume responsibility for “lighthouse operations” of the facility to ensure the safety and security of the FPSO and the protection of the surrounding environment.
- f. To mitigate these risks, the Industry department engaged:
 - i. Upstream Production Solutions Pty Ltd (**UPS**) to undertake the “lighthouse operations” of the FPSO on behalf of the Industry department.
 - ii. NOPSEMA to provide advice and assurance that the “lighthouse operations” by UPS on the FPSO were being undertaken in accordance with the previously-accepted *Safety Case, Environment Plan* (Doc 01-HSE-PL12, as revised on 5 January 2017) and *Well Operations Management Plan* (Doc 01-OPS-PL01, as revised on 7 September 2017), and in compliance with good oil field practice.
- g. 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 EPBC Act for “lighthouse operations” of the FPSO moored in the Timor Sea.
- h. On 31 July 2020, I granted an exemption to the Commonwealth as represented by the Industry department (or any other Commonwealth agency), and those acting on

behalf of the Industry department (or other Commonwealth agency), until 31 December 2021 (**Current Exemption**). The Current Exemption was granted to allow the Industry department to determine the long-term strategy to manage the FPSO, update its approach to environmental management and reassess the applicable requirements under the EPBC Act.

- i. In granting the Current Exemption, I considered Minister Pitt's statements in the Application Letter for the Current Exemption noting the importance of ensuring the maritime safety and security of the FPSO and the protection of the surrounding environment through the undertaking of "lighthouse operations".
8. The COVID-19 pandemic and the complexities associated with the necessary contractor procurement have delayed the Industry department from determining and complying with the EPBC Act assessment and approval requirements applicable to the proposed decommissioning of the FPSO.
9. Therefore, the Industry department has requested a further exemption to exempt the "lighthouse operations", and also "short-term well injection" (which is currently excluded from these operations under the Current Exemption) until 31 December 2022, to ensure the safe management of the FPSO until the Industry department has obtained the approval for the decommissioning of the FPSO under the EPBC Act (**Further Exemption**).
10. The Industry department has also contracted NOPSEMA to provide advice on the revision of the existing *Safety Case, Environment Plan* and *Well Operations Management Plan* for the FPSO, to reflect that the FPSO is no longer in production mode, and ensure that the documents are fit for purpose and in accordance with industry expectations.
11. The scope of the contract between the Industry department and NOPSEMA includes the provision of advice on matters ranging from NOPSEMA's normal regulatory functions to inspections, investigation and advice on enforcement action in the unlikely event it is required.
12. NOPSEMA have confirmed to the department that they are providing advice to the Industry department consistent with what would be required under the OPGGS Act and the streamlining arrangements under the EPBC Act under normal circumstances.
13. The department considers that the oversight provided by NOPSEMA in relation to revision of these plans will ensure that they reflect best-practice management and will effectively manage impacts to the environment.

"Short-term well injection" activities

14. "Short-term well injection" is a process where water and flushing chemicals are pumped from the FPSO through the flowlines into the wells to flush any remaining crude oil from the flowlines. The purpose of this is to reduce potential residual hydrocarbon or chemical releases to the sub-sea environment after a facility ceases production.

15. "Short-term well injection" is now necessary both as a potential emergency response, and also as part of sub-sea flushing in late 2021 or 2022.
16. In an emergency, the operator may need to undertake "short-term well injection" when performing a "well kill" to mitigate the impacts of a sub-sea loss of containment major accident event, such as the leakage of hydrocarbons from a well. "Short-term well injection" is necessary for an emergency well kill to ensure any leaks are controlled and to prevent the continued release of crude oil into the environment.
17. "Injection" was excluded from the Current Exemption as the Industry department did not foresee that "lighthouse operations" would include "short-term well injection" in the form of sub-sea flushing, or that the ability to inject in an emergency well kill would be required.
18. The ability to undertake these "short-term well injection" activities is now critical to flush hydrocarbons from the flowlines to reduce any risk, and minimise any impact, of the leakage of these into the ocean and harm to the marine environment.
19. Like the current "lighthouse operations", the "short-term well injection" activities are intended to be conducted in accordance with the previously-accepted *Safety Case, Environment Plan* and *Well Operations Management Plan*, as currently drafted and as revised.
20. The "short-term well injection" activities proposed as part of this exemption also require a permit under *Environment Protection (Sea Dumping) Act 1981* (Sea Dumping Act) which regulates the disposal of waste in Australian waters and includes regulation of disposal activities affecting the seabed and the subsoil thereof.
21. Other activities proposed under this exemption may also require a permit under the Sea Dumping Act.

Decommissioning

22. The Commonwealth, as represented by the Industry department, has now committed to the decommissioning and disconnection of the FPSO. No exemption for these activities is sought in the application for the Further Exemption.
23. The Industry department is in the process of seeking approval under the EPBC Act for the decommissioning of the FPSO and is completing the necessary procurements to inform these processes. These processes will require more time, and as such the Further Exemption is sought until 31 December 2022 to allow "lighthouse operations" and "short-term well injection" to continue until they have in place the relevant approvals to enable the safe and effective decommissioning and disconnection of the FPSO.
24. Having regard to this background information, I considered and agreed with the department's findings that:

- a. The “lighthouse operations” and “short-term well injection” activities being undertaken by UPS on behalf of the Industry department are necessary to temporarily manage and maintain the FPSO to ensure the maritime safety and security of the FPSO and the protection of the surrounding environment, until the Industry department has determined and complied with the assessment and approval requirements applicable under the EPBC Act to the proposed decommissioning of the FPSO;
- b. NOPSEMA will provide advice and assurance that the “lighthouse operations” and “short-term well injection” activities are being undertaken by UPS in accordance with the applicable requirements of the previously-accepted *Safety Case*, *Environment Plan* and *Well Operations Management Plan*, as currently drafted and as revised;
- c. If these activities are not undertaken, there would be unacceptable risks to personnel, maritime safety and security, and the environment; and
- d. If these risks to personnel, maritime safety and security and the environment materialise, there may be a risk of damage to the international relations between Australia, Indonesia and Timor-Leste, noting the proximity of the FPSO to Australia’s borders with these nations.

Reasons

25. 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, security or a national emergency. However, this does not limit the factors that I may take into consideration.
26. Having regard to my findings outlined above, I agreed with the department that it would be in the national interest for the specified provisions of the EPBC Act to not apply to the “lighthouse operations” and “short-term well injection” activities. This would 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, Australia’s international relations with Indonesia and Timor-Leste.
27. I agreed that the exemption should be granted for the “lighthouse operations” and “short-term well injection” activities until 31 December 2022 to allow the Industry department to safely manage and maintain the FPSO temporarily while the Industry department prepares for its disconnection and obtains approval for the decommissioning under the EPBC Act.
28. I considered and agreed with the department’s advice that stopping “lighthouse operations” and “short-term well injection” to comply with the assessment and approval requirements of Part 3 and Chapter 4 of the EPBC Act may hinder the proper

management of the FPSO necessary to manage and avoid the risks to personnel, maritime safety and security, the environment, and Australia's international relations.

- a. I particularly noted that continuing the following works as part of the "lighthouse operations" and "short-term well injection" is critical to managing these risks:
 - i. Safety equipment inspection, maintenance and repair including Safety of Life 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.

29. 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" and "short-term well injection" activities to be undertaken by the Industry department (or any other Commonwealth agency), and those acting on behalf of the Industry department (or other Commonwealth agency) until 31 December 2022.

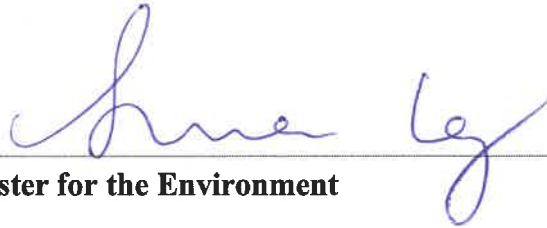
30. Such an exemption was necessary for the FPSO to be properly managed to avoid the risks posed by the FPSO to personnel, maritime safety and security, the environment, and critically, Australia's international relations.

31. In deciding to grant the Further Exemption, I noted and agreed with the department's advice that:

- a. the Application Letter sought an exemption from the all 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 these activities;
- b. consistent with the Application Letter, it was not necessary to provide an exemption from the following provisions of Part 3 as these were clearly unlikely to be applicable: ss 12 and 15A (provisions relating to world heritage), ss 15B and 15C (provisions relating to national heritage), ss 16 and 17B (provisions relating to wetlands of international importance), ss 21 and 22A (provisions relating to nuclear actions), ss 24B and 24C (provisions relating to the Great Barrier Reef Marine Park), ss 24D and 24E (provisions relating to water resources), ss 26 and 27A (provisions relating to actions involving Commonwealth land) and ss 27B and 27C (provisions relating to Commonwealth heritage places overseas).

32. 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, 26, 27A, 27B and 27C) and Chapter 4 of the EPBC Act, in relation to the

“lighthouse operations” and “short-term well injection” for the FPSO (as described above) until 31 December 2022.



Minister for the Environment

28 / 9 / 2021
