

**Submission
No 7**

**MINERALS LEGISLATION AMENDMENT (OFFSHORE DRILLING AND
ASSOCIATED INFRASTRUCTURE PROHIBITION) BILL 2023**

Organisation: Surfrider Foundation Australia

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**SURFRIDER FOUNDATION AUSTRALIA SUBMISSION TO THE INQUIRY INTO
MINERALS LEGISLATION AMENDMENT (OFFSHORE DRILLING AND
ASSOCIATED INFRASTRUCTURE PROHIBITION) BILL 2023.**



Submission to the Committee on Environment and Planning

31st August, 2023



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Dear Committee Chair,

Thank you for the opportunity to provide a submission to this inquiry. Surfrider Foundation Australia fully supports the intention of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023. We understand the Bill aims to stop exploration and mining of petroleum and minerals in the coastal waters off NSW by prohibiting project approvals. Surfrider Foundation Australia understands that this particular Bill presents some legal complexities which require further consideration to ensure its success. We hope that this inquiry enables the NSW government to establish an elegant Bill that protects our coast and ocean from fossil fuel mining in perpetuity.

Background on Surfrider Foundation Australia

Surfrider Foundation Australia is a not-for-profit sea roots organisation dedicated to the protection and enjoyment of our ocean, waves and beaches through a volunteer network comprising of 17 branches around Australia. Our branches are on the frontline of environmental impacts to our coastlines, so serve as a first response to local issues. We are also part of the global Surfrider Foundation Organisation which has over 250,000 supporters and members, as well as over 100 local branches worldwide.

Surfrider Foundation Australia is opposed to offshore gas and oil drilling as our local ocean, waves and beaches are vital recreational, economic and ecological treasures that will be polluted and harmed as a result of proposed industrialisation of our coastline. We therefore strongly encourage governments at all levels to use available legislative levers to protect our coast.

Summary of Submission

Key issues relating to the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023:

- As it stands, there is a risk the NSW Bill could be challenged by the Commonwealth. In this instance, both the Australian Parliament and the states have the power to make laws about the same issue. [Section 109](#) of the Constitution states that a federal law may override a state law if there is a conflict between the two.
- Our NSW coastal communities object to offshore fossil fuel mining and related activities on environmental, economic and climate change grounds. Based on existing research, there is overwhelming evidence to indicate the risks pertaining to new offshore fossil fuel activities significantly outweigh benefits. Impacts extend to sensitive marine environments, indigenous heritage, commercial and recreational fishing, and coastal lifestyles.
- The Bill fails to address related offshore activities, including seismic surveys, carbon capture and storage (CCS), and marine geoengineering which also pose unacceptable risks to our marine habitats. Many of the threats to environmental, indigenous, commercial/recreational fishing and coastal lifestyle values that are created by offshore drilling and associated infrastructure are also directly threatened by seismic surveys, CCS and geoengineering activities.

Recommendations for government action:

- Ensure legal certainty of prohibition of offshore fossil fuel mining and related infrastructure to both industry and community through tough legislation.
- Include the prohibition of offshore seismic surveys, CCS, and marine geoengineering (sea dumping) activities to the Bill.
- Respond to the community opposition to offshore fossil fuel mining in NSW, and ensure that these concerns take precedence over any private commercial desires.

The importance of a robust Bill

The Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 was born out of the NSW coastal communities' fury over the PEP 11 (Petroleum Exploration Permit 11) application to drill for oil and gas off Newcastle. Whilst the lease has been alive since the early 1990s, as is the way with most offshore mining, few people knew about it apart from government departments and mining prospectors.

Late in 2018, Surfrider Northern Beaches was made aware of an application for 3D seismic blasting in the PEP 11 lease area, as well as the intention of the company's ASSET Energy & Bounty Oil and Gas to drill for oil and gas. Our members were shocked to find out that such harmful activities could be occurring off our coastline, so along with other community groups (Living Ocean and Save Our Coast), Surfrider swung into action. The campaign to spread awareness and put an end to PEP 11 was long and hard fought. It involved multiple beach paddle out protests engaging thousands of people; virtual Town Hall meetings during COVID; movie nights; submissions; press conferences; meetings with MPs; STOP PEP 11 petitions; Stop PEP 11 Bills; announcements from all local council, state and federal MPs that they opposed PEP 11; a press announcement from Anthony Albanese in February 2021 that if elected PEP 11 would be "dead in the water"; and finally, in December 2021 the PM Scott Morrison announced that the PEP 11 licence would not be renewed.

We would like to emphasise the tens of thousands of volunteer hours applied to send the government a very clear message as to the views of coastal communities, the likes of which has not been seen. Further, we stress the importance that out of sight is definitely *not* out of mind for the voting public. The ocean bordering NSW is off limits for resource extraction for many varied reasons, and is the reason thousands took time to attend rallies and paddle outs on this issue.

Yet, here we are again...

The Federal Court has ruled that the PEP 11 application must be reassessed due to the "procedural unfairness" of Scott Morrison's secret Resources Ministry decision. Our community must now wait for the NSW and Federal government Joint Authority ruling on whether PEP 11, a mine that nobody wants and nobody needs, goes ahead.

This is an unacceptable waste of time, energy and resources and it weighs heavily on the community. The opportunity cost of community concern and energy is high, and strains our democracy. The NSW government must legislate effectively so this legal mess never happens again.

It is NOT Surfrider Foundation Australia's place to give advice on the constitutional issues or unintended consequences of the current Bill. That is for constitutional experts in Crown law and the NSW Parliamentary Counsel's Office to address. **The government does, however, have an opportunity to set a robust legislative precedent for other states to follow**, whilst inoculating our coast from the threat of future offshore fossil fuel mining and related activities such as carbon capture and storage and marine geoengineering.

The NSW coastal community opposes offshore drilling due to detrimental environmental, economic and climate change impacts. The community's objections to offshore fossil fuel drilling are well known. Oil and gas drilling poses an unacceptable risk for ocean habitat, marine wildlife including migrating whales, our beaches, tourism, fishing grounds and local recreational amenity. Community concerns are outlined in the following key areas - environment, economics and climate change.

ENVIRONMENT

- Oil pollution or oil spills (liquid petroleum hydrocarbons) into the environment have deleterious effects on life activities including respiration, feeding, spawning, thermoregulation and breeding of aquatic organisms (Thakur and Koul, 2022). Oil spills can be lethal to humans, fish, birds and wildlife in general, largely due to direct contact with the spilled oil and consumption of polluted food (Zhang *et al.*, 2019). Further, fish and smaller organisms that are vital links in food chains are killed, causing economic losses to fishers and government (Thakur and Koul, 2022). Should an incident occur and oil was to spread in NSW coastal waters, it is currently unlikely that the Australian Maritime Safety Authority, The Newcastle Port Authority and the Sydney Ports Corporation would be able to respond in an effective manner, resulting in widespread impacts.
- Drilling fluids (muds) have an acute and chronic effect on marine species and ecological processes, including acute toxicity and chronic toxicity (e.g. oil discharged on drilling cuttings was the greatest source of oil pollution in the North Sea from drilling operations, with 25,880 tonnes in 1985 [Kingston, 1992]; Holdway, 2002).
- Direct and indirect impact to benthic habitats and assemblages, including: injury/mortality from smothering or damage; change in water quality from sedimentation and turbidity, and a change in habitat (e.g. permanent alteration or smothering; ConocoPhillips, 2023).
- Hammering, vibrating and drilling noises are produced from offshore exploratory drilling, resulting in hearing damage, behaviour alteration, physical injury and even mortality of marine mammals (Ketten *et al.*, 1993; Huang *et al.*, 2023).
- Exploration for oil and gas involves the use of seismic surveys. The noise from seismic blasting disturbs, damages and kills marine life. Seismic activity causes significant mortality to zooplankton populations, including high mortality of krill up to at least 1.2 km from the seismic source (McCauley *et al.*, 2017). The blasts are also known to deafen cetaceans (dolphins and

whales) who rely on sound for essential processes, including navigation, migration, feeding and mating (Gordon *et al.*, 2003; Kavanagh *et al.*, 2019). Commercially valuable species, including scallops and crayfish, are significantly impacted by seismic activity, with detrimental impacts including avoidance behaviour, depressed immune systems, an inability to maintain homeostasis, and increased mortality (Day *et al.*, 2017).

- There are numerous hazards involved in drilling through the NSW offshore porous sandstone shelf, including chemical sludge and water pollution, possible oil spills and methane gas release. Despite safeguards, accidents happen (DCCEEW, 2021).
- Rigs, pipes, lights, and increased ship traffic noise disrupt marine species and the habitat within which they exist. These impacts have flow-on effects to marine ecosystems and species migrations.
- CCS technology is expensive, risky and unsuccessful (e.g. Gorgon W.A.). CCS offshore projects should not be considered as viable. There are several risks and impacts associated with CCS, including carbon dioxide leakages from sub-seabed basins (including groundwater contamination); impacts to marine species through pipeline construction; damage caused by hydrocarbons (where CO₂ injection is linked with enhanced oil recovery operations); and direct injuries to marine ecosystems (Parfomak, 2022).
- Geoengineering activities (sea dumping), including ocean fertilisation, contain risks such as ocean acidification, algal blooms, oxygen depletion and indirect effects on other ocean nutrient cycling.

ECONOMIC

- Oil spills and water pollution are costly. Billions of dollars would be lost in tourism and fishing, not to mention diminishing the overall worth of our local coastal environment. The coastline between Newcastle and Sydney is Australia's most valuable. (*Deloitte Access Economics* 2016)
- Oil and gas developments ruin seascapes and diminish tourism.
- Air and water pollution hurt local communities.
- PEP11 or any other NSW offshore mine has the potential to be a costly stranded asset. Drilling for new offshore gas in the current economic climate is high risk with low reward.
- Rigs, pipes, lights, and increased ship traffic noise disrupt commercial and recreational fishing practices.

CLIMATE CHANGE

- Fossil fuels are the cause of the climate crisis, and all new oil and gas projects are incompatible with a liveable future.
- Gas is a fossil fuel and not a renewable resource. Fugitive emissions (methane) from gas wells and pipelines, including whilst drilling, contribute to greenhouse gas pollution. Offshore gas mining is inconsistent with lowering Australian greenhouse gas emissions.
- Gas production creates greenhouse emissions at every stage of the supply chain. New offshore fossil fuel mining has the potential to be a carbon bomb at a time of climate crisis.

It would be hard to find a single coastal resident who supports the concept of NSW offshore mineral, coal or petroleum mining.

Conclusion

Surfrider Foundation Australia supports the intention of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023, along with the Committee on Environment and Planning inquiry into any legal issues raised by the Bill. We must use robust and effective legislative levers to ensure that our coastline is protected, for the well being of our marine life, our communities and our future.

Australian communities consider the coastline as our recreational playground, with the associated health and wellbeing benefits having greater value than any short term fossil fuel benefits. We are in a new era of accelerated climate change where communities are calling for the protection of our natural environments and sustainable energy solutions to guide us into the future. New offshore fossil fuel mining and its harsh practices are unacceptable, our communities have made it clear, and our laws must now reflect that.

Thank you for your consideration and we look forward to the tabling of the Committee's report after the 21st November 2023.

References

- Climate Council (2023) What Is Carbon Capture and Storage?, accessed 26/08/2023 <<https://www.climatecouncil.org.au/resources/what-is-carbon-capture-and-storage/>>
- ConocoPhillips (2023) Otway Exploration Drilling Program - Seabed Disturbance, accessed 28/08/2023 <https://s3-ap-southeast-2.amazonaws.com/mysppau/uploads/redactor_assets/documents/eca572a4d3c7a566ba75fb9b5b86daa4ec7f361d39de18179e8ecc956d1b2c4d/15527/6.3_Seabed_Disturbance_-_Draft_for_Consultation.pdf>
- Day, R. D., McCauley, R. D., Fitzgibbon, Q. P., Hartmann, K., & Semmens, J. M. (2017). Exposure to seismic air gun signals causes physiological harm and alters behavior in the scallop *Pecten fumatus*. *Proceedings of the National Academy of Sciences*, *114*(40), E8537-E8546.
- Gordon, J., Gillespie, D., Potter, J., Frantzis, A., Simmonds, M. P., Swift, R., & Thompson, D. (2003). A review of the effects of seismic surveys on marine mammals. *Marine Technology Society Journal*, *37*(4), 16-34.
- Holdway, D. A. (2002). The acute and chronic effects of wastes associated with offshore oil and gas production on temperate and tropical marine ecological processes. *Marine Pollution Bulletin*, *44*(3), 185-203.
- Huang, L. F., Xu, X. M., Yang, L. L., Huang, S. Q., Zhang, X. H., & Zhou, Y. L. (2023). Underwater noise characteristics of offshore exploratory drilling and its impact on marine mammals. *Frontiers in Marine Science*, *10*, 1097701.
- Kavanagh, A. S., Nykänen, M., Hunt, W., Richardson, N., & Jessopp, M. J. (2019). Seismic surveys reduce cetacean sightings across a large marine ecosystem. *Scientific reports*, *9*(1), 19164.
- Ketten, D. R., Lien, J., & Todd, S. (1993). Blast injury in humpback whale ears: Evidence and implications. *The Journal of the Acoustical Society of America*, *94*(3_Supplement), 1849-1850.
- Kingston, P. F. (1992). Impact of offshore oil production installations on the benthos of the North Sea. *ICES Journal of Marine Science*, *49*(1), 45-53.
- Mayo-Ramsay, J. Taking a Precautionary Approach to Ocean Fertilisation in the Southern Ocean.
- McCauley, R. D., Day, R. D., Swadling, K. M., Fitzgibbon, Q. P., Watson, R. A., & Semmens, J. M. (2017). Widely used marine seismic survey air gun operations negatively impact zooplankton. *Nature ecology & evolution*, *1*(7), 0195.
- Department of Climate Change, Energy, the Environment and Water (2021) Montara oil spill, accessed 29/08/2023 <<https://www.dcceew.gov.au/environment/marine/marine-pollution/montara-oil-spill>>

Patin, S (Translations by Cascio, E) 1999 “Waste discharges during offshore oil and gas activity”.

Parfomak, P (2022) Carbon dioxide pipelines: safety issues, Congressional Research Service, accessed 5/07/2023 <<https://crsreports.congress.gov/product/pdf/IN/IN11944>>

Seismic survey debate returns to south-west Victoria after national talks with fishers break down - ABC News.

Sydney beaches worth \$1.3 billion a year according to Deloitte report into value of better water quality | Daily Telegraph.

Thakur, A., & Koul, B. (2022). Impact of oil exploration and spillage on marine environments. In *Advances in Oil-Water Separation* (pp. 115-135). Elsevier.

Zhang, B., Matchinski, E. J., Chen, B., Ye, X., Jing, L., & Lee, K. (2019). Marine oil spills—Oil pollution, sources and effects. In *World seas: an environmental evaluation* (pp. 391-406). Academic Press.