

**Submission
No 49**

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

Organisation: The Wilderness Society

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**The Wilderness Society's
submission to:**

**Inquiry into the Minerals Legislation
Amendment (Offshore Drilling and
Associated Infrastructure) Bill 2023**

8 September 2023

About us

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. We are committed to protecting, promoting and restoring wilderness across the continent for the survival and ongoing evolution of life on Earth. From community activism to national campaigns, we seek to give nature a voice to support the life that supports us all. We are powered by more than 150,000 supporters from all walks of life.

Submitted to:

Legislative Assembly Committee on Environment and Planning

NSW Parliament Legislative Assembly

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Introduction

This submission is made in response to the referral of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure) Bill ('the Bill') for inquiry to the Legislative Assembly Committee on Environment and Planning.

The Wilderness Society commends the proposed amendments set out in the Bill to prohibit the offshore exploration and recovery of minerals and petroleum in New South Wales coastal waters. This submission addresses the following terms of reference:

- (a) any constitutional issues or unintended consequences raised by the bill, and whether any amendments may address those (see section 3: constitutionality and the need for legislation)
- (b) whether there are other ways to achieve the intended outcomes of the proposed bill through the New South Wales government offshore exploration and mining policy (see section 3: constitutionality and the need for legislation)
- (d) environmental impacts of offshore drilling (see section 2: environmental impacts)
- (e) any other related matter (see section 1: community demand for a gas-free coast)

Section 1. Community demand for a gas-free coast

There is strong community opposition to the expansion of the fossil fuel industry across Australia, including in relation to offshore oil and gas in New South Wales. A majority of Australians support the International Energy Agency's assertion that no new fossil fuel projects should be approved in order to avoid the worst impacts of climate change by limiting global temperature rise to 1.5 degrees celsius. Three quarters (75%) of Australians are concerned about climate change, and more people than ever are "very concerned" about climate change (42%).¹ The 2022 federal election became known as the "climate election", after voters booted out the Coalition government in favour of candidates that support stronger action on climate change. It is clear that support for the phase out of fossil fuels is growing every day and has become an issue that is decisive in determining voting behaviour.

In New South Wales, communities of the Northern Beaches, Central Coast and Newcastle have campaigned for years to protect the New South Wales coastline from Petroleum Exploration Permit 11 (PEP-11). Despite a lack of requirements for community consultation about the release of marine acreage for fossil fuel exploration, these communities have rallied together to ensure their opposition to PEP-11 was made loud and clear across a string of coastal Labor and Liberal electorates. More than 60,000 people signed a petition against seismic testing and drilling off the coastline between Sydney and Newcastle.² Hands Off Our Coast, Stop Seismic Testing Newcastle and the Protect Our Coast Alliance

¹ The Australia Institute. (2022). Climate of the Nation 2022: Tracking attitudes towards climate change and energy. Retrieved from <https://australiainstitute.org.au/report/climate-of-the-nation-2022/>

² Central Coast News. (2020). Zali Steggall tables petition in parliament to ban coastal gas exploration. Retrieved from <https://coastcommunitynews.com.au/central-coast/news/2020/02/zali-steggall-tables-petition-in-parliament-to-ban-coastal-gas-exploration/>.

were among the groups formed to raise awareness of the impacts of offshore oil and gas exploration in New South Wales on the environment, as well as recreational commercial fishing and coastal tourism industries. Community rallies, marches and demonstrations against PEP-11 have mobilised large numbers of supporters. For example, more than 1000 people attended the Wilderness Society's 2019 "Hands Across the Sands" event in Newcastle.



Image: More than a thousand people gather at the 2019 Hands Across the Sands event in Newcastle.

Indeed, the community opposition to PEP-11 was so significant that it compelled then Prime Minister Scott Morrison to use extraordinary ministerial powers to block the destructive project in the lead up to the 2022 federal election.³ Other decision-makers who have taken on board the community's concerns and expressed opposition to PEP-11 include:

- The current New South Wales government and New South Wales opposition
- The then federal government and federal opposition in the lead up to the 2022 federal election
- Federal MPs of impacted coastal electorates, including Newcastle MP Sharon Claydon (ALP), Shortland MP Pat Conroy (ALP), Dobell MP Emma McBride (LIB), Mackellar MP Sophie Scamps (IND) and Warringah MP Zali Steggall (IND)
- State MPs of impacted coastal electorates, including Newcastle MP Tim Crakanthorp (ALP), Swansea MP Yasmin Catley (ALP), Wyong MP David Harris (ALP), Terrigal MP Adam Crouch (LIB), Wakehurst MP Michael Regan (IND), Pittwater MP Rory Amon (LIB) and Manly MP James Griffin (LIB)
- Port Stephens, Newcastle, Lake Macquarie and Central Coast councils

³ The proponent successfully challenged this decision in the Federal Court and it must now be remade by the federal and NSW governments.

The level of community opposition to PEP-11 can be understood to translate into widespread community support for a bill that would effectively legislate a ban on offshore fossil fuel exploration and mining. Such a bill would produce the outcome the community has clearly signalled it demands—a gas-free coastline in New South Wales.⁴ In the lead up to the closing date for submissions to the inquiry, the Wilderness Society invited supporters in New South Wales to sign-on to this submission in support of a legislated ban on offshore fossil fuel exploration and mining. The short timeframe for submissions did not enable us to promote the petition widely, but a single email resulted in sign-ons from 1612 supporters (see Appendix 1). On the basis of the facts outlined in this section, the Wilderness Society suggests the committee should note and give weight to the significant community opposition to PEP-11—and support for the intent of the Bill—in its final report.

Section 2. Environmental impacts

To stay within safe limits of global heating, there can be no new oil, gas or coal developments. In 2021, the world’s peak energy body, the International Energy Agency, released its most comprehensive report yet into what is needed to reach international climate goals. The IEA’s Net Zero by 2050 Roadmap says there can be no new oil and gas fields approved for development, and no new coal mines or mine extensions, if the world is to reach net zero by 2050 and avoid the worst of climate change. Since then, a review by the International Institute for Sustainable Development found there is “large consensus” across all published studies that developing new oil and gas fields is “incompatible” with the 1.5 degrees celsius target.⁵ The only approach to carbon pollution from fossil fuel development that is consistent with science is to move rapidly to prohibit all new fossil fuel use and production, and phase out all existing fossil fuel development. The Parliament of New South Wales has the power to implement laws in line with science—laws that can limit the scale of climate-related devastation the future holds for the people of this state and around the world—but it’s not yet clear whether it has the political will.

Resulting emissions from any new oil or gas projects will fuel worsening climate impacts for communities and marine ecosystems. The people of New South Wales are already exposed to more frequent and intense climate change-driven natural disasters.⁶ The consequences of these natural disasters are wide-ranging and potentially long-lasting, including loss of life and hospital admissions, mental health impacts, property damage, destruction of crops and livestock, enormous clean-up costs, loss of productivity and emergency response.⁷ Hotter days, warmer oceans and rising sea levels threaten not only the health and survival of human communities but also marine biodiversity. A wide range of species will decline to some extent due to the impacts of climate change, and certain

⁴ Given potential offshore oil and gas resources in NSW are located primarily in the Sydney Basin, opposition to PEP-11 can be understood in effect - as opposition to offshore fossil fuel mining across the coastline of NSW.

⁵ Evans, S. (2022). New fossil fuels ‘incompatible’ with 1.5C goal, comprehensive analysis finds. Retrieved from <https://www.iisd.org/articles/iisd-news/new-fossil-fuels-incompatible-15c-goal-comprehensive-analysis-finds>

⁶ Adapt NSW. (2023). Climate change will exacerbate natural disasters, including flooding. Retrieved from <https://www.climatechange.environment.nsw.gov.au/climate-change-exacerbating-floods-and-natural-disasters>

⁷ Climate Council. (2022). The Great Deluge: Australia’s new era of unnatural disasters. Retrieved from: https://www.climatecouncil.org.au/wp-content/uploads/2022/11/CC_MVSA0330-CC-Report-The-Great-Deluge_V7-FA-Screen-Single.pdf

species, such as crayfish and frogs, are expected to be heavily affected.⁸ As the New South Wales government has recognised, reducing carbon emissions is the best way to reduce the impacts of climate change on our oceans.⁹ Another threat posed by offshore fossil fuel mining is the risk of an oil or gas spill, which would have devastating consequences for marine ecosystems and coastal communities.

In addition to climate change-driven impacts associated with the extraction and burning of fossil fuels, there are direct environmental impacts of fossil fuel exploration and mining. Over the past decade there has been extensive research on the impact of petroleum and gas exploration. This research has often focussed on the use of loud air guns in seismic testing and how this affects marine mammals such as whales and dolphins. Noise from seismic testing can cause both individual and population level impacts through behavioural changes, including disturbance from breeding and feeding grounds, interference with communication, increased levels of physiological stress, physical injury and even death.¹⁰ This is particularly concerning given the location of the New South Wales coastline on a whale superhighway that is used by humpbacks and southern right whales—and sometimes blue whales, minke and killer whales—to migrate between feeding and breeding grounds. Additionally, research has identified significant increases in mortality in scallops as a result of noise from seismic airguns,¹¹ a potential three-fold increase in mortality of adult and larval zooplankton¹²—which adversely affects the food chain—and damage to the sensory organs and righting reflexes of rock lobsters.¹³

Section 3. Constitutionality and the need for legislation

There is no constitutional barrier for New South Wales to pass and enshrine this legislation, thereby becoming Australia's first jurisdiction to prohibit fossil fuel exploitation in its coastal waters—and, by effect, sterilise fossil fuel exploitation in the adjacent ocean environment. Even though a series of High Court cases found that, in those cases, the Commonwealth has most of the advantages, in practice, the Commonwealth does not typically seek to exercise these advantages. Rather, states control their coastal waters under a range of agreed practices enshrined in state and Commonwealth laws. In light of the fact that the Offshore Constitutional Settlement was made both prior to the emergence of climate change issues and the Australia Act of 1986

⁸ Bush, A. (2015). Priorities and Uncertainties of Predicted Impacts of Climate Change on Freshwater Biodiversity in New South Wales. Retrieved from https://www.mq.edu.au/___data/assets/pdf_file/0007/653362/Effect-of-Climate-Change-on-Freshwater-Biodiversity-of-NSW-Final-Report.pdf

⁹ AdaptNSW. (2023). Climate change impacts on our oceans. Retrieved from <https://www.climatechange.environment.nsw.gov.au/oceans>

¹⁰ Erbe, C., Dunlop, R. and Dolman, S. (2018). Effects of Noise on Marine Mammals 10.1007/978-1-4939-8574-6_10

¹¹ Day, R., McCauley, R., Fitzgibbon, Q., Hartmann, K. and Semmens, J. (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. Available at: <https://www.pnas.org/content/114/40/E8537>

¹² McCauley, R., Day, R., Swadling, K., Fitzgibbon, Q., Watson, R. and Semmens, J. (2017). Widely used marine seismic survey air gun operations negatively impact zooplankton. *Nature Ecology & Evolution* 1, Article number: 0195. Available at: <https://www.nature.com/articles/s41559-017-0195>

¹³ Day, R., McCauley, R., Fitzgibbon, Q., Hartmann, K. and Semmens, J. (2019). Seismic air guns damage rock lobster mechanosensory organs and impair righting reflex Proceedings of the Royal Society B 286. Available at: <https://royalsocietypublishing.org/doi/10.1098/rspb.2019.1424> Peng, C., Zhao, X., and Liu, G. (2015) Noise in the sea and its impacts on marine organisms *International journal of environmental research and public health*, 12(10), 12304-12323. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4626970/>

(which ended the requirement of the Commonwealth to legislate to devolve powers to the states), there is no barrier to New South Wales seeking greater control over its state waters or administering state water petroleum access in a different way than what was originally envisaged.

Given the absence of constitutional issues regarding the intent of the Bill, in addition to the widespread community support for and lack of community opposition to the intent of the Bill, and that there is cross-parliamentary opposition to PEP-11, the only rationale for the Parliament of NSW in not passing the legislation would be that the political system remains fearful of retribution from the fossil industry. The scale and urgency of the climate crisis assigns a moral duty to the Parliament of New South Wales to demonstrably assert its willingness to act in accordance with the demands and interests of its constituents, rather than succumb to the influence of fossil fuel lobbyists.

Legislation is necessary to give certainty, and ensure through legislative levers, the end of the era of offshore fossil fuel exploitation in NSW. Commonwealth waters off the coast of New South Wales can be released for oil and gas exploration through the federal government's offshore acreage release program, but NSW legislation would send a signal to proponents of future projects that they will not receive the cooperation of the New South Wales government. The reality is that the exploitation of Commonwealth waters off the New South Wales coast is highly unlikely to be commercial without the tacit and legislative support of the NSW government. While this may not be the case in jurisdictions where floating production storage and offloading of oil or floating LNG are possible, it is in New South Wales.

This Bill is an opportunity for New South Wales to remove, from at least one aspect of its governance, the domineering control of the fossil fuel industry over its destiny. The fossil fuel industry is a malignant influence over Australian politics, including in New South Wales. Any jurisdiction that can free itself from their influence will have a remarkable freedom of action over its destiny and be better able to navigate the economic transitions necessary to deal with the climate and biodiversity crises.

Appendix 1: Wilderness Society supporter sign-ons
to this submission

Appendix 1 displayed the full names and post codes of 1612
individuals.