



Notification of REFERRAL DECISION – not controlled action if undertaken in a particular manner

Develop and operate a new deepwater port, Oakajee, WA EPBC 2010/5760

This decision is made under sections 75 and 77A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action

person named in the referral

WA Department of State Development

ACN 90199516864

proposed action

To develop and operate a new deepwater port, Oakajee, Western Australia [See EPBC Act referral 2010/5760].

Referral decision: Not a controlled action if undertaken in a particular manner

status of proposed action

The proposed action is not a controlled action provided it is undertaken in the manner set out in this decision.

Person authorised to make decision

Name and position

Barbara Jones
Assistant Secretary
Environment Assessment Branch

signature

date of decision

10 June 2011

manner in which proposed action must be taken

The following measures must be taken to avoid significant impacts on

- Listed threatened species and communities (sections 18 & 18A)
- Listed migratory species (sections 20 & 20A)
- Commonwealth marine areas (sections 23 & 24A)

1. To manage potential impacts to whales during pile driving activities, during May-December each year, the following measures must be implemented:

a) **Pre-start-up Visual Observations:** Visual observations for whales must be undertaken to the extent of the **whale exclusion zone** by a person trained in faunal observation and distance estimation for at least 30 minutes before the commencement of the soft or 'fairy taps' start procedure.

b) **Operating procedures:** While pile driving is being undertaken, the following procedures must be implemented:

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- i. Visual observations of the *whale exclusion zone* must be maintained continuously by a person trained in faunal observation and distance estimation to identify if there are any whales present.
 - ii. If whales are sighted within the *whale exclusion zone*, pile driving activities must be completely shut down immediately.
 - iii. Pile driving activities must not recommence until all whales are observed to move outside the *whale exclusion zone* or 30 minutes have passed since the last sighting.

c) **Soft 'fairy taps' start procedures:** Pile driving activities must be initiated at the soft 'fairy taps' start level and then build up to full impact force. The soft 'fairy taps' start procedures may only commence if no whales have been sighted within the *whale exclusion zone* during the pre-start-up visual observations.

d) During periods of low visibility (where a distance 2 km cannot be clearly viewed), including night-time, pile driving activities may be undertaken, provided that no whales have been sighted within the *whale exclusion zone* during the preceding 24 hour period as outlined in 1(b).

2. To manage potential impacts to Australian Sea Lions (*Neophoca cinerea*) and dolphins during pile driving activities, the following measures must be implemented:

a) **Pre-start-up Visual Observations:** Visual observations for Australian Sea Lions and dolphins must be undertaken to the extent of the *sea lion/dolphin exclusion zone* by a person trained in faunal observation and distance estimation for at least 30 minutes before the commencement of the soft or 'fairy taps' start procedure.

b) **Operating procedures:** While pile driving is being undertaken, the following procedures must be implemented:

- iv. Visual observations of the *sea lion/dolphin exclusion zone* must be maintained continuously by a person trained in faunal observation and distance estimation to identify if there are any Australian Sea Lions and/or dolphins present.
- v. If Australian Sea Lions and/or dolphins are sighted within the *sea lion/dolphin exclusion zone*, pile driving activities must be completely shut down immediately.
- vi. Pile driving activities must not recommence until all Australian Sea Lions and/or dolphins are observed to move outside the *sea lion/dolphin exclusion zone* or 30 minutes have passed since the last sighting.

c) **Soft 'fairy taps' start procedures:** Pile driving activities must be initiated at the soft 'fairy taps' start level and then build up to full impact force. The soft 'fairy taps' start procedures may only commence if no Australian Sea Lions and/or dolphins have been sighted within the *sea lion/dolphin exclusion zone* during the pre-start-up visual observations.

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- d) During periods of low visibility (where a distance 500 m cannot be clearly viewed), including night-time, pile driving activities may be undertaken, provided that no Australian Sea Lions and/or dolphins have been sighted within the *sea lion/dolphin exclusion zone* during the preceding 24 hour period as outlined in 2(b).
3. When operating two pile driving units, piles must not be driven directly adjacent to each other.
 4. To manage potential impacts to whales and Australian Sea Lions during dredging and barge rock dumping activities the following measures must be implemented:
 - a) Visual observations for whales and Australian Sea Lions must be undertaken to the extent of the **dredging exclusion zone** by a person trained in faunal observation and distance estimation for at least 15 minutes prior to dredging and barge rock dumping;
 - b) If whales and/or Australian Sea Lions are sighted within the *dredging exclusion zone* dredging/barge rock dumping must not commence until all individuals are observed to move outside the *dredging exclusion zone* or have not been sighted for 20 minutes, or the dredge/barge is to move to another area of the dredge/break wall area to maintain a minimum distance of 300 metres between the dredger/barge and whales and/or Australian Sea Lions.
 5. To manage potential impacts to the Commonwealth Marine Area the following measures must be implemented:
 - a) Daily visual monitoring of turbidity plume must be undertaken during dredging/breakwater construction to ensure the turbidity plume does not extend beyond 3 nautical miles from land;
 - b) In the event that the turbidity plume extends beyond 3 nautical miles of land, dredging/breakwater construction must cease until such time as the turbidity plume remains within 3 nautical miles of land.
 6. In the event that a trailer suction hopper dredge is used for the dredging activities then turtle excluder devices must be fitted if turtles have been seen sighted in the project area.

Definitions

Dredging Exclusion Zone: A 300 metre radius around the Dredger and barge undertaking the rock dumping for the breakwater.

Sea Lion/dolphin Exclusion Zone: Provided that the breakwater has been constructed prior to the pile driving activity a range of 500 m on headings between 310-360 °. In the event the breakwater has not been constructed prior to pile driving activity a 500 m radius in all seaward headings of the pile driving activity.

Whale Exclusion Zone: Provided that the breakwater has been constructed a range of 2 km of the pile driving activity on headings between 310-360 °. In the event the breakwater has not been constructed prior to pile driving activity a 2 km radius in all seaward headings of the pile driving activity.
