



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

**CETO 6 Garden Island Project, Western Australia and offshore WA (EPBC 2016/7635)**

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** Carnegie Wave Energy Limited  
ACN: 009 237 736

---

**proposed action** To: construct, operate and decommission an array of three wave energy technology units in Commonwealth waters, 8 kilometres south west of Garden Island in Western Australia; and to install an export cable to transfer the energy captured to Garden Island [See EPBC Act referral 2016/7635].

---

**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.

---

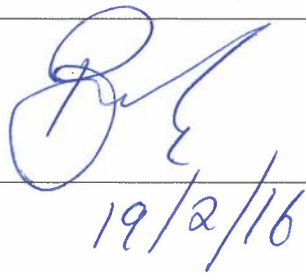
**Person authorised to make decision**

---

**Name and position** Bruce Edwards  
Assistant Secretary  
Assessments (WA, SA & NT) and Air Branch

---

**signature**



19/2/16

---

**date of decision**

---

**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 avoid physical and behavioural impacts of noise on listed threatened and migratory Southern Right Whales, *Eubalaena australis*, and Humpback Whales, *Megaptera novaeangliae*, no **impact piling** is allowed between 1 May and 30 November, inclusive, in any year.
2. If **impact piling** is selected for the installation of foundations, then to minimise its physical and behavioural impacts on listed threatened and migratory **whales**, the person taking the action must implement the following measures during **impact piling** activities:
  - a. Pre-start-up visual observations: Visual observations for marine fauna must be undertaken to the extent of the **piling observation zone** by at least one **Marine Fauna Observer** for at least 30 minutes before the commencement of **impact piling**.
  - b. Operating procedures: While **impact piling** is undertaken, the following procedures must be implemented:
    - i. Visual observations of a 3000 metre radius from the pile hammer must be maintained, by at least one **Marine Fauna Observer**, to identify if there are any **whales** present.
    - ii. The **exclusion zone** must be implemented so as to ensure that **whales** are not exposed to Sound Exposure Levels of greater than or equal to 183 dB re 1 $\mu$  Pa<sup>2</sup>.s and the **exclusion zone** must be no less than:
      - a 2000 metre radius around the pile hammer for **whales**; or
      - if agreed in writing by the **Minister**, an alternative fixed distance radius around the pile hammer based on the results of noise exposure modelling.
    - iii. If **whales** are sighted within the relevant **exclusion zone**, action must be taken to cease all piling within the **exclusion zone**, within 2 minutes or as soon as safely possible.
    - iv. **Impact piling** must not recommence until **whales** are observed to move outside the **exclusion zone** or 30 minutes have passed since the last sighting.
    - v. **Soft 'fairy taps' start procedures**: Piling activities must be initiated at the soft 'fairy taps' start level and then build up to full operating impact force. The **soft 'fairy taps' start procedures** may only commence if no **whales** have been sighted within the relevant **exclusion zone** during the pre-start-up visual observations.

- vi. No **impact piling** shall occur between the hours of sunset and sunrise during the Blue Whale (*Balaenoptera musculus*) foraging period of 1 January and 30 April, inclusive, of any year.
- vii. Marine pile driving commenced prior to a period of **low visibility** can continue unless impact pile driving is suspended for more than 15 minutes.
- viii. Piling may occur during the period specified in vii), and/or commence during the period specified viii), if an acceptable alternative to visual observations is agreed by the **Minister**.

### Definitions

**Exclusion zone:** A radius around pile driving operations for whales, which must be visually observed at all times during piling and where piling must cease if whales are observed within the relevant radius.

**Impact piling:** Driving structural supports into the ground below the waterline using weighted strikes.

**Low visibility:** is as defined in *EPBC Act Policy Statement 2.1 – Interaction between offshore seismic exploration and whales* (September 2008).

**Marine Fauna Observer:** a dedicated and suitably trained person who has demonstrated experience in marine fauna observation, distance estimation and reporting and must not have any other duties while engaging in visual observations for whales.

**Minister:** the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and includes a delegate of the Minister.

**Piling Observation Zone:** A 3000 metre horizontal radius from the pile hammer for **whales**.

**Soft 'fairy taps' start procedures:** Initiated at commencement of all piling activities by piling at low energy levels and then build up to full impact force. The first five impacts from the piling operation must be at no more than 50% of full hammer weight (e.g. a hammer with an adjustable stroke height of 1.2 metres should drop from a height of 0.6 metres at least 5 times during a 'soft start' procedure), to encourage animals to move away from subsequent blows.

**Whales:** Includes baleen whales and larger toothed whales (such as sperm whales, killer whales, false killer whales, pilot whales and beaked whales).

