

# SCOPING PROTOCOL FOR NATIONAL ENVIRONMENT PROTECTION MEASURES

## SCOPING OBJECTIVES

The scoping of a potential National Environment Protection Measure should:

- ensure an adequate level of consideration has been given to a proposal for NEPM development;
- ensure that a proposal to develop a NEPM is consistent with the NEPC Act; and
- provide sufficient and appropriate information for NEPC to fully consider whether a decision to initiate a NEPM is justified.

## PRINCIPLES OF SCOPING

The scoping of a potential NEPM should involve:

1. identifying the important issues for consideration in determining the feasibility of developing a potential NEPM;
2. determining whether national action is warranted and whether a NEPM is the most appropriate mechanism for addressing those issues rather than other available mechanisms (legislative or other) and selecting those issues that are to be included within the scope of a proposed NEPM;
3. identifying potential key stakeholders and their views;
4. establishing how a proposed NEPM would conform with the NEPC Act and with existing international agreements, jurisdictional legislation and other initiatives;
5. establishing jurisdictional consensus (with consideration of stakeholder views) in prioritising issues identified;
6. determining what a proposed NEPM would seek to achieve by identifying the objectives related to a desired Goal and the desired environmental outcomes;
7. identifying proposed components of the NEPM (ie Goal, Standards, Protocols and/or Guidelines);
8. identifying potential risks and constraints to developing a proposed NEPM;
9. identifying potential issues arising from any relevant regional environmental differences;
10. developing estimated time lines and budgets;
11. identifying the need for implementation arrangements between jurisdictions outside the NEPM process;

12. determining, while taking cognisance of the Precautionary Principle, whether sufficient information is available to develop a proposed NEPM including identification and clarification, where appropriate, of the underpinning scientific, economic and social aspects of the standard, guideline or protocol giving structure to a proposed NEPM;
13. evaluation of the value and relevance of existing information; and
14. establishing a consultative process for proposed NEPM development.

## STRATEGIES FOR SCOPING

### *Options for a two-stage approach*

The scoping of potential NEPMs may be addressed in a single scoping exercise but in some instances it may be preferable to apply a two-staged approach. A two-staged approach may be appropriate when there is a high degree of uncertainty as to whether a NEPM for a particular issue is warranted.

### Stage 1: Preliminary Scoping

Stage 1 will allow for a preliminary investigation that will be limited to assessment of specific environmental issues and the identification of possible alternatives to, and options for developing a NEPM.

The objectives of an initial scoping stage are to provide an overview of issues for an environmental topic by:

- identifying and examining relevant issues;
- identifying jurisdictional priorities for identified issues, and current and proposed initiatives being employed by jurisdictions to address those issues;
- determining the extent to which existing jurisdictional policies and practices are achieving equivalent environmental protection and whether national action is warranted;
- determining what options, including potential NEPMs, are available for addressing issues and a preliminary assessment of the associated costs and benefits, and constraints;
- examining the potential for a NEPM to complement and add value to existing initiatives; examining, while taking cognisance of the Precautionary Principle, whether sufficient scientific, economic and social information is available for developing a NEPM;
- considering possible structures potential NEPMs could take (standards, protocols or guidelines); and
- providing a recommendation to NEPC Committee as to whether a more detailed examination of identified issues should be undertaken and whether the detailed scoping of a potential NEPM is justified.

Stage 1 will provide an initial assessment of an environmental issue and provide NEPC Committee with a sufficient level of information to determine whether a more detailed scoping exercise is desirable. Important sources of information at this stage would be 'state of the environment' reports, and jurisdictional views developed through their experience and their relationships with relevant stakeholders, national, state and territorial government agencies, and NGO (industry and conservation) bodies.

#### Stage 2: Detailed Scoping

Should NEPC Committee approve the undertaking of a detailed scoping exercise, a working group will be appointed to develop a full scoping report based on the entire scoping protocol. Upon completion, the scoping report will be submitted to NEPC Committee for consideration. The report will, if appropriate, provide a detailed description of what issues a NEPM should specifically address. Should NEPC Committee agree that the information provided justifies the development of a NEPM it will forward the results of the scoping process to NEPC with a recommendation that NEPC agree to initiate the development of the NEPM.

#### A combined approach

A single stage approach would combine the terms of reference for Stages 1 and 2.

Regardless of whether a single or two-stage approach is used, the full principles of the NEPM scoping protocol should be applied to the scoping process before a recommendation is made to progress with NEPM development.

#### ***Who will do the scoping?***

Working groups established by NEPC Committee, with appropriate representation and skills, appear to be a desirable means for NEPM scoping. The NEPC Service Corporation will provide management of the scoping process. Some aspects of the scoping process could be undertaken by an individual or an agency who would then report to NEPC Committee either directly, through an agency, or through a working group. In most cases, working groups to date have been comprised solely of environment protection agency personnel. However, NEPC acknowledges the expertise and resources of stakeholders and it may be advantageous at times to include key stakeholder representation on NEPM scoping groups.

The final decision regarding working group composition, terms of reference, and any funding considerations in regard to scoping of potential NEPMs remains with NEPC Committee.

#### ***Stakeholder and Government Consultation***

An important component of the scoping process will be to consult closely with jurisdictions to establish the scoping consultation requirements of a NEPM and identify appropriate stakeholders. Consultation may be conducted during Stage 1 or Stage 2 of scoping.

During the scoping process key stakeholders may be consulted. Key stakeholder consultation during the scoping phase can be conducted in a number of ways. This may include consultation with targeted peak bodies at national and jurisdictional levels. Key stakeholders may be requested to identify important issues to be

considered during NEPM scoping. Consultation could occur through formal or informal processes.

***Notice of Intention to develop a NEPM***

Should NEPC Committee find that the development of a NEPM is justified and if it agrees with the outcomes of the scoping process, it will submit the scoping document to NEPC with a recommendation that Council resolve to initiate a NEPM. Such a process would provide a level of confidence to Council, jurisdictions and stakeholders that a rigorous process has been undertaken in considering the initiation of a NEPM. The final decision to initiate a NEPM is a matter for Governments and the National Environment Protection Council.

If Council resolves to develop a new NEPM, a Notice of Intention will be publicly advertised. It is proposed that scoping be completed before a notice of intention is published. This approach will ensure that the planning process has been completed in a thorough and structured manner before a notice is published. The Notice of Intention, when published, will be supplemented by information posted on the NEPC/EPHC website.