



Eastern Green Link 2 - Marine Scheme

Environmental Appraisal Report Volume 2

Chapter 3 - Legislative and Policy Framework

nationalgrid



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3. Legislative and Policy Framework

3.1 Introduction

This chapter of the Environmental Appraisal Report (EAR) describes marine planning policy in the UK and sets out the legislative framework and marine licensing and permitting requirements that apply to the Installation, Operation and Maintenance, and Decommissioning Phases of the marine elements of the Marine Scheme.

Marine planning policy at the international level is summarised, where relevant to the Marine Scheme.

3.2 Marine Planning and Policy

3.2.1 International Planning Context and the United Nations Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS), also called the Law of the Sea Convention or the Law of the Sea Treaty, is an international agreement that establishes a legal framework for all marine and maritime activities. Article 79 of the agreement provides protection for international submarine cables and pipelines (i.e., electricity and telecommunications cables), giving the freedom to lay, maintain and repair cables on and off the continental shelf, while also placing obligations on owners of new cables and pipelines to indemnify repair costs for any damage caused to existing cables.

Under Article 79, a coastal state may not impede the laying or maintenance of cables and pipelines in international waters (beyond the 12 nautical mile (NM) limit of territorial waters). UK regulators may therefore not grant licences contrary to international law, and to address this requirement, there are differences in the licence requirements for the laying, maintenance, cable protection and other associated works in UK territorial waters (within 12 NM) in comparison to the offshore waters (beyond 12 NM).

3.2.2 Marine Planning Policy

This section presents the background and rationale for marine spatial planning and summarises relevant UK planning policies. The marine planning policy and framework of the two consenting authorities through which the Marine Installation Corridor would pass – Marine Scotland Licensing Operations Team (MS-LOT) in Scotland and the Marine Management Organisation (MMO) in England – is described.

Boundaries for terrestrial plans essentially follow existing or historic administrative jurisdictions. For marine areas, while the land/sea boundary and international boundaries provide onshore and offshore limits, clear boundaries are not always apparent. Marine Spatial Planning (MSP) is an approach to the management of the sea. The aim is to ensure a sustainable future for territorial waters and those of the Exclusive Economic Zone (EEZ) through managing and balancing the many activities, resources and assets in the marine environment. MSP seeks to adapt spatial planning concepts used on land and, taking into consideration the challenges in the marine environment, apply them to territorial waters and the EEZ.

3.2.2.1 UK Marine Policy Statement

In order to rationalise planning in the marine environment, a UK Marine Policy Statement (MPS) (2011) was prepared by the UK Government in March 2011 in accordance with Section 44 of the Marine and Coastal Access Act 2009 (the MCAA). The MPS sets out the policies intended to help achieve sustainable development in the UK marine areas and provides the framework for preparing marine plans and for taking decisions that affect the marine environment. Marine plans provide more detailed policy and spatial guidance at a national or regional level (see Section 3.2.2.2).

The objectives of the MPS are to:

- Promote sustainable economic development;
- Enable the UK's move towards a low-carbon economy, in order to mitigate the causes of climate change and ocean acidification and adapt to their effects;
- Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and
- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

The MPS emphasises the importance of renewable energy and recognises the importance of considering marine renewable projects in marine planning, stating that:

“Contributing to securing the UK’s energy objectives, while protecting the environment, will be a priority for marine planning”.

The MPS states that in examining and determining applications for all energy infrastructure, the following must be considered:

- The national level of need for energy infrastructure;
- The positive wider environmental, societal, and economic benefits of low carbon electricity generation;
- That the renewable energy resources can only be exploited where the resource exists and where economically feasible; and
- The potential for inward investment on energy related manufacturing and deployment activity and employment opportunities and regeneration of local and national economies, supporting the objective of developing the UK's low carbon manufacturing capability.

The MCAA requires all public authorities taking authorisation or enforcement decisions that affect, or might affect, the UK marine area do so in accordance with the MPS and relevant marine plans unless relevant considerations indicate otherwise. Authorities taking decisions that affect, or might affect, the UK marine area which are not authorisation or enforcement decisions must have regard to the MPS and relevant marine plans.

In Scottish territorial waters (within the 12 NM limit), marine planning matters are governed under the Marine (Scotland) Act 2010 (the MSA), with Scottish national and regional marine plans required to also be in accordance with the MPS, unless relevant considerations indicate otherwise. This is to ensure that Scottish marine planning is consistent with wider UK objectives and priorities.

3.2.2.2 UK Marine Plans

Responsibility for the development of marine plans in England has been delegated to the MMO. In Scotland, responsibility lies with Scottish Ministers, and can be delegated to Marine Planning Partnerships (MPPs) for the preparation of regional marine plans (Scottish Government, 2016).

Marine Plans in UK coastal areas overlap in jurisdiction with those of Local Planning Authorities (LPAs), with the jurisdiction of MS-LOT and the MMO extending landwards up to Mean High Water Springs (MHWS), whereas LPA responsibilities extend seaward to Mean Low Water Springs (MLWS). As a result, LPAs play an important role in the marine planning process, leading to the integration of land-use plans and marine plans where they overlap. A total of 11 regional marine plans have been developed in England including inshore and offshore areas.

In Scotland, a National Marine Plan (NMP) has been developed covering the management of both inshore and offshore waters, and that will be supported by 11 Scottish Regional Marine Plans (RMPs), implemented at local level and covering Scottish territorial waters.

The Project Marine Scheme lies within the following marine plan areas:

- National Marine Plan Area for Scotland – Scotland's NMP (Scottish Government, 2015);
- North East Inshore and North East Offshore Marine Plan (June 2021) (HM Government, 2021); and

- Eastern Inshore Marine Plan Area – East Inshore and East Offshore Marine Plans (April 2014) (HM Government, 2014).

Whilst the Marine Scheme does not lie directly within the East Offshore Marine Plan Area (HM Government, 2014), it is located approximately 13 km from the Marine Installation Corridor at its closest point. Accordingly, consideration has been given to this marine plan as its extents overlap with defined Study Areas and/or Zones of Influence adopted within the technical assessments reported in this EAR.

A summary of each marine plan is provided in the sections below. Marine plans contain a number of objectives which will be delivered through policies covering a wide range of topics, including: activities and users; economic; social and environmental considerations; cross-cutting issues such as the interface between decision-making on land and at sea; and opportunities for coexistence.

Under Section 15 of the MSA 2010 and Section 58 of the MCAA 2009, MS-LOT and the MMO respectively must have regard to the appropriate marine plan in making any decision capable of affecting the whole or any part of the UK or Scottish Marine Area, such as determining Marine Licence Applications (MLAs).

The Applicants have provided a Marine Plan Compliance Checklist in Appendix 3.1, and further details of how compliance and alignment with relevant policies has been achieved is presented in the technical chapters.

Scottish National Marine Plan

The Scottish NMP covers the management of both Scottish territorial waters and offshore waters (Scottish Government, 2015). It is the intention that 11 RMPs will eventually support the NMP and cover territorial waters in each of the Scottish Marine Regions. At time of assessment, of the three RMPs in preparation although none include the Marine Scheme area. The status of the remaining plans is currently unknown.

The NMP provides a comprehensive overarching framework for all marine activity in Scotland, with an aim to enable sustainable development and use of Scotland's marine area in a way which will protect and enhance the marine environment whilst promoting both existing and emerging industries.

The overall objective of the plan is *'to integrate both the ecosystem approach and the guiding principles of sustainable development to deliver a robust approach to managing human impact on Scotland's seas.'* The plan includes several high-level marine objectives including the objectives to maximise sustainable activity, prosperity, and opportunities for all.

In reference to offshore cables, the NMP states:

"CABLES 1: Cable and network owners should engage with decision makers at the early planning stage to notify of any intention to lay, repair or replace cables before routes are selected and agreed. When making proposals, cable and network owners and marine users should evidence that they have taken a joined-up approach to development and activity to minimise impacts, where possible, on the marine historic and natural environment, the assets, infrastructures and other users. Appropriate and proportionate environmental consideration and risk assessments should be provided which may include cable protection measures and mitigation plans.

Any deposit, removal or dredging carried out for the purpose of executing emergency inspection or repair works to any cable is exempt from the marine licensing regime with approval by Scottish Ministers. However, cable replacement requires a marine licence. Marine Licensing Guidance should be followed when considering any cable development and activity."

Sectoral policies are also outlined in the NMP where a particular industry brings with it issues beyond those set out in the general policies. In addition to general planning policies, the specific policies covering submarine cables, sea fisheries, wild salmon and diadromous fish, offshore wind, recreation, and tourism are of particular relevance to the Project Marine Scheme.

Plan objectives relevant to the Marine Scheme are summarised in Appendix 3.1.

North East Inshore and Offshore Marine Plan

The North East Inshore and North East Offshore Marine Plan was published in June 2021 and provides a framework in England that aims to shape and inform decisions how the areas' waters are developed, protected and improved over the next 20 years. The plan is split into inshore (territorial) and offshore waters. The North East Inshore Marine Plan area covers territorial waters between the Scottish border and Flamborough Head, in Yorkshire (approximately 6,000 km²). The North East Offshore Marine Plan covers offshore waters through the same area to the EEZ (approximately 50,000 km²).

The plan introduces a strategic approach to planning, following an evidence-based approach to inform decision-making by marine users and regulators on where activities might take place within the marine plan areas. The plan covers the coastlines of 13 local authorities and includes three major tidal rivers, the Tyne, Wear and Tees, as well as a number of ports including Port of Blyth, Port of Tyne, Port of Sunderland, Hartlepool and Teesport.

The plan area contains important shipping routes for transiting traffic, as well as areas important for oil and gas production and processing. Sections of coastline important for tourism and recreational activities are also present including North Northumberland and North Yorkshire as well as a wide range of internationally significant habitats and species.

Plan objectives relevant to the Marine Scheme are summarised in Appendix 3.1.

East Inshore and East Offshore Marine Plan

The East Inshore Marine Plan covers territorial waters from Flamborough Head to Felixstowe (approximately 6,000 km²). The plan was published in April 2014 and is valid for a period of 20 years. The plan has 11 main objectives which have a focus on sustainable development, creating employment opportunities, and realising the potential of renewable energy. The area covered by the East Inshore Marine Plan includes the Humber's busiest port complex of Grimsby and Immingham, as well as accounting for 50% of all areas licensed for aggregate extraction in English waters.

The East Offshore Marine Plan covers the area from the seaward limit of the territorial seas out the boundary of the EEZ, including the maritime boundaries with the Netherlands, Belgium and France; a total of approximately 49,000 km². The East Offshore Marine Plan was published jointly with the East Inshore Marine Plan in April 2014. The area covered by the East Offshore Marine Plan is predominantly open, expansive, shallow water supporting oil and gas platforms and commercial activities such as shipping, aggregate extraction and fishing. Designated shipping routes, cable infrastructure and oil and gas pipelines cross the offshore area linking the UK with Europe.

Plan objectives relevant to the Marine Scheme are summarised in Appendix 3.1.

3.2.3 National Policy Statements

The UK Government produces National Policy Statements (NPSs), which set out the UK Government's objectives for the development of a Nationally Significant Infrastructure Project (NSIP) within England.

The Marine Scheme is not an NSIP, and therefore NPSs do not directly apply. However, whilst the MMO will determine any MLAs in accordance with the MPS and applicable Marine Plans, the NPSs are considered to also be relevant. The relevant sector specific guidance is set out in the Overarching NPS for Energy (EN-1) and in NPS for Electricity Networks (EN-5), in terms of consideration of the need for new renewable energy generation and the potential environmental effects of relevant marine infrastructure. That guidance is generally applicable to offshore infrastructure projects and elements of the NPSs are therefore considered relevant considerations during the Environmental Appraisal process, as follows:

- EN-1- Paragraph 3.7.1 discusses the likelihood of new electricity infrastructure location being located where there is no existing transmission and the predicted unsuitability of existing network infrastructure for connection of new renewable generation assets;
- EN-1- Paragraph 3.7.10 outlines the urgent need for new electricity transmission and distribution infrastructure, and that new connection has been demonstrated to represent an efficient and economical means of connecting new generation assets to the transmission or distribution network; and

- EN5 – notes that “*when considering impacts for electricity networks infrastructure, all of the generic impacts covered in EN-1 are likely to be relevant, even if they only apply during one phase of the development such as construction or only apply to one part of the development such as a substation.*” The generic impacts referred to include: biodiversity, landscape and visual; and noise and vibration.

3.3 Marine Licensing

3.3.1 The Marine Acts

The MSA (2010) and MCAA (2009), together known as ‘the Marine Acts’, set out the framework for marine licensing. Under the MSA 2010, MS-LOT is responsible for the marine licensing activities carried out in the Scottish inshore region, from MHWS to 12 nautical miles (NM). The MMO is responsible under Part 4 of the MCAA 2009 for licensing of activities relating to the construction and removal of any substance or object in English territorial waters (up to 12 NM). Under the MCAA 2009, MS-LOT have responsibility for licensing and enforcement for the Scottish offshore region from 12 NM to 200 NM.

A Marine Licence is therefore required for the installation and maintenance of the Marine Scheme within Scottish and English territorial waters from MS-LOT and the MMO respectively. Under Section 81 (2) (b) of the MCAA 2009, works undertaken in the course of laying or maintaining a submarine cable in the English and Scottish offshore region (12 NM to 200 NM) are exempt from a Marine Licence. This means that:

- Laying and burial of the inshore section within English and Scottish territorial waters requires a Marine Licence; and
- Within offshore waters, the installation and maintenance of the cable is exempt from requiring a Marine Licence however, the placement of cable protection material is considered a licensable activity by MS-LOT and the MMO, and a Marine Licence is still required for this activity.

Therefore, three Marine Licences are required for the Marine Scheme, as follows:

- Two Marine Licences are required for the Marine Scheme in Scottish waters:
 - One under the MSA 2010, for all activities associated with the installation, installation of cable protection, removal of materials and other supporting and maintenance works of the Marine Scheme in Scottish territorial waters (within 12 NM); and
 - One under the MCAA 2009 for the installation of cable protection activities only, for elements of the Marine Scheme in Scottish offshore region between 12 NM and 200 NM. Under Section 81 (2) (b) of the MCAA 2009, works undertaken in the course of laying or maintaining a submarine cable is exempt from a Marine Licence, although licence conditions may still be applied.
- In English waters, one Marine Licence is required, under the MCAA 2009, for all activities associated with the installation, installation of cable protection, removal of materials and other supporting and maintenance works of the Marine Scheme within English territorial waters, and for cable protection activities only in the English offshore region (from the 12 NM limit to 200 NM).

This EAR has been prepared in support of the MLAs to the MMO and MS-LOT under the Marine Acts.

3.3.2 Scottish Marine Area

As outlined in Section 3.3.1, MS-LOT is the body responsible for determining MLAs in the Scottish Marine Area under the MSA, and in the Scottish offshore waters under the MCAA, on behalf of Scottish Ministers.

As part of the assessment of the MLAs, MS-LOT may seek advice from their primary advisors and consultees before making a decision on whether to issue the licence. In addition, MS-LOT may consult any person or body it deems fit, in cases involving any matter in which that person or body has particular interest or expertise.

Part 4 of the MSA defines the marine licencing requirements for the cable installation and associated activities within territorial waters. Requirements for the consideration of potential effects on MPAs are also set out within the MSA in Section 82 'Duties of public authorities in relation to MPAs etc.'

Marine cables that cross the intertidal zone (between MHWS and MLWS) fall within the coverage of the MSA but also fall under the provisions of the Town and Country Planning (Scotland) Act 1997 (as amended). A separate planning application has been submitted to Aberdeenshire Council, under this legislation for the Scottish Onshore Scheme.

Under The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013¹ (the 2013 PAC Regulations) marine licences for certain activities require public pre-application consultation. These regulations cover activities with the potential to have significant impacts upon the environment, local communities, and other legitimate uses of the sea. The purpose of the consultation is to allow local communities, environmental groups and other interested parties to comment upon the Project Marine Scheme before the MLA is submitted to MS-LOT.

The Marine Scheme falls under Section 4 (a) of the 2013 PAC Regulations as it constitutes the placement of a submarine cable into the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container, where that cable is over 1,853 metres (approximately 1 NM) in length and where it crosses the 'inter-tidal boundary'. These requirements only apply in respect of relevant applications in Scottish territorial waters.

In the Scottish offshore waters the marine licensing process falls under the MCAA 2009, with MS-LOT acting as regulator on behalf of Scottish Ministers.

3.3.3 English Marine Area

The MCAA provides the framework for the marine licensing system. The Act modernises previous licencing process and provides a more streamlined, transparent, and effective licensing system.

The MMO is responsible, under Part 4 'Marine licencing' of the MCAA, for administering marine licensing of activities as defined in Section 66, these include the construction or removal of any substance or object in the UK Marine Area as defined by Section 42 of the MCAA.

As part of the assessment of the MLAs, the MMO may seek advice from their primary advisors and consultees before making a decision on whether to issue the licence. In addition, MMO may consult any person or body it deems fit, in cases involving any matter in which that person or body has particular interest or expertise.

A Marine Licence is required under Part 4 of the MCAA for cable installation and associated activities within English territorial waters. As outlined in Section 3.3.1, within offshore waters the laying and maintenance of cables does not require a Marine Licence under Section 81 of the MCAA. Activities requiring a Marine Licence include the placement of cable protection and may include some removals of materials.

Marine cables that cross the intertidal zone (between MHWS and MLWS) fall within the coverage of the MCAA but also fall under the provisions of the Town and Country Planning Act 1990 (as amended). A separate EAR will be submitted to East Riding of Yorkshire Council and Selby District Council, under a separate consenting process as part of the Project English Onshore Scheme.

3.4 Habitats Regulations Assessment

EC Council Directive 92/43/EC² on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and EC Council Directive 2009/147/EC³ on the conservation of wild birds (the Birds Directive) enable European Union (EU) Member States to work together within the same legislative framework to protect Europe's most valuable species and habitats, irrespective of political or administrative boundaries. At the heart of these Directives is the creation of a network of Europe's most

¹ The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013. [The Marine Licensing \(Pre-application Consultation\) \(Scotland\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² EC Council Directive 92/43/EC [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ EC Council Directive 2009/147/EC [EUR-Lex - 32009L0147 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu)

valuable species and habitat sites, previously known as Natura 2000, however, following the UK's exit from the EU these sites are now collectively referred to as a "national site network".

The aim of the national site network is to ensure the long-term survival of European threatened species and habitats. The network comprises Special Areas of Conservation (SACs) designated under the Habitats Directive, and Special Protection Areas (SPAs) designated under the Birds Directive. SPAs and SACs are designated by the individual member states. Under Article 6 (3) of the Habitats Directive, project-related activities within or adjacent to national site network sites must be assessed with regard to their implications for the site(s) conservation objectives.

In Scotland, the Habitats Directive and the Birds Directive are transposed into law by The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)⁴, while in England, the same function is performed by The Conservation of Habitats and Species Regulations 2017, applying to Scottish and English territorial waters respectively. The Conservation of Offshore Marine Habitats and Species Regulations 2017 transpose the Habitats Directive into law for the offshore waters of both Scotland and England. These regulations are collectively referred to as the 'Habitats Regulations'⁵.

Where a plan or project, either alone or in combination with other plans or projects, is likely to have a significant effect on a national site network site(s) and is not directly connected with or necessary for the management of the site, the Habitats Regulations require a Habitats Regulations Assessment (HRA) to be undertaken. HRA is a staged assessment process involving Screening, Appropriate Assessment (AA) and Derogation. If an AA is required, the Secretary of State must consider whether the plan or project will adversely affect the integrity of the site(s). The regulators (MS-LOT in Scotland and MMO in England) are the Competent Authorities under the Habitats Regulations and are responsible for undertaking the AA.

The UK left the EU on 31 January 2020 under the terms set out in the European Union (Withdrawal Agreement) Act 2020 ("the Withdrawal Act"). However, the most recent amendments to the Habitats Regulations – The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019 maintain the requirement for a HRA to be undertaken, as appropriate.

To facilitate the development of the Competent Authorities' AA, the Applicants have provided information to inform HRA for the Project Marine Scheme as a report; this is presented in Appendix 8.2 of this EAR.

3.5 Marine Protected Areas

MPAs are defined under the MSA for Scottish territorial waters, and the MCAA for Scottish offshore waters.

The Scottish MPA network is designed to conserve a selection of marine biodiversity (species and habitats) and geodiversity (the variety of landforms and natural processes that underpin the marine landscapes), offering long-term support for the services our seas provide to society (Marine Scotland, n.d.). The development of this network has involved work between Marine Scotland, the Joint Nature Conservation Committee (JNCC), Natural England (NE), Historic Environment Scotland (HES), the Scottish Environment Protection Agency (SEPA) and NatureScot (formerly Scottish Natural Heritage).

Section 83 of the MSA 2010 and Section 126 of the MCAA 'Duties of public authorities in relation to certain decisions' places specific duties on MS-LOT relating to MPAs and Marine Licence decision making. This applies where a public authority is responsible for making a decision on whether to issue the licence for the Project, where the Project has the potential of affecting (other than insignificantly) an ecologically, geomorphologically, or historically protected feature within the MPA, unless it can be demonstrated that:

- There is no other means of proceeding with the act that which would create a substantially lower risk of hindering the achievement of those objectives;

⁴ The Conservation (Natural Habitats, &c.) Regulations 1994 [The Conservation \(Natural Habitats, &c.\) Regulations 1994 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁵ UK Habitat Regulations 2017 [The Conservation of Habitats and Species Regulations 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk), [The Conservation of Offshore Marine Habitats and Species Regulations 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk) and [The Conservation \(Natural Habitats, &c.\) Regulations 1994 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- The benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it; and
- The person seeking authorisation to undertake, or make arrangement for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MPA concerned.

MS-LOT is required to give specific consideration to MPAs during the Marine Licence determination process. To support MS-LOT in this process and inform their assessment, the Applicants have provided an MPA assessment in Appendix 8.3 of this EAR.

3.6 Marine Conservation Zones

Alongside Marine Licensing, a fundamental component of the MCAA 2009 is the provision of powers to the appropriate authority to designate Marine Conservation Zones (MCZs). MCZs seek to protect a range of nationally important marine wildlife, habitats, geology and geomorphology, and can be designated anywhere in English and Welsh territorial and UK offshore waters.

A main objective when selecting MCZs is to ensure that an ecologically coherent network is achieved. MCZs therefore aim to complement the existing national site network – SACs and SPAs, and the marine components of Sites of Special Scientific Interest (SSSIs) and Ramsar sites.

Under Section 126 of the MCAA 2009, the MMO has a duty to consider MCZs during the determination of MLAs. To meet the requirements of Section 126, the MMO has introduced a specific MCZ assessment process which will be integrated into the marine licence decision making procedures. The process comprises three main stages, i) Screening; ii) Stage 1 Assessment; and iii) Stage 2 Assessment.

- Screening determines whether Section 126 should apply to the MLA and therefore require MCZ assessment. It will apply if the licensable activity takes place within or near a MCZ and has the potential to affect the features of an MCZ or processes on which the conservation of any protected feature of the MCZ is reliant.
- Stage 1 Assessment considers whether the conditions of Section 126 can be met. It will be deemed met if information supplied by the applicant demonstrates that there is no significant risk of the activity hindering the achievement of the MCZ conservation objectives. If it cannot be met, are there measures which can reduce the risk.
- Stage 2 Assessment considers if the benefit of the licensable activity to the public outweighs the risk of damage to the environment and whether the applicant can undertake measures of equivalent environmental benefit to compensate the environmental damage.

Consideration of the MCZ process as relevant to the Project Marine Scheme is provided within Appendix 8.3 (alongside consideration of Scottish MPAs, as required).

3.7 Protected Species

Certain species are protected by international, European and national wildlife legislation throughout the UK. This section focuses on the legislation making it an offence to recklessly disturb, harm, or kill a protected species, as follows:

- Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive);
- The Habitats Regulations (see Section 3.4);
- The Wildlife and Countryside Act 1981 (as amended);
- Nature Conservation (Scotland) Act 2004, which makes amendments to the Wildlife and Countryside Act 1981 (as amended);
- The Conservation of Seals Act 1970;
- The Conservation of Seals (England) Order 1999; and
- The Marine (Scotland) Act 2010.

Table 3-1 presents selected examples of marine species which are protected in the UK under this legislation, and which are potentially relevant to the Project Marine Scheme.

Table 3-1: Protected Marine Species in UK Waters

Regulation / Schedule	Examples of Relevant Protected Marine Species
The Habitats Regulations (European Protected Species)	<ul style="list-style-type: none"> • Whales, dolphins and porpoises (all species) • Marine turtles (loggerhead turtle, green sea turtle, Kemp's Ridley turtle, hawksbill turtle, leatherback turtle); • Common sturgeon; and • Otter.
The Wildlife and Countryside Act 1981 (as amended) Schedule 5	<ul style="list-style-type: none"> • Whales, dolphins, and porpoises (all species); • Basking and angel sharks; • Fan mussel and freshwater pearl mussel; • Wild birds; and • Otter.
The Conservation of Seals Act 1970	<ul style="list-style-type: none"> • Harbour and grey seals.
The Conservation of Seals (England) Order 1999	<ul style="list-style-type: none"> • Harbour and grey seals.
Marine (Scotland) Act 2010 (Section 117)	<ul style="list-style-type: none"> • Harbour and grey seals.

A European Protected Species licence is required for certain activities in relation to these protected species that might otherwise be against the law. Licences are granted subject to conditions and licence holders are responsible for ensuring compliance with conditions. Failure to comply with conditions is an offence.

It is not anticipated that activities undertaken during the Installation, Operation and Maintenance and Decommissioning Phase of the Project Marine Scheme will recklessly disturb, harm, or kill any protected species. However, it is acknowledged that geophysical surveys have the potential to disturb marine mammal species, so appropriate mitigation measures will be implemented to ensure those surveys can be consented. Where there is the potential for injury or disturbance of a protected species, the significance of the effect has been assessed within the relevant topic chapter.

Applications for European Protected Species licences do not form part of this EAR; these will be applied for at the relevant time prior to the geophysical survey being undertaken, if required.

3.8 The Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities Act 2006 (NERC) came into force on 01 October 2006 and imposes a duty on public authorities to conserve biodiversity. It applies to the English territory, and therefore to the Project Marine Scheme in English waters only.

Section 40 (1) of the Act states that "*Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*". Section 40 (3) of the Act explains that: "*Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat*".

Section 41 of the Act requires the Secretary of State to publish "*a list of habitats and species which are of principal importance for the conservation of biodiversity in England*". The list (which includes 56 habitats and 943 species) has been drawn up in consultation with Natural England, as required by the Act and draws upon the UK Biodiversity Action Plan List of Priority Species and habitats.

The Section 41 list is used by decision makers such as local and regional authorities when implementing their duty under Section 40 of the Act, to have regard to the conservation of biodiversity in the exercise of their normal functions.

3.9 Water Framework Directive

The Water Framework Directive (WFD) was adopted in October 2000 and came into force in December 2000. The WFD established a framework to protect and improve the ecological health of European waters, including inland surface waters (rivers and lakes), transitional waters, coastal waters and groundwater.

This has been implemented through the introduction of a comprehensive river basin management planning system underpinned by the use of environmental standards which are used to assess risks to the ecological quality of the water environment and to identify the improvements that would be needed to bring waters under pressure back into good condition.

Protection of coastal waters under the WFD extends from the mean low water mark up to one nautical mile from shore and requires that licensed projects or activities do not cause deterioration in a water body'.

In the UK, MS-LOT and the MMO must ensure that their respective Marine Licence determinations are compatible with the objectives of the WFD and the relevant river basin management plan.

3.10 Marine Strategy Framework Directive

The European Marine Strategy Framework Directive (MSFD) (2008/56/EC) of 17 June 2008 was transposed into UK legislation on 15 July 2010. The Directive requires Member States to prepare national strategies to manage their seas to achieve Good Environmental Status (GES) by 2020. The MSFD applies to waters beyond one nautical mile and has been implemented in the UK by the Marine Strategy Regulations 2010.

The MSFD does not state a specific programme of measures that Member States should adopt to achieve GES except for the establishment of MPAs. Broadly GES for the marine environment means that marine waters are:

- Ecologically diverse;
- Clean, healthy and productive; and
- Used sustainably, so that the needs of current and future generations are safeguarded.

Annex I of the MSFD lists eleven high level descriptors of GES. These relate to: biological diversity; non-indigenous species; commercially exploited fish and shellfish; food webs; human induced eutrophication; sea floor integrity; hydrographical conditions; contaminants; contaminants in fish and other seafood; marine litter; and introduction of energy (including underwater noise) (Defra 2014a).

The above descriptors have been considered within this EAR to determine whether the Project Marine Scheme is likely to affect the achievement of GES.

3.11 Crown Estate Licence

The Crown Estate Scotland and The Crown Estate own and manage the majority of the seabed out to the 12 NM territorial limit within both Scottish and English waters respectively. Permission will be required for the construction, operation (including maintenance and repair) and decommissioning of the Marine Scheme on areas of seabed for which they are the landlord. The Crown Estate also request that they are informed of cables that transit the Offshore Area as other activities and interests may be impacted. A Seabed Lease as well as Marine Works Licences will be required for the right to construct and operate the Marine Scheme.

The Applicants will be required to obtain all necessary consents and licences, as well as crossing and proximity agreements (see Section 3.13) in close proximity to the works, prior to obtaining the lease and licences from The Crown Estate.

3.12 Harbour Authority Consent

The Scottish landfall lies within the limits of Peterhead Harbour as defined by The Peterhead Port Authority Harbour Revision Order 2015. During consultation, Peterhead Port Authority confirmed that a

works licence would not be required for the works within their statutory harbour limits. Further information on this can be found in Chapter 6: Consultation and Stakeholder Engagement.

3.13 Crossing and Proximity Agreements

The Marine Scheme crosses a number of third-party infrastructure assets as described in Chapter 15: Other Sea Users. The crossings of third-party marine infrastructure will be made with prior agreement of the owners following negotiated formal Crossing Agreements for each asset. Each agreement describes the rights and responsibilities of the parties and also the detailed design of the crossing. The design addresses the need to protect both the cables and the third-party infrastructure and other aspects such as crossing angle and vertical separation.

The Applicants are in the process of negotiating formal Crossing Agreements with existing cable and pipeline owners.

3.14 Additional Topic-Specific Legislation and Guidance

There is a range of additional legislation and topic-specific guidance of relevance to the Marine Scheme.

For brevity, topic-specific legislation and guidance is not reported in this chapter. This is detailed within Appendix 3.2 and a list is provided within each chapter, as appropriate.

3.15 References

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