



# Scotland England Green Link 1 / Eastern Link 1 - Marine Scheme

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Environmental Appraisal Report  
Volume 2

Chapter 3 - Legislative and Policy Framework

**nationalgrid**  **SP TRANSMISSION**

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## 3. Legislative and Policy Framework

### 3.1 Introduction

This chapter provides a description of marine planning policy in the UK and sets out the legislative framework and the marine licensing and permitting requirements that apply to the construction, operation (including maintenance and repair) and decommissioning of the Marine Scheme. The international context of planning and policy is summarised as it pertains to the Marine Scheme.

### 3.2 Marine Planning and Policy

#### 3.2.1 Marine Planning Policy

This section describes the background and rationale for Marine Spatial Planning and summarises the UK planning policies relevant to the Marine Scheme.

Marine Spatial Planning (MSP) is an approach to the management of the sea. The aim is to ensure a sustainable future for territorial and offshore waters 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 and offshore waters.

##### 3.2.1.1 UK Marine Policy Statement

In order to rationalise planning in the marine environment, the UK Marine Policy Statement (MPS) was prepared in March 2011 in accordance with Section 44 of the Marine and Coastal Access Act 2009 (hereafter 'MCAA 2009'). The MPS (2011) 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 country or regional level.

The objectives of the MPS (2011) are to:

- Promote sustainable economic development;
- Enable the UK to 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 (2011) 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 (2011) 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 2009 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 (hereafter 'MSA 2010'), 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.

### 3.2.1.2 UK Marine Plans

Responsibility for the development of Marine Plans in the UK has been delegated to the Marine Management Organisation (MMO) in England. 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 that of local planning authorities (LPAs), with the jurisdiction of Marine Scotland - Licensing Operations Team (MS-LOT) and the MMO extending landwards up to Mean High Water Springs (MHWS), while LPAs' responsibilities extend seaward to Mean Low Water Springs (MLWS). Accordingly, LPAs are expected to 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. It will be supported by 11 Scottish Regional Marine Plans, implemented at local level and covering Scottish territorial waters.

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

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

A summary of each Marine Plan is provided below. The Marine Plans contain a number of objectives which will be delivered through policies covering a 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 Applicant has provided a Marine Plan Compliance Checklist in EAR Volume 3 Appendix 3.1. Further details on how compliance and alignment with Marine Plan policies has been achieved provided is presented within specific technical chapters.

#### **Scotland's National Marine Plan**

Scotland's NMP (Scottish Government, 2015) covers the management of both Scottish territorial waters and offshore waters. It is the intention that 11 Regional Marine Plans (RMPs) will eventually support the NMP and cover territorial waters in each of the Scottish Marine Regions. Of the three RMPs in preparation, none include the Marine Scheme area at the time of appraisal. The status of the remaining plans is unknown, but no plan for the Marine Scheme area is anticipated before the submission of MLAs to MS-LOT.

The NMP provides a comprehensive 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.

### **Forth & Tay Marine Region**

The regional plans were defined under the Scottish Marine Regions Order 2015. The marine installation corridor falls within the Forth & Tay Marine Region, which covers the south-eastern portion of the Scottish territorial sea. It extends northwards along the eastern territorial sea, from the boundary between Scotland, East Lothian and England to above the mouth of the River North Esk, Angus Council. At the time of writing, an MPP has not been established to develop the RMP for the Forth & Tay Marine Region.

Where there is no Scottish regional plan in place, the Scottish NMP and the MPS apply in that area of sea.

### **North East Inshore and North East Offshore Marine Plan**

The combined North East Inshore and North East Offshore Marine Plan was published in June 2021. 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 km<sup>2</sup>). The North East Offshore Marine Plan covers offshore waters to the Exclusive Economic Zone (EEZ) (approximately 50,000 km<sup>2</sup>).

This combined plan introduces a strategic approach to planning within the North East Inshore and Offshore Marine Plan Area, 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 combined 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; these include North Northumberland and North Yorkshire as well as a wide range of internationally significant habitats and species.

Relevant plan objectives related to cable infrastructure are summarised in EAR Volume 3 Appendix 3.1.



## 3.2.2 National Policy Statement (England only)

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

The Marine Scheme is not an NSIP, and therefore NPSs do not directly apply. However, paragraph 1.2.1 of the Overarching National Policy Statement for Energy (EN-1) and paragraph 1.2.3 of the National Policy Statement for Electricity Networks Infrastructure (EN-5) makes it clear that these NPSs are likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Paragraph 1.2.2 of NPS EN-1 states that this NPS may be a relevant considerations for the MMO when determining applications.

Relevant sector specific guidance is set out in the NPS EN-1 and NPS EN-5 in relation to considering the need for new renewable energy generation and the potential environmental effects of relevant marine infrastructure. Relevant considerations for the Environmental Appraisal (EA) process have been:

- NPS 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;
- NPS 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
- NPS EN-5 – 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.

The UK Government is consulting on a renewed suite of NPSs. Consultation ran from 6 September 2021 to 29 November 2021; with the consultation responses being reviewed by the Department for Business, Energy & Industrial Strategy (BEIS) following publication of the Draft NPS EN-1 and Draft NPS EN-5. A date has not been announced for the next stage of the review process; however, both documents contain similar statements to those contained in NPS EN-1 and NPS EN-5 regarding their materiality in decision making and being relevant considerations.

## 3.2.3 National Legislation

### 3.2.3.1 Environment Act 2021

The Environment Act 2021 will set clear statutory targets for the recovery of the natural world in four priority areas: air quality, biodiversity, water and waste, and includes an important new target to reverse the decline in species abundance by the end of 2030. The Act has been enshrined into law; however, it is not anticipated to come into full effect until the end of 2023 (2025 for NSIPs).

### 3.2.3.2 Climate Change Act 2008

The Climate Change Act 2008 introduced a legally binding climate change mitigation target for the UK to reduce its greenhouse gas emissions by 80% by 2050, compared to 1990 levels. This was amended to a legally binding target of 100% by 2050 through The Climate Change Act 2008 (2050 Target Amendment) Order 2019.

The Climate Change Act 2008 requires the government:

- to assess regularly the risks to the UK of the current and predicted impact of climate change;
- to set out its climate change adaptation objectives; and
- to set out its proposals and policies for meeting these objectives.

The Climate Change Act 2008 requires the UK government to set legally binding 'carbon budgets' which act as stepping stones towards the 2050 target. The Committee on Climate Change's (the CCC) sixth

carbon budget (running from 2033-2037), which will require a 78% reduction in emissions from 1990 to 2035, was introduced in April 2021.

## 3.2.4 National Energy Policy

### 3.2.4.1 National Infrastructure Strategy

The National Infrastructure Strategy (HM Government, 2020) describes the goals for decarbonisation of the UK's energy network stating that to reach net zero by 2050, the power system will need to be virtually carbon free and significantly larger to cope with the additional demand from electrification in transport, heating and some industrial processes. The bulk of generation will likely be provided by low-cost renewables, with the Strategy reiterating the target of 40 Gigawatts (GW) offshore wind by 2030, and also stating that *'the government expects around 65% of electricity generated in Great Britain to come from renewable sources by 2030'*. Given the intermittent nature of renewables, the Strategy also states a requirement for more reliable sources of power in the future energy provision of the UK, identifying that the UK Government is to provide *'up to £525 million to bring forward large-scale nuclear and invest in the development of advanced nuclear technologies'*, is *'establishing a £240 million Net Zero Hydrogen Fund to provide capital funding to support deployment of low-carbon hydrogen production in the UK'*, and is investing *'£1 billion to bring forward four CCS clusters'* by 2030 to capture emissions for biomass and gas powered energy generation.

The Strategy sets out plans for energy infrastructure reform and delivery of network infrastructure upgrades that will be required to deliver this energy to where it is needed; and is described as being central to the UK's efforts to achieve net zero emissions by 2050 and delivering the Ten Point Plan for a Green Industrial Revolution (see below). The Strategy acknowledges that *'this expanded system will require increased investments in network infrastructure, sources of flexibility, such as interconnection, demand response and storage and enough low carbon generation capacity to provide the vast majority of the UK's electricity needs'*. To this end, network operators will be required to make investment decisions that are best for the operation of the whole system, rather than their own network.

The Strategy states that *'the evolution of the power system will also require the evolution of the networks to deliver power to people's homes and businesses and to ensure this infrastructure does not hold back the transition to electric vehicles, cleaner sources of heat or greater renewables on the grid. To enable this, government and the regulator will continue to ensure there is a common understanding of the future strategic direction to align policy objectives while maintaining the regulators' independence. If achieved, this approach could provide investors with greater certainty over longer-term investment decisions and support the transition of the energy network'*.

### 3.2.4.2 Ten Point Plan

The UK Government's Ten Point Plan (HM Government, 2020) is described as laying the foundations for a 'Green Industrial Revolution' which will reduce UK emissions by 180 million tonnes of carbon dioxide equivalent (Mt CO<sub>2</sub> e) between 2023 and 2032 and help meet the target of net zero by 2050. With respect to energy generation and transmission, the aims of the Plan include measures to (1) advance the development of offshore wind, (2) drive the growth of low carbon hydrogen, (3) deliver new and advanced nuclear power, and (4) accelerate the shift to zero-emission vehicles. The Plan acknowledges that greater network capacity (building more or improving existing energy infrastructure) is needed to integrate these clean technologies.

### 3.2.4.3 The Energy White Paper

The Energy White Paper – Powering our Net Zero Future (EWP) (HM Government, 2020) was presented to Parliament in December 2020 and builds on the Ten Point Plan (above). At the core of the EWP is the commitment to achieve net zero and tackle climate change. The EWP seeks to put in place a strategy for the wider energy system that transforms energy, supports a green recovery, and creates a fair deal for consumers (page 4). Chapter 2 of the EWP deals with 'Power' with the stated goal being to use electricity to enable the transition away from fossil fuels and decarbonise the economy cost-effectively by 2050. Figure 3.2 of the plan, *'Electricity demand, Net Zero scenarios'* (page 42) highlights how electricity demand could double by 2050 as electricity replaces the use of petrol and diesel in transport and to some extent, gas for heating. This would require a four-fold increase in clean electricity generation with the decarbonisation of electricity being required to underpin the delivery of the net zero target.



The EWP commits to complete a review of the existing energy NPSs (see Section 3.2.2).

### 3.2.4.4 The British energy security strategy

The British Energy Security Strategy (HM Government, 2022) acknowledges the country's vulnerability to international oil and gas prices (with particular reference to the war in the Ukraine and restrictions on Russian imports) and sets out long-term goals for reducing dependence upon imported oil and gas by promoting domestic clean and renewable energy production.

The Strategy describes an increase in the pace of deployment of offshore wind with a renewed target of 50 GW by 2030, including 5 MW of floating wind, being promoted, with the ambition that by 2030 over half the UK's renewable generation capacity will be wind.

The Strategy identifies that the increase in domestic energy supply will also require investment in the connecting network infrastructure. Two key network features are to be prioritised: *'anticipating need because planning ahead minimises cost and public disruption; and hyper-flexibility in matching supply and demand so that minimal energy is wasted'*. The Strategy proposed that this more efficient, locally responsive system could bring energy down costs by up to £10 billion a year by 2050.

The Government aims to reduce the timescales for delivering strategic transmission network infrastructure (such as the Marine Scheme) by around three years. To achieve this increase in pace, the Government aims to have produced a blueprint for the electricity infrastructure network by the end of 2022 and to then update NPSs *'to recognise these blueprints in the planning system, increasing certainty for the planning inspectorate, developers and other stakeholders, and speeding up delivery'*. The Government also aims to ensure that *'Ofgem expedites its approvals process to build networks in anticipation of major new sources of generation and demand'* and *'will set out the importance of strategic network investment in its forthcoming Strategy and Policy Statement for Ofgem'*.

## 3.3 Marine Licensing

### 3.3.1 The Marine Acts

Marine licensing for the Marine Scheme falls under two pieces of legislation, collectively referred to here as "The Marine Acts":

1. The MSA 2010, applies in the Scottish Marine Area, defined as Scottish territorial waters from MHWS to the 12 NM limit. The MSA provides for the development of marine plans, licensing of marine activities, the protection of the Scottish Marine Area and its wildlife including seals and regulation of sea fisheries. It provides a framework which helps balance competing demands on Scotland's seas. It introduces a duty to protect and enhance the marine environment and includes measures to help boost economic investment and growth in areas such as marine renewables.

It applies to the licensing of the Marine Scheme as follows:

- In Scottish territorial waters, a Marine Licence under the MSA 2010 is required for cable installation, installation of cable protection installation, removal of materials and other supporting and maintenance works.

The regulatory body responsible for determining a Marine Licence under the MSA 2010 within Scottish territorial waters is MS-LOT.

2. The Marine and Coastal Access Act (MCAA) 2009 provides a framework for the establishment of marine protected areas (MPAs), management of inshore fisheries, marine planning and improvement of the marine licensing regime within all UK offshore waters (outside 12 NM) and within English territorial waters (inside 12 NM).

It applies to licensing of the Marine Scheme as follows:

- In English territorial waters a Marine Licence under the MCAA 2009 is required for cable installation, installation of cable protection, removal and some other supporting and maintenance works.

The regulatory body for determining a Marine Licence under the MCAA 2009 in English territorial waters is the MMO.

### 3.3.2 Scottish Marine Area

As outlined in Section 3.2, MS-LOT is the regulator for MLAs in the Scottish territorial waters under the MSA (2010).

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 (2010) defines the marine licensing requirements for the cable installation and associated activities within terrestrial waters. Requirements for the consideration of potential effects on Marine Protected Areas (MPA) are also set out within the MSA (2010) in Section 82 'Duties of public authorities in relation to marine protected areas etc.'

Marine cables between MLSW and MHWS (i.e., the intertidal zone) fall within the coverage of the MSA (2010) but also fall under the provisions of the Town and Country Planning (Scotland) Regulations 1997 (as amended). The regulator for requirements under these regulations is East Lothian Council. A separate Environmental Impact Assessment Report has been submitted to East Lothian Council, as part of a separate consent as part of the Scottish Onshore Scheme.

Under the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 (hereafter the '2013 PAC Regulations'), marine licences for certain activities require public pre-application consultation. These regulations cover activities with the potential to have significant effects 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 before the application is submitted to the MS-LOT.

The Project falls under Section 4 (a) of the 2013 PAC Regulations as:

*'(a) the deposit of a subsea cable into the sea or on or under the seabed from a vehicle, vessel, aircraft, marine structure or floating container, but only where such cable-*

- (i) exceeds 1,853 metres in length; and*
- (ii) crosses the inter-tidal boundary'*

These requirements only apply in respect of relevant applications in territorial waters.

Pre-application consultation was undertaken in January and February 2022; refer to Chapter 6: Consultation and Stakeholder Engagement for further details.

### 3.3.3 English Marine Area

The MCAA (2009) provides the framework for the marine licencing system in England. The Act modernises the previous licensing process and provides a more streamlined, transparent and effective licensing system.

The MMO is responsible for the determination of marine licences for a range of licensable activities. Under Part 4 and Section 66 of the MCAA (2009), the MMO is responsible for administering marine licensing of activities related to construction or removal of any substance or object in English territorial waters.

As part of the assessment of the MLA, the MMO may seek advice from their primary advisors and consultees before making a decision on whether to issue the licence. In addition, the 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 2009 for cable installation and associated activities within English territorial waters.

Marine cables between MHWS and MLWS (i.e. the intertidal zone) fall within the coverage of the MCAA 2009 but also fall under the provisions of the Town and Country Planning Act 1990. The regulator for requirements under these regulations is Durham County Council. A separate EAR<sup>1</sup> will be submitted to Durham County Council, as part of a separate consent as part of the English Onshore Scheme.

### 3.4 Habitats Regulations Assessment

EC Council Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) (Union, 1992) and EC Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive) (2009) enable European Union 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 valuable species and habitat sites known as Natura 2000. The aim of the Natura 2000 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 Natura 2000 sites must be assessed with regard to their implications for the site conservation objectives.

In Scotland, the Habitats Directive and Birds Directive are transposed into law by the Conservation (Natural Habitats, &c.) Regulations (1994) (as amended), while in England, the same function is performed by the Conservation of Habitats and Species Regulations (2017) (as amended), applying to territorial waters of Scotland and England respectively.<sup>2</sup> These regulations are collectively referred to as the 'Habitats Regulations'. The Marine Scheme remains within 12 NM and so offshore regulations do not apply.

Following the UK's departure from the European Union on 31 January 2020, changes were made to these Habitats Regulations, although, European sites are still protected in the UK. The terms "European site", "European marine site", and "European offshore marine site", have been retained, as have SAC and SPA. European sites, European marine sites and European offshore marine sites in the UK (as defined by the Habitats Regulations) are no longer part of the European Union's Natura 2000 network. Instead, they form a UK-wide network of protected sites, referred to in the 1994 Regulations as the UK Site Network, and retain the same protections. Any references to Natura 2000 in the 2017 Regulations and in guidance now refers to the new National Site Network.

As a result of EU exit, information relating to the UK's existing SACs and SPAs has been transferred to the Emerald Network database. This is to ensure that the UK continues to meet its obligations under the Bern Convention 1979. These sites will continue to be protected through the existing domestic legislation (the Habitats Regulations) which implements and retains obligations from the Habitats Directive. There are no additional management requirements that come from the Bern Convention (2020). Under the terms set out in the European Union (Withdrawal Agreement) Act 2020 (the Withdrawal Act), 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 Habitats Regulation Assessment (HRA) as appropriate.

The Habitats Regulations require a HRA to be undertaken to test if a plan or project is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), whether the plan or project is directly or indirectly connected with the site or affects the management of the site, before deciding to grant consent, permission or authorisation for the project. HRA is a staged assessment process involving Screening (determining if a plan or project has likely significant effects), Appropriate Assessment (AA) and Derogation. If an AA is required, the competent authority must consider whether the plan or project will adversely affect the integrity of the

<sup>1</sup> The Durham County Council Screening Opinion (25 March 2021) confirmed that the English Onshore Scheme is not considered to be 'EIA Development'. NGET - in line with its statutory obligations – has provided information about the English Onshore Scheme's potential environmental impacts in a non-statutory Environmental Appraisal Report (EAR).

<sup>2</sup> 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)

site. The regulators (MS-LOT in Scotland and MMO in England) as the Competent Authorities under the Habitats Regulations, are responsible for undertaking the HRA.

To facilitate the development of the Competent Authorities' Appropriate Assessment, the Applicants have provided "Information to Inform HRA" for the Marine Scheme as a report; this is presented in EAR Volume 3 Appendix 8.3 of this EAR.

### 3.5 Marine Protected Areas (Scotland)

MPAs are defined under the MSA 2010, for Scottish territorial 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, Historic Environment Scotland, the Scottish Environment Agency and NatureScot (formerly Scottish Natural Heritage).

Section 83 of the MSA 2010 and Section 126 of the MCAA 2009 '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;
- 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 licence decision making process. To support MS-LOT in this process and inform their assessment, the Applicants have provided an MPA assessment in EAR Volume 3 Appendix 8.1.

### 3.6 Marine Conservation Zones (England)

The MCAA (2009) provides powers to the appropriate authority to designate Marine Conservation Zones (MCZs). MCZs are areas that protect a range of nationally important, rare or threatened habitats and species; they 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 and Ramsar sites.

91 MCZs in English waters have been designated through three phases. Phase one designated 27 zones in November 2013 and Phase two designated 23 sites in January 2016. Following consultation carried out by the MMO, Phase three designated 41 sites and 12 additional features (additional features to sites designated in Phases one and two identified to fill ecological gaps in the network) were then also designated (May 2019)<sup>3</sup>. Each MCZ is established by a legal order made by Defra under Section 116 of the MCAA (2009) (MCAA). Each MCZ designation order defines a specific area, lists the features being protected within that area and specifies the conservation objective or objectives of the MCZ.

The conservation objective for each MCZ is that each of the features being protected be in favourable condition. Generally, for a habitat, favourable condition is defined as:

<sup>3</sup> Marine Conservation Zone Designations in England <https://www.gov.uk/government/collections/marine-conservation-zone-designations-in-england>

- Its extent is stable or increasing; and
- Its structures and functions, its quality, and the composition of its characteristic biological communities are such as to ensure that it remains in a condition which is healthy and not deteriorating.

For a species, the definition of favourable condition is that the quality and quantity of the species' habitat, and the composition of the species' population in terms of number, age and sex ratio, are such as to ensure that the population is maintained in numbers which enable it to thrive.

Under Section 126 of the MCAA (2009), the MMO has a duty to consider MCZs during Marine Licence decision making. To meet the requirements of Section 126, the MMO has introduced a specific MCZ assessment process which is 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 application and therefore whether or not an MCZ assessment is required. It will apply if the licensable activity takes place within or near a MCZ and has the potential to affect (other than insignificantly) 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. In doing so the MMO will use information supplied by the applicant with the licence application, advice from the SNCBs and any other relevant information to determine whether:
  - There is no significant risk of the activity hindering the achievement of the conservation objectives stated for the MCZ; and
  - The MMO can exercise its functions to further the conservation objectives stated for the MCZ (in accordance with s.125(2)(a)).
  - If the answer is no to either of these statements, then the authority must consider whether there are other means of proceeding with the act which would create a substantially lower risk of hindering the achieving objectives. If the answer is still no, then proceed to Stage 2.
- **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 the environmental damage.

Consideration of the MCZ process as relevant to the Marine Scheme is provided within EAR Volume 3 Appendix 8.1.

### 3.7 Protected Species

Certain species are protected by international, European and national wildlife legislation throughout the UK. This includes protection from intentional or reckless disturbance, taking, harming, and killing, and in some cases possession or sale of the species.

The overarching protected species legislation includes 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). Table 3-1 presents selected examples of marine species protected under legislation UK and potentially relevant to the Marine Scheme.



**Table 3-1: Protected Marine Species in UK waters**

Regulation/ Schedule	Examples of Relevant Protected Marine Species
Nature Conservation (Scotland) Act 2004	Wild birds; Whales, dolphins and porpoises (all species); and Basking shark <i>Cetorhinus maximus</i>
The Wildlife and Countryside Act 1981 (as amended)	Whales, dolphins and porpoises (all species); Basking <i>Cetorhinus maximus</i> and angel sharks <i>Squatina</i> ; Fan mussel <i>Atrina fragilis</i> and freshwater pearl mussel <i>Margaritifera margaritifera</i> ; Wild birds; and Otter <i>Lutra lutra</i> .
The Conservation of Habitats and Species Regulations 2017 (England and Wales)	Sea lamprey <i>Petromyzon marinus</i> ; River lamprey <i>Lampetra fluviatilis</i> ; Allis shad <i>Alosa alosa</i> ; Twaite shad <i>Alosa fallax</i> ; Atlantic salmon <i>Salmo salar</i> ; Bottlenose dolphin <i>Tursiops truncatus</i> ; Harbour porpoise <i>Phocoena phocoena</i> ; Grey seal <i>Halichoerus grypus</i> ; Harbour seal <i>Phoca vitulina</i> ; Freshwater pearl mussel.
The Conservation (Natural Habitats, &c.) Regulations 1994 (Scotland)	Whales, dolphins and porpoises (all species); Loggerhead turtle <i>Caretta caretta</i> ; Green turtle <i>Chelonia mydas</i> ;
Schedule 2 (European Protected Species of animals)	Kemp's Ridley turtle <i>Lepidochelys kempii</i> ; Hawksbill turtle <i>Eretmochelys imbricata</i> ; Leatherback turtle <i>Dermochelys coriacea</i> ; and Common sturgeon <i>Acipenser sturio</i> .
The Conservation of Seals Act 1970	Harbour and grey seals.
Conservation of Seals (England) Order 1999	Harbour and grey seals.
The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014	Harbour and grey seals.

A 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 construction, operation (including maintenance and repair), and decommissioning of the Marine Scheme will recklessly disturb, harm, or kill any protected species. However, it is acknowledged that marine geophysical surveys pre-installation, during construction and post construction all have the potential to disturb marine mammal species (as all marine geophysical surveys do), and that appropriate mitigation measures will be required to ensure those surveys can be consented. Where there is the potential for accidental harm that could injure a protected species e.g. vessel collision, the significance of the impact has been assessed in the relevant topic chapter.

Applications for European Protected Species (EPS) licences do not form part of the scope of the Marine Scheme and will be applied for post consent.

### 3.8 The Natural Environment and Rural Communities (NERC) Act 2006 [England]

The Natural Environment and Rural Communities (NERC) Act came into force on 1 October 2006 and imposes a duty on public authorities to conserve biodiversity. It applies in relation to England, including, where the context requires, the territorial sea adjacent to England 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 (S41) 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 BAP List of Priority Species and habitats.

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

### 3.9 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. A Seabed Lease as well as any other relevant consents from the Crown Estates for surveys will be required for the right to construct and operate the Marine Scheme.

The Applicants are required to obtain all necessary consents and licences as well as crossing and proximity agreements (see Section 3.11) in close proximity to the works, prior to obtaining the lease and licences from The Crown Estate.

### 3.10 Crossing and Proximity Agreements

The Marine Scheme crosses a number of third-party infrastructure assets which are listed in Table 2-3 of Chapter 2: Project Description. 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.

### 3.11 Additional Topic-Specific Legislation and Guidance

There is a wide variety of additional legislation which may be of relevance to the Marine Scheme. Similarly, there is a range of topic-specific guidance which may be of relevance to the assessment of potential impacts on specific receptors. For brevity, neither topic-specific legislation or guidance is reported here and is instead detailed within each chapter.

## 3.12 References

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