



Guidance Documents: Key Legislation for Consenting in Spain

The guidance documents are intended to be available for regulators and advisors as they carry out their decision-making and for developers as they prepare consenting and licensing applications. This country-specific document presents an overview of key consenting requirements relevant for marine renewable energy development in Spain from pre-application, through to application and post-consent and is intended mainly for developers and consultants.¹ It is not intended to replace any formal guidance or prescribe action, but rather provide a starting point for understanding the key requirements of the regulatory framework.

Spain regulatory context

In Spain, regulatory responsibility for marine renewable energy (MRE) projects falls to National agencies (Table 1). The consenting process is based on four legal instruments (Table 2), within the framework defined by the Integrated National Plan for Energy and Climate 2021-2030² (PNIEC) and the Maritime Space Planning Plans (Royal Decree 363/2017³, transposed from Directive 2014/89/EU⁴).

Table 1. Regulatory jurisdictions in Spain.

Designation	Location	Agencies with jurisdiction
Inland waters	From baseline to coastline	National agencies and Autonomous Community ⁵
Territorial waters	< 12 nautical miles from baseline	National agencies and Autonomous Community (from coastline to 1 nautical mile)
Exclusive economic zone	12 to 200 nautical miles	National agencies

Table 2. National agencies or other level of government with jurisdiction over licensing/authorization for marine renewable energy projects.

Agency	Relevant Statute	Implementation
General State Administration and Directorate General for Energy Policy and Mines of the current Ministry for the Ecological Transition and Demographic Challenge (MITERD)	Royal Decree 1028/2007 ⁶	Licensing power generation activity
MITERD, through the Directorate General for Sustainability of the Coast and the Sea. In the case of occupation of the public port domain, the competent Port Authority. Coastal	Law 2/2013 ⁷	Licensing for private occupation of marine space

¹This country-specific document should be read in conjunction with the background guidance document, which can be found on Tethys: <https://tethys.pnnl.gov/guidance-documents>.

² <https://www.miteco.gob.es/es/prensa/pniec.aspx>

³ Royal Decree 363/2017 establishes a framework for maritime spatial planning.

⁴ Directive 2014/89/EU of the European parliament establishes a framework for maritime spatial planning.

⁵ Territorial entity which, within the current Spanish constitutional legal system, is endowed with autonomy, with its own institutions and representatives and with certain legislative, executive, and administrative powers. These days, there are 17 Autonomous Communities.

⁶ Royal Decree 1028/2007⁶ establishes the administrative procedure for processing applications for electricity generating facilities.

⁷ Law 2/2013 for protection and sustainable use of coasts.



Demarcation Departments are representatives in each coastal province and Autonomous Community.		
MITERD, through the Directorate General for Environmental Quality and Assessment	Law 21/2013 ⁸ Directive 2014/52/EU ⁹	Environmental Impact Assessment (EIA)
MITERD	Royal Decree 79/2019 ¹⁰	Compatibility with the strategies for marine environment protection

Species and/or populations at risk

There are no specific regulations for the protection of species and populations from MRE developments. Potential effects to species and/or populations at risk are regulated by Ministry for the Ecological Transition and the Demographic Challenge (MITERD) through the general regulations specified in Table 3.

Table 3. Regulations related to species and/or populations at risk.

Agency	Relevant Statute	Implementation
Ministry for the Ecological Transition and the Demographic Challenge (MITERD) – Directorate General of Biodiversity, Forests and Desertification (DGBBD)	Birds Directive ¹¹	Protection, management, and control of all species of naturally occurring birds in the wild state in the European territory of the Member States (MS). MS shall classify special protection areas for the conservation of these species. MRE developments should demonstrate through an EIA process that they do not pose a danger to the protected areas and species.
MITERD – Directorate General of the Coasts and the Sea (DGCM)	Marine Strategy Framework Directive (MSFD) ¹²	MSFD aims to achieve and therefore assess Good Environmental Status for marine waters and establishes a management system with iterative cycles of 6 years. 11 descriptors (D) are used to define status, including D1 (biodiversity) and D3 (commercial fish). MRE developments should demonstrate that the proposed developments do not jeopardize compliance with the Good Environmental Status of the marine waters where they are proposed.

⁸ Law 21/2013 establishes the Strategic Environmental Assessment for plans and programs and the Environmental Impact Assessment for projects.

⁹ Directive 2014/52/EU of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance.

¹⁰ Royal Decree 79/2019¹⁰ for regulating the compatibility report and establishing the criteria for compatibility with marine strategies.

¹¹ Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds.

¹² Commission Directive (EU) 2017/845 amending Directive 2008/56/EC, integrated in Spanish Law 41/2010, for Marine Environment Protection, and in Royal Decree 957/2018.



MITERD	Royal Decree 556/2011 ¹³	List of Wild Species under Special Protection Regime Spanish Catalogue of Endangered Wild Species; Spanish Inventory of Marine Species. MRE developments should demonstrate through an EIA process that they do not pose a danger to the protected species.
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Habitat alteration or loss

There are no specific regulations for the protection of habitats from MRE developments. Potential effects to habitats are regulated by MITERD through the general regulations specified in Table 4 in the framework of an Environmental Impact Assessment (EIA) process.

Table 4. Regulations related to habitat alteration or loss.

Agency	Relevant Statute	Implementation
Ministry for the Ecological Transition and the Demographic Challenge (MITERD) – the General Directorate of Biodiversity, Forests and Desertification (DGBBD)	Habitats Directive ¹⁴	Ecological network of special conservation areas (Natura 2000 sites), which also includes the special protection areas designated in accordance with the Birds Directive. MRE developments should demonstrate through an Environmental Impact Assessment (EIA) process that they do not pose a danger to the protected spaces and species.
MITERD – Directorate General of the Coasts and the Sea (DGCM)	Marine Strategy Framework Directive (MSFD)	MSFD aims to achieve and therefore assess Good Environmental Status for marine waters and establishes a management system with iterative cycles of 6 years. 11 descriptors (D) are used to define status, including D6 (seafloor integrity). MRE developments should demonstrate that the proposed developments do not jeopardize compliance with the Good Environmental Status of the marine waters where they are proposed.

Effects on water quality

There are no specific regulations for the protection of water quality from MRE developments. Potential effects to species and/or populations at risk are regulated by MITERD and regional water or environmental agencies through the general regulations specified in Table 5.

¹³ Royal Decree 556/2011 for the development of the Spanish Inventory of Natural Heritage and Biodiversity; Bern Convention or Convention on the Conservation of Wildlife and the Natural Environment in Europe.

¹⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

**Table 5.** Regulations related to effects on water quality.

Agency	Relevant Statute	Implementation
Ministry for the Ecological Transition and the Demographic Challenge (MITERD) – Directorate General of the Coasts and the Sea (DGCM)	Marine Strategy Framework Directive (MSFD)	MSFD aims to achieve and therefore assess Good Environmental Status for marine waters and establishes a management system with iterative cycles of 6 years. 11 descriptors (D) are used to define status, including D5 (eutrophication) and D8 (concentrations of contaminants). MRE developments should demonstrate that the proposed developments do not jeopardize compliance with the Good Environmental Status of the marine waters where they are proposed.
Water or Environmental Regional Agencies ¹⁵	EU Water Framework Directive (WFD) ¹⁶	WFD aims to achieve Good Ecological and Chemical Status of inland surface waters, transitional waters, coastal waters, and groundwater, establishing a management system with iterative cycles of 5 years. MRE developments should demonstrate that the proposed developments do not jeopardize compliance with the Good Ecological and Chemical Status of the marine waters where they are proposed.

Effects on social and economic systems

There are no specific regulations for assessing impacts to social and economic systems from MRE developments. Potential social and economic effects are regulated by MITERD and the competent Port Authority through the general regulations specified in Table 6.

Table 6. Regulations related to effects on social and economic systems.

Agency	Relevant Statute	Implementation
Ministry for the Ecological Transition and Demographic Challenge (MITERD) – Directorate General for Environmental Quality and Assessment	Law 21/2013 Directive 2014/52/EU	Social and economic effects are to be considered as part of environmental assessments, including descriptions of the impacts to landscape or landscape singularity areas, cultural heritage (architectural and archaeological heritage), and analysis of the community that could be affected (e.g., fisheries, recreation, tourism).
MITERD – Directorate General for Sustainability of the Coast and the Sea In the case of occupation of the public port	Law 2/2013	Legal framework for governing issues affecting the fishing sector and safety conditions for maritime navigation. This framework is not specific to MRE, but governs issues related to MRE.

¹⁵ Royal Decree 29/2011 and Royal Decree 1626/2011

¹⁶ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.



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Additional Information

Marine Spatial Planning

In Spain, Maritime Spatial Planning Plans (PSOEMs) (Royal Decree 363/2017, transposed from Directive 2014/89/EU⁴), establish a framework for maritime spatial planning, promoting the growth and sustainable development of maritime economies, of marine spaces, and the sustainable use of marine resources.

Scope: PSOEMs cover the 5 marine demarcations established by Law 41/2010 for the protection of the marine environment (the North Atlantic, the South Atlantic, the Strait and Alborán, Levante/Balearic Islands and the Canary Islands):



PSOEMs are coordinated by MITERD – Directorate General of the Coasts and the Sea (DGCM). PSOEMs identify (i) polygons for priority uses (ensuring that such uses of general interest imply a priority character) and (ii) polygons for high potential uses (in which it is also necessary to have identified suitable space for development) in a Royal Decree, which means that those polygons will be binding. Among other activities, the PSOEMs consider the development of renewable marine energies, in accordance with the PNIEC 2021-2030 (roadmap of "Spanish Strategy for the development of Offshore Wind and Marine Energy"). For both type of uses (priority and high potential), only specific polygons for offshore wind energy have been identified. The activities related to experimentation of infrastructure or precommercial projects for wind and other marine energy (specific types of marine energy are not specified) have been preferably identified in the high potential use areas for research, development, and innovation, with no specific polygons identified in the PSOEMs for marine energy projects.

Chronology: The process for the Strategic EIA started in 2020. From July to September 2021 there was a public consultation with the affected public administrations and the interested agents to collect feedback for the improvement of the PSOEMs. The final version of the PSOEMs should be completed by the end of 2022, but the process is blocked due to the fact that the resolution of some of the feedback received is still pending (as of August 2022).



Adaptive Management

In Spain, adaptive management is not integrated into the legislative consenting procedure. According to Spanish public authorities¹⁷, this approach could be implemented in the early stages of environmental processes, at the strategic and planning level. The integration of both approaches could be suggested as a good practice guide in consenting procedures, including recommendations which could be very useful for environmental agents or managers.

Consistency Between Jurisdictions

In Spain, regulatory responsibility for MRE projects will fall to National Authorities (Table 1). MITERD is in charge of the consenting process, divided into Directorate General for Energy Policy and Mines, Directorate General for Sustainability of the Coast and the Sea, and Directorate General for Environmental Quality and Assessment which grant the Licensing for power generation activity, Licensing for private occupation of marine space, and Environmental Impact Assessments, respectively. However, the development of PSOEMs requires a review of the authorization or concession procedures for the allocation or reservation of areas for development of activities in the Spanish marine space, especially for the authorization of electricity generation facilities in the territorial sea (Royal Decree 1028/2007). The consenting procedure of the Royal Decree 1028/2007 has been identified as a bottleneck and is under review. Out of the 28 projects submitted to be approved under RD 102/2007, not one has yet completed the whole procedure.

¹⁷ Apolonia, M., Cruz, E., Simas, T., Menchaca, I., Uyarra, M.C. and Bald, J., 2021. Deliverable 4.3 Feasibility for the implementation of wave energy licensing based on a risk-based approach and adaptive management in Spain and Portugal. Corporate deliverable of the WESE Project funded by the European Commission. Agreement number EASME/EMFF/2017/1.2.1.1/02/SI2.787640. 67 pp. <http://dx.doi.org/10.13140/RG.2.2.14915.12328>