



## Guidance Documents: Key Legislation for Consenting in Wales

*The guidance documents as a whole 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 Wales from pre-application, through to application and post-consent and is intended mainly for developers and consultants<sup>1</sup>. 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.*

### Wales regulatory context

Regulatory responsibility for marine renewable energy (MRE) in the Welsh inshore (0 - 12 nm) and offshore (12 - 200 nm, or the median line) zones falls to the Welsh Ministers and/or Natural Resources Wales (NRW), depending on project size (MW) and type of consent required. In Welsh offshore waters, the Joint Nature Conservation Committee (JNCC) is the statutory nature conservation body (SNCB). Seabed leases, required to obtain development rights, are also required from The Crown Estate who owns most of the seabed around Wales. The primary consents and permissions for MRE projects in inshore and offshore Welsh waters<sup>2</sup> are shown in Table 1. Additional details on receptor- and impact-specific legislation and further guidance are provided in later sections of this document.

**Table 1.** Primary consents and permissions, as well as the legislation and associated authority, for MRE energy projects in Welsh waters (inshore or offshore).<sup>3</sup>

Project size	Consent/Permission	Issuing Authority
< 1 MW	Marine Licence issued under Part 4 of Marine and Coastal Access Act 2009 (as amended by the Wales Act 2017).	Natural Resources Wales
1 MW – 350 MW	Marine Licence issued under Part 4 of Marine and Coastal Access Act 2009 (as amended by the Wales Act 2017).	Natural Resources Wales
	Section 36 Energy Consent issued under the Electricity Act 1989 (as amended by the Wales Act 2017).	Welsh Ministers
Over 350 MW	Marine Licence issued under Part 4 of Marine and Coastal Access Act 2009 (as amended by the Wales Act 2017)	Natural Resources Wales
	Development Consent Order (Planning Act 2008) (as amended by Wales Act 2017)	Natural Resources Wales, Secretary of State, Local Planning Authority
Any size	Consent under the Marine Works (Environmental Impact Assessment) Regulations 2017 <u>if significant environmental effects are likely such that an Environmental Impact</u>	Natural Resources Wales

<sup>1</sup> This 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>.

<sup>2</sup> Guidance: [Natural Resources Wales / Overview of marine renewable energy consenting in Welsh waters](#)

<sup>3</sup> Note that this information is not exhaustive and other legislation is likely to apply depending on project details and location. This guidance document provides a broad overview of key consenting requirements.



	Assessment (EIA) <sup>4</sup> is required. Includes an assessment of the effects of the project on species, marine habitats, water quality and physical processes, and social and economic effects.	
	Consent under the Electricity Act (Environmental Impact Assessment) Regulations 2017 <u>if significant environmental effects are likely</u> such that an Environmental Impact Assessment (EIA) is required. Includes an assessment of the effects of the project on species, marine habitats, water quality and physical processes, and social and economic effects.	Welsh Ministers
Any size	Agreement for Lease under the Crown Estate Act 1961 granting a developer an option over an area of seabed, allowing full development rights if all Project consents are secured.  Seabed Lease under the Crown Estate Act 1961 once all project consents and licences have been secured.	The Crown Estate

### Species and/or populations at risk

Potential effects to species and/or populations in Wales are regulated by NRW following the key legislation detailed in Table 2.

**Table 2.** Key legislation related to protecting species and/or populations in Wales and links to further information and guidance<sup>5</sup>.

Legislation	Details
Conservation of Habitats and Species Regulations 2017 (and offshore equivalent)	Define the process for determining if effects on Annex II species features of European protected sites are likely (Test of Likely Significant Effect) and, where needed, appropriate assessment. Define the process for determining whether a licence to injure, kill, or disturb “European Protected Species” is required. <sup>6</sup>
Wildlife and Countryside Act 1981	Define the process for determining whether notified species features of Sites of Special Scientific Interest (SSSI) and Protected Plants and Species may be affected by a project. <sup>7</sup>
Environment (Wales) Act 2016	Lists species of principal importance for conserving biodiversity in Wales which must be considered in consent applications including EIA, where required.

<sup>4</sup> Guidance for EIAs: [Natural Resources Wales / Scoping an Environmental Impact Assessment for marine developments](#); [Natural Resources Wales / Marine renewable energy developments](#)

<sup>5</sup> Guidance: [Natural Resources Wales / Marine vertebrate conservation legislation in Wales](#)

<sup>6</sup> Guidance: [Natural Resources Wales / Marine European Protected Species licensing](#)

<sup>7</sup> Guidance: [Natural Resources Wales / Sites of special scientific interest: responsibilities of owners and occupiers](#); [Natural Resources Wales / Sites of special scientific interest: responsibilities of public bodies and statutory undertakers](#)



### Habitat alteration or loss

Potential effects to habitat in Wales are regulated by NRW following the key legislation detailed in Table 3.

**Table 3.** Key legislation related to habitat alteration or loss in Wales and links to further information and guidance.

Legislation	Details
Conservation of Habitats and Species Regulations 2017 (and offshore equivalent)	Define the process for determining if effects on Annex I habitat features of European protected sites are likely (Test of Likely Significant Effect) and, where needed, appropriate assessment. <sup>8</sup>
Wildlife and Countryside Act 1981	Define the process for determining whether notified habitat features of Sites of Special Scientific Interest (SSSI) may be affected by a Project. <sup>9</sup>
Environment (Wales) Act 2016	Lists marine habitat of principal importance for conserving biodiversity in Wales which must be considered in consent applications including EIA, where required.

### Effects on water quality

Potential effects on water quality in Wales are regulated by NRW following the key legislation detailed in Table 4.

**Table 4.** Key legislation related to effects on water quality in Wales and links to further information and guidance.

Legislation	Details
The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017	Defines when a Water Framework Directive (WFD) compliance assessment is required and the assessment process. If required, applicants must carry out a WFD assessment to accompany their licence application(s). <sup>10</sup>

### Effects on social and economic systems

Potential effects on social and economic systems in Wales are regulated by NRW following the key legislation detailed in Table 5.

**Table 5.** Key legislation related to effects on social and economic systems in Wales and links to further information and guidance.

Legislation	Details
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<sup>8</sup> Guidance: [Natural Resources Wales / Marine European Protected Species licensing](#)

<sup>9</sup> Guidance: [Natural Resources Wales / Sites of special scientific interest: responsibilities of owners and occupiers](#); [Natural Resources Wales / Sites of special scientific interest: responsibilities of public bodies and statutory undertakers](#)

<sup>10</sup> Guidance: [Water Framework Directive assessment: estuarine and coastal waters - GOV.UK \(www.gov.uk\)](#)



The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017	Defines when a Water Framework Directive (WFD) compliance assessment is required and the assessment process. If required, such as for freshwater concerns like flood risk or contamination to the water supply, applicants must carry out a WFD assessment to accompany their licence application(s). <sup>11</sup>
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## Additional Information and key relevance for MRE consenting

### Regulatory Guidance

**Table 6.** Legislation which consenting authorities and applicants must act in accordance with or have regard to when consenting MRE projects<sup>12</sup>.

Legislation	Implications for MRE consenting
Welsh National Marine Plan <sup>13</sup>	Sets the policy for sustainable use of Welsh seas for 20 years from 2019. Public authorities must make decisions based on the policies in the Welsh National Marine Plan.
Marine and Coastal Access Act 2009 (as amended by the Wales Act 2017)	<b>Part 3</b> (Marine Planning) requires that MRE consent applications and decisions are made in accordance with relevant marine policy documents unless relevant considerations indicate otherwise. <b>Part 4</b> (Marine Licensing) sets out the requirement for Marine Licences and the application and determination (decision-making) process.
Well-being of Future Generations (Wales) Act 2015	MRE consent applications and decisions must be made in accordance with the Sustainable Development and Wellbeing Goals for Wales.
Environment (Wales) Act 2016	<b>Section 6</b> of the Act states that a public authority must seek to maintain and enhance biodiversity when making consent decisions for MRE Projects in Wales. <b>Section 7</b> of the Act lists species and habitats of principal importance for conserving biodiversity in Wales. MRE consent applications and decisions must demonstrate that all reasonable steps have been taken to maintain and enhance these habitats and species.
Wildlife and Countryside Act 1981	MRE consent applications and decisions must be made in accordance with measures to protect the notified features of Sites of Special Scientific Interest (SSSI) in Wales and nationally protected species listed under Schedule 5 of the Act.

### Marine Spatial Planning

- The Marine and Coastal Access Act 2009 outlines how marine planning should be approached, through Marine Policy Statements and Marine Plans

<sup>11</sup> Guidance: [Water Framework Directive assessment: estuarine and coastal waters - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>12</sup> Guidance: [Natural Resources Wales / Sustainable management of Welsh Waters, including the Marine Protected Area Network](#)

<sup>13</sup> Welsh National Marine Plan: <https://gov.wales/marine-planning>



- Welsh National Marine Plan (WNMP)<sup>14</sup> –the framework for the Welsh seas to be clean, healthy, safe, productive and biologically diverse with a 20-year view from its publication in 2019. It outlines a vision for the future of the Welsh inshore and offshore marine area.
  - MRE Project applications and consent decisions to be made in accordance with policies in the WNMP.

### Adaptive Management

Adaptive management is a tool used in Wales to allow MRE developments to potentially be consented when the environmental effects are not well understood.

- Guidance on using adaptive management for marine development in Wales is available at
  - [Natural Resources Wales / Using adaptive management for marine developments](#)
  - [Natural Resources Wales / Applying for a marine licence for projects using adaptive management or project phasing](#)

### Relevant industry stakeholders and networks

- Marine Energy Wales (MEW)<sup>15</sup> brings together technology developers, the supply chain, academia, and the public sector to establish Wales as a global leader in sustainable MRE generation and has strong links to Welsh Government and local councils. MEW's website provides support to MRE developments including information on supply chain, planning and consenting processes, funding, and education. MEW also offers facilitation services to developers and those interested in MRE.
- The Consenting Strategic Advisory Group (CSAG) was formed to collaborate on identifying and overcoming barriers to the efficient and timely licensing of MRE in Wales. The group includes MEW as the secretariat as well as MEW members, NGOs, and NRW technical specialists. The Science and Evidence Group is a subgroup of the CSAG which reviews the data and information needs for MRE projects in Wales to provide advice to CSAG<sup>16</sup>.
- Offshore Renewables Joint Industry Programme (ORJIP) Ocean Energy<sup>17</sup> is an advisory and network programme. The programme aims to ensure that the principal EIA and Habitats Regulations Assessment consenting risks for early array deployments in the wave and tidal sectors are addressed by facilitating a strategic, coordinated, and prioritised approach to monitoring and research which is endorsed by industry, regulators, and Statutory Nature Conservation Bodies. ORJIP Ocean Energy is sponsored by The Crown Estate, Marine Scotland, Welsh Government, Scottish Natural Heritage, Natural Resources Wales, and Crown Estate Scotland.

<sup>14</sup> Welsh National Marine Plan: <https://gov.wales/marine-planning>

<sup>15</sup> <https://www.marineenergywales.co.uk/>

<sup>16</sup> CSAG Terms of Reference available here: <https://gov.wales/terms-reference-2>

<sup>17</sup> <http://www.orjip.org.uk/oceanenergy/about>