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Legal and Institutional Review of National Consenting Processes

Deliverable 2.2

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Contents

Acronym List

AA – Appropriate Assessment

AM – Adaptive Management

APA – Agência Portuguesa do Ambiente

AP – Allocation Plan

CER – Commission for Energy Regulation (Ireland)

CEREMA – Centre d'Etudes et d'Expertise sur les Risques, l'Environnement, la Mobilité et l'Aménagement

CCDRs - Regional Development and Coordination Commissions

CODERST – French Department Council for the Environment, Healthcare and Technological Risks

DECLG - Department of the Environment, Community and Local Government (Ireland)

DETI – Department of Enterprise, Trade and Investment (Northern Ireland)

DOENI - LIT – Department of the Environment –Licensing Team (Northern Ireland)

DOI – Department of Interior (USA)

DGEG - Energy and Geology Directorate-General (Portugal)

EA – Environmental Authority

EIA – Environmental Impact Assessment

EEZ – Exclusive Economic ZoneEIA – Environmental Impact Assessment

EPS – European Protected Species

ES – Environmental Statement

EU - European Union

HRA – Habitat Regulation Appraisal

MCAA – Marine and Coastal Access Act 2009 (UK

MMO – Marine Management Organisation

MS - Marine Scotland

MS-LOT – Marine Scotland – Licensing Operations Team

MW - Megawatts

NSIP - Nationally Significant Infrastructure Projects

ORE - Offshore Renewable Energy

SSECC – Secretary of State for Energy and Climate Change

PMD – Public Maritime Domain

POEM - Plano de Ordenamento do Espaço Marítimo

SDM- Survey-Deploy-Monitor

1 Introduction

1.1 General considerations

Simplified consenting processes and Environmental Impact Assessment (EIA) procedures are needed to ensure the further expansion of offshore renewable energy. In previous RiCORE workshop reports, consenting and EIA have been highlighted as two of the most significant non-technological barriers faced by the offshore renewable energy sector. The problematic elements of consenting processes pertain to the absence of dedicated consenting process, the lack of clear and focused EIA guidance and the existence of multiple competent authorities each with responsibility for delivering different consents related to a development.

The aim of the RiCORE project is to develop a risk-based approach to consenting for offshore renewable energy projects, where new technologies are being proposed. Before dealing with risk-based approaches, the structure of national consenting processes for marine renewables need to be understood. The 'one-stop-shop' approach is seen by developers as the most desirable consenting approach. A 'one-stop-shop' approach offers a single point of contact providing all services attached to consents and EIA processes (EIA screening, EIA scoping, consultation coordination, application examination and licence delivery). Such an approach is operated in Scotland through Marine Scotland, the principal competent authority for planning and decision-making. Marine Scotland administers the whole licensing process from screening / scoping consultations to the delivery of a Marine Licence covering all elements of offshore developments, with Scottish Ministers making the final decisions on consent under section 36 of the Electricity Act 1989. In the rest of the UK, the licensing procedure is relatively similar to the system operated by Marine Scotland. The Marine Management Organisation (MMO) is the single authority in charge of administering and delivering Marine Licences in English offshore and inshore waters and Welsh offshore waters for ORE project below 100 megawatts (MW). Offshore generating stations with a capacity of more than 100 MW are classed as nationally

significant infrastructure projects (NSIP) and subject to a specific regime administrated by the Planning Inspectorate.

These require an order from the relevant Secretary of State and this may deem a marine licence to have been granted. In Northern Ireland, the consenting process in inshore waters is primarily administered by the Department of the Environment Northern Ireland (DOENI). In offshore waters, the Marine Management Organisation remains the 'one-stop-shop' authority for consenting offshore renewable energy (ORE) developments. Further details rergarding the consenting processes in operation in Member States are provided in the present deliverable.

In other European countries, such as France and Ireland, progress has been made towards more integrated consenting systems. As evidenced in the present report, there is a move away from consenting regimes with multiple consents and require as well many consenting authorities to more integrated systems coordinated by one single entity with the responsibility for granting all required consents. The implementation of the 'one-stop-shop' approach is not achievable in all countries in the short term, due to a range of possible factors including administrative considerations, legal contexts and resources. In France and Ireland, the 'one-stop-shop' approach is in progress but remains a long-term goal. Spain has implemented a parallel administrative process as an alternative to the 'one stop shop' approach, which allows applications for developments to be processed simultaneously, but required consents are still inter-dependent.

1.2 Objectives and methodology

The present deliverable aims to consolidate up-to-date information on the structure of consenting processes in RiCORE project partner countries: France, Portugal, Spain, Ireland and United Kingdom (England, Wales, Scotland and Northern Ireland). A summary of the different elements of consenting for Marine Renewables is presented in section 4 '*Review of national consenting processes for offshore renewable energy*'. For each country, consenting processes are reviewed and analysed on the basis of five parameters: occupation of maritime space, licence to generate/supply electricity,

terrestrial planning, environmental assessment and monitoring and public participation. The report addresses the institutional aspects applicable to each parameter. The objective of this review is to provide an overall 'picture' highlighting fragmentation or integration in the consenting systems in operation in these countries. The report then goes onto highlight possible difficulties for each countries studied and best practices within consenting processes.

The information contained in the deliverable is primarily based on relevant data collected during a number of RiCORE workshops and as well as other EU projects e.g. SOWFIA. The report also includes information from academic literature, licensing manuals, EIA Guidance documents (in France, Germany and UK), Environmental Statements and EIA consent decisions (where available).

2. A review of national consenting processes

2.1 France

2.1.1 Description of the consenting process

There is no dedicated consenting process or legislative framework dealing specifically with offshore renewable energy deployment. However, France has enacted important legal amendments to streamline the licensing process applicable to offshore renewable energy development. The Law Grenelle II (Law n° 2010-788, July, 12th 2010) and related Law-Decree n° 2012-41 have consolidated the legal framework applicable to licensing processes for generating stations producing power from renewable energy sources. The deployment of offshore renewable energy technologies on the French Maritime Domain (seabed and subsoil of the territorial sea) is now subject to two legal authorisations delivered by the Préfet of Département:

- A concession to occupy the Public Maritime Domain (PMD) (Maritime Domain consent) (Article L 2124-1 to L 2124-5, article R 2124-1, article R 2121-1 and subsequent Public Administration Property Code)
- An authorisation related to water resources protection (Water Resource Protection Licence) (Article L 214-1 and subsequent, article R 214-1 and subsequent of the Environment Code)

These authorisations are delivered by the Préfet of Département after assent of the Préfet of the concerned Marine Region. Under article L 2124-1 of the Public Administration Property Code and article L 214-2 of the Environment Code, these authorisations aim to ensure that the occupation of the sea space is compatible with the legal objective of protecting the marine area. The recent Decree n° 2016-9 of January 8th, 2016 extends to 40 years the concession period for offshore renewable energy installations. The timescale for administering and delivering Water Resource Protection Licences and Maritime Domain Consents varies from six to nine months. In the Exclusive Economic Zone (EEZ), the installation of offshore renewable energy devices is allowed under the Decree n° 2013-611, 10th of July 2011 which confers the authorisation powers to the Préfet Maritime. The legal framework applicable to the

installation of turbines in the EEZ will be further defined in the National Roadmap Framework for floating and fixed offshore wind platforms. The occupation of the EEZ must currently be approved by the Préfet Maritime, who is in charge of supervising the evaluation of applications and giving final approval. However, the Prefet Maritime is entitled to prescribe protective measures through the EIA that are binding on the Préfet of Département.

The Maritime Domain Consent and the Water Resource Protection Licence will be granted provided an EIA has been positively assessed. According to article R122-2 (Environmental Code), offshore renewable energy installations can be subject to conducting an EIA on either a mandatorily or case-by-case-basis. Even though article R 122-2 does not specify whether an EIA must be systematically conducted, in practice, previous offshore deployments have been the subject of a systematic EIA.

Two distinct environmental approvals are required depending on the authorisation delivered. Under article R 214-6, Water Resource Protection Licences are subject to an Impact Study being conducted. Maritime Domain Consent applications must be accompanied by an EIA as regulated by article L 122-1 and R 122-2 and in line with the Environment Code. The required EIA along with the application for Public Domain consent is subject for approval to the Environmental Agency on behalf of the Préfet of Département. Offshore renewable energy developments in France are thus subject to two environmental approvals. The EIA required under the Maritime Domain Consent may serve the purpose of the Impact Study provided the Environmental Statement contains the same information as required under the Water Resource Licence provisions (article R 214-6, Environment Code). Environmental Statements are submitted to the Environmental Authority for examination and recommendations. The final environmental approval is delivered by the Préfet of Département. The Préfet of Department is under an obligation to take into account the recommendations of the Environmental Agency but the Préfet is not bound by them. Nevertheless, the préfet Maritime can prescribe measures in order to protecT the environnement through the EIA. As the préfet Maritime have a formal assent to give to the Maritime domain

administrator, the Préfet of Département has the obligation to take these measures into account and ask to the petitioner to respect them. The Préfet of Department may not always have the required scientific expertise necessary to grant leases on the Maritime Domain. The absence of legally binding environmental recommendations from the Environmental Authority could be suggestive of a lack of relevant scientific information or understanding in the decision-making process. This is primarly supported by the absence of a scientific body able to advise the Authority responsible for administering consents.

With regards to the electrical aspects of consenting, there are important differences between offshore renewable energy projects that have been selected via a call for tenders and those projects proposed by developers on an individual basis. Offshore renewable energy projects selected after a call for tenders benefit from a simplified consenting scheme. Under the Energy Code, the authorisation to construct and exploit offshore electricity generating installations is deemed to be granted when a project has been selected in the frame of a call for tenders (article L 311-10, Energy Code). This means that developers do not have to submit an additional application for the construction of offshore stations and supply of power into the national grid. In the case of applications processed outside of a call for tenders, developers must obtain a power exploitation permit granted by the Ministry of Ecology, Sustainable Development and Energy (article L 311-5 and subsequent, Energy Code). A permit to construct and, or exploit a generating installation is valid provided that ORE installations have been commissioned or exploited without interruption for a period of at least three years after the permit has been issued. Under the Decree n° 2016-9, the validity period of exploitation permits can now be extended to 19 years if developers request to do so.

The terrestrial planning consent is subject to the provisions of the French Town Planning Code. Under the Law Grenelle II and the Decree n° 2012-40, electricity generating installations within the Public Maritime Domain and using marine renewable energy sources are exempt from planning permission for all related

terrestrial electrical works - including works related to grid connection (French Town Planning Code, articles L 421-5 and R 421-8-1). Under the French Town Planning Act, renewable energy developers benefit from deemed planning permission for related onshore works. In other words, planning permission is deemed to be granted under the Maritime Domain Consent. Developers are not required to submit a separate application to local authorities to obtain planning permission for associated terrestrial works.

The deployment of offshore renewable energy installations on the French Maritime Domain is also subject to public participation. It is procedure for a public debate to be held by the French Commission of Public Debate. All development projects over €300 million must be the subject of a public debate (article R 121-2, Environment Code). The Commission of Public Debate must be consulted by the Public Authority or the offshore renewable energy developer. The timeframe for the public debate is 3 to 4 months (case-studies: Offshore wind farms of St-Nazaire and Courseulles sur mer, Dieppe Le Tréport and Noirmoutier, 1st and 2nd call for tender). A more formal and regulatory process: public enquiry then takes place at a local level. The final report of the public enquiry is submitted to the Préfet of Département for consideration when decision-making.

2.1.2 Institutional responsibilities

The degree of integration in the French consenting process varies depending on whether offshore renewable energy projects are proposed as a consequence of a call for tenders or at the request of individual developers. With regard to projects selected in a call for tenders, the Préfet of Département operates as a single licensing authority for all the elements of the offshore deployment and associated EIA in the territorial sea. However, additional institutions such as the Préfet Maritime, the Commission of Public Debate and the Environmental Agency intervene as consultees for other aspects of consenting relating to electrical works and public participation. Even though the Préfet of Département is under a legal obligation to take into account the outcomes of the Public Debates and observations of the Environmental Authority, as well as those

from the Prefet Maritime and the Military Authority (article R. 2124-56 code général de la propriété des personnes publiques), the Préfet remain the ultimate decision-maker.

With regard to projects proposed outside of a call for tenders, the Préfet of Département still acts as the main authority responsible for granting consents (relating to the occupation of the Public Maritime Domain) and approving Environmental Statements. Developers are not required to apply for terrestrial planning permission. However, developers must obtain a licence to generate electricity from an offshore generating station from the Ministry of Ecology, Sustainable Development and Energy. An important improvement in the French permitting system is expected with the recent adoption of the Law on the simplification of the life of French Companies (Law n° 2014-1545, 20th, December 2014). This Law is a first step towards a 'one-stop-shop' licensing approach. Law n° 2014-1545 allows for the adoption of an Order permitting the Préfet of Département to take a single decision authorising the installation of offshore renewable energy devices on the Maritime Domain, the installation of related offshore electrical equipment including the carrying out of onshore grid connection works. The Order shall be adopted by the Government within 18 months after the enactment of the Law. Say that a new decree has been enacted and considerably simplify licensing process for offshore renewable energy.

In France, areas of potential development are identified through a process of public consultation organised under the responsibilities of the Regional Prefectures in charge of the coordination of Maritime Facades. A consultation and planning process is undertaken by the Préfet of Region and Maritime Préfet for each Maritime Façade based on the technical and economic studies conducted by the Centre d'Etude et d'Expertise sur les risques, l'Environnement, la Mobilité et l'Aménagement (CEREMA) and the network feasibility studies led by the French Reseaux Public de Transport d'Electricite (RTE).

The Figure 1 and Figure 2 below provide an overview of the consenting process for offshore renewable energy projects in France.

Figure 1. Summary of the consenting process for offshore renewable energy projects in France (1)

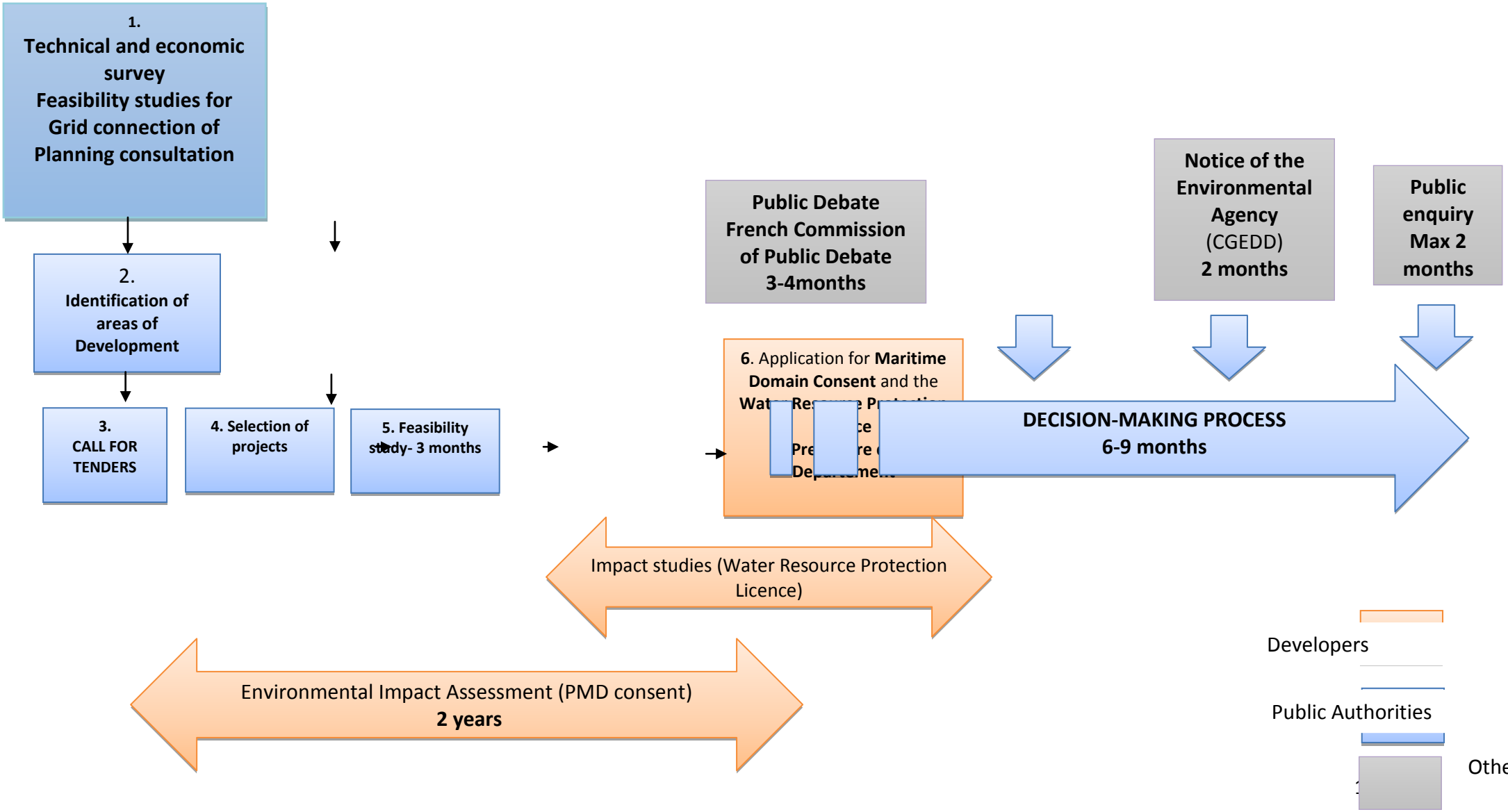
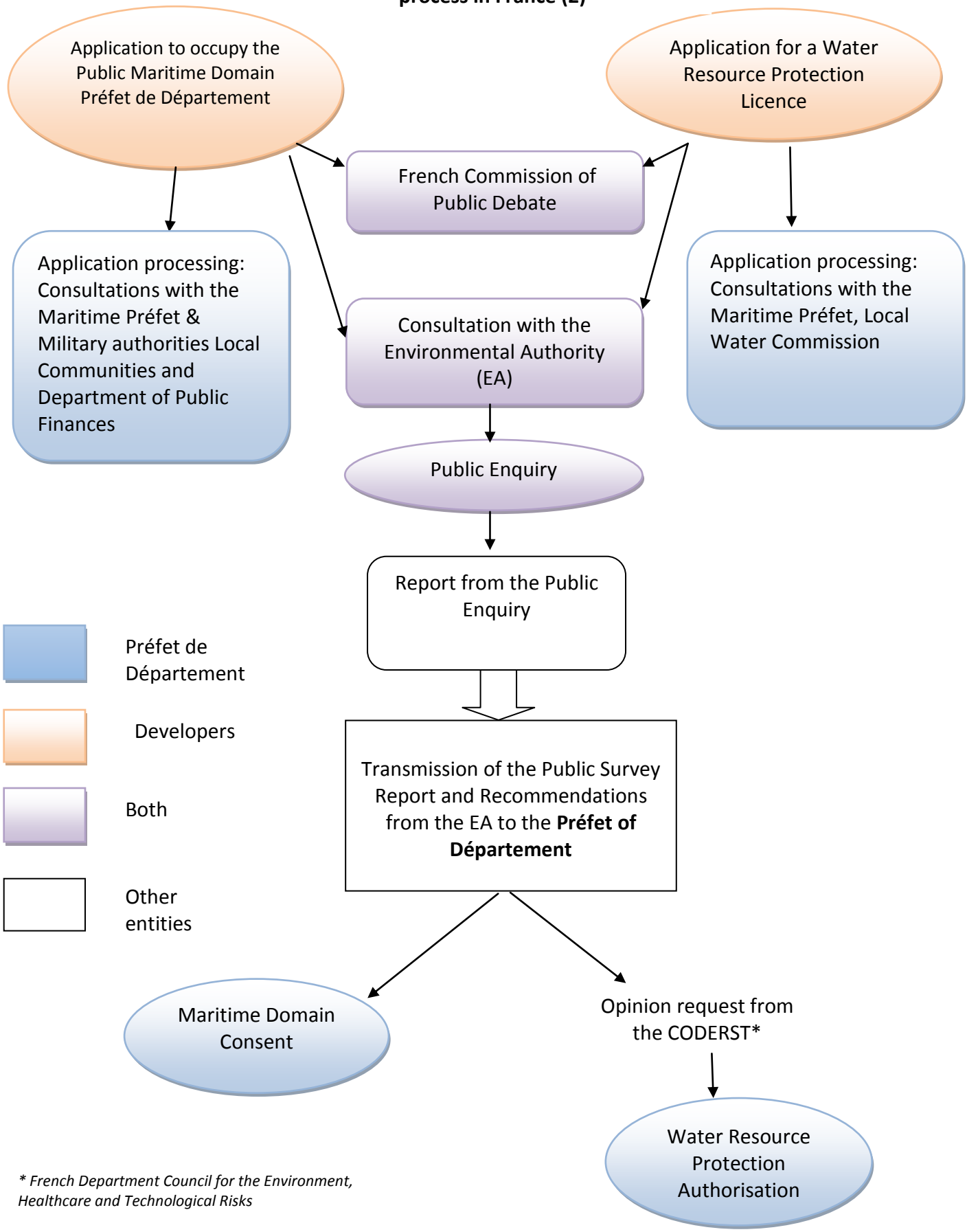


Figure 2 - Summary of the consenting process in France (2)



** French Department Council for the Environment, Healthcare and Technological Risks*

2.2 United Kingdom

2.2.1 Scotland

2.2.1.1 Description of consenting process

There is no dedicated legislative framework for offshore renewable energy deployments in Scotland. Marine renewable energy projects are subject to the general provisions of the Marine (Scotland) Act 2010. A dedicated consenting process and EIA guidance for marine renewables and offshore wind energy is available under the Licensing Manual[1] and the EIA guidance document for offshore renewable energy projects (Marine Scotland Guidance for Marine Licence Applicants, versión 2, June 2015).

Pursuant to the Marine and Coastal Access Act (2009) (MCAA) and Marine (Scotland) Act 2010, offshore licensing is devolved to the Scottish Ministers in Scottish inshore waters (up to 12 nautical miles) and offshore waters (12-200 nautical miles). Marine Scotland has established a single point of contact for all aspects of consenting: the Marine Scotland-Licensing Operations Team (MS-LOT). Offshore renewable energy developers must apply for several consents. The number of consents required depends on the type, size and location of the development. First, a Marine Licence is required for the occupation of the Scottish marine area (territorial sea) under Marine Scotland Act and the Scottish EEZ (Marine and Coastal Access Act). Second, consent under section 36 of the Electricity Act (1989) is required for the construction and operation of offshore generating stations with an overall capacity higher than 1MW but lower than 50MW in Scottish waters. Offshore developments with a capacity of 1 MW or under and offshore developments with a capacity of 50 MW or above are exempt from section 36 requirements. The need for an EIA is determined on a case-by-case basis. Additional consents such as European Protected Species (EPS) Licence under the Habitats Directive must also be issued by Marine Scotland (or SNH for onshore species) where developments are likely to impact certain species listed in the Annex IV of the

[1] Marine Scotland Licensing and Consents Manual, covering Marine Renewables and Offshore Wind Energy Development, Report R 1957, October 2012.

Habitats Directive as species of European Community interest and requiring a strict protection regime.

The licensing process for offshore renewable energy is based on the following key stages:

- Pre-screening consultation with MS-LOT
- Environmental screening and scoping
- Screening and scoping consultation managed by MS-LOT
- Preparation of documents and pre-application
- MS-LOT gate checking of documentation
- Submission of applications
- Consultation stage
- Determination
- Monitoring and post determination

The licensing process starts with a pre-application consultation phase with MS-LOT. The pre-application consultation includes environmental screening/scoping. Screening and scoping are not mandatory processes. Screening and scoping are delivered by Scottish Ministers on the request of developers. The screening stage can be defined as the process by which a project is reviewed to deterine if an EIA is statutory under the EIA Directive. Whereas, the scoping stage is the first stage where potential environmental impacts and their likely significance are identified. This stage also outlines data collection and assessment methodologies. MS-LOT will manage consultations with statutory and non-statutory consultees to determine whether an EIA and/or Appropriate Assessment (AA) are required. The timeframe to provide a Screening Opinion (delivered by MS-LOT on behalf of Scottish Ministers) shall not exceed three weeks. If an EIA or AA is required, the developer may request a formal Scoping Opinion by submitting a Scoping Report to Scottish Ministers through Marine Scotland along with a covering letter. When a developer requests a Scoping Opinion of MS-LOT by submitting a Scoping Report, it is necessary that the report outlines an

initial assessment of the potential environmental impacts whilst also identifiying any receptors and issues that could be scoped out.

MS-LOT will then issue a copy of the Scoping Report to each of the statutory and non-statutory consultees with a covering letter setting out a three week consultation period. Within the 3 weeks following the receipt of the consultation responses, MS-LOT shall issue a formal Scoping Opinion. The Scoping Report should provide MS-LOT (and consultees) with sufficient information regarding the proposed development and potential environmental impacts to allow them to advise, through the Scoping Opinion, the scope and content of the EIA.

In accordance with the EIA Regulations, the overall timescale to provide a Scoping Opinion is nine weeks. The Scoping Opinion should identify which issues will or will not need to be addressed in the forthcoming EIA. This will include any specific sensitivities of the site and the environmental data likely to be required in the Environmental Statement (ES). Following the screening and scoping process, the pre-application process has to be undertaken. The applicant will be required to to prepare the relevant documentation, public notices and application forms. The Environmental Statement, including a non-technical summary (NTS), the Marine Licence application form, the section 36 licence application form and other required documents must go through a three week gate-checking process. 'Gate-checking' is a process through which MS-LOT ensures that the application forms, Environmental Statements and proposed public notices are satisfactory and meet the requirements of the legislation. If no issue arises during the gate-checking of the submitted documents, the developer will be able to submit a formal application, pay the application fee and publish the public notices. MS-LOT will then administer the application and conduct the consultation process. Under the Licensing Manual (referened, footnote 1), applications solely for Marine Licences should be dealt within eight to twelve weeks following the receipt of the application and payment of the fee if there are no objections or complex issues. Marine Scotland aims to determine section 36 applications within nine months of receipt of the application. The timescales for decision-making may vary if developers are requested to provide additional information during the consultation stage, as this will require further consultation and public notices.

Should applications be refused, MS-LOT will advise developers on the reasons and on the best way forward.

Following positive determination, applicants will be required to comply with various consent conditions set by MS-LOT. Developers have a statutory obligation to comply with these conditions and MS-LOT has a statutory power to ensure compliance (Licensing Manual, p. 25). The post-determination period includes review, reassessment of consent/ licence conditions and remedial measures depending on the results of monitoring programmes. Developers are under an obligation to submit regular monitoring results/ reports to MS-LOT. Results of monitoring may lead MS-LOT to decide corrective actions.

2.2.1.2 Institutional responsibilities

From an institutional point of view, Scotland has implemented a dedicated and fully integrated licensing process for offshore renewable energy projects.

MS-LOT operates a 'one-stop-shop' approach to all aspects of marine renewable energy consents namely, occupation of sea space, electricity generation, terrestrial planning and environmental approval. MS-LOT is responsible for administering and delivering the following consents and environmental approvals:

- Marine Licences under the Marine and Coastal Access Act (2009) and Marine Scotland Act (2010)
- Section 36 consent under the Electricity Act (1989) for electricity generating station with an overall capacity higher than 1MW
- European Protected Species Licence under the Conservation (Natural Habitats & cons.) Regulations 1994, the Offshore Marine Conservation (Natural Habitats & cons.) Regulations 2007 and the Wildlife and Natural Environment (Scotland) Act 2011
- Basking Shark Licences (discussed alongside EPS Licences under the Wildlife and the Natural Environment (Scotland) Act 2011

The 'one-stop-shop' licensing approach in Scotland culminates with the recent amendment of the Town and Country Planning Act (section 57(2) of the Growth and Infrastructure Act (2013)). The amendment extends the provisions on deemed planning permission to offshore electricity generating installations. This allows Marine Scotland, when granting a consent under the section 36 of the Electricity Act, to direct that planning permissions for ancillary onshore works are deemed to be granted. There is no need to prepare and submit a separate terrestrial planning application for the onshore works associated with offshore stations.

Even though MS-LOT operates a 'one-stop-shop' approach to all aspects of marine renewable energy consents, statutory consultees including Northern Lighthouse Board, Scottish Natural Heritage, Maritime and Coastguard Agency and Scottish Environment Protection Agency shall be involved in the issuing of Marine Licences and s. 36 consents.

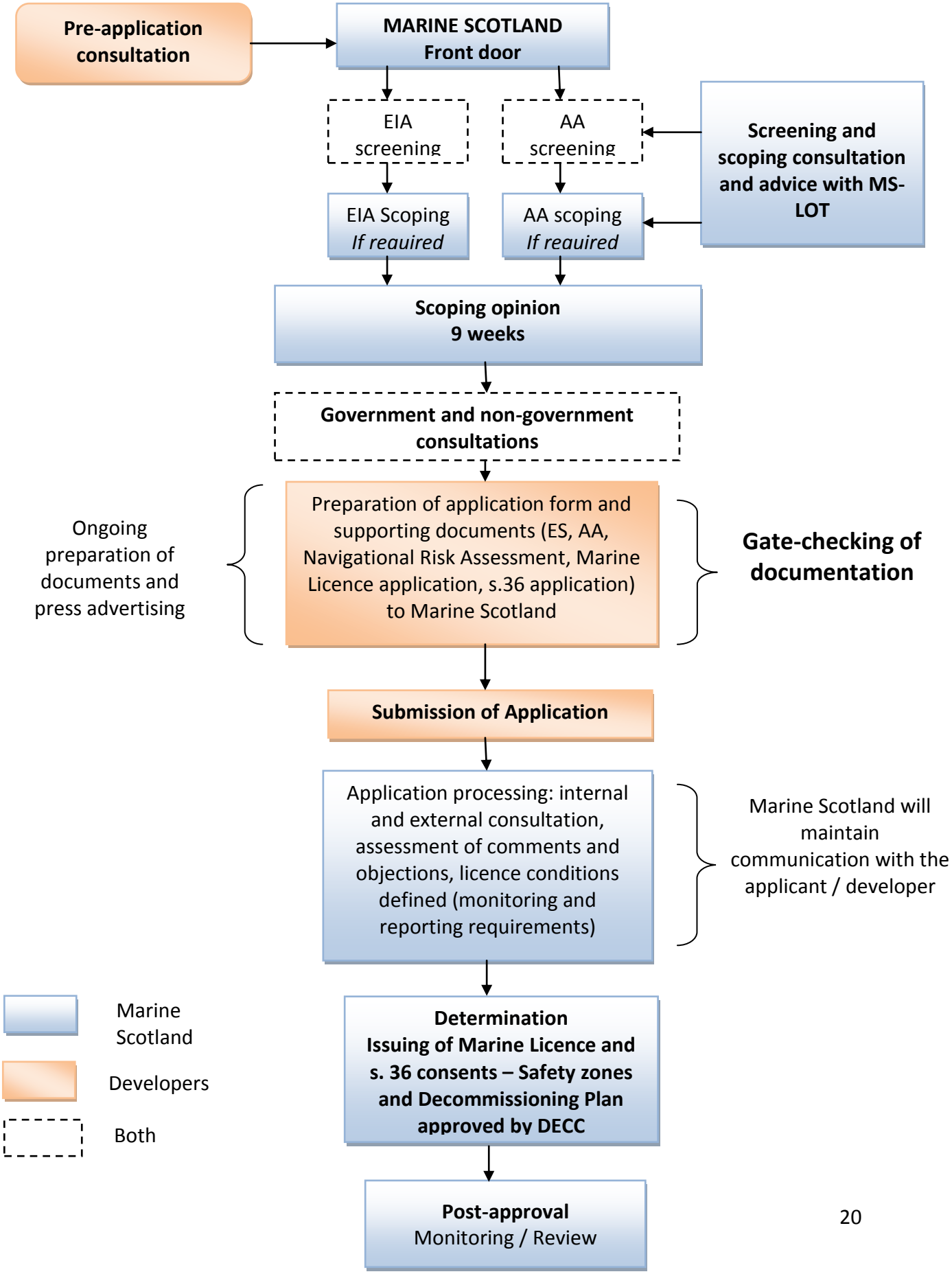
Moroever, it is important to note that competencies relating to seabed leasing, navigational safety and decommissioning remain respectively the responsibility of the Crown Estate and Department of Energy and Climate Change (DECC) under the Energy Act 2004. With regards to decommissioning responsibilities, developers must enter in preliminary discussions with the DECC to ensure that they understand their decommissioning obligations. Depending on the outcomes of these discussions, the Secretary of State may, by notice, require developers to prepare a costed decommissioning programme and ensure that it is (eventually) carried out (sections 105 to 114, Energy Act 2004). Once the final draft of the decommissioning programme has been agreed with DECC, developers should formally submit it to the Offshore Renewables Decommissioning Team of the DECC (Decommissiong of offshore renewable energy installations under the Energy Act 2004. Guidance notes for industry, January 2011)[2].

[2] The DECC to provide a "one stop shop" in relation to decommissioning. However, there may be occasions when developers will need to enter into a separate dialogue with individual Government Departments or their Agencies or with other bodies (for example, The Crown Estate and appropriate conservation agencies) if specific matters relating to their areas of responsibility arise.

For non-devolved responsibilities, MS-LOT will liaise with appropriate authorities.

The Figure 3 below (p.20) provides an overview of the consentinf process for offshore renewable energy projects in Scotland.

Figure 3 - Summary of the consenting process for offshore renewable energy projects in Scotland (adapted from the version available on the Licensing Manual)



2.2.2 England and Wales

There is no dedicated consenting process and legislation dealing specifically with marine renewable energy projects in England and Wales. Licensing for Offshore renewable energy projects is subject to the general provisions of the Planning Act 2008 and Marine and Coastal Access Act 2009. The licensing system and institutional responsibilities in England and Wales varies depending on the jurisdiction and the overall capacity to be generated by the offshore renewable energy installations. Projects over 100 MW capacity are considered as Nationally Significant Infrastructure Projects (NSIPs) and require consent under the Planning Act 2008. NSIPs must be approved by the Planning Inspectorate. Projects under 100 MW capacity are subject to the provisions of the Marine and Coastal Access Act 2009. The licensing process for offshore projects under 100 MW is administered by the Marine Management Organisation (MMO). Responsibilities for licensing offshore renewable energy projects under 100 MW in Welsh inshore waters (up to 12 nm) are devolved to Natural Resources Wales.

2.2.2.1 Offshore renewable energy projects (over 100 MW)

Description of the consenting process

The Planning Act 2008 has considerably streamlined the licensing process applicable to NSIPs by reducing the number of consents required for offshore deployments. Under the Planning Act 2008, the Planning Inspectorate acts as a 'one-stop-shop' licensing authority for all offshore renewable energy projects with a generating capacity exceeding 100 MW. As presented in section 4 '*Review of national consenting processes*', the Planning Inspectorate administers development consents covering all aspects of offshore renewable energy (ORE) development. Under the Planning Act 2008, the development consent replaces the previous consents required under section 36 of the Electricity Act 1989, planning permissions and related environmental approvals (Planning Act, section 33).

There are six stages in the consenting system for offshore NSIPs:

- *A pre-application consultation* during which the project is screened and scoped by the Planning Inspectorate. The onus to engage with stakeholders is on the applicant. The applicant must also consult with statutory consultees, local authorities and communities or any affected person. The pre-application consultation is followed by an acceptance or refusal by the Planning Inspectorate to proceed with the consenting process.
- *During the acceptance stage* is directed by the Planning Inspectorate. The Planning Inspectorate has 28 days to decide whether the application meets the application standards and consultation requirements before progressing to examination.
- *The pre-examination stage*: public notices must be published by the developer to permit all interested parties to register to be involved in the examination process.
- *The Planning Inspectorate carries out the examination*: an inspector or panel of inspectors is appointed as an examining authority. The Planning Inspectorate examines the application in accordance with the Marine Policy Statement for a period of up to six months – during the six month examination period the examining authority must prepare recommendations for the Secretary of State.
- *Determination* is conducted by the Secretary of State: the Secretary of State has three months to issue a decision on the proposal.
- *Post-decision* provides a six week window for the applicant and interested parties to legally challenge the Secretary of State decision in the High Court.

During the whole consenting process, the onus to engage stakeholders and prepare EIAs is on developers.

One of the key improvements of the Planning Act 2008 is the definition of a timescale. Under the Planning Act, the overall consenting process from the examination to determination phases should not exceed nine months (Planning Act, s.98 and s.107).

Institutional responsibilities

The Planning Inspectorate is the centralised licensing authority for renewable energy infrastructure projects over 100 MW capacity in the English and Welsh territorial sea and EEZ.

The centralised aspect of consenting is limited by the competencies of The Crown Estate, the manager of the seabed, on behalf of the Crown. Before applying for development consent, developers will first have to request a Zonal Development Agreement from The Crown Estate (see Figure 4). Moreover, approvals relating to navigation risks, safety zone consents and statutory decommissioning scheme are required from the Department of Energy and Climate Change (DECC) under the Energy Act 2004.

A summary of the consenting process for offshore NSIPs is presented in Figure 4 below.

2.2.2.2 Offshore renewable energy project (under 100 MW)

Description of the consenting process

Offshore renewable energy projects with a capacity of less than 100 MW are subject to the provisions of the Marine and Coastal Access Act 2009 and must be approved by the MMO. In Welsh inshore waters (up to 12 nm), licensing is devolved to Natural Resources Wales.

The Marine and Coastal Access Act 2009 has significantly simplified the consenting regime. The 2009 Act provides for the consolidation of the six consents required previously into one Marine Licence. Consenting processes in England and Wales start with a pre-application phase which is an online service through which applicants may require screening/scoping opinions and Environmental Statement reviews. The need for an EIA is determined by the MMO on a case-by-case basis during the pre-

application consultation. Criteria to determine the need for an EIA are set out in Annex 2 of the Marine Works (EIA) Regulations 2007 or Schedule II of the Electricity Act (EIA) (England and Wales) Regulations 2000. These criteria mainly refer to the size, nature and location of the project. Developers can proceed straight to environmental assessment but the MMO recommends that developers discuss the projects with regulators and request screening and/or scoping advices. When a formal EIA is required, the applicant must provide an Environmental Statement including the information set out in Schedule 3 of the Marine Works (EIA) Regulations 2007. The applicant must then submit a formal section 36 Electricity Act application form, Marine Licence Application form, Environmental Statement and/ or Appropriate Appraisal online. The MMO will manage the consultations with public authorities, agencies or any other interested parties before providing a final decision in accordance with the Marine Policy Statement and relevant marine plans.

There is no timescale for decision making under the Marine and Coastal Access Act. In the online application guidance, it is indicated that the MMO aims to make a decision within 13 weeks of an application being validated during the pre-consultation phase.

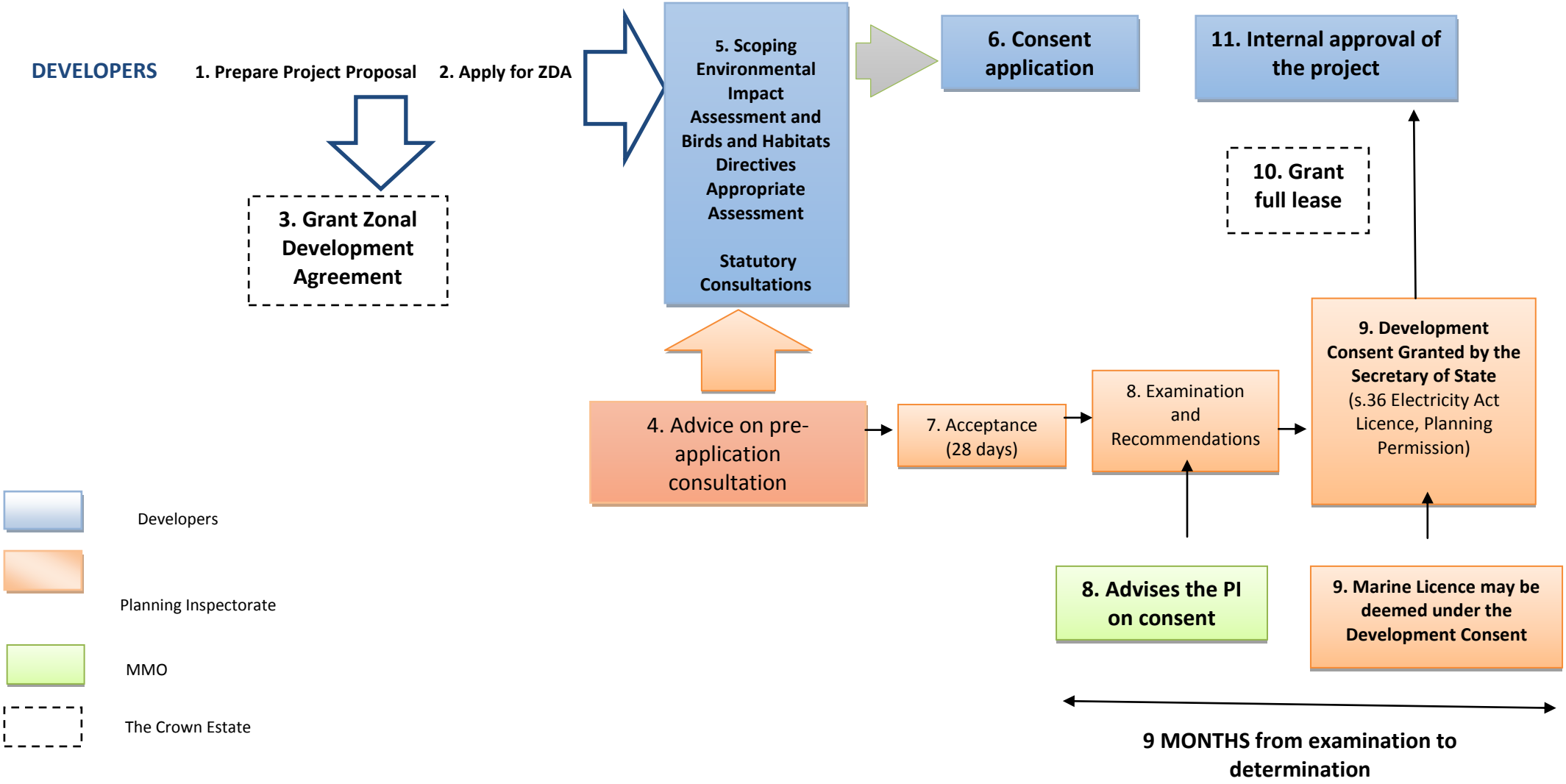
Institutional responsibilities

The Marine and Coastal Access Act 2009 allowed for the creation of the MMO as a single licensing authority in English inshore, offshore waters and Welsh offshore waters. Moreover, Part I Chapter 2 of the Marine and Coastal Access Act also transfers the section 36 Electricity Act licensing to the MMO so that it can grant all necessary consents for small-scale projects (less than 100 MW) The MMO is also responsible for approving Environmental Impact Statements and Habitat Regulation Assessments. In Welsh inshore waters, Marine Licences are delivered by the Natural Resources Wales and section 36 consents and safety zones are still determined by the MMO.

Before applying for a Marine Licence, developers of small-scale projects in England and Wales must acquire a seabed lease from the Crown Estate. Navigational safety and

decommissioning remain the responsibility of DECC. Likewise, terrestrial planning for renewable energy projects must be dealt with by local authorities.

Figure 4 – Summary of the licensing system for offshore Nationally Significant Infrastructure Projects in England and Wales



2.2.3 Northern Ireland

Description of the consenting process

The consenting process starts with a pre-application consultation. Developers must arrange a pre-application consultation with the MMO (offshore waters) or the Department of the Environment Northern Ireland – Licensing Team (DOENI-LIT) (territorial waters) before submitting an application. The pre-application process includes key stages namely: the conduct of an EIA and, or Habitat Regulation Assessment screening, the provision of a scoping opinion by the DOENI-LIT and the review of ES (if requested by developers). During the pre-application phase the DOENI-LIT will coordinate scoping consultations with all relevant consultees. In the guidance document on consenting processes provided by DOENI-LIT, scoping consultations should be carried out for a period of no less than 28 calendar days. The Scoping Opinion will be issued after receipt of the consultation responses. The Scoping Opinion will be sent to the applicant, all primary advisors and consultees. It will also be placed on the Marine Division's public register. The onus to prepare Marine Licence application forms, Environmental Impact Statements and Appropriate Appraisals (where applicable) is on developers. After formal submission of applications, the DOENI-LIT will lead the consultation process and manage consultees' responses. There is no statutory list of consultees in the Marine and Coastal Access Act 2009. The DOENI-LIT may decide to consult any person or body that has an interest or expertise in the proposed development. The consultation period is 28 calendar days. There is no specific timeframe for processing applications but the Marine Division endeavours to have an application processed within four months of having received all information.

Offshore electrical works require generating station consent/ licence under Section 39 of the Electricity (Northern Ireland) Order. Section 39 consents are granted by Department of Enterprise, Trade and Investment (DETI). Under the Marine Act (Northern Ireland) 2013, Marine Licences and Section 39 consents can be dealt with simultaneously.

For the terrestrial works conducted above the low water mark, electrical infrastructures will be subject to planning permission from DOENI - Planning Service.

All three consents (Marine Licence, section 39 Electricity Order consent and planning permission) must be supported by an ES. On this aspect, a memorandum of understanding has been agreed between DOENI and DETI, which establishes a framework for streamlining the planning, marine licensing and consent application process. The memorandum states that one single ES is required to cover all three consents.

A summary of the consenting regime and institutional aspects in Northern Ireland is presented in section 4 'Review of national consenting processes'.

Institutional responsibilities

The consenting process in inshore waters of Northern Ireland is primarily administered by the Department of the Environment Northern Ireland with its agency, the Northern Ireland Environment Agency (NIEA). The DOENI-Licensing Team is responsible for assessing applications and issuing all relevant consents and permissions under Part 4 of the Marine and Coastal Access Act 2009, namely the Marine Licence, section 36 Electricity Order consent and planning permissions. Thus DOENI-LIT acts as a 'one-stop-shop' licensing authority for the offshore and terrestrial elements of marine renewable energy projects in the territorial waters of Northern Ireland. In offshore waters, the Marine Management Organisation remains responsible for marine licensing. Developers of ORE projects in Northern Ireland must acquire a seabed lease from the Crown Estate.

2.2.4 A streamlined seabed leasing process for small scale renewable energy projects

One of the most significant limits of the 'one-stop-shop' licensing approach developed in the United-Kingdom is the absence of devolved responsibilities to deal with the leasing of the seabed. In the UK, the Crown Estate manages lands held by the Crown as sovereign including the foreshore and seabed, usually to 12 nautical miles, around the UK. As such, the Crown Estate can alienate property meaning the Crown can grant a right to the seabed or foreshore to a third party for specific purposes such as offshore renewable energy generation. Beyond 12 nautical miles, The Crown Estate is also responsible for granting leases for the deployment of ORE projects. Applicants need to obtain a lease from the Crown Estate Commissioners for the use of sea areas in inshore waters (up to 12 nm) and EEZ. The MMO and Marine Scotland are responsible for the administration and issuing of Marine Licences but do not grant seabed leases. The onus to ensure that all necessary leases are acquired from the Crown Estate is on developers.

For the purpose of this review, it is relevant to address the new leasing programme for small-scale wave and tidal energy projects. The Crown Estate has launched a simplified leasing system for small-scale projects with a maximum generation capacity of 3 MW. Developers of small-scale projects will be able to apply for a seabed lease provided the project complies with a set of criteria. In particular the project capacity shall not exceed 3 MW, the dimension of the development shall not exceed a certain spatial extent (3km² for tidal projects, 5km² for inshore wave projects, 12km² for offshore wave projects) and the specific technology must have been selected prior to making an application. Successful applicants will be granted an Option Agreement which entitles the applicant to undertake investigations on the site before submitting an application for a seabed lease. The term of the Option Agreement is five years. The application for a lease and other applications for relevant licences must however be made within three years of the start of the Option Agreement.

The new leasing scheme allows successful applicants to develop their project concepts and assess the suitability of the proposed development sites before acquiring a lease

from The Crown Estate and all necessary licences from regulators. The Crown Estate takes one month to determine whether the lease application meets the required standards. Following which there is a three month period follows to determine whether any competing interest exists in the proposed site. This timeline is indicative and may vary depending on whether a Habitats Regulation Assessment is needed or competing interests are detected. A negotiation period with developers will then start with developers to prepare the final Lease Agreement.

The new leasing became operational in September 2015. Developers are still required to obtain a Marine Licence before installing their devices even though the project has a generating capacity of lower than 3 MW. One of the direct positive impacts of this new leasing system may be the streamlining of consenting processes operated by the MMO, Marine Scotland and the DOENI for small-scale projects. The opportunity to obtain a Seabed Option Agreement for small-scale projects will inevitably expedite EIA approvals and consenting processes since better knowledge of the site and risk-profiles of the technologies will be achieved at an early stage during the term of the Option Agreement.

2.3 Ireland

2.3.1 Description of the consenting process

There is no dedicated licensing process or legislation dealing specifically with marine renewable energy in Ireland. The deployment of ORE facilities is governed by existing foreshore and environmental legislation.

In Ireland, consents for the occupation of the sea space, electrical works, terrestrial planning permissions and environmental approvals are administered and managed by different entities. Regarding the occupation of the sea space, developers must first enter a period of pre-consultation with the Department of Environment, Community and Local Government's (DECLG) Foreshore Unit before applying for a Foreshore Licence. Foreshore Licences are granted to carry out site exploration and EIA activities.

Foreshore Licence applications are administered by the DECLG. Successful applicants must lodge a deposit of €100,000 before starting investigation works in development areas.

The deposit is then refundable if the applicant complies with the terms of the licence and applies for a Foreshore Lease. Foreshore Leases are granted for activities of a permanent nature which require the exclusive occupation of the maritime area. Successful applicants for a Foreshore Licence (site investigation licence) may subsequently apply for a Foreshore Lease to undertake development activities. However a Foreshore Licence does not automatically entitle developers to a Foreshore Lease.

Offshore renewable energy infrastructures are subject to the provisions of the Electricity Regulation Act, 1999 and must be licensed by the Commission for Energy Regulation. The authorisation procedure is based on the level of capacity generated. ORE installations over 10 MW capacity must be authorised by a 'generic' licence. Generating stations with an installed capacity not exceeding 10 MW must be authorised/licensed by Order. Generating stations with an installed capacity not exceeding 1 MW are deemed to be automatically authorised and licensed by Order. The licence to construct generating stations and the licence to generate and supply electricity are distinct but may be administered/delivered simultaneously. The authorisation to construct a generating station does not include grid connection. Developers must request a connection offer from EirGrid or the Electricity Supply Board Network. When requiring a connection offer, developers must comply with the requirements of the Grid Code and Distribution Code.

Foreshore Leases and Licences to generate electricity must be accompanied, where applicable, by an EIA. The EIA usually requires a Foreshore Licence so that related studies and surveys can be conducted. The general content of Environmental Statements (ESs) is set out in the Planning and Development Regulations 2001. Developers are responsible for preparing an ES but it is the DECLG who makes an assessment of the submitted ES.

Furthermore, planning permission must be obtained from Local Authorities for terrestrial works such as the building of electricity sub-stations and cables on land. Terrestrial planning permissions are granted provided an ES is positively assessed by the Planning Authority. This entails a duplication of EIA for both the offshore elements and associated onshore works associated with marine renewable energy projects

2.3.2 Institutional responsibilities

A 'one-stop-shop' licensing approach is currently lacking in Ireland. As mentioned before, responsibilities for consenting offshore renewable energy deployments reside in different entities. The DECLG is the competent authority dealing with the occupation of the maritime area through the delivery of Foreshore Licences and Leases. The Foreshore Lease aims to guarantee the exclusive occupation of the maritime space; it does not involve the right to start building on its own. An additional licence to construct offshore stations and generate electricity is required and managed under the responsibility of the Commission for Energy Regulation. Where a licence to construct generating stations and to supply electricity has been granted by the Commission for Energy Regulation, EirGrid or the Electricity Supply Board Network are responsible for issuing grid connection offers. Likewise, with regards to terrestrial works, responsibilities for delivering terrestrial planning permissions still remain with the local authorities under the provisions of the Planning and Development Acts, as amended.

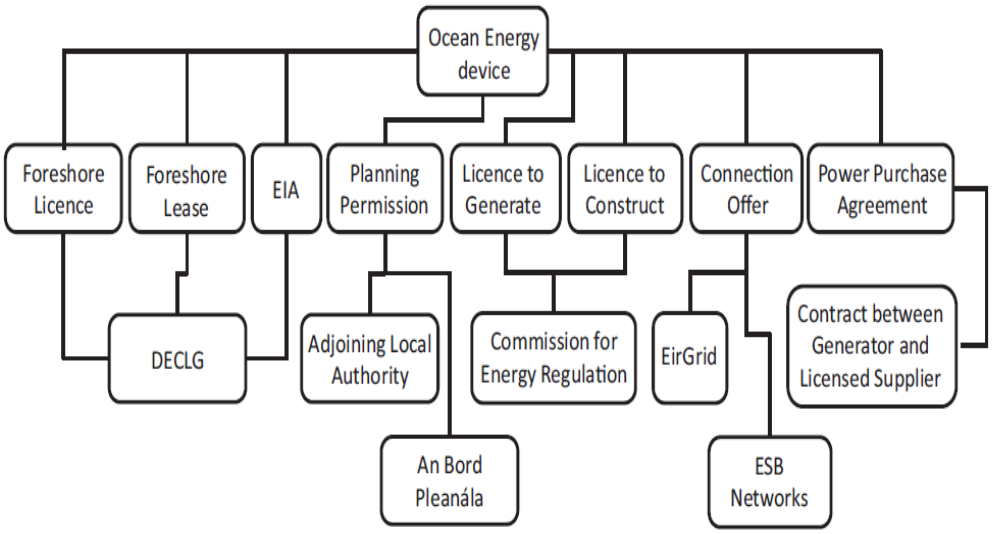
The Maritime and Foreshore (Amendment) Bill 2013 proposed to modify the institutional scheme currently in practice, by streamlining the offshore development consent process by means of greater alignment with the terrestrial process. The Bill proposes to include ORE projects in the category of 'Strategic Infrastructure Projects'. An Bord Pleanála[3] will take on the role of development consent authority where the development in the maritime area is deemed to be 'Strategic Infrastructure' or where an EIA or an AA is required. Development consents will thus be sought from An Bord

[3] An independent, statutory, judicial body that decides on appeals resulting from planning decisions made by local authorities

Pleanála if developments are entirely located beyond the nearshore (up to the low tide mark) and a single EIA will be required for offshore and onshore works.

The legislation is currently awaiting enactment and it is hoped it will be in force by 2016. The Figure 5 below provides an overview of the consenting process in operation in Ireland. This Figure has been provided by T. Simas *et al*, in a review of the consenting processes in operation in a sample of selected Member States (T. Simas *et al*, 2015).

Figure 5 Summary of the licensing process for ocean energy projects in Ireland



DECLG: Department of Environment, Community and Local Government
Note an Appropriate Assessment may be deemed in certain locations.

2.4 Portugal

2.4.1 Description of the consenting process

Recent legislation launch on Marine Spatial Planing (MSP) contributed to change the existing context of consenting human activities in the Portuguese marine space. This regulation transpose the recent EU MSP Directive into the national law and applies to all marine waters under Portuguese jurisdiction, from territorial waters, to the exclusive economic zone, and extended continental shelf (including beyond the 200 nm limit according to the proposal submitted to the United Nations) (Frazão Santos *et al*., 2015).

The new MSP regulation comprises two types of national MSP instruments, both of them legally binding on public and private entities, and both following specific objectives[4]. The first type is the Situtaion Plan (SP), which is expected to lay down the baseline for national MSP. In the SP, current and potential uses (e.g. aquaculture, fisheries, marine biotechnology, tourism and marine renewable energy) and resources are identified for the Portuguese maritime space and their spatial and temporal distribution is determined. The plan also identifies relevant areas for nature conservation, biodiversity and ecosystem services, sites of archeological and historical interest and overlapping terrestrial plans/programs that require an integrated planning. The SP is subject to SEA and to a formal public consultation process and thus also aims to identify protection mechanisms for natural and cultural resources and good practices guidelines for the management and use of the maritime space. The SP is expected to be approved (by a Council of Ministers Resolution) within six months after the publication of the MSP regulation. However, a preliminary baseline for the SP has already been developed under the "Plano de Ordenamento do Espaço Marítimo" (POEM) and represented the first Portuguese initiative towards MSP at the national level, which development extended over a period of four years (2008-2012).

[4] These are: 1) To implement strategic development objectives established in the National Ocean Strategy (NOS 2013-2020); 2) to foster sustainable ,efficient and rational economic exploitation of marine resources and ecosystem services; 3) to spatially plan maritime uses; 4) to prevent or minimize potential conflicts between maritime uses; 5) to ensure legal certainty and transparency in the assignment of private us titles; 6) to ensure the use of available information on the national maritime space.

The second main MSP instrument is the Allocation Plan (AP) which allocates areas to "new uses" or those not yet included as potential uses in he SP for a given area. As for the SP, the AP must identify protection mechanisms for natural and cultural resources as well as management/use good practices. An AP may be developed either by public (government) or private initiative (such as a marine renewable energy developer), but in this later case, a public entity must be involved and responsible for the project. The AP has an advisory committee to support and monitor its development and is subject to formal public consultation. The AP approval is made by a Council of Ministers Resolution and after that it is automatically integrated in the SP. When conflict of uses arises between two uses and the ones comtemplated in the SP (either existing of potential) two preference criteria[5] are evaluated in order to determine the prevailing use (Frazão Santos *et al.*, 2015).

The private use of the Portuguese maritime space[6] is assigned through a "private use title". This title has three types of legal permits depending on the nature and duration of the private use:

1) Concession: require a continuous use (over the entire year) of an area and can have a maximum duration of fifty years;
2) License: corresponds to an intermittent (or temporary/seasonal) use of the marine area for periods of less than one year and up to a maximum of twenty-five years;
3) Authorization: specific for scientific research projects and/or for pilot-projects related to new technologies or non-commercial uses with a maximum duration of ten years.

If the use to be developed is already identified as apotential use in the SP, the issuing of the title starts with a request by the promoter. However, if the use is not yet included in the SP, the assignment of the title depends on the previous development

[5] These are: 1) major social and economic advantage for the country (which includes a number of sub-variables); and 2) maximum coexistence of uses (which only applies if the first criteria produces equal results or it is not applicable).While sub-variables such as "number of jobs created" and "volume of investment" can be easily evaluated (thus being more meaningful for a proper prioritization of activities), sub-variables such as "projected (economic) return" or "contribution to sustainable development" are more subjective and, therefore, less significant.

[6] Defined as "a utilization that requires the reservation of an area or volume of the Portuguese maritime space for a use of the marine environment, marine resources or ecosystem services greater than the one obtained by common utilization and which results in a benefit to the public interest.

and approval of an AP (with the potential exception of the request for the use of a marine area for scientific research). To compensate the benefit resulting from the private use of a "common" – the Portuguese maritime space – a "utilization tax" (TUEM) is expected to be applied to all maritime activities that imply a private use of the national maritime space under concessions and licenses. Private uses developed under authorizations are "free" from such tax (due to their non-comercial nature) (Frazão Santos *et al*., 2015).

In addition to the private use title, a licence for power production installation is required, which is composed of a production permit and an exploration permit. These permits do not include grid connection and thus developers that require a grid connection must firstly obtain a reservation for power injection into the public electrical network (RESP) from a given reception point. The documentation required to issue the production permit includes the need to present an Environmental Impact Study, if the project, or parts of it, is/are to be located within or in the vicinity of a national ecological reserve, Natura 2000 sites and/or the national network of protected areas. Outside protected areas and if the project is not listed in the EIA national legislation a favourable advice still needs to be issued. In both cases the CCDR ('Comissão de Coordenação e Desenvolvimento Regional') is the competent authority that issues the environmental permit. The EIA procedure for marine renewable energy projects (pilot projects or testing prototypes) is a simplified procedure, with shorter terms and less formalities. If the project is listed under the EIA national legislation (e.g. wind projects with 20 or more turbines) a full EIA is required and APA is the authority that provides the licence. Terrestrial works associated with offshore renewable energy development must be approved by the Local Planning Authority.

The consenting process for wave and tidal energy in Portugal does not take more than 18 months after the preparation of an EIA.

2.4.2 Institutional responsibilities

Due to the recent implementation of MSP legislation the Portuguese Directorate-Generale for Natural resources, Safety and Maritime Services (DGRM) is, among other duties, the entity responsible for several aspects regarding the private use of the national maritime space. Except for energetic resources harnessing, DGRM decides upon new applications for private use titles and ensures coordination with other responsible entities whenever a maritime use requires the issuance of additional legal permits (Frazão Santos et al., 2015). The entity responsible for the licensing process of electric projects including ORE is the Directorate-Generale of Energy and Geology (DGEG: 'Direcção Geral de Energia e Geologia') which acts as the one-stop-shop facility in charge of all licensing process liasing with other authorities for specific permits such as DGRM, for the private use title, and CCDR or APA for the environmental licence. Furthermore, all communication with DGEG is made through an online platform created for the purpose of managing and informing about all processes.

As mentioned above, CCDR is the regional authority in charge of leading the EIA process when the project is not listed in the general national EIA legislation, otherwise (e.g. for wind projects with 20 or more turbines), the Portuguese Environmental Agency (APA; 'Agência Portuguesa do Ambiente') is the authority in charge of leading the EIA process.

2.5 Spain

2.5.1 Description of the consenting process

Although Spain has implemented a parallel processing approach allowing applications for developments to be processed simultaneously, required consents are still inter-dependent. The Ministry of Industry is the central authority responsible for passing the applications to the other regulatory authorities for comment. Regulatory authorities then return their comments to the Ministry of Industry which then decides whether to proceed with granting consents.

There is no pre-application consultation phase in the Spanish consenting process. Offshore renewable energy developers directly enter a complex licensing system involving several authorities. Regarding the use of the sea space, authorisations to occupy the Maritime Area must be delivered by the Ministry of the Agriculture, Food and Environment.

Multiple consents are required for the electrical elements of offshore developments. Royal Decree 1028/2007 establishes the procedure for processing applications for electricity generating facilities in the territorial sea. The construction, extension, modification and exploitation of electric installations are subject to the following administrative sanctions:

1. An Administrative Authorisation which validates the project's draft installation plan.
2. A Project Execution Approval authorizing the commissioning of the project and,
3. A formal Exploitation Authorisation allowing the installations to be powered up and proceed to commercial exploitation.

The competent authority for granting the aforementioned Adiministrative Authorisation, Project Execution Approval and Exploitation Authorisation is the Ministry of the Industry.

Administrative Authorisation is conditional upon the validation of the ES by the Ministry of the Agriculture, Food and Environment. Under Law 21/2013 (amending Royal Decree 1/2008), a simplified EIA shall be issued for all projects devoted to the production of energy in the marine environment. The need for an EIA is subject to a case-by-case analysis. The Law imposes a statutory time frame for the delivery of environmental approval. The validation of an ES should take no more than 4 months or 6 months in special circumstances.
With regards to terrestrial planning, an additional consent from Port Authorities is needed where terrestrial works include the occupation of public ports.

The overall timeframe needed for an offshore renewable energy development to be consented is approximately two years. This timeframe has yet to be verified. The consenting of BIMEP test site (Biscaye Marine Energy Platform) ended with the maritime public consent being granted. The overall process took four years.

2.5.2 Institutional responsibilities

The number of competent institutions in relation to environmental, land and marine-based project elements suggests a somewhat fragmented institutional structure which could have implications for the administration of the consenting process.

The Department of Industry coordinates the overall process but responsibilities for consenting the occupation of the maritime space, electrical developments, environmental assessment and planning permission reside in different public entities.

The Ministry of Agriculture, Food and Environment is in charge of the authorisations and concessions regarding the occupation of maritime areas.
The Ministry of the Industry is the institution responsible for dealing with the construction, extension, modification and exploitation of electric installations in maritime areas. Terrestrial works associated with offshore stations must be approved by Local Planning Authorities and Port Authorities (where applicable). Moreover, where offshore developments affect maritime safety, navigation or human life at sea,

a special consent from the Directorate General of Merchant Navy (Ministry of Development) is needed.

3. Conclusion

The 'one-stop-shop' approach developed in the United-Kingdom is working well and is now fully achieved through the recent amendment of the Town and Country Planning Act (as amended by sections 21(4) to 21(6) of the Growth and Infrastructure Act 2013). Offshore renewable energy developers in Scotland are no longer required to submit separate planning permission applications in addition to the section 36 application forms for the onshore works associated with offshore generating stations. The new scheme allows Marine Scotland to grant – on behalf of the Scottish Ministers - deemed planning permission for the onshore ancillary works. This scheme has positive impacts for offshore development. Thirteen consents for offshore renewable projects using wind and wave energy have been granted in Scottish waters since the amendment of the consenting scheme in 2013. Moreover, eleven projects are currently in a pre-application phase and two offshore projects using wind and tidal energy are now under determination by MS-LOT (Forthwind Offshore Windfarm in Methil and DP Marine Energy, Islay)[7].

In other European countries, a move towards more integrated licensing systems for ORE projects is noticeable. In France, the enactment of an Order allowing the Préfet of Département to adopt one single decision for all elements of marine renewable energy development will be an important breakthrough towards a 'one-stop-shop' licensing approach. In Ireland, improvements in the licensing process are also expected with the upcoming adoption of the Maritime and Foreshore (Amendment) Bill. Under the new licensing scheme, An Bord Pleanála will be the single development consent authority responsible for delivering a single EIA approval and single development consent for Strategic Infrastructure Projects located in the Maritime Area. Although the implementation of a 'one-stop-shop' approach is in progress in France and Ireland, it is currently only implemented for the marine and associated environmental elements of

[7] Updated figures about consented renewable energy projects and projects under review in Scotland are available online: http://www.gov.scot/Topics/marine/Licensing/marine/scoping.

ORE developments (occupation of the maritime domain and associated EIA for offshore works). Responsibilities relating to the electrical aspects of a development, grid connection, planning permission and associated terrestrial EIAs still reside in different departments or authorities. The French Decree n° 2012-40 has streamlined the consenting process by removing the obligation to apply for terrestrial planning permissions for offshore generating installations using marine renewable energy sources. However, developers who intend to propose ORE projects outside a call for tenders process are still constrained to submit a separate application to the Ministry of Energy for the construction of offshore stations and supply of power into the national grid.

In Spain and Portugal, consenting approaches remain fragmented and sequential even though efforts have been made to implement parallel administrative processes. In the short time, better coordination between licensing authorities is necessary. In Portugal this may be achieved in the first instance by the establishment of a single point of contact in charge of coordinating the whole application process. This will permit a more integrated decision making process.

Fragmentation of consenting processes creates complexities for developers. It is highly recommended that developers are provided with clear guidance on consenting processes through institutional websites and documents. In Ireland, guidelines on consenting may be developed following enactment of the forthcoming, new Maritime Area and Foreshore (Amendment) Bill. In France, Portugal and Spain, online or paper guidance should be issued to help developers navigate consenting systems. In France, a special procedure dedicated to marine renewable energy may also be incorporated in the Energy Code. Procedures should include statutory timelines to limit the period for consenting responses. Such timelines should be appropriate to the scale of developement that is being installed. These propositions have already been advanced as strategic and operational national recommendations with regards to consenting for wave energy in the SOWFIA project (Enabling Wave Power: Streamlining processes for progress, 2013). These recommendations are relevant and may be applied to other renewable energy technologies.

A key finding of this review is that the applicable legislation governing consenting is, in the majority of Member States, capable of dealing with new technologies such as wave and tidal. Persistent problematic elements however are how competent authorities implement the legislation, how they work collaboratively and how they approach environmental considerations. The latter will be a key focus of the next deliverable in this work package.

4. Review of national consenting processes

	PRE –APPLICATION	OCCUPATION OF SEA SPACE	ELECTRICITY	TERRESTRIAL PLANNING	ENVIRONMENTAL MONITORING	CONSULTATION AND OTHER LICENSES OR APPROVALS
IRELAND	**Pre-application consultation** Screening process For the Investigation Licence aspect Foreshore Unit No statutory timeframe for decision making	**Foreshore Acts 1933-2009** **Foreshore Licence** (Site investigation and EIA) **Foreshore Lease** (development on commercial nature only at the moment) Department for the Environment, Communities and Local Government (DECLG)	**Electricity Regulation Act 1999** **'Generic' authorisation & Licence** (installed capacity >10 MW) **Authorisation & Licence by Order** (> 1MW < 10 MW) **Automatically authorised and licenced by Order** (= or < 1 MW) Commission for Energy Regulation (CER)	**Planning and Development Act 2001** **Planning and Dev. (Strategic Infrastructures) Act 2006** Special planning procedures for 'Strategic Infrastructures Developments' = Application to An Bord Pleanála Local Planning Authority or An Bord Pleanála	**EIA Directive** **Planning and Development Act 2001** **Planning and Development Regulations 2001** **EC (EIA) Regulations 1989 – 2006** Department for the Environment, Communities and Local Government (DECLG) ---------- **Habitats and Birds Directives** **EC (Natural Habitats) Regulations 1997 – 2005** National Parks and Wildlife Service	**Grid connection –** Electricity Supply Board Network or EIRGRID The onus to engage consultations with statutory and non-statutory stakeholders is on the developers from site selection to EIA process. A list of consultee is provided during the pre-application consultation with the Foreshore Unit

SCOTLAND **One stop shop Licensing system**	**Pre-screening consultation with MS-LOT** Environmental Screening / Scoping Consultations directed through MS-LOT Issuing of a scoping opinion Preparation of documentation Public notice Pre-application consultations Gate-checking of documentation by MS-LOT (EIA/ AA, Navigational risk assessment, non-technical summary of Marine Licence application form and section 36 application form) Application MS LOT will distributes to statutory consulted Determination by MS-LOT Timescale for determination after receipt and payment of fee: between 8 and 12 weeks for Marine Licences alone or 9 Month target for s.36 consent Marine Scotland-Licensing Operation Team (MS-LOT)	**Marine and Coastal Access Act 2009** (offshore waters) **Marine (Scotland) Act 2010** (inshore waters) **Marine Licence** Marine Scotland Licensing Operation Team (MS-LOT)	**Electricity Act 1989** **Section 36 Electricity Act consent** (Stations over 1 MW) s.36 electricity consents and Marine Licences to be considered together under the Marine (Scotland) Act Planning Authorities are statutory consultees for s.36 consents MS-LOT	**Town and Country Planning (Scotland) Act 1997** **Growth and Infrastructure Act 2013 (s.21(4) to s. 21(6))** **Deemed Planning Permission** MS-LOT	**EIA Directive** **The Electricity Works (EIA) (Scotland) Regulations 2000** **The Marine Works (EIA) Regulation 2007** **The EIA (Scotland) Regulation 2011** *EIA on a case-by-case basis* *SDM approach* **Environmental Impact Statement** MS-LOT **Habitats Directives** **The Conservation (Natural Habitats & cons.) Regulations 1994** **The Offshore Marine Conservation (Natural Habitats & cons.) Regulations 2007** **The Wildlife and Natural Environment (Scotland) Act 2011** *Case-by-case basis* **European Protected Species Licences** MS-LOT	**Seabed Lease from the Crown Estate** for the use of inshore and offshore waters (Energy Act 2004) **Planning permission** for associated land-based development (Town and Country Planning (Scotland) Act 1997) **Safety zone consent** from the DECC (s.95 Energy Act 2004) **Statutory decommissioning scheme** (Energy Act 2004) – Decommissioning is administered by the DECC and decommissioning programmes must be agreed by the Secretary of State for Energy and Climate Change – Liaison with DECC should be made via MS-LOT **Consultation with statutory and non-statutory stakeholder** – Consultations are directed by MS-LOT at the screening and scoping stage of the application process. Public consultations take the form of public notice (responsibility of the developer during the pre-application step). Consultations after submission of the application are administered by MS-LOT

ENGLAND & WALES	**Pre-application** Marine Management Organisation Or Natural Resources Wales (for welsh inshore waters) *online account service may be used to submit EIA screening request/ EIA scoping request and EIS review* Planning Inspectorate for Nationally Significant Infrastructure Projects (over 100 MW)	**Marine and Coastal Access Act 2009** **Planning Act 2008** **Marine Licence** **Development Consent for Nationally Significant Infrastructure Projects** MMO For projects under 100 MW capacity in English inshore waters and Welsh and English offshore waters or Marine Resource Wales *In Welsh inshore waters* or Secretary of State for Energy and Climate Change (SSECC) after examination of the Planning Inspectorate Nationally Significant Infrastructure Projects (over 10 MW)	**Electricity Act 1989** **Planning Act 2008** **Section 36 Electricity Act Licence** offshore stations generating a capacity > 1 MW but = or < 100 MW - **Development Consent** *NSIPs* Marine Management Organisation or Planning Inspectorate *NSIPs*	**National Policy Statement** **Town and Country Planning Act 1990** **Planning Act 2008** **Planning Permission** Planning Permission for **Nationally Significant Infrastructures** (**projects > 100MW**) are dealt with by the **Planning Inspectorate** Local Planning Authority or SSECC after examination by the Planning Inspectorate	**EIA Directive** **Habitats Directive and Birds Directive** **The Electricity Works (EIA) (England and Wales) Regulations 2000** **The Marine Works (EIA) Regulation 2007** *EIA in a case-by-case basis* **Environmental Impact Statement** Marine Management Organisation or SSECC (after examination by the Planning Inspectorate)	**Safety zone consent** from the DECC (s.95 Energy Act 2004) **Statutory decommissioning scheme** (Energy Act 2004) Decommissioning is administered by the DECC and decommissioning programmes must be agreed by the Secretary of State for Energy and Climate Change **Zonal Development Agreement (seabed lease)** Crown Estate

NORTHERN IRELAND	**Pre-application** On a voluntary basis but expected for projects likely to require an EIA and / or AA / Water Framework Assessment EIA and HRA Screening and scoping Scoping consultation directed by the Marine Division (28 days) Issuing of a scoping opinion by the Licensing Team Pre-application consultation on the onus of the applicant Preparation of documents Application submission Consultations directed by the Licensing Team No statutory timeframe for processing application DOENI – Licensing Team Inshore waters Marine Management Organisation in offshore waters	**Marine and Coastal Access Act 2009** **Marine Act (Northern Ireland) 2013** **Marine Licence** DOENI – Licensing Team In inshore waters Marine Management Organisation in offshore waters	**Marine Act (Northern Ireland) 2013, Part 4** **Section 39 Electricity (Northern Ireland) Order 1992** **Generating Station Consent (Generating stations over 10 MW)** Department of Enterprise, Trade and Investment (DETI)	**Planning (Northern Ireland) Order** **Planning Permission** (for terrestrial works above the low water mark) DOENI – Planning Service	**EIA Directive** **Water Framework Directive** **Habitats Directives and Birds Directive** **Conservation of Habitats and Species Regulations 2010 (as amended)** **Offshore Marine Conservation (Natural Habitats & C.) Regulations 2007 (as amended)** **Environmental Impact Assessment consent decision** (one single EIA for Marine Licence, Planning Permission and section 39 consent) DOENI –Licensing Team	Application consultation process led by DOENI-LIT 28 days **Zonal Development Agreement (seabed lease)** Crown Estate **Zonal Development Agreement (seabed lease)** Crown Estate

PORTUGAL	**Pre-application Form** - (project characteristics and annexes specifying project location and site characteristics) - Pre-application with one of the Decentralised Departments of the Portuguese Environmental Agency (one per hydrographic regions) Directorate-Generale for Natural resources, Safety and Maritime Services (DGRM)	**Decree-Law 238/2015** Private Use title Directorate-Generale for Natural resources, Safety and Maritime Services (DGRM)	**Decree-law 215-B/2012** (licence on power production) **Ordinance 243/2013** (licence on reservation and power injection into the public grid) **Licence on power production and grid connection** Directorate-General of Energy and Geology (DGEG)	**Planning Permission** Local Planning Authority	**Decree Law 151-B/2013 (amended by DL 47/2014)** – transposes the Directive 2001/92/EC **Decree-law 215B/2012** **Environmental Licence (EIA)** Required if any part of the project is located within the national ecological reserve, Natura 2000 sites and/ or the national grid of protected areas. Otherwise if the project is not listed in the EIA legislation a favourable advice still needs to be issued by the regional EIA authority. Coordination Committee on Regional Development	**Ordinance 243/2013** **Grid connection request** – Electricidade de Portugal (EDP)

FRANCE Consolidation of the legal framework for consenting offshore renewable energy : Law Grenelle II n° 2010-788, July 12th, 2010	**Pre- Identification of development areas and Call for Projects** Roadmap for Offshore Wind Farms 1/ Technical survey for the identification of potential development areas led by CEREMA and RTE (Public Network for electric transport) – update of SEXTANT (GIS database) 2/ Planning and consultation of stakeholders for each Maritime façade under the coordination of the Préfet de Region and Préfet Maritime 3/ Call for Project launched by the Ministry of the Environment, Sustainable Development and Energy	**CGPPP** **Articles L 2124-1 and subsequent articles** **Decree n° 2004-308, 29, March 2004 –Décret n° 2016-9, 8th of january 2016** **Environment Code Articles L 214-1, L 214-2, R 214-1 and subsequent articles** **Concession d'occupation du domaine public maritime** (40 years) **Water Resource Protection Licence** Préfet de Département in inshore waters Maritime Préfet in offshore waters	**Energy Code** **Articles L 311-5** **Décret n° 2016-9, 8th of january 2016** **Energy Code Articles L 311-10 Call for tenders procedure** (authorisation to construct electricity generating installations deemed to be granted when projects are selected in a Call for tenders procedure) **Authorisation to construct & exploit electricity generating installations** (> 4.5 MW) Ministry of the Environment, Sustainable Development and Energy	**Town Planning Code** **L 421-5 and R 421-8-1** (Grenelle for the Environment, Decree n° 2012-41, 12th, January 2012) **Planning permissions <u>NOT required</u>** from Local Authorities	**Environment Code** **Article L 122-1 and subsequent articles** General provisions governing applicable to infrastructures works that are likely to impact the environment **Environment Code Article R 122-2 (annex)** **EIA mandatory for offshore installations** Content of EIA sets in art. R 122-5 (art 24 decree n°15-2015) **Article R 214-6** Specific provisions related to the protection of waters, marine and aquatic environment **Impact Studies** (Water Resource Protection Licence) **Environmental Impact Assessment** Environmental Authority	**Public consultations take the form of:** - **Public Debate –** National Public Debate Commission (article L 121- 8 and R 121-2 , Environment Code) mandatory for industrial equipment projects > 300 million € (timescale 4 months) - **Public Survey** attached to the concession Maritime Public Domain consent and Water Resource Use Licence (timescale 4-6 weeks) – Article L 123-1 and subsequent, Environment Code - Authorisation from the Ministry of civil aviation (R 244 – 1, Civil Aviation Code)

SPAIN	**Department of Industry receives application and coordinates the overall process** **No formal pre-application phase**	**Law 2/2013** **Concession of the Maritime Area** Ministry of the Agriculture, Food and Environment	**Royal Decree 1028/2007** **Administrative Authorisation** **Project Execution Approval** (commissioning of the specific project and allow applicant to start the construction) **Exploitation *Authorization*** (allow the installation to be powered up and proceed to commercial exploitation) Ministry of Industry		**Law 21/2013 Modifies the Royal Decree 1/2008** **Environmental Impact Statement** All project devoted to the production of energy on the marine environment are subject to a simplified environmental impact assessment Ministry of the Agriculture, Food and Environment	Additional consent from the Port Authority in case of occupation of public port Directorate General of Merchant Navy (part of the Ministry of development) authorizes the activities when they affect maritime safety, navigation, human life at sea

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