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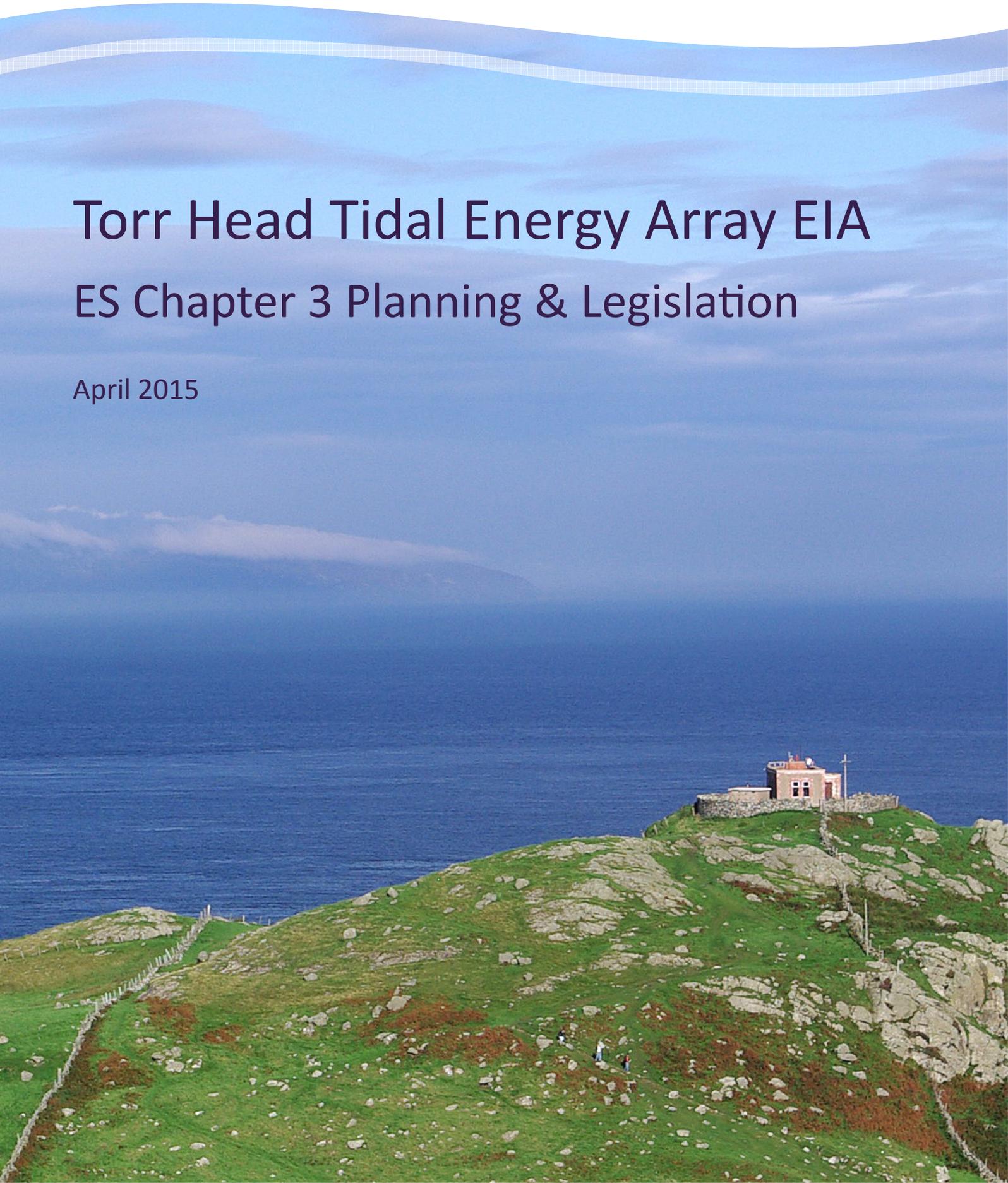


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Torr Head Tidal Energy Array EIA

ES Chapter 3 Planning & Legislation

April 2015



3 PLANNING AND LEGISLATION

3.1 Introduction

This chapter discusses the international, UK, Northern Ireland, regional and local planning and environmental policies and legislation that are directly relevant to the Project, with particular emphasis on policy and legislation relating directly to the offshore Project only.

Key information included in this chapter includes:

- > Marine policy and legislation;
- > Environmental Impact Assessment (EIA); and
- > Environmental protection and nature conservation.

3.2 Marine planning, policy and legislation

3.2.1 The Marine Act (Northern Ireland) 2013

The Marine Act (Northern Ireland) 2013 came into operation on the 18th September 2013. The Act, builds on the provisions of the UK Marine and Coastal Access Act (MCAA) 2009 with respect to Northern Ireland territorial waters and includes:

- > Marine planning;
- > Marine conservation; and
- > Marine licensing.

Implementation of the Marine Act will assist Northern Ireland in contributing to the aim of having clean, healthy, productive and biologically diverse oceans and seas. The Act also provides for marine plans, marine conservation zones and to make further provision in relation to marine licensing for certain electricity works in the Northern Ireland inshore region. The inshore region is described as the area of sea within the seaward limits of the territorial sea (out to 12 nm) of the UK adjacent to Northern Ireland, including the bed and subsoil of the sea within that area (DoENI, 2014a).

Marine planning

Under the Marine Act (Northern Ireland) 2013 the Department of Environment Northern Ireland (DoENI) Marine Division is able to prepare a Marine Plan for the whole or part of the inshore region of Northern Ireland territorial waters. The Northern Ireland Marine Plan (NIMP) must conform with the UK Marine Policy Statement (MPS) prepared under the MCAA 2009 and will bring together information and policies on the multiple uses of the marine area, together with spatial and temporal data for the water column and the seabed. It will act as a strategic tool in making decisions about the best use of the marine area to maximise compatibility of activities and achieve sustainable development.

All the UK administrations (UK Government, The Scottish Government, the Welsh Assembly Government and the Northern Ireland Executive) were involved in the preparation of the UK MPS which, following its adoption in March 2011, provides the framework for the preparation of national and regional marine plans across the UK. The plan also provides the basis against which sustainable licensing decisions will be made until such times as regional and national marine plans are in place.

The UK MPS sets out a number of key strategic priorities for the UK's waters. These strategic priorities are to:

- > Promote sustainable economic development;
- > Enable the UK's move towards a low-carbon economy, in order to mitigate the causes of climate change and ocean acidification and adapt to their effects;

- > Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and
- > Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

The UK MPS also emphasises the importance of renewable energy and recognises the importance of considering marine renewable projects in marine planning. This includes the following statements that "Contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning" (paragraph 3.3.1) and "A significant part of the renewable energy required to meet these targets and objectives will come from marine sources" (paragraph 3.3.2) (HM Government, 2011).

Stakeholder engagement will be an essential part of the development of the NIMP. In addition, the DoENI Marine Division must consult with the other departments with marine functions (Department of Agriculture and Rural Development (DARD), Department for Regional Development (DRD), Department for Enterprise, Trade and Investment (DETI) and Department of Culture, Arts and Leisure (DCAL)) as the NIMP will state their policies in connection with the sustainable development of the marine area. If the NIMP includes retained functions (those not fully devolved to Northern Ireland) the Secretary of State must approve the plan before it can be adopted (DoENI, 2014a).

Marine conservation

Under the Marine Act (Northern Ireland) 2013, the DoENI Marine Division can designate Marine Conservation Zones (MCZs). The aim of the designation is to protect rare, threatened or nationally important marine habitats, species and geological features taking fully into account any economic, cultural or social consequences of doing so (DoENI, 2014). The Secretary of State must agree to the making of the designation. It is intended that the new designation will exist alongside the existing marine nature conservation sites (collectively referred to as Marine Protected Areas (MPAs)) described below to produce an ecologically coherent network:

- > Natura sites:
 - Special Areas of Conservation (SACs) designated under the EC Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) for the protection of rare and vulnerable habitats and species listed under Annexes I and II respectively; and
 - Special Protection Areas (SPAs) designated under the Birds Directive (Directive 2009/147/EC on the conservation of wild birds) for the protection of rare and vulnerable birds listed under Annex of the Directive and regularly occurring migratory species.
- > Wetlands of international importance (Ramsar sites) designated under the Ramsar Convention (Convention on Wetlands of International Importance especially as Waterfowl Habitat)
- > Areas of Special Scientific Interest (ASSIs) designated for nationally important habitats and species in Northern Ireland; and
- > Marine Nature Reserves (MNRs) for nationally important habitats and species.

In May 2013 the DoENI Marine Division published for consultation, its draft Strategy for Marine Protected Areas (MPAs) in the Northern Ireland Inshore Region (DoENI, 2013). This draft strategy sets out how the designation of an MCZ under the Marine Act will form part of Northern Ireland's wider strategy for the creation of new MPAs in Northern Ireland waters. This strategy is discussed in more detail in Section 3.2.2.

Marine licencing

Part 4 of the Marine and Coastal Access Act (MCAA) 2009 introduced a new system of marine licensing which extended to Northern Ireland (DoENI, 2014b). The 2009 Act allowed for the use of special procedures in respect of certain electricity works in parts of the UK. The Marine Act (Northern Ireland) 2013 allows for the extension of these arrangements to Northern Ireland territorial waters (out to 12 nm). These special procedures will apply in situations where both a Marine Licence (from DoENI Marine Division) and a generating consent (Article 39 consent) (from DETI) are required and will allow for parallel consideration of applications for both types of consent.

Marine Licences are required for a range of projects requiring the construction, alteration or improvement of new marine works or alteration or improvement of any existing works. This includes the construction of renewable energy generating infrastructure. Marine Licences are also required for projects involving the deposition or removal of any substance or object in or from the sea – or on or under the sea bed, using a vehicle, vessel, aircraft, a marine structure or floating container.

3.2.2 Marine Strategy Framework Directive (MSFD)

The Marine Strategy Framework Directive (MSFD) was introduced on 15th July 2008 before being transposed into UK Legislation on 15th July 2010. The Directive is the environmental pillar of the Integrated European Maritime Policy which focuses on the development of a coherent, co-ordinated and integrated approach to the management of marine environment. The MSFD constitutes a vital environmental component of the European Union's future maritime policy and is designed to achieve full economic potential of oceans and seas in harmony with the marine environment (AFBI, 2009).

The main requirement of the MSFD is for Member States to prepare national strategies to manage their seas to achieve Good Environmental Status (GES) by 2020 at the latest (Scottish Government, 2014). This is to be achieved by:

- > Assessing the current state of UK seas; and
- > Providing detailed description of what GES means for UK waters, with a set of associated targets and indicators.

Timescales for implementing the MSFD and achieving GES are as follows:

- > July 2010 - transpose the Directive;
- > July 2012 - undertake an initial assessment of marine waters;
- > July 2013 - determine a set of characteristics of and comprehensive targets and indicators to guide progress to GES;
- > July 2014 - establish and implement a co-ordinated monitoring programme for the on-going assessment of GES;
- > December 2015 - develop a programme of cost effective measures to achieve GES; and
- > December 2016 - implement the programme of measures.

In December 2012, the UK Marine Strategy Part 1 was published. This included an assessment of UK marine waters; proposals on defining Good Environmental Status (GES) and developing targets and indicators for achieving and monitoring GES. Provisions for Northern Ireland to work with other UK administrations e.g. Scottish Government, DEFRA and the Welsh Government towards achieving GES are set out under the MSFD.

In 2013, under these provisions, the DoENI Marine Division published its draft Strategy for Marine Protected Areas (MPAs) in the Northern Ireland Inshore Area (DoENI, 2013). The strategy sets out how Northern Ireland intends to use MPAs as one of the tools available to help protect and improve ecosystems in the Northern Ireland inshore region (i.e. within 12 nm) and fulfil international and national legal obligations, in particular those set out under the MSFD. The draft strategy reinforces Northern Ireland's commitment to the development of an ecologically coherent network of well managed MPAs both at Northern Ireland level and as a UK contribution to the wider OSPAR network (DoENI, 2013).

The draft Strategy also set out how the DoENI Marine Division plans to establish appropriate management measures to enable the achievement of favourable condition status and/or GES through regular monitoring of species and habitats while promoting sustainable use of Northern Ireland waters. These management measures contributed towards preparation of Part 2 of the UK Marine Strategy which was published on 5th August 2014. This describes the UK's MSFD marine monitoring programme for assessing progress towards meeting UK targets for achieving GES.

3.2.3 Article 39 Consent

The Department for Enterprise, Trade and Investment (DETI) is responsible for granting consent under Article 39 of the Electricity (Northern Ireland) Order 1992 for the construction and operation of an offshore energy generating station wholly or partially driven by wind or water with capacity greater than 1 MW in Northern Ireland's territorial waters.

3.3 Environmental Impact Assessment (EIA)

3.3.1 EIA Directive and EIA Regulations

The requirements for carrying out an EIA are set out under Directive 85/337/EEC on the assessment of the effects of certain public and private developments on the environment ("the EIA Directive") as amended by Council Directives 97/11/EC, 2003/35/EC and 2009/31/EC. The European Commission (EC) has now brought the 1985 Directive and its three subsequent revisions into one single codified Directive without making changes to existing provisions.

The purpose of the EIA Directive is to ensure that the Competent Authority, in relation to development that is likely to have significant effects on the environment, has appropriate information to enable it to come to a decision on whether or not to grant consent. The EIA Directive sets out procedures that must be followed for such projects before they can be given 'development consent'.

Where a development is deemed to need an EIA, environmental information must be provided by the developer in the form of an Environmental Statement (ES). The Competent Authority cannot grant consent for an EIA development without taking into account an ES.

The requirements of the EIA Directive are transposed into UK and Northern Ireland law through a series of EIA Regulations. The Regulations that apply to this Project as confirmed by DoENI Marine Division and Department for Enterprise, Trade and Investment (DETI) in the EIA Scoping Opinion (DoENI Marine Division and DETI, 2014) are summarised in Table 3.1 below.

Table 3-1 EIA Regulations

EIA Regulation	Description
Marine Works (Environmental Impact Assessment) Regulations 2007	The Marine Works (Environmental Impact Assessment) Regulations 2011 apply to all activities requiring a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009. These Regulations came into force on 6th April 2011. Amendments to these Regulations were made to allow the streamlining of the regulatory process, bringing together deposits, navigational activity, harbour works and marine minerals dredging.
Regulation 5(3) of the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008	Where projects also require Article 36 consent these are also subject to the requirements of the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008.

The requirements of both Regulations can be met with one ES which will be submitted in support of both the Marine Licence application and the Article 39 consent application. Any differences in the wording of the different Regulations must be addressed fully in the ES to ensure that the requirements of both Regulations are satisfied (DoENI Marine Division and DETI, 2014).

3.4 Nature conservation (HRA and wildlife licences)

3.4.1 Habitats and Birds Directives

The Habitats Directive affords protection to European sites designated under the Habitats Directive (Special Areas of Conservation (SACs)) and the Birds Directive (Special Protection Areas (SPAs), collectively referred to as Natura 2000 or European sites. Under Article 6(3) of the Habitats Directive (EC Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna) any *plan or project which is not directly connected with or necessary to the management of a European site but would be likely to have a significant effect on such as site,*

either individually or in-combination with other plans and projects, shall be subject to an appropriate assessment of its implications for the European site in view of the site's conservation objectives."

The Habitats Directive applies the precautionary principle to these sites and projects can only be permitted when it is ascertained that there will be no adverse effect on the integrity of the site(s) in question. Where adverse effects are identified a project may only be permitted in the absence of alternative solutions if there is an Imperative Reason of Overriding Public Interest (IROPI) for the project to go ahead. Where this is the case, Member States are required to take all compensatory measures necessary to ensure that the overall coherence of the Natura 2000 network is protected.

The Habitats Directive is transposed in Northern Ireland by the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 which covers onshore areas and territorial waters (out to 12 nm). In accordance with these Regulations, the effects of a project on the integrity of a European site are assessed and evaluated as part of the Habitat Regulations Assessment (HRA) process. Findings from the HRA carried out as part of this Project are presented in the accompanying Torr Head Tidal Energy Array HRA Report.

3.5 Wildlife licences

Following enactment of the Marine Act (Northern Ireland) 2013 responsibility for wildlife licensing in the marine environment (out to 12 nm) passed from NIEA to the DoENI Marine Division. As discussed in the DoENI's Marine Wildlife Licensing: Guidance for Applicants (October 2014) Wildlife Licences are required under the following legislation:

- > The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and
- > The Wildlife (Northern Ireland) Order 1985 (as amended).

3.5.1 The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended)

Under this legislation it is an offence to deliberately or recklessly capture, kill, injure, harass or disturb any species listed in Annex IV of the Habitats Directive as a European Protected Species (EPS). It is also an offence to deliberately or recklessly obstruct access to a breeding site or resting place of any such animal, or otherwise to deny the animal use of the breeding site or resting place. In addition, it is an offence to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs. For cetaceans (dolphins, porpoises and whales) only, there is a more general offence deliberately or recklessly to disturb these creatures. The damage or destruction of a breeding site or resting place of any EPS is an offence of strict liability. A Wildlife Licence is required from the DoENI Marine Division for any activity that might result in disturbance to an EPS.

3.5.2 The Wildlife (Northern Ireland) Order 1985 (as amended)

With regard to the marine environment, under this Order, as amended by the Wildlife and Natural Environment (NI) Act 2011, it is an offence to intentionally kill, injure, disturb or take a range of marine species including basking shark, seals (grey and harbour) and common skate. The 2011 amendment also introduced a new statutory duty on Government Departments and public bodies to take further action for the conservation of biodiversity (DoENI, 2014d).

The Wildlife (Northern Ireland) Order 1985 (as amended) is equivalent to Part I of the Wildlife and Countryside Act 1981 in England and Wales and the Wildlife Act 1976 as amended by the Wildlife (Amendment) Act 2000 in the Republic of Ireland. With regard to the marine environment, the DoENI Marine Division has the power to issue Wildlife Licences to permit what would otherwise be prohibited action under nature conservation legislation. However, a licence will only be granted where the activity satisfies the requirements of the relevant legislation and where there are no alternative options or mitigation measures available to reduce the risk of an offence (DoENI, 2014e).

3.6 Onshore planning

3.6.1 Planning consent and EIA requirements

In addition to the consents already described for the offshore components of the Project, planning permission under the Planning (Northern Ireland) Order 1999 will be required for the landfall, onshore cables and substation. This includes all onshore activities out to the Mean Low Water Spring (MLWS).

The onshore Project consent applications for the above will need to be accompanied by an ES prepared in accordance with the Planning (Environmental Impact Assessment) Regulations (NI) 1999 as amended by The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008.

The proposed scope of the EIA for the onshore Project was presented in the EIA Scoping Report that was issued to DoENI Marine Division and DETI in June 2013 (RPS, 2013). An opinion on this scope was then provided by DoENI Marine Division and DETI in the EIA Scoping Opinion (DoENI and DETI, 2014). Based on the EIA Scoping Report and subsequent work carried out to further refine the onshore Project, further information on the potential impacts that will need to be considered as part of an EIA for the onshore Project is provided in Chapter 22.

Screening may also be required as part of a Habitat Regulation Assessment (HRA) under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 to determine whether the onshore components of the Project are likely to have an adverse effect on the integrity of a Natura 2000 site and therefore are subject to an Appropriate Assessment under the Habitats Directive.

The onshore components of the Project will also be required to take account of relevant planning policy set out in strategic planning documents, Planning Policy Statements (PPSs) and local development plans. Further detail on specific planning policies will be provided as part of the onshore planning application.

3.7 References

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