



Guidance Documents: Key Legislation for Consenting in Ireland

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

Ireland regulatory context

In Ireland, regulatory responsibility for marine renewable energy (MRE) projects is divided between various Government Departments, State agencies and local authorities (county councils) depending on the aspect of responsibility being considered as well as the location of the MRE development (Table 1). This document focuses on the regulatory requirements for projects in the territorial sea (high water mark to 12 nautical mile sea limit) and Exclusive Economic Zone (EEZ; 12-200 nautical miles). Prior to 2021, offshore energy (wind, wave, and tidal) projects could only be consented in the foreshore (high water mark to 12 nautical miles) but a new marine planning and consenting system was enacted through the Maritime Area Planning Act, 2021.² Currently, there is one offshore wind project operational and two ocean energy test centres, all within the territorial sea. There are strong policy drivers and government plans to expand offshore wind significantly in order to meet national and European Union (EU) renewable energy targets (5 GW offshore wind by 2030). At the Irish level, the immediate focus is on offshore wind with MRE potentially having a role in the longer term. At the EU level, there is a target of 1 GW of ocean energy by 2030 which may also influence Irish action in this area.

Table 1. Regulatory jurisdictions in Ireland.

Designation	Location	Agencies with jurisdiction
Nearshore	Generally mean high water to 3 nautical miles (but may vary)	Local authorities will have selected responsibilities in this area including offshore energy developments that <u>do not</u> require an Environmental Impact Assessment (EIA) or Appropriate Assessment. Department of the Environment, Climate and Communications (DECC) ³ , Department of Housing, Local Government and Heritage (DHLGH) ⁴ , Maritime Area Regulatory Authority (MARA) ⁵ , Commission for Regulation of Utilities (CRU) ⁶ , Sustainable Energy

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

² <https://www.irishstatutebook.ie/eli/2021/act/50/enacted/en/html>

³ <https://www.gov.ie/en/organisation/departments/departments-of-the-environment-climate-and-communications/>

⁴ <https://www.gov.ie/en/organisation/departments/departments-of-housing-local-government-and-heritage/>

⁵ <https://www.maritimeregulator.ie/>

⁶ <https://www.cru.ie/>



		Authority of Ireland (SEAI) ⁷ , Marine Institute ⁸ , An Bord Pleanála ⁹ , National Parks and Wildlife Service (NPWS) ¹⁰
Territorial Sea	Mean high water to 12 nautical miles	DECC, DHLGH, MARA, CRU, SEAI, Marine Institute National Parks and Wildlife Service (NPWS), An Bord Pleanála
Exclusive economic zone	12 to 200 nautical miles	DECC, DHLGH, MARA, CRU, SEAI, Marine Institute NPWS, An Bord Pleanála

Table 2. Government departments and agencies with jurisdiction over aspects of licensing/authorization for MRE projects.

Agency	Relevant Statute	Implementation
Department of the Environment, Climate and Communications (DECC)	Climate Action and Low Carbon Development (Amendment) Act 2021 ¹¹ [CALCD]	The CALCD Act provides for the approval of plans by the Government in relation to climate change (e.g., Climate Action Plan ¹²) for the purpose of achieving a climate neutral economy by 2050 and to promote climate justice and the just transition. DECC sets energy policy including that for offshore renewable energy.
	Maritime Area Planning Act, 2021 ¹³ [MAPA]	MAPA provides for the creation of Designated Maritime Area Plans (DMAPs) which will form the planning basis for future MRE development, which DECC will be responsible for in relation to energy.

⁷ <https://www.seai.ie/>

⁸ <https://www.marine.ie/site-area/home/home>

⁹ <https://www.pleanala.ie/en-ie/home>

¹⁰ <https://www.npws.ie/>

¹¹ <https://www.irishstatutebook.ie/eli/2021/act/32/enacted/en/print.html>

¹² <https://www.gov.ie/en/publication/7bd8c-climate-action-plan-2023/>

¹³ <https://www.irishstatutebook.ie/eli/2021/act/50/enacted/en/html?q=maritime>



<p>Department of Housing, Local Government and Heritage (DHLGH)</p>	<p>Maritime Area Planning Act, 2021</p>	<p>Sets the overarching framework for national marine planning (complying with EU Directive on MSP (2014/89/EU))¹⁴, including provisions relating to Designated Maritime Area Plans (DMAPs), and provides for a new marine consenting system comprising of three different parts:</p> <ol style="list-style-type: none"> 1. Maritime Area Consents (MACs), 2. Development Consent, and 3. Maritime Usage Licences (MULs). <p>MAPA also establishes the Maritime Area Regulatory Authority (MARA), and provides for Ministerial guidelines, directives, and further regulations where necessary.</p> <p>A person who wishes to occupy a part of the maritime area for a usage that requires development consent (like planning permission) must first apply to MARA for a MAC. A MAC is the State consent and relates to the actual property and the person, not the project. You must have a MAC before applying for development consent.</p> <p>Development consent refers to the substantive parts of developing a project, equivalent to planning permission on land and includes EIA and Appropriate Assessment. MAPA adds a new Part, “Part XXI Maritime Development” into the Planning and Development Act 2000 for the purpose of establishing a framework for assessing development in the maritime area.</p> <p>MULs are required for certain maritime usages that do not require planning permission or an EIA (see below under MARA)</p> <p>Under MAPA and the National Marine Planning Framework, public bodies are now obliged to take the objectives of the plan into account in their decision-making processes.</p>
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¹⁴ <https://eur-lex.europa.eu/eli/dir/2014/89/oj>



	Foreshore Act, 1933 as amended ¹⁵	Provides for licences and leases of the foreshore prior to enactment of the new Maritime Area Planning Act, 2021. The Foreshore Acts are still applicable to certain marine activities such as aquaculture and will remain so, despite the enactment of MAPA. For example, the Arklow Bank offshore wind farm and the ocean energy test sites were consented under this legislation, but the foreshore consenting portfolio covering existing MRE activities will transfer to MARA in due course.
	European Communities (Marine Strategy Framework) Regulations 2011, as amended ¹⁶	Transposes the provisions of the EU Marine Strategy Framework Directive (2008/56/EC) ¹⁷ into Irish law.
	European Communities (Birds and Natural Habitats) Regulations 2011, as amended ¹⁸	Transposes the provisions of the EU Habitats and Birds Directives into Irish law including requirements relating to the designation and management of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and associated provisions on Appropriate Assessment, which can impact on if a MRE development can be built and might also impact on terms and conditions attached to the consent.
	Wildlife Acts, 1976 as amended ¹⁹	Provides for the conservation of certain habitats and species. Applies to the foreshore (mean high water to 12 nautical mile).
Maritime Area Regulatory Authority (MARA)	Maritime Area Planning Act, 2021	Processes applications for MACs and MULs. MULs cover, for example, navigational and maintenance dredging; marine environmental surveys for the purposes of scientific discovery and site investigations ²⁰ ; seaweed harvesting; and non-permanent platforms/pontoons. MARA also has enforcement and compliance responsibilities in relation to MACs and MULs.
An Bord Pleanála	Maritime Area Planning Act, 2021	Processes applications for development consent under MAPA, including compliance with EU law such as requirements deriving from the EIA Directive and Birds and Habitats Directives.

¹⁵ <https://revisedacts.lawreform.ie/eli/1933/act/12/front/revised/en/html> [consolidated version]

¹⁶ <https://www.irishstatutebook.ie/eli/2011/si/249/made/en/print?q=marine+strategy+framework>

¹⁷ <http://data.europa.eu/eli/dir/2008/56/oj>

¹⁸ <https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print?q=natural+habitats>

¹⁹ <https://revisedacts.lawreform.ie/eli/1976/act/39/front/revised/en/html> [consolidated version]

²⁰ At the time of writing MARA is working on refining the list of survey types that require a licence with a view to exempting certain survey techniques from the requirement to obtain a licence.



	<p>Planning and Development Act, 2000 as amended²¹</p> <p>EU EIA Directive → Numerous EIA Regulations e.g., Planning and Development Regulations 2001, as amended; EU (Planning and Development) (EIA) Regulations 2018²²</p>	<p>Covers strategic infrastructure development and interacts with Part 8 of MAPA in establishing a framework for assessing development in the maritime area.</p> <p>The EU EIA Directive is transposed into Irish law through numerous statutory instruments, updated to take account of any changes to the over-arching Directive. The developer is responsible for submitting a report on the effects, if any, which the proposed development, if carried out, would have on the environment and shall include the information specified in Annex IV of the Environmental Impact Assessment Directive, as amended.</p> <p>The EIA is intended to identify, describe and assess the direct and indirect significant effects of a project on the following factors: ‘a) population and human health; b) biodiversity, with particular attention to species and habitats protected under nature conservation legislation; c) land, soil, water, air and climate; d) material assets, cultural heritage and the landscape; e) the interaction between the factors referred to in points (a) to (d)’ (Article 3(1)).</p> <p>The description of the likely significant effects on the environment should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term, and long-term, permanent and temporary, positive and negative effects of the project.</p>
Commission for Regulation of Utilities (CRU)	Electricity Regulation Act, 1999 as amended ²³	Processes applications for Licences to Generate and Supply Electricity (section 14) and Authorisation to Construct and or Reconstruct a Generating Station (section 16).
National Parks and Wildlife Service (NPWS)	Wildlife Act, 1976 as amended European Communities (Birds and Natural Habitats) Regulations 2011, as amended	Licensing responsibilities under the Wildlife Acts and also responsible for licensing of specified activities in designated European sites (SACs and SPAs).

²¹ <https://revisedacts.lawreform.ie/eli/2000/act/30/front/revised/en/html> [consolidated version]

²² <https://www.irishstatutebook.ie/eli/2018/si/296/made/en/print?q=environmental+impact+assessment>

²³ <https://www.irishstatutebook.ie/eli/1999/act/23/enacted/en/print.html>



Note: It is the responsibility of individual regulatory authorities in Ireland to ensure that the provisions of both EU and Irish legal requirements are adhered to in the delivery of their statutory functions. This is particularly important in relation to requirements deriving from the EU Environmental Impact Assessment (EIA) Directive and EU Birds and Habitats Directives. In practice, regulatory authorities will circulate all relevant applications to a list of Statutory Consultees for observations to inform their decision concerning an application. The National Parks and Wildlife Service, for example, will provide observations and advice concerning national and international nature conservation obligations to regulatory authorities when so requested.

Under the revised EU Renewable Energy Directive ((EU) 2023/2413),²⁴ significant changes are expected to occur. By 21 February 2026, Member States must adopt one or more plans designating acceleration areas for one or more types of renewable energy sources. These plans are to designate areas where deployments of a specific type of renewable energy are not expected to have a significant environmental impact. Such plans must also exclude Natura 2000 sites and areas designated under national conservation programmes, major bird and marine mammal migratory routes or other areas of high sensitivity. Before their adoption, these plans must be subject to a Strategic Environmental Assessment (SEA) and, if they are likely to have a significant impact on Natura 2000 sites, to the appropriate assessment process deriving from Article 6(3) of the Habitats Directive (92/43/EEC).²⁵

Species and/or populations at risk

Potential effects to species and/or populations at risk are currently regulated by the National Parks and Wildlife Service (NPWS) and various regulatory authorities (Table 3).

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

Agency	Relevant instrument	Implementation
National Parks and Wildlife Service (NPWS) [See Note above]	Wildlife Acts, 1976-2023	All cetaceans and seals are protected species listed on the 5 th Schedule. In 2022, ‘protected wild animal’ status was conferred on Basking Sharks (<i>Cetorhinus maximus</i>) under Section 23 of the Wildlife Act, 1976 as amended. Section 23 makes it an offence to injure a protected wild animal or wilfully interfere with or destroy the breeding or resting places of a protected wild animal. Under this Act, Natural Heritage Areas (NHAs) may be established to protect habitats or species.
Regulatory Authority [see Note above]	European Communities (EC) (Birds and Natural Habitats) Regulations 2011, as amended	The EC (Birds and Natural Habitats) Regulations 2011, as amended, implement the habitats and species protection requirements of the EU Birds and Habitats Directives including requirements in relation to Appropriate Assessment (AA). Regulation 23 of the 2011 Regs. further require that the requisite measures are taken to establish a system of strict protection for the animal species listed in Annex

²⁴ <http://data.europa.eu/eli/dir/2023/2413/oj>

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31992L0043>



		<p>IV(a) in their natural range, prohibiting all forms of deliberate capture or killing of specimens of these species in the wild; deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; deliberate destruction or taking of eggs from the wild; deterioration or destruction of breeding sites or resting places.</p> <p>An AA is an assessment of the potential adverse effects of a plan or project (in combination with other plans or projects) on Special Areas of Conservation under the Habitats Directive and Special Protection Areas under the Birds Directive (collectively known as the Natura 2000 network). AA is not a prohibition on new development or activities but involves a case-by-case examination of the implications for the Natura 2000 site and its conservation objectives. If adverse effects are likely, or in cases of doubt, the project cannot proceed. In cases where there are Imperative Reasons of Overriding Public Interest (IROPI)²⁶ requiring a project to proceed, a dedicated process applies.</p>
<i>Department of Housing, Local Government and Heritage (DHLGH)</i>	<i>Marine Protected Areas Bill [forthcoming]</i>	<i>In December 2022 the government approved the General Scheme of a Bill to provide for the designation and effective management of Marine Protected Areas. As of April 2024, this has not yet been officially enacted but once it is, it will introduce a new system of designating national Marine Protected Areas.</i>
<i>DHLGH</i>	<i>EU Nature Restoration Law [forthcoming]</i>	<i>This aims to restore at least 20% of the EU's land and sea areas by 2030 and a target for all ecosystems in need of restoration to be restored by 2050. The current working text²⁷ includes a requirement to prevent significant deterioration of areas subject to restoration that have reached good condition and of certain listed areas of terrestrial and marine habitats.</i>

²⁶ These can include reasons of a social or economic nature. For IROPI to be granted, both Ministers must consult (DECC and DHLGH) and there may need to be further consultations between the Minister, ABP, and the applicant leading to modifications of the project. In certain situations, an opinion from the European Commission may be necessary. If it is determined that compensatory measures are sufficient, ABP may grant development consent, the Minister (DHLGH) must inform the Commission (including info on compensatory measures). If the compensatory measures are not sufficient, ABP cannot grant consent. To date, Galway Port is the only significant infrastructure project to undertake the IROPI route and it has yet to be approved 10 years since the project first sought approval.

²⁷ See https://www.arc2020.eu/wp-content/uploads/2023/11/NRL_Text_November2023_en.pdf [accessed 08/02/2024]



Habitat alteration or loss

Potential effects to habitat are regulated by various regulatory authorities (Table 4).

Table 4. Legislation related to habitat alteration or loss.

Agency	Relevant instrument	Implementation
Regulatory Authority [see Note above]	European Communities (Birds and Natural Habitats) Regulations 2011, as amended	A development that is considered by the regulatory authority to have the potential for a likely significant effect on a European site cannot be consented until an Appropriate Assessment (AA), undertaken by the regulatory authority, has ascertained that the development will have no adverse effect on the integrity of those European sites. If the development is found to have adverse effects, it cannot proceed i.e., unlike EIA the outcome of an AA is binding.
Regulatory Authority	EU Marine Strategy Framework Directive (2008/105/EC) ²⁸ → EC (Marine Strategy Framework) (Amendment) Regulations 2017 ²⁹	MRE developments need to demonstrate that the proposed development does not jeopardise compliance with Good Environmental Status (GES) of the marine waters. GES Descriptors relevant to habitat alteration and loss include biodiversity (1), populations of commercial species (3) and seafloor integrity (6).

Effects on water quality

Potential effects to water quality are regulated by DHLGH with Environmental Protection Agency (EPA), Marine Institute, and various regulatory authorities (Table 5).

Table 5. Legislation related to effects on water quality.

Agency	Relevant instrument	Implementation
Department of Housing, Local Government and Heritage (DHLGH) with Environmental Protection Agency (EPA) and Marine Institute and Regulatory Authority	EU Marine Strategy Framework Directive (MSFD) (2008/105/EC) → EC (Marine Strategy Framework) (Amendment) Regulations 2017	MSFD aims to achieve Good Environmental Status of marine waters - this includes coastal waters, but not Water Framework Directive (WFD) transitional waters (e.g., estuaries, sea loughs, or coastal lagoons). This is done with reference to eleven descriptors. MRE developments usually address compliance with MSFD within their Environmental Impact Assessment (EIA) Report so the regulator can ensure there are no risks to water quality.
	Water Framework Directive (2000/60/EC) ³⁰ → European Communities (Water	Aim is to improve and protect the chemical and ecological status of surface waters from rivers, lakes, groundwaters, estuaries and coastal waters out to 1 nautical mile. MRE developments usually address compliance with WFD within their EIA Report so the

²⁸ <https://eur-lex.europa.eu/eli/dir/2008/56/oj>

²⁹ <https://www.irishstatutebook.ie/eli/2017/si/265/made/en/print>

³⁰ <https://eur-lex.europa.eu/eli/dir/2000/60/oj>



	Policy) Regulations 2003 ³¹	regulator can ensure there are no risks to water quality.
	Directive 2013/39/EU ³² amending Water Framework Directive (2000/60/EC) and the Marine Strategy Framework Directive (2008/105/EC) as regards priority substances in the field of water policy	MRE developments usually address compliance with this Directive within their EIA Report so the regulator can ensure there are no risks to water quality from leaks or discharges of harmful substances/materials.

Effects on social and economic systems

Potential social and economic effects are regulated by various regulatory authorities (Table 6).

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

Agency	Relevant instrument	Implementation
Regulatory Authority	<i>Potentially Environmental Impact Assessment (EIA) Directive</i> ³³	The Irish legislation transposing the EU EIA Directive does not require assessment of or detailed socio-economic analysis. Coverage of these types of issues can be provided as part of the wider application for development consent. Irish guidance says this type of information should be avoided in an EIA report, unless issues such as economic patterns give rise directly to significant effects. In practice, however, many EIA reports contain socio-economic information.

Additional Information

Marine Spatial Planning (MSP)

Under the EU Maritime Spatial Planning Directive (MSPD) (2014/89/EU), all coastal Member States of the EU were required to have maritime spatial plans in place by 31 March 2021 at the latest. After significant periods of consultation, the Irish Government published its National Marine Planning Framework (NMPF) in July 2021.³⁴ The NMPF provides a policy framework for MSP, which will be supplemented by a statutory Marine Planning Policy Statement in due course. The NMPF provides guidance on how MSP should be conducted but does not in itself, have a zoning component or contain priority objectives for specific sea areas. Rather the NMPF outlines a number of Overarching Marine Planning Policies covering objectives relating to environmental, economic and social aspects. Those relating to the environment, for example,

³¹ <https://www.irishstatutebook.ie/eli/2003/si/722/made/en/print>

³² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32013L0039>

³³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0052>

³⁴ <https://www.gov.ie/en/publication/60e57-national-marine-planning-framework/>



align with the provisions of the Marine Strategy Framework Directive (MSFD). Those relating to the economy focus on co-existence and infrastructure, whereas those covering more social aspects relate to access, employment, heritage, seascape, and rural/island communities.

In addition to the overarching policies, there are 16 Sectoral Marine Planning Policies, covering a range of activities including Offshore Renewable Energy. The Maritime Area Planning Act, 2021, which provides the legal basis for MSP, also provides for Designated Maritime Area Plans (DMAPs), essentially a marine plan that can cover a region or activity and be proposed by a public body to advance a particular sector, a number of sectors or a particular location. All future Offshore Renewable Energy will be taken forward through DMAPs, meaning it will not be possible to propose an offshore energy development outside a DMAP area.

In July 2023, a proposal for a South Coast Designated Maritime Area Plan (DMAP) was published by government. This covers an area of 8,600 square kilometres in size, extending from the mean high-water mark on Ireland's south coast to the 80-metre depth contour and/or the edge of the Irish EEZ and will effectively dictate the second round of offshore wind energy developments in Irish waters. The proposed plan was subject to a public consultation and at the time of writing, submissions made are still being reviewed. Once completed a 'Draft DMAP' can then be published. This will identify specific areas for future offshore renewable energy development and be subject to a further six-week statutory public consultation period. After that the draft DMAP will be presented to the Minister for Housing, Local Government and Heritage and both houses of the Oireachtas [parliament] for approval.

Adaptive Management

Both the EU MSFD and the EU MSPD refer to adaptive management. Under MSFD, the marine strategies developed are required to “apply an EBA to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of Good Environmental Status (GES) and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations” (Article 1(3)). Furthermore, Article 3(5) of the Directive explicitly states that “adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status” but no further detail is available on how this is to be achieved in practice. This is re-iterated in the MSPD which states that maritime spatial planning should apply an ecosystem-based approach thereby allowing an adaptive management approach “which ensures refinement and further development as experience and knowledge increase, taking into account the availability of data and information at sea basin level to implement that approach.” Given the widespread changes and reform taking place in the consenting processes for offshore energy in Ireland at the time of writing, it is not yet known if or how adaptive management principles will be embedded in their forthcoming implementation.

Consistency Between Jurisdictions

Under the EU EIA Directive, in compliance with the Espoo Convention on Environmental Impact Assessment in a Transboundary Context³⁵, Ireland (and all Member States) must consult with neighbouring countries on the potential transboundary effects of the proposed development and the measures envisaged to reduce or eliminate such effects.

³⁵ https://unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf



Guidance Documents



Country Specific Documents



Ireland

All EIAs must include information on the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources. This usually applies to other projects occurring in the immediate vicinity of the proposed project but could also include transboundary cumulative effects.

As an EU Member State, Ireland is subject to the same legislation as other EU Member States. Consenting processes vary between Member States but there is a common underpinning in terms of EU law.