

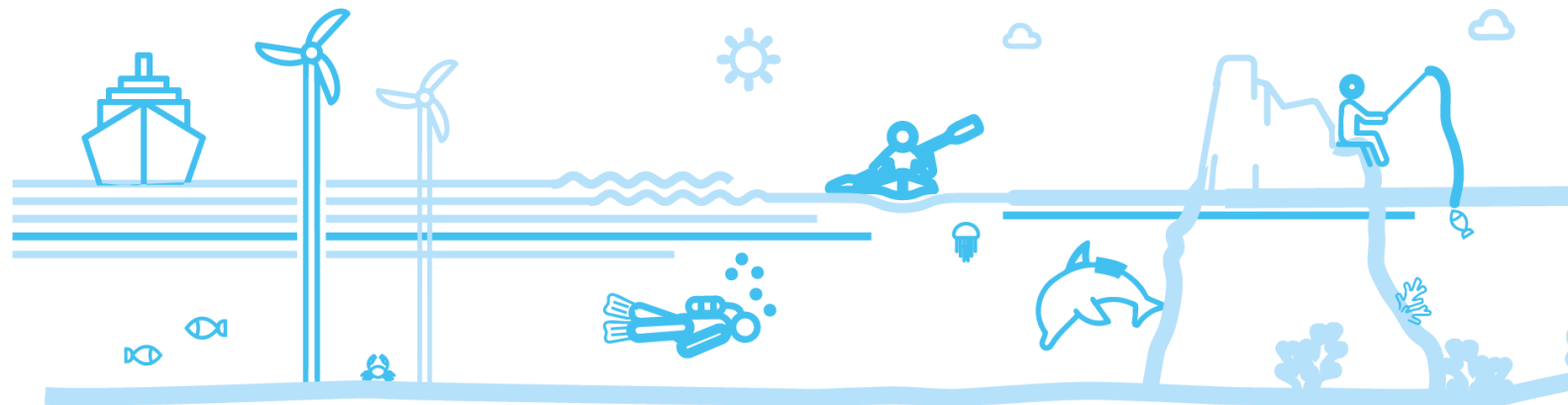
The Consenting Process in Wales

James Moon (Offshore Renewable Energy Programme Manager)



Overview

1. Overview of consenting for MRE
2. S36 Energy Consent
3. Development Consent Order
4. Marine Licensing
5. Summary of key legislation
6. Useful guidance



Overview of consenting for MRE

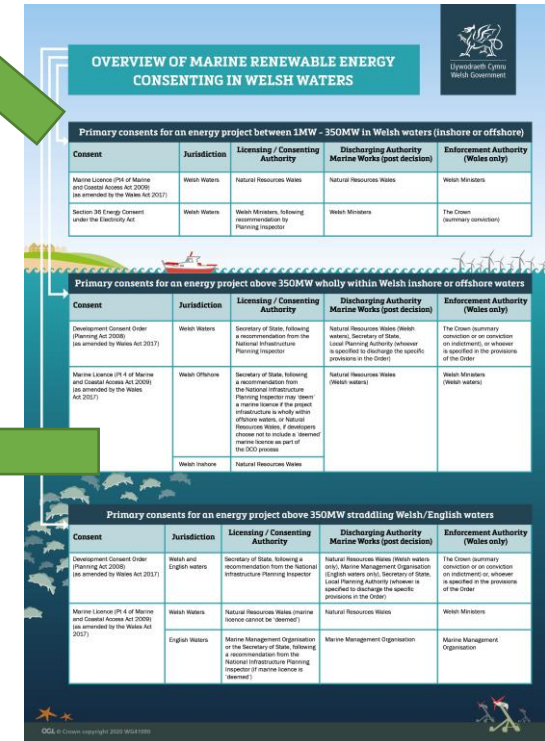
Primary consents for an energy project between 1MW - 350MW in Welsh waters (inshore or offshore)

Consent	Jurisdiction	Licensing / Consenting Authority	Discharging Authority Marine Works (post decision)	Enforcement Authority (Wales only)
Marine Licence (Pt4 of Marine and Coastal Access Act 2009) (as amended by the Wales Act 2017)	Welsh Waters	Natural Resources Wales	Natural Resources Wales	Welsh Ministers
Section 36 Energy Consent under the Electricity Act	Welsh Waters	Welsh Ministers, following recommendation by Planning Inspector	Welsh Ministers	The Crown (summary conviction)

Extract taken from Welsh Government infographic to be published shortly.

Primary consents for an energy project above 350MW wholly within Welsh inshore or offshore waters

Consent	Jurisdiction	Licensing / Consenting Authority	Discharging Authority Marine Works (post decision)	Enforcement Authority (Wales only)
Development Consent Order (Planning Act 2008) (as amended by Wales Act 2017)	Welsh Waters	Secretary of State, following a recommendation from the National Infrastructure Planning Inspector	Natural Resources Wales (Welsh waters), Secretary of State, Local Planning Authority (whoever is specified to discharge the specific provisions in the Order)	The Crown (summary conviction or on conviction on indictment), or whoever is specified in the provisions of the Order
Marine Licence (Pt 4 of Marine and Coastal Access Act 2009) (as amended by the Wales Act 2017)	Welsh Offshore	Secretary of State, following a recommendation from the National Infrastructure Planning Inspector may 'deem' a marine licence if the project infrastructure is wholly within offshore waters, or Natural Resources Wales, if developers choose not to include a 'deemed' marine licence as part of the DCO process	Natural Resources Wales (Welsh waters)	Welsh Ministers (Welsh waters)
	Welsh Inshore	Natural Resources Wales		



Electricity Act 1989 (Section 36 consent)

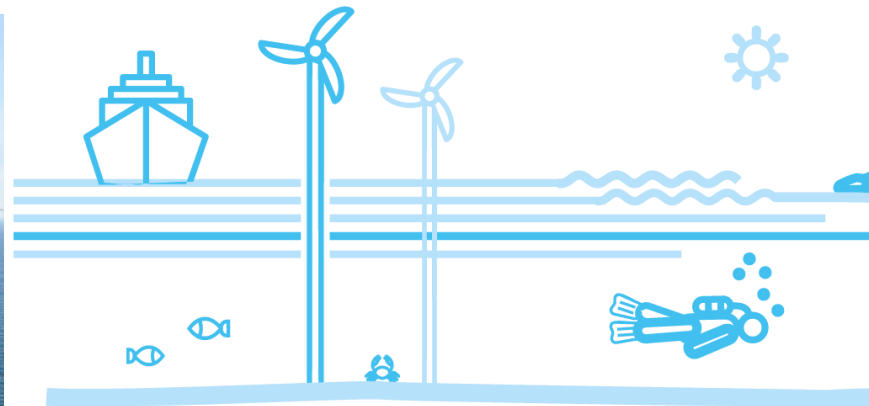
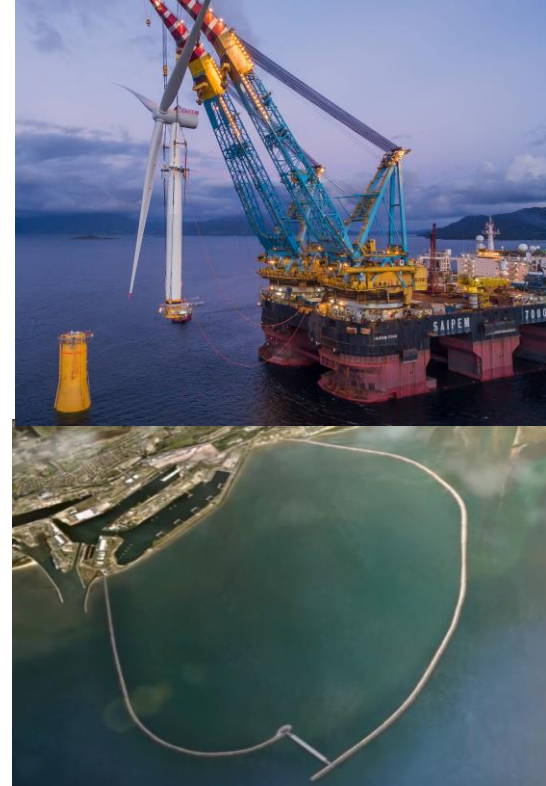
- Section 39 of the Wales Act 2017 devolved offshore projects up to a generating capacity of 350MW to Welsh Ministers.
- For projects between 1 and 350MW in Welsh waters a S36 is required from Welsh Ministers following recommendation from Welsh PINS.
- Below 1MW developments are exempt from the requirement for a S36
- The S36 application should cover the generating station (turbine, wave/tidal device etc.) and any cabling.
- The requirement for an EIA also applies.....

1-100MW	Over 100MW
Marine Management Organisation	UK Government
Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects
1-350MW	Over 350MW
Welsh Government	UK Government
Section 36 Electricity Act 1989	Nationally Significant Infrastructure Projects



Development Consent Order (DCO)

- Nationally significant infrastructure projects (NSIPs) are major infrastructure projects such as new harbours, roads, power generating stations and electricity transmission lines, which require a type of consent known as ‘development consent’ under procedures governed by the Planning Act 2008.
- A DCO is required for all electricity generating stations greater than 350MW.
- The Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent.
- A strict process and timeline must be followed.....



Development Consent Order process

The application process.
The six steps

The Inspectorate, on behalf of the Secretary of State, has **28 days** to decide whether the application meets the required standards to proceed to examination including whether the developer's consultation has been adequate.

You can send in your comments in writing. You can request to speak at a public hearing. The Inspectorate has **6 months** to carry out the examination.

There is the opportunity for legal challenge.

Pre-application

Acceptance

Pre-examination

Examination

Decision

Post-decision

Look out for information in local media and in public places near the location of the proposed project, such as your library. The developer will be developing their proposals and will consult widely.

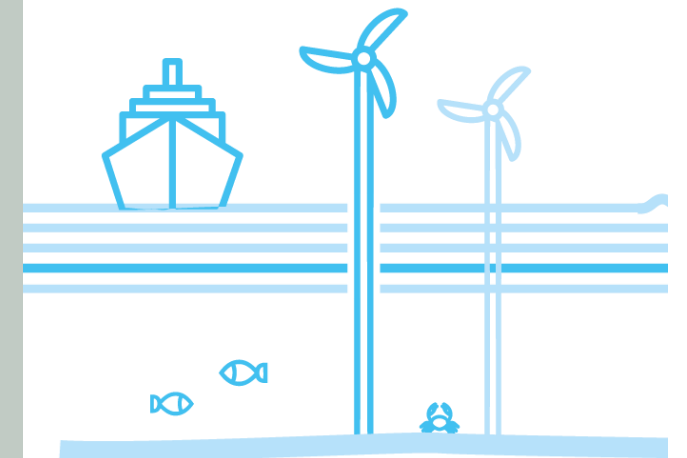
You can now register as an interested party; you will be kept informed of progress and opportunities to put your case. Inspectors will hold a Preliminary Meeting and set the timetable for examination.

A recommendation to the relevant Secretary of State will be issued by the Inspectorate within **3 months**. The Secretary of State then has a further **3 months** to issue a decision on the proposal



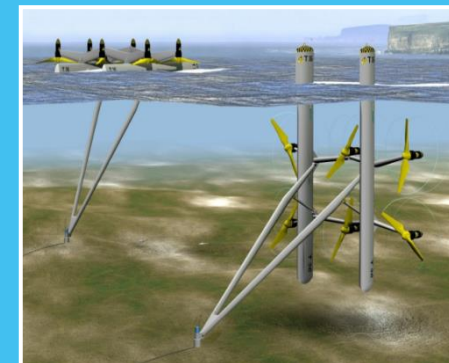
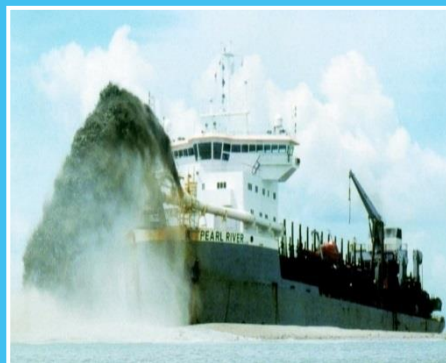
The Planning Inspectorate

<https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>



Marine Licensing

- The Welsh Ministers are the licensing authority under Part 4 of the Marine & Coastal Access Act 2009.
- NRW is the body responsible for the administration and determination of marine licence applications, acting on behalf of the Welsh Ministers.
- NRW's Marine Licensing Team (MLT) administer and determine marine licences, ensuring legal compliance with a range of legislation and policy.



What activities are licensable?

Deposit

in the sea or on/under sea bed using a vehicle, vessel or structure

Remove

on/under sea bed using a vehicle or vessel

Construction, alteration or improvement

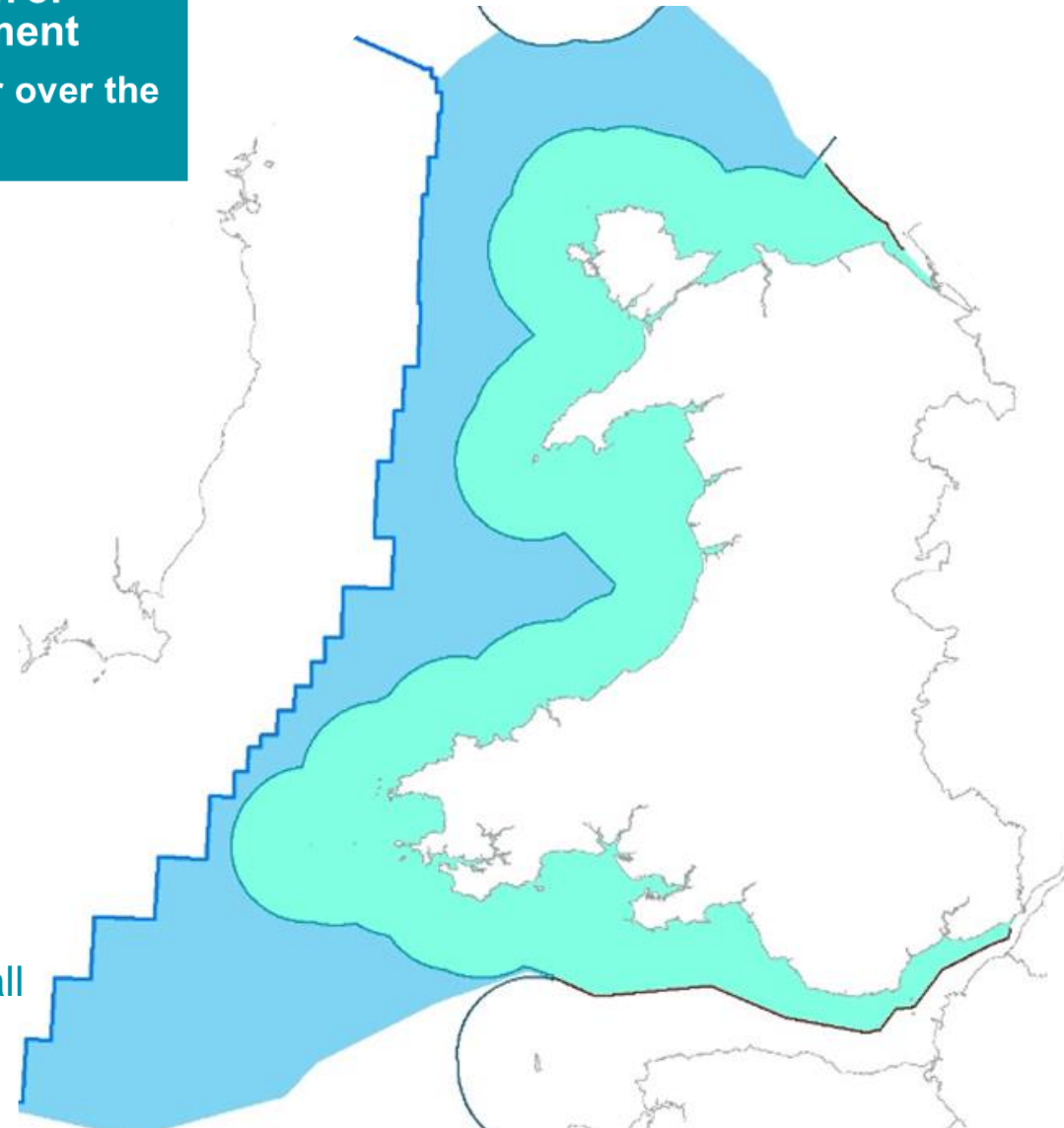
in, on, under or over the sea

Use of explosives

Dredging

Marine Licensable area:

- Welsh waters = the Welsh inshore area & the Welsh offshore area.
- The Welsh inshore area extends seaward 12 nautical miles from Mean High Water Spring (MHWS) to the territorial limit.
- The Welsh offshore area extends beyond the territorial limit to include all areas of the sea out to the median line.

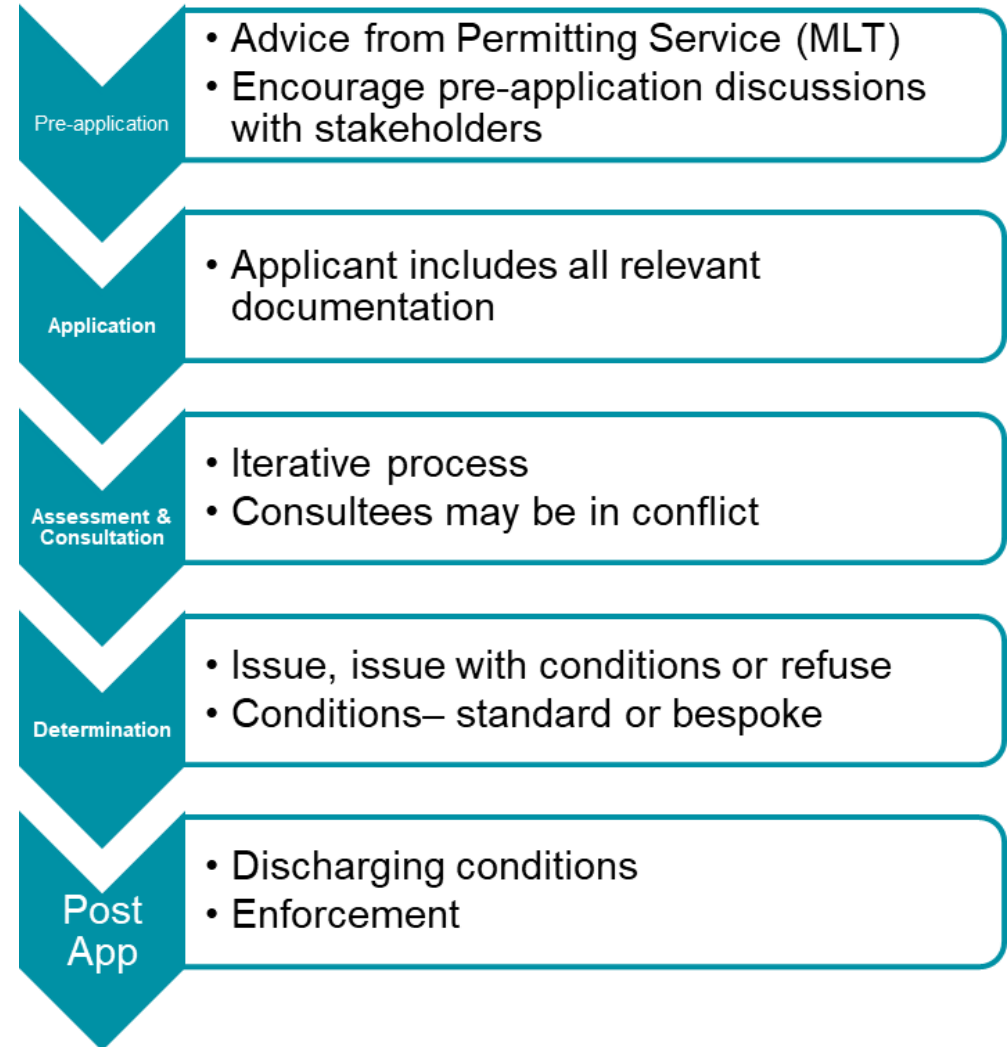


How are licenses determined?



Determined regarding need to:

- Protect the environment
- Protect human health
- Prevent interference with legitimate uses of the sea
- Any other matters considered relevant



SUSTAINABLE MANAGEMENT OF WELSH WATERS, INCLUDING THE MARINE PROTECTED AREA NETWORK



Llywodraeth Cymru
Welsh Government

Marine Licence Determination

**The marine licensing regulatory process is governed by a number of key pieces of legislation.
The Regulator is required to comply with all legal requirements.**

Environmental legislation requiring technical assessments

Marine Works
(Environmental Impact
Assessment) Regulations
2007 (as amended)

Conservation of Habitats
and Species Regulations 2017
(and offshore equivalent)

The Water Environment
(Water Framework
Directive) (England and
Wales) Regulations 2017

EIA Consent Decision
(only where the need for an
EIA has been determined)

Test of Likely Significant
Effect and, where needed,
Appropriate Assessment
(also known as Habitats
Regulation Assessment)

Water Framework
Compliance Assessment

Environmental legislation, which the regulator must act in accordance with or have regard to

Marine and Coastal
Access Act 2009

Well-being of Future
Generations (Wales)
Act 2015

Environment
(Wales) Act 2016

Wildlife and
Countryside Act
1981

Part 3 Marine
Planning - Welsh
National Marine
Plan Policies
Part 4 Marine
Licensing Process

Sustainable
Development and
Wellbeing Goals
for Wales

Sustainable
Management of
Natural Resources

Sites of Special
Scientific Interest
and Protected Plants
and Species

Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

- The EIA Directive sets out a procedure that must be followed for certain types of project before they can be given consent. This procedure, known as Environmental Impact Assessment (EIA), is an assessment of a project's likely significant environmental effects. This helps to ensure that the predicted effects, and the scope for reducing them, are understood by the public and the relevant authority before it makes its decision.
- The EIA Regulations determine that EIA development means a development which is either -
 - Schedule 1 development; or
 - Schedule 2 development, likely to have significant effects on the environment by virtue of factors such as its nature, size or location.
- The Marine Works (EIA) Regulations provide for the application process to include:
 - An EIA screening exercise where an applicant may request the licensing authority's opinion as to whether an EIA is required. This is known as a screening opinion
 - An EIA scoping exercise where an applicant may request the licensing authority's opinion as to the information to be provided in the Environmental Statement (ES). This is known as a scoping opinion
- NRW have produced guidance on scoping an Environmental Impact Assessment for marine developments which is available on our website [here](#).



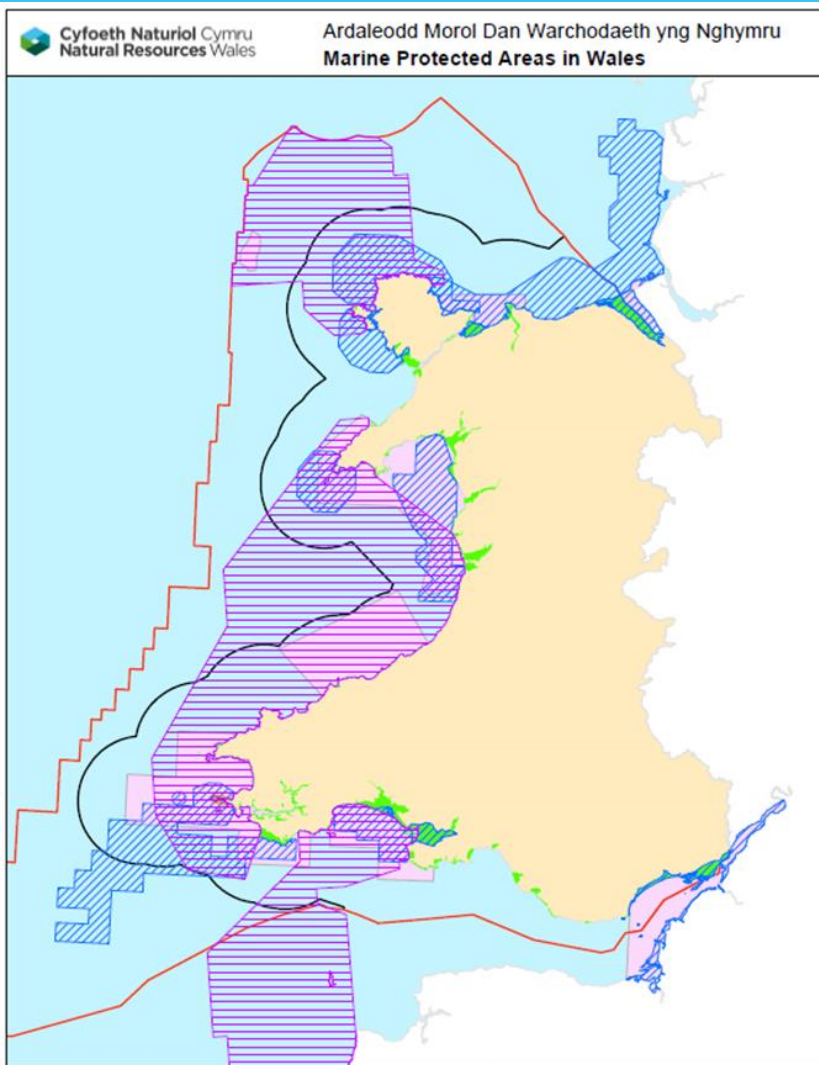
Conservation of Habitats and Species Regulations, 2017

The Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017 enable the designation and protection of areas that host certain important habitats and species.

European designated sites include:

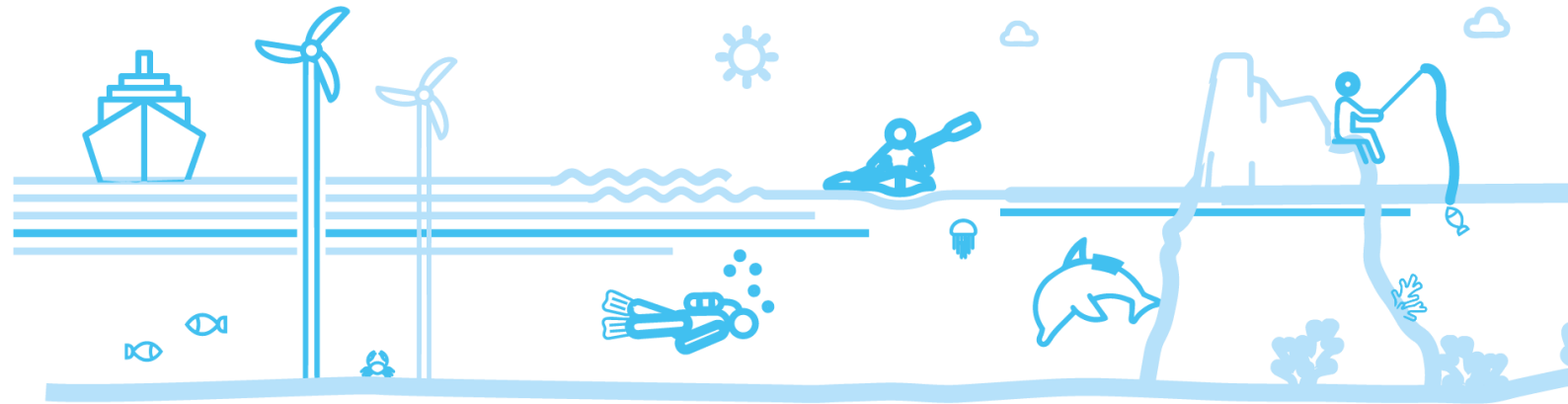
- Special Areas of Conservation (SACs) for the protection of certain habitats and species
- Special Protection Areas (SPAs) for the protection of certain wild bird species

Under this legislation projects cannot be consented if adverse effect on integrity of a European site cannot be ruled out, unless a derogation is used.



Useful guidance

- We have created bespoke marine renewable webpages via the [marine guidance and advice](#) pages on the NRW website to provide links to relevant guidance, advice, evidence and data.
- We also have detailed information to help guide you through the [marine licensing process](#)
- Additional information on [Environmental assessment](#) is also available on our website which includes further details and links on EIA and Habitats Regulations Assessment.
- To search for relevant designated sites and the associated conservation objectives please visit our [designated sites](#) pages.
- Under our [Discretionary Advice Service](#) we also offer charged pre-application advice on marine developments.
- In addition to this if you would like any specific advice on matters relating to marine licensing please contact the marine licensing team directly at marinelicensing@cyfoethnaturiolcymru.gov.uk



Thank you for listening

For any questions please contact:

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