

Channel Regulatory Report

ENGLISH Edition 2014



Promoting Effective Governance
of the Channel Ecosystem

Promouvoir une gouvernance efficace
de l'écosystème de la Manche



France (Normandie) - England
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CHANNEL REGION ~ CONTEXT

The Channel is an area requiring complex management due to the diversity of marine ecosystems and the human activities that occur within it. It is one of the most intensively used maritime basins in the world. Some of the activities taking place in the region include transport, marine renewable energies, fisheries, aggregate extraction and tourism, many of which depend on the economic, ecological and social resources available in the Channel region. Forecasts¹ suggest this use will increase due to the growth in existing activities and development of new uses; putting further pressure on the region, its environment and ecosystems.

The governance of the Channel region is complex since it has to take into account local, European and international policies and agreements. A range of new maritime and coastal policies and legislation have been introduced over the last 20 years in order to address the challenges facing the marine environment, and maximise opportunities. In this developing landscape, the fundamental role of cross-sector working and integrated approaches are key to successful marine management.

Supporting governance and cooperation at the scale of the Channel is therefore necessary to meet the specific needs of this region. The Channel area is a 'connector' linking two major seas and connecting communities and land uses. This leads to two reasons for cooperation: the implementation of joint actions at the Channel scale, whereby the Channel is recognised as a single region; and also to exchange experiences of communities within the Channel region impacted by similar opportunities or threats. The INTERREG IVA France (Channel) – England cross-border cooperation programme demonstrated the value of cooperation between both sides of the Channel Sea. Over a hundred Franco-British projects were supported by the programme enhancing cooperation across a wide range of sectors and activities including fish stock assessments, marine renewable energies, marine protected areas and technological developments.

¹ CAMIS (2013). *Integrated Maritime Strategy for the Channel Region: A Plan for Action*. Available at: https://camis.arcmanche.eu/stock/files/user4/13_247_Camis_doc_strategie_maritime_UK_BD_1.pdf

THE PEGASEAS PROJECT ~ Promoting Effective Governance of the Channel Ecosystem

The PEGASEAS project is funded through the Interreg IV A programme (France (Manche) - England) and aims to promote the effective governance of the Channel marine ecosystem through the identification and capitalisation of key lessons drawn from the programme.

This project, between France and the United Kingdom, is based on an analysis of a cluster of the following Interreg IV A projects: CAMIS, ChannelIS, CHARM 3, CRESH, LiCCo, Marinexus, MERiFIC, OFELIA, PANACHE, SETARMS and VALMER.

The results of PEGASEAS will:

- Offer new insights into effective Channel Governance,
- Provide clear, powerful, communicable and coherent advice targeted to marine governance practitioners and policy-makers,
- Communicate and share experiences and practices,
- Provide an input to discussions regarding potential actions to be supported during the Interreg V programming period (2014-2020).

PEGASEAS will tailor its findings to align with current and forthcoming marine policy and law to facilitate their integration into governance practice. The deliverables will feed directly into enhanced policy or practice and therefore seek to generate and demonstrate impact on the governance of the Channel.

Further information www.pegaseas.eu

THE CLUSTER

CAMIS – *Channel Arc Manche Integrated Strategy [2009/2013]*

The aim of CAMIS was to develop an integrated maritime strategy for the Channel area as well as a range of tools to promote Franco-British cooperation in governance, the maritime economy, transport, maritime safety and knowledge of the Channel area. Over a period of four years, CAMIS brought together 19 partner organisations, while involving hundreds of stakeholders in the Channel area in its work.

<http://camis.arcmanche.eu>

ChannelIS – *Channel Library and Information Services [2011/2015]*

The project will bring closer together library resources on both sides of the Channel. Working together, the National Marine Biological Library at the Marine Biological Association of the UK in Plymouth and the library of the Station Biologique de Roscoff in France will create a shared database of their holdings of material relevant to the scientific study of the Channel. The project will especially aim to catalogue the libraries' holdings of grey literature in order to raise awareness of and facilitate access to these sorts of documents. This database will be made available on-line from early 2015.

www.channelis.eu/

CHARM 3 – *Channel integrated Approach for marine Resource Management [2008/2012]*

The CHARM 3 project provided a multidisciplinary integrated approach that offers decision makers a status report of the English Channel ecosystem and a range of tools based on scientific knowledge for the sustainable management of living marine resources. CHARM 3 provided a coherent synthesis of (i) political orientations defined within a multilateral framework, (ii) research outputs from the international scientific community and (iii) a range of operational tools for the sustainable and fair exploitation of marine resources.

www.charm-project.org/en

CRESH – *Cephalopod Recruitment from English Channel Spawning Habitats [2009/2012]*

The project increased the knowledge on the cephalopods (squids and cuttlefish), residing in the Channel and which are important resources for fisheries. It reports data on (i) their natural habitats with detailed studies at spawning sites, (ii) their environmental preferences in the egg and juvenile stages, (iii) their migrations, and (iv) their stock status and exploitation rate. The research undertaken on both sides of the Channel was mostly disseminated through meetings with stakeholders and local authorities and scientific publications.

<http://www.unicaen.fr/ufr/ibfa/cresh/>

LiCCo – *Living with a Changing Coast [2011/2014]*

The LiCCo project covers seven sites in England and France. It aims to help coastal communities to better understand and prepare for the impacts of climate change, including sea level rise and coastline erosion. It will also raise awareness to the impacts of a changing coast within the different communities.

www.licco.eu/

Marinexus – *Mechanisms of Change in the English Channel [2010/2014]*

The project, between France and the UK, aimed to raise awareness of the adverse effects of human activity on marine ecosystems and to encourage the sustainable development in the Channel area. The principal objective of this project was to create a cross-channel network of research structures working on the changes related to human activity within coastal and open water ecosystems in the western Channel. It also disseminated its results to the general public and schoolchildren, but also stakeholders, local authorities and charities.

www.marinexus.org/

MERiFIC – *Marine Energy in Far Peripheral and Island Communities [2009/2014]*

The project seeks to advance the adoption of marine energy across the two regions of Cornwall and Finistère and the island communities of le Parc Naturel Marin d'Iroise and the Isles of Scilly. The project will work to identify the specific opportunities and issues faced by peripheral and island communities in exploiting marine renewable energy resources with the aim of developing tool kits and resources for use by other similar communities.

www.merific.eu

OFELIA – *Offshore Foundations Environmental Impact Assessment [2013/2015]*

The aim of the project is to establish cross-channel collaboration, in order to improve our understanding of the environmental impacts of offshore wind farm foundations. The partners will work closely together to identify conditions and problems at existing sites, and risk scenarios for future developments; to determine relevant parameters to be introduced into regional models and assess the model improvements.

<http://www.interreg-ofelia.eu/>

PANACHE – *Protected Area Network Across the Channel Ecosystem [2012/2015]*

This project between France and the UK aims at a better protection of the Channel marine environment through the networking of existing marine protected areas. The objectives are to assess the existing marine protected areas network for its ecological coherence; to mutualise knowledge on monitoring techniques, share positive experiences; to build greater coherence and foster dialogue for a better management of marine protected areas; to increase general awareness of marine protected areas; to develop a public GIS database.

www.panache.eu.com

SETARMS – *Sustainable Environmental Treatment and Reuse of Marine Sediment [2010/2014]*

The project aimed to find sustainable economic and environmental solutions to dredged sediment management. SETARMS brought together 12 partners organisations to work jointly for the economic development of Channel sea ports by developing sustainable management practices for marine sediment. They have considered economic, environmental, social and regulatory aspects.

www.setarms.org/en/

VALMER – *Valuing Marine Ecosystem Services in the Western Channel Region [2012/2015]*

VALMER is a Franco-British cooperation project that brings together research institutes, local authorities and stakeholders to explore the use of ecosystem service valuation for the management and planning of the Western Channel marine area. One of the main objectives of this project is to develop a framework for valuing ecosystem services and to apply this to a number of case study areas in France and the UK.

www.valmer.eu

ABOUT THE REGULATORY REPORT

The objective of the Regulatory Report is, in combination with the Governance Mapping Report, to provide a reference source to: (a) clarify the key marine and coastal governance frameworks for the Channel Seas by which England and France implement and elaborate on their international key policy commitments; and (b) inform the development of recommendations within the PEGASEAS project to support improved governance of the Channel marine ecosystem.

The report draws from work undertaken during several INTERREG IVA projects, combined with new research undertaken by the following partners of the PEGASEAS project - University of Portsmouth, Université de Bretagne Occidentale and Region Haute Normandie. The report focuses on 4 main themes important to the governance of the Channel: marine planning and licensing, nature conservation, fisheries and renewable energy. For each theme there is a French and English contribution, addressing: the key institutions, regulatory approaches, principal international and national legal acts, a detailed overview of national legal provisions and concluding with a tabular presentation of relevant national legislation and list of related policy documents

To facilitate use, in the electronic version of this report the legislation and policy documents referred to are accompanied by hotlinks to official versions of those documents.

Please note that the source linked to for the UK and English legislation (www.legislation.gov.uk) provides up-dated versions of primary legislation (incorporating any amendments made to that legislation) and original versions of secondary legislation (some, but not all secondary legislation is updated). Care should, therefore, be taken both in making reference to secondary legislation from this source and in using this source without reference to any changes to the legal regime following its publication. The official source of European legislation cited in this document is EUR-LEX (<http://eur-lex.europa.eu>), which provides free access to European Union law, updated daily.

ENGLISH / UNITED KINGDOM WATERS



Marine Planning and Licensing

INSTITUTIONS

- **Secretary of State for Environment, Food and Rural Affairs** - government minister with responsibility for marine spatial planning and licensing.
- **Department for Environment, Food and Rural Affairs** - government department responsible for policy and regulations on environmental, food and rural issues in England.
- **Marine Management Organisation** - responsible for exercising functions delegated by the Secretary of State for marine plan development, implementation, revision and marine licensing.
 - Official consultees, inter alia:
 - **Environment Agency**
 - **Natural England**
 - **Joint Nature Conservation Committee**
 - **English Heritage**
 - **Inshore Fisheries and Conservation Authorities**
 - **Crown Estate**
 - **Coastal Partnerships**
 - **County, District and Unitary planning authorities**

PROPERTY RIGHTS

The principal elements of common law pertinent to marine spatial planning and licensing are property rights.

Property rights below high water mark along the coast principally lie with the Crown. The Crown Estate (on behalf of the Crown) exercises property rights over the seabed, tidal waters and about half the foreshore (between high and low watermarks), except where the Crown may have made grants of the foreshore, which are today restricted by Statute under the [Crown Estate Act 1961](#) (ss.3, 4) (See also Case Law: A-G v Emerson [1891] Appeal Cases 649, p.653). Property rights in the seabed are based on the royal prerogative (i.e. sovereignty) (see Case Law: the Crown Estate Commissioners v Fairlie Yacht Slip Ltd 1977 (Scots Law Times 19, p 20)).

The remaining foreshore lies with, inter alia, the Royal Duchies, the operators of various ports and harbours, local authorities and the National Trust. Much of the foreshore in the vicinity of ports and harbours is vested in public authorities or private owners by either grant or prescription. Elsewhere extents of foreshore (as in proximity to popular seaside resorts) are held and administered by local authorities under “regulating leases” issued by the Crown Estate or the Royal Duchies.

Since the [Law of Property Act 1925](#) there have been two principal estates in land, which also extend to the marine area: ‘freehold’ and the lesser derived interest, ‘leasehold’. The common law rights of the freeholder (or Crown where appropriate) extend to the airspace above the land, to a height necessary for the ordinary use and enjoyment of the land and the structures on it. They also extend to the minerals under that land, with the exception of gold, silver, oil and gas in a natural state in underground strata (vested in the Crown) and coal. There is no property in water and no right of ownership over wild animals or “fruits of the earth”, although a landowner may kill and take such animals under common law (subject to statutory restrictions). Further, the right to use or enjoy the land is limited by the obligation not to cause a nuisance and restricted by

statute. The rights of leaseholders are largely governed by the terms of the lease agreed with the freeholder (or Crown Estate), along with certain statutory provisions modifying the rights and duties owned by the parties to a lease.

Note that there is another, contractual, arrangement that enables a person or organisation to occupy and utilise property without creating a property right - a licence. Licences in this context are simple contracts issued by the freeholder that confer on an individual or organisation permission to occupy land to undertake some act, usually for a strictly limited purpose, which would otherwise be illegal.

Entitlement to use the seabed, bed of tidal waters and foreshore is typically conveyed by the Crown Estate through grant of leases of up to 150 years and licences in respect of minor works and dredging ([Crown Estate Act 1961](#), s.3, as amended). Note that Crown entitlements to certain minerals (e.g. coal and oil and gas) are exercised by government departments rather than through the Crown Estate.

PRINCIPAL LEGAL MECHANISMS

The national legal framework reflects national agendas and international and European commitments. There are many international commitments relevant to marine planning. However, two of the key European and international legal commitments are:

- [Directive 2008/56/EC of the European Parliament and of The Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy \(Marine Strategy Framework Directive\)](#) (MSFD)
- [Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning](#)

At the national level for the Channel, the principal legal mechanisms are:

- [Marine and Coastal Access Act 2009](#)
- [Local Government Act 1972](#)
- [Town and Country Planning Act 1990](#)
- [Planning Act 2008](#)
- [Law of Property Act 1925](#)

REGULATORY STRATEGY

The regulatory strategy for the marine planning and licensing comprises 5 main elements:

1. The creation of a new marine planning system to integrate economic potential with social and environmental needs, compatible with terrestrial planning
2. The creation and implementation of a single marine licensing regime for marine activities and developments in English waters of the Channel, which facilitates the implementation of marine plans and/or ensures the intent of the marine plans are met
3. The requirement that marine plans have: (a) regard to any other plan prepared by a public or local authority in connection with the management or use of the sea or coast, or of marine or coastal resources in the area in, adjoining or adjacent to the Marine Plan area; and (b) be consistent with the national Marine Policy Statement and other National Policy Statements
4. The requirement that the permit, authorisation and enforcement roles of the Marine Management Organisation and other public authorities reflect the aspirations of the marine plans and the Marine Policy Statement
5. Separate provisions for determining 'nationally significant infrastructure projects', which are determined at the national level

MARINE PLANNING

The provisions for marine planning apply to the “UK marine area”, which extends between the landward limit of mean high water spring tides and the seaward extent of the continental shelf ([Marine and Coastal Access Act 2009](#), s.42)

The planning process is underpinned by a periodically reviewed Marine Policy Statement laying out the priorities and objectives of the UK Government contributing to the achievement of sustainable development in the UK marine area ([Marine and Coastal Access Act 2009](#), ss.44-48). The [UK Marine Policy Statement](#) was published on 18 March 2011 following a process of: public participation, consultation, appraisal of the sustainability of the proposals, parliamentary scrutiny and subsequent adoption and publicity as prescribed by the [Marine and Coastal Access Act 2009](#) (Schedule 5, s.44). This is now underpinning the preparation of a network of marine plans and providing direction to the marine licensing and authorisation processes in line with commitments under, inter alia, the European [Marine Strategy Framework Directive](#) (2008/56/EC) and [Marine Strategy Regulations 2010](#).

Marine Plans

There are 2 marine planning regions around the English coast: the “English inshore region” consisting of sea areas falling within the territorial sea; and the “English offshore region” lying outside the territorial sea ([Marine and Coastal Access Act 2009](#), ss.49, 322). There will eventually be a number of marine plans within each of these two regions (See: [Marine Plan Areas in England](#), MMO 2014).

The Marine Plan Authority for both these regions is the Secretary of State for Environment, Food and Rural Affairs ([Marine and Coastal Access Act 2009](#), s.50), although the responsibility for preparing, monitoring, reviewing and reporting on marine plans has been delegated to the Marine Management Organisation, with the Secretary of State retaining responsibility for directing these functions ([Marine and Coastal Access Act 2009](#), ss.55-56, 61). It is consequently the Marine Management Organisation’s duty to, *inter alia*, prepare marine plans for the whole or part of their region, in conformity with the Marine Policy Statement and the arrangements laid out in Schedule 6 of the [Marine and Coastal Access Act 2009](#) (Section 51).

The process of preparing a Marine Plan is specified in Schedule 6 of the [Marine and Coastal Access Act 2009](#), and includes: the notification of intent to prepare a plan to stipulated authorities; the preparation and publication of a statement of public participation to facilitate public involvement in the plan development process; the seeking of advice and assistance in connection with the development of a marine plan; and the requirement to pay regard to the following in the preparation of the marine plan - e.g. the Marine Policy Statement, other marine plans, plans prepared by public or local authorities within or adjacent to the plan area, the results of reviews and representations, the powers and duties of the Crown Estate Commissioners under the [Crown Estate Act 1961](#), and other specified matters. The Marine Management Organisation is also required under Schedule 6 to conduct an appraisal of the sustainability of its proposals for inclusion in the plan (in compliance with the [Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment](#) (SEA Directive)), the outcome of which determines their inclusion. There are three distinct assessment requirements at this stage: an Sustainability Appraisal incorporating the strategic environment assessment; a Habitats Regulation Assessment under the [Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora](#); and a Equalities Impact Assessment ([Equality Act 2010](#), s.149). The penultimate stage in the plan process is a possible Independent Investigation of any unresolved issues, held at the request of the Secretary of State upon consideration of the issues and their potential consequences and the recommendation of the Marine Management Organisation (Schedule 6(13)). Once settled, the text of the marine plan is adopted and published by the Marine Management Organisation, subject to the agreement of the Secretary of State ([Marine and Coastal Access Act 2009](#), Schedule 6(15)). For further information on the plan preparation process refer to ‘[A Description of the Marine Planning System for England](#)’ (PDF) produced by the Department for Environment, Food and Rural Affairs (2011).

Once the marine plans are in place they are designed to perform similar functions to terrestrial plans. The Marine Management Organisation aims to use the plans to:

- “guide marine users to the most suitable locations for different activities
- manage the use of marine resources to ensure sustainable levels
- work with all marine users to ensure everyone has an opportunity to contribute to marine plans
- take a holistic approach to decision making and consider all the benefits and impacts of all the current and future activities that occur in our marine environment”¹.

The implementation of the marine plans is to be through the marine licensing and enforcement roles of the Marine Management Organisation and other public authorities, which are required to accord with the marine plans and the Marine Policy Statement ([Marine and Coastal Access Act 2009](#), ss.58-59). While in the transitional period of plan preparation, however, such roles are required to be exercised in the context of the Marine Policy Statement, any emerging Marine Plans in existence and any other relevant and emerging documents (“[A description of the marine planning system for England](#)” Department for Environment, Food and Rural Affairs (London), March 2011).

TERRESTRIAL PLANNING

Section 72 of the [Local Government Act 1972](#) annexes and incorporates “every accretion from the sea, whether natural or artificial, and any part of the sea-shore to the low-water mark” to the adjoining parish, district and county (See Case Law: *Blackpool Pier Co v Fylde Assessment Committee* (1877) 46 Law Journal Magistrate's Cases 189; *Barwick v South Eastern & Chatham Ry Cos* [1921] 1 King's Bench 187; *Smart & Co v Town Board of Suva* [1893] Appeal Cases 301). The Government Department for Communities and Local Government currently regards planning control in England to be co-extensive with these local government areas, typically extending terrestrial planning control down to mean low water of spring tides and thereby providing an overlap with marine planning across the tidal foreshore. Note that the design of the marine planning system is very similar in structure and purpose to the existing terrestrial town and country planning system.

Land-use planning in England and Wales is governed principally by the [Town and Country Planning Act 1990](#), as amended by the [Planning and Compulsory Purchase Act 2004](#). The local planning authority is statutorily required to produce local development documents setting out the authority's policies for the development and use of land in their area, and to keep them under review ([Planning and Compulsory Purchase Act 2004](#), Section 17). The development documents produced reflect the split of development functions and matters between County and District authorities (as specified in Schedule 1 of the [Town and Country Planning Act 1990](#)). Note that Unitary authorities have both district and county functions in relation to development planning. As with marine plans, the preparation of these plans and documents requires a statement of community involvement, consideration of national policy and of a variety of other existing plans and policies, a sustainability appraisal and to be subject to independent examination ([Planning and Compulsory Purchase Act 2004](#), ss.18-20).

Under the terrestrial planning system, permission must be obtained prior to any development. In determining whether to award planning permission, the local authority is required to consider the development plan for the area and other material considerations (e.g. Habitats Regulations Assessments, Environmental Impact Assessments, emergency response scenarios or altered knowledge of resources, obligations or technologies) ([Planning and Compulsory Purchase Act 2004](#), s.38(6) and [Town and Country Planning Act 1990](#), s.70(2)). The Secretary of State has the power to 'call in' planning applications for determination rather than leaving decisions to the local authority (where, for example, there is conflict with national policies on key issues) ([Town and Country Planning Act 1990](#), s.61B). There is also provision for planning appeals, and for those

¹ <http://www.marinemanagement.org.uk/marineplanning/about/index.htm>, Marine Management Organisation, accessed: 25 August 2012.

appeals to be 'recovered' for decision by Ministers for similar reasons ([Town and Country Planning Act 1990](#), ss.78-79).

The Department for Communities and Local Government takes the lead in terrestrial development planning and development management. It instigates planning legislation and provides national planning policy and guidance. In March 2012 a new '[National Planning Policy Framework](#)' was published by the Department for Communities and Local Government, which set out the Government's planning policies for England and their application, including consideration of, inter alia, the challenges of climate change, flooding and coastal change, and the conservation of the natural and historic environment. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions ([Planning and Compulsory Purchase Act 2004](#), ss.19(2)(a), 38(6) and [Town and Country Planning Act 1990](#), s.70(2)). Planning policies and decisions must also reflect other statutory requirements and policies and, where appropriate, promote relevant EU obligations. Under the [Localism Act 2011](#), this requirement is extended to the consideration of, and cooperation for the purposes of, the sustainable development of land in the preparation of planning policies and documents (Section 110).

Note: Under the [Planning Act 2008](#) there is a modification to the terrestrial planning system, which also applies for marine developments. The [Planning Act 2008](#) provides specifically for development consents in respect of nationally significant infrastructure projects, which are determined at the national level (see section on Nationally Significant Infrastructure Projects within the Chapter on Renewable Energy for further insight into this process).

LINKS BETWEEN TERRESTRIAL AND MARINE PLANNING

The [Marine and Coastal Access Act 2009](#) requires the Marine Management Organisation to take reasonable steps to ensure the compatibility of a Marine Plan with any development plan for any area that is affected by, or is in, adjoins or is adjacent to the Plan area (Schedule 6(3)). Such plans include: the above mentioned terrestrial development plan documents (DPDs) within Local Development Frameworks (LDFs); and Spatial Development Strategies (SDSs) (i.e. the London Plan). A tight relationship between marine and terrestrial planning is provided by this provision, plus the requirement:

- (a) to have regard to any other plan prepared by a public or local authority in connection with the management or use of the sea or coast, or of marine or coastal resources in the area in, adjoining or adjacent to the Marine Plan area when preparing a Marine Plan;
- (b) for consistency of the Marine Policy Statement with National Policy Statements produced under the [Planning Act 2008](#) (Schedule 6(9h)); and
- (c) for Sustainability Appraisals (under Schedule 6(10) of the [Marine and Coastal Access Act 2009](#)) to evaluate relationships with other relevant plans and programmes and clarify how far Marine Plans integrate with terrestrial plans.

Engagement with the local planning authorities is also a key element of the Marine Management Organisation's stakeholder engagement ([Marine and Coastal Access Act 2009](#), Schedule 6) and not only as a statutory requirement. For further information, please refer to: '[Marine Planning: A Guide for Local Authority Planners](#)' (MMO 2014).

Note that there is no reciprocal commitment on terrestrial planners for compatibility with marine plans. However, any terrestrial development plan likely to affect the UK marine area is required to pay regard to the Marine Policy Statement and any relevant Marine Plan under of the [Marine and Coastal Access Act 2009](#) (s.58(3)). In addition, terrestrial planning documents prior to the [Marine and Coastal Access Act 2009](#) were already required to take into account relevant national policies with a marine dimension when dealing with coasts and estuaries.

MARINE LICENSING

Alongside the new system of Marine Planning, the [Marine and Coastal Access Act 2009](#) (Part 4) introduced a new system of marine licensing from April 2011, providing a consolidated system of development and

operational consents. The licensing regime applies to the UK marine area between the landward limit of mean high water spring tides and the seaward limit of the continental shelf, excluding the Scottish inshore region ([Marine and Coastal Access Act 2009](#), ss.42, 66). Without a marine licence granted by the appropriate licensing authority, no person may carry on a "licensable marine activity" or cause or permit any other person to carry on such an activity (s.65). The licensing authority for the waters around England is the Secretary of State for Environment, Food and Rural Affairs ([Marine and Coastal Access Act 2009](#), s.113). However, under the [Marine Licensing \(Delegation of Functions\) Order 2011](#), these functions have been delegated to the Marine Management Organisation for all English regions.

The licensable marine activities are defined by Section 66 (see Text Box 1 below). The [web pages](#) produced by the Marine Management Organisation and its enclosed weblinks (accessed 10 July 2014) also provides further illustration of the categories of activities for which a licence is required - inter alia:

- Energy generation
- Harbour / navigation works
- Land reclamation
- Oil and Gas activities and carbon dioxide storage works
- Piers
- Scour protection
- Slipways
- Cables and pipelines
- Barrage and islands
- Bank stabilisation
- Shellfish aquaculture and cultivation

Note that a number of operations are exempt from the requirement for a marine licence under sections 65, 74-77 of the [Marine and Coastal Access Act 2009](#) and the [Marine Licensing \(Exempted Activities\) Order 2011](#) and [Marine Licensing \(Exempted Activities\) \(Amended\) Order 2013](#). These exclusions could include (depending on the circumstances) shellfish cultivation, some scientific activities, certain activities undertaken by governmental agencies under statutory authority, or activities falling within the scope of other regulatory systems (e.g. pollution by oil or garbage) (s.77).

Part 4 of the [Marine and Coastal Access Act 2009](#) also covers: the requirement and form of an application for a marine licence and the creation of regulations stipulating fee arrangements (s.67); the publishing of notices of applications (s.68); the passing of additional provisions through secondary legislation (s.69); public inquiries in respect of marine licences (s.70); the granting of licences with or without conditions (s.71); the term of a licence (s.71); the varying, suspension or revocation of a licence following a breach of its provisions (s.72); and an appeals process (s.73).

Section 69 of the [Marine and Coastal Access Act 2009](#) lays out the primary factors that must be considered when determining whether to award a licence (operationalized by the Marine Management Organisation) or not. These include: the need to protect the environment and human health; the need to prevent interference with legitimate uses of the sea; the effects of the planned activities; representations made to the licensing authority; and such other matters as the authority thinks relevant. To these, section 71(6) specifies that a licence should not be granted for any activity which is contrary to international law and section 58 adds that decisions must be made in accordance with marine policy documents (the Marine Policy Statement and Marine Plans) unless relevant considerations indicate otherwise.

Given the particular needs of certain marine activities (e.g. certain electricity works, electronic communications apparatus, submarine cables and harbour works) Part 4 of the [Marine and Coastal Access Act 2009](#) also provides special procedures for and clarification over the application of marine licensing to such activities (s.78-81).

SUPPLEMENTARY PROVISIONS

It should be noted that in addition to the requirement for a marine licence, some projects and works may require a formal environmental impact assessment and similarly, where the project is within or adjacent to a European site it may encounter the requirement for a Habitats Regulation Appraisal under the [Conservation of](#)

[Habitats and Species Regulations 2010](#) (as amended). Consents from other regulators may also be necessary, particularly where they extend into inter-tidal areas or are partly land-based, as with planning permission from the Local Planning Authority.

It should also be noted that the Marine Management Organisation holds licensing functions in addition to Marine Licensing. These include the granting and revoking of: licences under section 10 of the [Conservation of Seals Act 1970](#) ([Marine and Coastal Access Act 2009](#), s.9); licences under Section 16 of the [Wildlife and Countryside Act 1981](#) ([Marine and Coastal Access Act 2009](#), s.10); certain consents under section 36 of the [Electricity Act 1989](#) ([Marine and Coastal Access Act 2009](#), s.11) and under section 95 of the [Energy Act 2004](#) ([Marine and Coastal Access Act 2009](#), s.12); and harbour revision and empowerment orders under the [Harbours Act 1964](#) ([Marine and Coastal Access Act 2009](#), s.315, Schedule 21).

Text Box 1: Licensable marine activities as defined by Section 66:

1. To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from any vehicle, vessel, aircraft or marine structure, any container floating in the sea, or any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.
2. To deposit any substance or object anywhere in the sea or on or under the sea bed from a British vessel, British aircraft or British marine structure, or a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft or British marine structure.
3. To deposit any substance or object anywhere in the sea or on or under the sea bed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object in any part of the United Kingdom except Scotland, or in the UK marine licensing area.
4. To scuttle any vessel or floating container in the UK marine licensing area.
5. To scuttle any vessel or floating container anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft or British marine structure.
6. To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled, for the purpose of that scuttling, from any part of the United Kingdom except Scotland, or from the UK marine licensing area, unless the towing or propelling began outside that area.
7. To construct, alter or improve any works within the UK marine licensing area either in or over the sea, or on or under the sea bed.
8. To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the sea bed within the UK marine licensing area.
9. To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed).
10. To deposit or use any explosive substance or article within the UK marine licensing area either in the sea or on or under the sea bed.
11. To incinerate any substance or object on any vehicle, vessel, marine structure or floating container in the UK marine licensing area.
12. To incinerate any substance or object anywhere at sea on a British vessel or British marine structure, or a container floating in the sea, if the incineration is controlled from a British vessel, British aircraft or British marine structure.
13. To load a vehicle, vessel, aircraft, marine structure or floating container in any part of the United Kingdom except Scotland, or in the UK marine licensing area, with any substance or object for incineration anywhere at sea.

TABLE - PRIMARY LEGISLATION*(Note: in amended form)*

Marine and Coastal Access Act 2009	Marine planning; marine licensing
Equality Act 2010	Equality Impact Assessments
Local Government Act 1972	Terrestrial planning limits
Town and Country Planning Act 1990	Terrestrial land-use planning
Planning and Compulsory Purchase Act 2004	Terrestrial land-use planning
Planning Act 2008	Nationally significant infrastructure projects
Conservation of Seals Act 1970	Supplementary (MMO other licenses & consents)
Wildlife and Countryside Act 1981	Supplementary (MMO other licenses & consents)
Electricity Act 1989	Supplementary (MMO other licenses & consents)
Energy Act 2004	Supplementary (MMO other licenses & consents)
Harbours Act 1964	Supplementary (MMO other licenses & consents)
Law of Property Act 1925	Property rights
Crown Estate Act 1961	Property rights, Crown Estate

TABLE - DELEGATED (SECONDARY) LEGISLATION (EXAMPLES)

Marine planning and licensing	Marine Strategy Regulations 2010 Conservation of Habitats and Species Regulations 2010 Marine Licensing (Delegation of Functions) Order 2011 Marine Licensing (Exempted Activities) Order 2011 Marine Licensing (Exempted Activities) (Amended) Order 2013 Marine Licensing (Register of Licensing Information) Regulations 2011 Marine Licensing (Application Fees) Regulations 2011 Marine Licensing (Licence Application Appeals) Regulations 2011 Marine Licensing (Notices Appeals) Regulations 2011
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KEY POLICIES AND SUPPLEMENTARY INFORMATION

- [National Planning Policy Framework](#). Department for Communities and Local Government (DCLG). 2012. London: DCLG
- [UK Marine Policy Statement](#). HM Government. 2011. London: The Stationery Office
- [National Policy Statements](#) (various)
- [A Coastal Concordat for England](#). Department for Environment, Food and Rural Affairs (DEFRA). 2013. London: DEFRA
- [Red Tape Challenge – Water and Marine Theme Implementation Plan](#). Department for Environment, Food and Rural Affairs (DEFRA). 2013. London: DEFRA



Fisheries

INSTITUTIONS

- **The Secretary of State for Environment, Food and Rural Affairs** - government minister with responsibility for fisheries in England.
- **Department for Environment, Food and Rural Affairs** - government department responsible for policy and regulations on environmental, food and rural issues in England, including fisheries. The Department also leads for Britain at the EU on fisheries matters.
- **Marine Management Organisation** - responsible for the national management of marine fisheries (excluding salmon and migratory trout), including: licensing of fishing vessels, operation of the Days and Sea Scheme, administration of area and seasonal closures, quotas, monitoring and enforcement.
- **Inshore Fisheries and Conservation Authorities** – the management of inshore fisheries.
- **Environment Agency** - responsible for the management of fishing for salmon and migratory trout and shellfish health provisions.

PROPERTY RIGHTS

Under Common law in England there is no absolute property in living fish (other than provided by a “private shellfishery”) as fish are “wild animals”. However, there is a public right to fish in tidal waters for both fish and shellfish as well as from the foreshore, up to mean high water and the tidal reaches of rivers and estuaries. The public right can only be limited if the Crown (or a subject) has acquired a proprietary right exclusive of the public right or where Parliament has restricted the common law rights of the public by an Act of Parliament (e.g. by the [Sea Fisheries \(Shellfish\) Act 1967](#), s.1 (as amended)).

Private rights of shellfishery have been created in certain places, either by Crown grant before 1189 or subsequently by legislation under the [Sea Fisheries \(Shellfish\) Act 1967](#). Such private rights exclude the public right of fishery (see case law: *Smith v Cooke* (1914) 84 Law Journal King's Bench 959) subject to some statutory provisions.

In addition to these Common law rights in fish and shellfish, fish and shellfish farms typically require a lease from the Crown Estate (as landowner) to utilise the seabed or foreshore for such activities.

PRINCIPAL LEGAL MECHANISMS

The national legal framework reflects national agendas and international and European commitments. There is a large body of European and national legislation, reflecting the diverse forms of fishing (e.g. vessels/boats, gears, species and waters) – examples (not comprehensive):

- [Regulation \(EU\) No 1380/2013 of 11 December 2013 on the Common Fisheries Policy](#)
- [Regulation \(EC\) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources](#) (amended by No.1380/2013)
- [Regulation \(EU\) No 43/2014 of 20 January 2014 fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, to Union vessels, in certain non-Union waters](#)
- European Council Multi-Annual (Stock Recovery) Plans

- [Regulation \(EC\) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing](#) (Consolidated version)
- [Regulation \(EC\) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation \(EC\) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing](#) (Consolidated version)
- [Regulation \(EC\) No 850/98 of 30 March 1998 for the conservation of fisheries resources through technical measures for the protection of juveniles of marine organisms](#) (Consolidated version)
- [Regulation \(EU\) No 227/2013 of the European Parliament and of the Council of 13 March 2013 amending Council Regulation \(EC\) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and Council Regulation \(EC\) No 1434/98 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption](#)
- [Regulation \(EC\) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources](#) (Consolidated version)
- [Regulation \(EC\) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation \(EC\) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets](#)
- [Regulation \(EEC\) No 3440/84 of 6 December 1984 on the attachment of devices to trawls, Danish seines and similar nets](#) (Consolidated version)
- [Council Regulation \(EEC\) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels](#) (Consolidated version)
- [Council Regulation \(EC\) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy](#)
- [Regulation \(EC\) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy](#)
- [Regulation \(EC\) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation \(EC\) No 423/2004](#)
- [Commission Implementing Regulation \(EU\) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation \(EC\) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy](#)
- [Council Regulation \(EC\) No 754/2009 of 27 July 2009 excluding certain groups of vessels from the fishing effort regime laid down in Chapter III of Regulation \(EC\) No 1342/2008](#)
- [Regulation \(EU\) No 304/2011 of the European Parliament and of the Council of 9 March 2011 amending Council Regulation \(EC\) No 708/2007 concerning use of alien and locally absent species in aquaculture](#)
- [Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy](#)

At the national level for the Channel, the principal legal mechanisms are:

- [Fishery Limits Act 1976](#)
- [Sea Fisheries Act 1968](#)
- [Marine and Coastal Access Act 2009](#)
- [Sea Fish \(Conservation\) Act 1967](#)
- [Sea Fisheries \(Shellfish\) Act 1967](#)
- [Salmon and Freshwater Fisheries Act 1975](#)
- [Fisheries Act 1981](#)
- [The Exclusive Economic Zone Order 2013](#)

REGULATORY STRATEGY

The regulatory strategy for the management of marine fisheries in the UK waters of the Channel reflects European commitments and national and local requirements, through:

- Three partially overlapping regimes addressing: sea fisheries, migratory and freshwater fisheries and shellfisheries
- The clear and coordinated allocation of management responsibilities and policing efforts
- The provision of licensing regimes, byelaw making powers, quota management and allocation and gear restrictions (plus exclusion zones, quota limits and landing sizes for marine stocks)

Note: The United Kingdom is piloting a more local approach to quota management and publishing a register of fixed quota allocations.

SEA FISHERIES

Fishing Limits

British fishery limits extend from the baselines of the territorial sea to the seaward limit of the Exclusive Economic Zone ([Fishery Limits Act 1976](#), s.1, as amended by the [Marine and Coastal Access Act 2009](#)).

Under the [Fishery Limits Act 1976](#) (s.2), fishing boats registered in specified countries outside of the United Kingdom, the Channel Islands and the Isle of Man may fish in designated areas within relevant British fishery limits for certain specified sea fish. In addition to extending rights to the fishing fleets of European nations beyond the 12 mile limit, specific provision is made for fishing by the fleets of certain countries within the 12 mile limit (as with Belgium and France under the [Fishing Boats \(European Economic Community\) Designation Order 1983](#)).

Foreign fishing boats (other than those provided for above) may not enter British fishery limits except for a purpose recognised by international law or convention, which requires that they do not fish and that they leave once this purpose is fulfilled ([Fishery Limits Act 1976](#), Section 2).

Under the [Sea Fisheries Act 1968](#) (s.5) Ministers may enact Orders for regulating the conduct of and safeguarding fishing operations (and operations ancillary thereto) undertaken by British fishing boats and their crews wherever they may be and all Scottish or foreign fishing boats and their crews in waters within relevant British fishery limits (s.5(1)-(2)). They may also regulate the movement of certain foreign boats within those limits (s.5(2)).

Technical Management Measures

Fishing implements are prescribed by Orders made under the Statutes indicated below or contained in the byelaws of the Inshore Fisheries and Conservation Authorities:

Landing sizes and Fishing Gears

The [Sea Fish \(Conservation\) Act 1967](#) (as amended by, inter alia, the [Marine and Coastal Access Act 2009](#)), prohibits the landing, trading and carrying on board of undersized fish by British fishing vessels within or outside relevant British fishery limits or Scottish or foreign vessels within relevant British fishery limits (s.1). The minimum sizes can differ by species, area and sex of fish (as specified by Order of the Secretary of State) (s.1(4)).

The [Sea Fish \(Conservation\) Act 1967](#) (s.3) also provides the Secretary of State with the power to make Orders for regulating fishing gears within, inter alia, the exclusive economic zone located off the coast of England and including technical features such as the size, construction, design, material or mesh size of gears (e.g. [Shrimp Fishing Nets Order 2002](#)).

The [Salmon and Freshwater Fisheries Act 1975](#) (as amended) prohibits the use of dynamite, other explosive, poison, noxious substance, or any electrical device to catch or destroy fish in any waters out to 6nm.

Exclusion Zones

The [Sea Fish \(Conservation\) Act 1967](#) (s.5, amended by s.198 [Marine and Coastal Access Act 2009](#)) provides the power to make Orders: prohibiting in a specified area and either for a specified period or without limitation of time all fishing for sea fish, fishing for specified types of sea fish; and fishing by specified methods; restricting, in any specified area and either for a specified period or without limitation of time the amount of sea fish, or specified types of sea fish, that may be taken by any person or any fishing boat e.g. [Prohibition of Fishing with Multiple Trawls Order 2003](#). The [Environment Act 1995](#), s.103(1) amends section 5 (adding section 5A) extending these powers to, inter alia, marine environmental purposes.

Training & Certification

There are specified training and certification requirements for fishing vessel crew laid out in the: Maritime and Coastguard Agency (MCA) Marine Guidance Note (MGN) 411; the [Fishing Vessels \(Safety Training\) Regulations 1989](#) as amended by [Fishing Vessels \(Safety Training\) \(Amendment\) Regulations 2004](#); and the [Fishing Vessels \(Certification of Deck Officers and Engineer Officers\) Regulations 1984](#) as amended by the [Fishing Vessels \(Certification of Deck Officers and Engineer Officers\) \(Amendment\) Regulations 1995](#).

Fishing Vessel Licensing

The purpose of the fishing vessel licensing system is to control UK fishing opportunities so that the European Union (EU) regulations for sustainable fisheries management can be met.

The [Sea Fish \(Conservation\) Act 1967](#) (s. 4, as amended) provides that Ministers may by Order require all fishing vessels (English, Scottish or foreign) to have a fishing licence to fish within British Fishery Limits and in specified areas outside British Fishery Limits in respect of British fishing boats. The Order can apply to fishing in a specified area or to specified sea fish, fishing methods, seasons or other periods and to fishing boats registered in a specified country (Section 4(2)). The [Sea Fish Licensing Order 1992](#) (Art.3) provides that a fishing licence is not required if the vessel is: fishing for salmon or migratory trout; is 10 metres or less in length and not powered by an engine; fishing only for common eels; or is used wholly for the purpose of conveying persons wishing to fish for pleasure.

The Marine Management Organisation is responsible for confirming licence entitlements and granting licences under the [Sea Fish \(Conservation\) Act 1967](#) (amended by [Marine and Coastal Access Act 2009](#) s.4).

The award of a licence requires a licence entitlement from a sunk, scrapped or deregistered vessel and the vessel registered with the Registry of Shipping of Seamen (part of the Maritime and Coastguard Agency) under Reg.20(1) of the [Merchant Shipping \(Registration of Ships\) Regulations 1993](#). The Licence is granted to a named vessel and may authorise fishing generally or restrict the area, times, species or method of fishing and impose other conditions.

Inshore Fisheries - Inshore Fisheries and Conservation Authorities

[Marine and Coastal Access Act 2009](#) (ss.149-150) empowers the Secretary of State to establish by Order Inshore Fisheries and Conservation Districts and associated Inshore Fisheries and Conservation Authorities (IFCAs) (e.g. [The Cornwall Inshore Fisheries and Conservation Order 2010](#)). The duties and powers of the IFCAs are specified in the [Marine and Coastal Access Act 2009](#) (ss.153 to 158). There are 10 Inshore Fisheries and Conservation Districts in England. The seaward extent of a District is typically 6 nm from the baselines for the measurement of the breadth of the territorial sea.

Each authority is a committee or joint committee of the local authorities that fall within the district plus people appointed by the Marine Management Organisation and is responsible for, inter alia: managing the exploitation of sea fisheries resources in their district and ensuring their sustainability; balancing social and economic benefits from exploitation with protection of the environment; and furthering the conservation objectives of any marine conservation zone (ss.153-154). Exploitation includes any activity relating to the exploitation of such resources (including fish, animals and plants), whether for commercial purposes or otherwise, including: introducing, cultivating, fishing, landing, transporting, storing and selling ([Marine and](#)

[Coastal Access Act 2009](#) s.153). The manner in which the IFCA conducts these duties is dictated by the [Marine and Coastal Access Act 2009](#), secondary legislation, other primary legislation, and the directions of the Secretary of State (s.153).

To perform their duties Inshore Fisheries and Conservation Authorities are given the power to make byelaws for their District under the [Marine and Coastal Access Act 2009](#) (s.155). Unless they are “emergency byelaws” (which are of limited duration), these byelaws come into effect upon confirmation by the Secretary of State (possibly following a local inquiry). The purposes for which byelaws can be made are laid out in section 156 of the Act.

Note that the provisions exclude: salmon, trout, eels, lampreys, smelt and shad; any other fish of a kind that migrates from fresh to salt water, or from salt to fresh water, in order to spawn; and any freshwater fish. These fall under the jurisdiction of the Environment Agency.

MIGRATORY & FRESHWATER FISH

The Environment Agency has primary responsibility under the [Salmon and Freshwater Fisheries Act 1975](#) for migratory and fresh water fish (salmon, trout, eels, lampreys, smelt, shad and freshwater fish). Its jurisdiction extends for up to 6nm from the baseline of the territorial sea ([Salmon and Freshwater Fisheries Act 1975](#), s.1 as amended by the [Marine and Coastal Access Act 2009](#), s.215(6)). Fishing for these species is regulated by the Environment Agency via a system of licensing, governing fishing by rod and line and certain other licensable means ([Salmon and Freshwater Fisheries Act 1975](#), s.25 (as amended)). The Environment Agency also has byelaw making powers under the [Water Resources Act 1991](#) (Schedule 25) for purposes of the [Salmon and Freshwater Fisheries Act 1975](#). Subject to Ministerial confirmation, such byelaws may: prohibit the taking or removal of fish; specify closed seasons or times; set landing sizes; specify fishing gears/instruments and design parameters; and require the submission of returns on catches. There are also powers for time limited emergency byelaws (Schedule 27).

Enforcement is provided for under Part 5 of the [Salmon and Freshwater Fisheries Act 1975](#) as amended by, inter alia, the [Marine and Coastal Access Act 2009](#). The enforcement officers of the Environment Agency - Water Bailiffs – are afforded powers under the [Salmon and Freshwater Fisheries Act 1975](#) (s.31-33) of, inter alia: entry, examination, stop and search, ordering the production of documentation and seizure.

Note that the [Salmon and Freshwater Fisheries Act 1975](#) (s.1) also makes it an offence to use certain gears for taking migratory and fresh water fish, to take or attempt to take unclear or immature fish or to wilfully disturb spawn, area of or spawning fish (s.2).

SHELLFISHERY

Shell fisheries fall within species-specific technical management measures provided by primary legislation governing sea fisheries in general (as with the specification of minimum landing size for scallops within the [Scallop Fishing Order 2004](#) (made under [Sea Fish \(Conservation\) Act 1967](#), s.1), shellfish specific legal provisions (e.g. [Sea Fisheries \(Shellfish\) Act 1967](#)), and property rights (notably Public, Several and Regulating Fisheries).

Several and Regulating Fisheries

There is a public right of fishery in tidal waters for shellfish, which applies even where they were laid down by someone else (see case law: *Truro Corp v Rowe* [1902] 2 KB 709, CA). However, it cannot be exercised for commercial purposes (see case law: *Anderson v Alnwick District Council* [1993] 3 All ER 613, [1993] 1 WLR 1156) nor within the area of any Several or Regulating shellfishery.

The [Sea Fisheries \(Shellfish\) Act 1967](#) (s.1), empowers the Secretary of State for Environment, Food and Rural Affairs to make legal Orders conferring for up to 60 years: the right of "Several fishery" for shellfish (i.e. exclusive fishing rights); or the right of "Regulating" a fishery (i.e. the right to manage it and license fishermen) It also allows for the creation of Hybrid Orders, which combine Several and Regulating provisions. It is largely

through these provisions and ancient “Several fisheries” with their basis in Common Law that commercial shellfisheries and their management is regulated (See case law: *Smith v Cooke* (1914) 84 Law Journal King’s Bench 959).

Modern day applications for an Order for a Several or Regulating fishery are made to the Department for Environment, Food and Rural Affairs (DEFRA) and can take up to 1 year to make, including a process of inter-departmental and public consultation and a consideration of existing rights and legal issues. The Orders can encompass oysters (*Ostrea edulis*), mussels (*Mytilus adulis*), cockles (*Cerastoderma edule*), clams (*Venus verrucosa*), lobsters (*Homarus gammarus*), molluscs and cetaceans of a kind specified in regulations made by the appropriate Minister, or in an Order. The Orders can cover any portion of the shore and bed of the sea, or of an estuary or tidal river, above or below low water mark and within waters adjacent to England to a distance of 6nm measured from territorial sea baselines and once made require a management plan for 5 years for their establishment and improvement.

Several fishery Order under [Sea Fisheries \(Shellfish\) Act 1967](#) (s.2) (subject to certain restrictions and exceptions) conveys the exclusive right of depositing, propagating, dredging, fishing for and taking of shellfish described in the Order within a specified geographic area. The grantees may make and maintain beds for such shellfish (harvesting alone is insufficient for an Order), collect such shellfish and remove them from place to place and do such other things required for obtaining, storing and disposing of the produce of the fishery. Under the [Sea Fisheries \(Shellfish\) Act 1967](#) (s.7) for the protection of the rights of the several fishery or private oyster or shellfish bed, it is an offence for anyone other than the grantee (or persons working on their behalf) to take shellfish covered by an Order or to knowingly use any fishing gear or undertake activities prejudicial to the shellfish, bed or fishery.

A right of regulating a fishery ([Sea Fisheries \(Shellfish\) Act 1967](#), s.1) confers rights/powers in respect of specified species and areas for: implementing and enforcing restrictions and regulations; the levy of tolls or royalties; providing for the deposit and propagation of shellfish for improving, cultivating and regulating the regulated fishery (s.3); and issuing licences and keeping records thereof (ss.4, 4ZA). Note that there are also provisions for the policing of the Regulating Fishery by British sea-fishery officers (ss.4A-4D).

Note: DEFRA only grant Regulating Orders to Inshore Fisheries and Conservation Authorities (IFCAs), or other public bodies that regulate fishing activity in certain areas (such as the Environment Agency). The same applies to hybrid Orders. Note also that the conduct of the above Several and Regulatory fisheries may be subject to inspection and if the Minister is not satisfied by the manner in which the rights are being exercised, they can by certificate remove the benefits of the Act in respect of the whole or part of the said fishery ([Sea Fisheries \(Shellfish\) Act 1967](#), s.5).

Shellfish Health Provisions

The UK implements the provisions of the [Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy](#), which replaced the [EC Shellfish Waters Directive 2006/113/EC](#) (Official Journal No L376, 27.12.2006, p 14) as of the end of 2013. The Water Framework Directive is implemented through the [Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003](#) (SI 2003 No.3242) in respect of the Channel, with the 98 shellfish waters now designated under that legislation as having protected area status. The [EC Water Framework Directive](#) (Directive 2000/60/EC) is administered in England by the Department for Environment, Food and Rural Affairs (DEFRA) and implemented in England by the Environment Agency in terms of these provisions.

The Secretary of State also has powers to regulate fish movements and, with the support of inspections, take any action considered fit to eliminate diseases or pests affecting shellfish ([Sea Fisheries \(Shellfish\) Act 1967](#), ss.12-15).

Fish Farming (Shellfish)

Under the [Fisheries Act 1981](#) (s.31), 'fish farming' is defined as the breeding, rearing or cultivating of fish (including shellfish) for the purpose of producing fish for human consumption. In the Channel, fish farming takes the form of shellfish cultivation, which is regulated primarily through the provisions of Several fisheries (as described above), However, there are other specific legal provisions, hereinafter described. Note: there is no caged aquaculture of finfish within the Channel.

While the majority of structures and deposits related to shellfish farming are exempt from a requirement to hold a marine licence under the [Marine and Coastal Access Act 2009](#) (Article 13 of the [Marine Licensing \(Exempted Activities\) Order 2011](#) (as amended) made under Section 74 of the [Marine and Coastal Access Act 2009](#)), a marine licence would be required for any cages; any deposit for the purpose of disposal; any deposit made for the purpose of creating, altering or maintaining an artificial reef; any deposit that causes or is likely to cause obstruction or danger to navigation; any construction works (e.g. jetty) or scuttling (Part 4).

For the prevention and control of certain diseases, shellfish and crustacean farms (with limited exceptions) are required to be authorised by the Fish Health Inspectorate (on behalf of the Secretary of State) under the [Aquatic Animal Health \(England and Wales\) Regulations 2009](#) (Reg. 5). Authorisation is required prior to any operation of the shellfish farm, and the farm is required to comply with stipulated record keeping, surveillance and operational practices or have its authorisation suspended or revoked.

The growing of shellfish on the seabed, trestles, suspended on ropes or nets and the growing of seaweeds requires a proprietary lease from the Crown Estate as landowner of the seabed around the UK out to the 12nm limit. An application for a Crown Estate fish farming lease does not require all statutory consents to be in place. However, if prior statutory consent is not obtained, then a lease-option is granted for a specified period rather than a full lease. The lease-option does not convey the entitlements of a lease. However, it does provide the applicant with some assurance that a lease would be granted if statutory consent is obtained (Source: <http://www.thecrownestate.co.uk/coastal/aquaculture/working-with-us/aquaculture-leases/> Accessed: 16 July 2014). Note that there is provision for a lease to be transferred if the business is sold on, but only with Crown Estate approval (which is generally not given within 5 years of issue).

The lease once issued is subject to conditions, including the requirement that all equipment, including moorings, is completely removed at the end of the lease and that the operation complies with any Farm Management and / or Area Management Agreement that currently includes the site. The lease is also subject to rental (generally small for shellfish farming)

Note: The [Environmental Impact Assessment \(Fish Farming in Marine Waters\) Regulations 1999](#) do not extended to shellfish farming (whether or not for profit) (Reg.2(1)).

POLICING

National enforcement powers with respect to sea fisheries are principally provided by the [Sea Fish \(Conservation\) Act 1967](#), [Sea Fisheries Act 1968](#) (much amended), [Marine and Coastal Access Act 2009](#) (ss.235, 238) and [Fisheries Act 1981](#), with Section 30 of the [latter](#) making it a general offence to fish contrary to restrictions under European Community legislation and providing for Orders to enforce community restrictions (e.g. [The Sea Fishing \(North-East Atlantic Control Measures\) Order 2000](#)).

Sea fisheries (including salmon, migratory trout and shellfish) are policed by:

- British Sea-Fishery Officers, including officers of the Sea Fishing Inspectorate, commissioned officers of Her Majesty's ships, persons in command of any aircraft or hovercraft of the Royal Navy, Army or Royal Air Force, or other persons specifically appointed by the Secretary of State ([Sea Fisheries Act 1968](#), s.7).
- Marine Enforcement Officers under the [Marine and Coastal Access Act 2009](#), s.235

- Inshore Fisheries and Conservation Officers appointed by IFCA.

The powers of the Sea Fisheries Officers are specified in detail in secondary legislation, e.g. [Sea Fishing \(Enforcement of Community Conservation Measures\) Order 2000](#) made under Section 30(2) of the [Fisheries Act 1981](#).

Under the [Marine and Coastal Access Act 2009](#) the Marine Management Organisation co-ordinates the policing and enforcement effort within British fishery limits around the coast of England, and UK vessels operating outside those waters. They investigate, enforce and prosecute in the event of breaches of regulations. Inspections at sea are principally carried out, under agreement, by the Royal Navy's Fishery Protection Squadron and aerial surveillance is contracted out.

The [Marine and Coastal Access Act 2009](#) and the other legislation stipulate the range of powers available. Supplemental to which, the [Sea Fisheries Act 1968](#) empowers the Secretary of State for Environment, Food and Rural Affairs to make Orders for, e.g. the identification and marking of fishing boats and fishing gear.

TABLE - PRIMARY LEGISLATION

(Note: in amended form)

Fishery Limits Act 1976	British fishery limits
Sea Fisheries Act 1968	Sea fisheries regulation; policing
Marine and Coastal Access Act 2009	Sea fisheries regulation; technical management measures; licences; inshore fisheries; migratory & freshwater fish; fish farming; fisheries (wildlife conservation); policing
Sea Fish (Conservation) Act 1967	Sea fisheries regulation; technical management measures, licences; shell fisheries; policing
Sea Fisheries (Shellfish) Act 1967	Shell fisheries
Salmon and Freshwater Fisheries Act 1975	Migratory & freshwater fisheries
Water Resources Act 1991	Migratory & freshwater fisheries
Environment Act 1995	Migratory & freshwater fisheries
Fisheries Act 1981	Fish farming; fisheries (wildlife conservation)
Crown Estate Act 1961	Fish farming
Sea Fisheries (Wildlife Conservation) Act 1992	Fisheries (wildlife conservation)

TABLE - DELEGATED (SECONDARY) LEGISLATION (EXAMPLES)

Sea fisheries regulation	Fishing Boats (European Economic Community) Designation Order 1983 Fishing Boats (Specified Countries) Designation Order 1996 (and subsequent)
Technical management measures	Sea Fish (Specified area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989 Sea Fish (Specified Sea Areas) (Regulations of Nets and Other Fishing Gear) Order 1991 The Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) Order 2001 Shrimp Fishing Nets Order 2002 Prohibition of Fishing with Multiple Trawls Order 2003
Training & certification	Fishing Vessels (Safety Training) Regulations 1989 Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations 1984

Fishing licences	Sea Fish Licensing Order 1992 Sea Fish Licensing (Variation) Order 1993 Sea Fish Licensing (Variation) (No.2) Order 1993 Merchant Shipping (Registration of Ships) Regulations 1993
Inshore fisheries	The Cornwall Inshore Fisheries and Conservation Order 2010 The Devon and Severn Inshore Fisheries and Conservation Order 2010 The Isles of Scilly Inshore Fisheries and Conservation Order 2010 The Kent and Essex Inshore Fisheries and Conservation Order 2010 The Southern Inshore Fisheries and Conservation Order 2010 The Sussex Inshore Fisheries and Conservation Order 2010
Shell fishery (Shellfish farming)	Scallop Fishing Order 2004 Aquatic Animal Health (England and Wales) Regulations 2009
Fish farming	Aquatic Animal Health (England and Wales) Regulations 2009 Marine Licensing (Exempted Activities) Order 2011
Fisheries (wildlife conservation)	Incidental Catches of Cetaceans in Fisheries (England) Order 2005 Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999
Policing	Sea Fishing (Enforcement of Community Conservation Measures) Order 2000 Sea Fishing (Enforcement of Community Control Measures) Order 2000 Sea Fishing (Enforcement of Community Satellite Monitoring Measures) Order 2004 The Sea Fishing (Marking and Identification of Passive Fishing Gear and Beam Trawls) (England) Order 2006 The Sea Fishing (North-East Atlantic Control Measures) Order 2000

KEY POLICIES AND SUPPLEMENTARY INFORMATION

- [UK Marine Policy Statement](#). HM Government. 2011. London: The Stationery Office
- Online guide: [Understand Fisheries Catch Limits and Closed Fishing Areas](#).gov.uk. Accessed: 16 July 2014



Renewable Energy

INSTITUTIONS

- **Secretary of State for Energy and Climate Change** - government minister with responsibility for, inter alia, renewable energy.
- **Department of Energy & Climate Change** – government department responsible for energy security, renewable energy, action on climate change, supporting growth through energy policies and promoting affordability and fairness, and managing the UK’s energy legacy safely, securely and cost-effectively.
- **Marine Management Organisation** - responsible for: marine licences and development consents for generating stations between 1 and 100 megawatts; consultee for nationally significant infrastructure projects; safety zone notices; environmental impact assessments; wildlife licences.
- **Major Infrastructure Planning Unit of the Planning Inspectorate** – responsible for development consents for nationally significant infrastructure projects and related environmental impact assessments.
- **The Crown Estate** – responsible for exercising the proprietary rights of the Crown through the award of lease and site licences following invitations to participate in a licensing round.

COMMON LAW

Common law provides a property rights framework to supplement the statutory consents process and also addresses interpretative issues relating to the sector (see Case Law: *R (on the application of Redcar and Cleveland Borough Council) v Secretary of State For Business Enterprise and Regulatory Reform* (2008) EWHC 1847 (Admin), (2008) All ER (D) 159 (Jul)).

The Crown Estate manages the proprietary interests of the Sovereign including the ‘Marine Estate’, which includes the seabed out to the 12nm territorial limit ([Crown Estate Act 1961](#)) plus the “Renewable Energy Zone” as defined by the [Energy Act 2004](#) (Section 84, as amended by the [Marine and Coastal Access Act 2009](#), s 41(8), Sch 4, Pt 1, para 4) as extending out to the outer limit of the Exclusive Economic Zone ([Marine and Coastal Access Act 2009 \(Commencement No 6\) Order 2013](#)).

Crown Estate has a statutory duty to maintain and enhance the land and property rights under its management ([Crown Estate Act 1961](#), s.1). This is exercised for offshore renewable energy developments through leasing rounds, culminating in the determination and award of a Crown Estate “lease” within the 12nm Territorial Waters and a “site licence” in the Renewable Energy Zone under the provisions of Section 3 of the [Crown Estate Act 1961](#). Note that the granting of a lease does not confer development rights, only the right of occupation of the area for specific purposes as defined in the lease or licence.

Strategic environmental assessments are undertaken by the Government Department for Business, Enterprise and Regulatory Reform (BERR) in conjunction with the leasing rounds, designed to assess the suitability of the areas identified by The Crown Estate as offering potential for offshore wind (under the [Environmental Assessment of Plans and Programmes Regulations 2004](#), implementing the [European Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment](#) (also known as the Strategic Environmental Assessment (SEA) Directive).

PRINCIPAL LEGAL MECHANISMS

The national legal framework reflects national agendas and international and European commitments - examples:

- [UN Framework Convention on Climate Change](#)
- [Kyoto Protocol to the Framework Convention on Climate Change](#)
- [United Nations Convention on the Law of the Sea 1982](#)
- [European Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources](#)
- [Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora \(European Habitats Directive\)](#)
- [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds](#)
- Directive No 85/337/EEC (as amended) on the assessment of the effects of certain public and private projects on the environment
- [EC Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy \(Marine Strategy Framework Directive\)](#)
- [Convention for the Protection of the Marine Environment of the North-East Atlantic 1992](#)

At the national level for the Channel, the principal legal mechanisms are:

- [Energy Act 2004](#)
- [Planning Act 2008](#)
- [Electricity Act 1989](#)
- [Crown Estate Act 1961](#) (and Crown property rights)
- [Marine and Coastal Access Act 2009](#)
- [Marine Works \(Environmental Impact Assessment\) Regulations 2007](#)
- [Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2009](#)
- [Conservation of Habitats and Species Regulations 2010](#)
- [Offshore Marine Conservation \(Natural Habitats, &c\) Regulations 2007](#)

REGULATORY STRATEGY

The regulatory strategy for the renewable energy in the Channel comprises 3 elements:

1. Definition of the spatial scope of jurisdiction over renewable energy developments and generation
2. A statutory system of licensing and consents to supplement Crown proprietary rights (refer to the Common Law section above) which reflects the megawatt output of the generating station
3. Statutory provisions providing for navigational considerations, decommissioning and environmental impacts.

SPATIAL SCOPE OF JURISDICTION

National jurisdiction over renewable energy developments and generation extends over UK territorial waters and the “Renewable Energy Zone” as defined by the [Energy Act 2004](#) (Section 84, as amended by the [Marine and Coastal Access Act 2009](#), s 41(8), Sch 4, Pt 1, para 4) as extending out to the outer limit of the Exclusive Economic Zone ([Marine and Coastal Access Act 2009 \(Commencement No 6\) Order 2013](#)).

LICENSING AND CONSENTS

Supplementing the abovementioned Crown Estate “leases” and site licences, there is a statutory system of licensing and consents for offshore renewable energy generating activities, the form of which is determined by the installation’s megawatt capacity:

Generating stations of up to 1 megawatt wholly or primarily driven by wind or water are exempt from requiring consent ([Electricity Act 1989 \(Requirement of Consent for Offshore Wind and Water Driven Generating Stations\) \(England and Wales\) Order 2001](#)), providing that they do not extend above the low water mark along the coast and, thereby, require planning permission under the [Town and Country Planning Act 1990](#) (s.57). Generating stations between 1 and 100 megawatts are subject to development consents exercised by the Marine Management Organisation, while generating stations over 100 megawatts (“Nationally Significant Infrastructure Projects”) fall within the remit of the Secretary of State supported by the Major Infrastructure Planning Unit.

Decisions on consents by the Marine Management Organisation and the Secretary of State are taken on the basis of the [National Policy Statement for Renewable Energy Infrastructure \(EN-3\)](#), July 2011. For the latter, this is in accordance with the provisions of Section 104 of the [Planning Act 2008](#), which requires that the Secretary of State must have regard to national policy statements, any appropriate marine policy documents (e.g. Marine Policy Statement and marine plans) ([Marine and Coastal Access Act 2009](#), s.59) and a local impact report ([Planning Act 2008](#), s.60(3)), among other stipulated and discretionary matters.

Generating Stations between 1 and 100 megawatts

Generating stations between 1 and 100 megawatts in England (including wind farms, wave and tidal devices in both tidal waters and the UK marine area below mean high water springs²) are subject to development consents under Section 36 of [Electricity Act 1989](#) exercised by the Marine Management Organisation ([Marine and Coastal Access Act 2009](#), s.12) and the requirement for a marine licence.

The application process for development consent is specified by the [Electricity Act 1989](#) (Schedule 8), which includes provisions for objections, inquiries and inspections. Upon determination, the MMO may grant consent of such duration and subject to such conditions (including conditions as to the ownership or operation of the generating station) as appear to the MMO (on behalf of the Secretary of State) to be appropriate ([Electricity Act 1989](#), Section 36(5)). The process for applications for variation are determined by the [Electricity Generating Stations \(Variation of Consent\) \(England and Wales\) Regulations 2013](#).

Note that under Section 36(2) of the [Electricity Act 1989](#) two Orders have been made to provide specifically for generating stations of different classes or descriptions: the [Electricity Act 1989 \(Requirement of Consent for Offshore Wind and Water Driven Generating Stations\) \(England and Wales\) Order 2001](#) lays out the minimum threshold for consent as 1 megawatt; and the [Offshore Generating Stations \(Exemption\) Order 1990](#) exempts from the requirement for Section 36 consent a generating station that is (a) situated on an offshore installation; and (b) used solely for the purpose of supplying electricity to that offshore installation, or to that and any other offshore installation.

In addition to development consent, a marine licence under the [Marine and Coastal Access Act 2009](#) (MCAA) Part 4 is also required to construct, alter, improve or decommission any renewable energy generation works within the UK marine licensing area, unless an appropriate exemption under the [Marine Licensing \(Exempted Activities\) Order 2011](#) applies. Further, where a project extends into inter-tidal areas or is partly land-based planning permission from the Local Planning Authority will be required under the [Town and Country Planning Act 1990](#), along with other consents reflecting its location and impacts.

Nationally Significant Infrastructure Projects

Coastal and offshore renewable energy schemes over 100 megawatts fall within specific provisions for “Nationally Significant Infrastructure Projects” ([Planning Act 2008](#), ss.15, 31) and the remit of the Secretary of

² “UK marine area” consists of the following:

- a) The area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom;
- b) Any area of sea within the limits of the exclusive economic zone;
- c) The area of sea within the limits of the UK sector of the continental shelf (so far as not falling within the exclusive economic zone and includes the bed and subsoil of the sea within those areas (see also Section on Marine Licensing)

State and Major Infrastructure Planning Unit (MIPU) of the Planning Inspectorate for their determination ([Planning Act 2008](#) s.14(7)). The MMO is a statutory consultee for those with marine elements.

The responsibilities and process are prescribed by the [Planning Act 2008](#) (amended by the [Marine and Coastal Access Act 2009](#) and the [Localism Act 2011](#)). Note that the consent (a “development consent order”) when awarded constitutes a deemed marine licence, removing the need for a separate marine licence, and also disappplies the requirement for section 36(1) consent under the [Electricity Act 1989](#) (s.36(1B)).

Part 5, notably Section 37, of the [Planning Act 2008](#) and the [Infrastructure Planning \(Applications: Prescribed Forms and Procedure\) Regulations 2009](#), Schedule 2 and Regulations 5 and 6 prescribe the form and process of applications for orders granting development consent, which must cover all development ‘associated’ with the project (including, for example, wind turbines, all types of foundations, onshore and offshore substations, anemometry masts, accommodation platforms and cabling).

“Projects of Common Interest” (PCIs)

The [Regulation \(EU\) No 347/2013 of 17 April 2013 on guidelines for trans-European energy infrastructure](#) (the TEN-E Regulation) sets out guidelines for streamlining the permitting processes for major energy infrastructure projects that contribute to European energy networks (“Projects of Common Interest” - PCIs). The initial Union List of PCIs came into force on 10 January 2014. Although not significant currently to the Channel Seas, they could be of subsequent interest. The Department of Energy and Climate Change has produced guidance “[The TEN- E Regulation EU347/2013 UK Manual of Procedures](#)”, noting that in the UK the consenting processes for major energy infrastructure are broadly similar to the procedures set out in the TEN-E Regulation, requiring no new legislation or material change in UK processes, excepting in certain limited circumstances. The Secretary of State for Energy and Climate Change is the designated national competent authority for PCIs in the UK.

NAVIGATIONAL CONSIDERATIONS

Under Section 36B(1) of the [Electricity Act 1989](#) the Marine Management Organisation (on behalf of the Secretary of State) may not grant a consent for offshore generating activities that interfere with the use of recognised sea lanes essential to international navigation. Further, consent must consider the extent and nature of any obstruction of or danger to navigation likely to be caused (s.36B(2)) and can be varied in the interests of navigation and provide for aids to navigation and controls over vessel movements (s.36B(5)). Note that modifications to international traffic separation schemes can and have been requested of the International Maritime Organisation in the interests of offshore wind farms (as in the case of the Wave Hub project based off St Ives Head, Cornwall, south-west England).

Safety zones are provided for all offshore renewable energy installations under the [Energy Act 2004](#) (ss.95-98), which inter alia, extends the consent requirements under Section 36 of the [Electricity Act 1989](#) (s.36A). The requirements for applying to the Secretary of State for a safety zone are prescribed by the [Energy Act 2004](#) (s.95 and Schedule 16) and the [Electricity \(Offshore Generating Stations\) \(Safety Zones\) \(Application Procedures and Control of Access\) Regulations 2007](#). A notice to declare a safety zone is technically issued by the Secretary of State (s.95(2)), although the responsibility is delegated to the Marine Management Organisation for energy generating stations not exceeding 100 megawatts ([Marine and Coastal Access Act 2009](#), s.13). Once a safety zone is declared, in addition to the specific provisions of the notice, Sections 96 to 98 of the [Energy Act 2004](#) lay out certain general prohibitions and offences.

DECOMMISSIONING INSTALLATIONS

The end of life decommissioning of all offshore wind and marine energy installations is covered under the [Energy Act 2004](#) (ss.105-114) (implementing international commitments under, inter alia, the [United Nations Convention on the Law of the Sea 1982](#) and [Convention for the Protection of the Marine Environment of the North-East Atlantic 1992](#) and meeting the [Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone](#), IMO, 19 October 1989). The Secretary of State has some discretion in exercising the decommissioning powers. However, a decommissioning programme is generally required to be submitted and considered in conjunction with a

proposal to construct, extend, operate, use or decommission an offshore installation ([Energy Act 2004](#) , s.105(1), [Electricity Act 1989](#), s.36).

The decommissioning programme specifies: the measures for decommissioning, provisions for the restoration of the site, and provisions for the monitoring and maintenance of the object whilst in position ([Energy Act 2004](#), s.105(8)). Under Section 105(7) of the [Energy Act 2004](#) consultation may be required before submitting the programme. Upon receipt of a decommissioning programme the Secretary of State (or its designated representative – e.g. the Marine Management Organisation) may either: a) approve the submitted programme with or without modifications and/or conditions, b) reject the programme and require a new one; or c) prepare a decommissioning programme and recover the expenditure from the developer ([Energy Act 2004](#), ss.106-107).

Note that there are also decommissioning requirements attached to The Crown Estate leases and site licences. However, under an agreement with The Crown Estate, developers covered by the above statutory decommissioning scheme do not need to submit a separate scheme to The Crown Estate.

ENVIRONMENTAL CONSIDERATIONS

Environmental Impact Assessments

Wind farms and installations for the production of energy are included in Annex II of the European Council [Directive No 85/337/EEC \(as amended\) on the assessment of the effects of certain public and private projects on the environment](#), which lists projects for which an EIA may be required if deemed to be likely to have significant effects on the environment. The [Marine Works \(Environmental Impact Assessment\) Regulations 2007](#) transposes the Directive into UK law in respect of marine licences, with Regulation 4 requiring that a regulator must not grant regulatory approval unless the appropriate authority has given EIA consent. Correspondingly, the award of a marine licence is contingent on EIA consent.

For nationally significant infrastructure projects the [Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2009](#) set out the procedural requirements for an environmental impact assessment, with an environmental statement required to accompany an application for a development consent order. The [Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2000](#) (as amended) also potentially apply to offshore generating stations depending on the timing and route for approval of the development. However, only one environmental impact assessment is typically required ([Marine Works \(Environmental Impact Assessment\) Regulations 2007](#), Regulation 10(1)(b) (as amended)).

Consideration of the environmental statement by the responsible authority (the MMO in respect of marine licences) follows consultation with statutory and other bodies, with the final determination and decision reflecting the provisions of the [Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment](#). Similar requirements are specified by the [Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2009](#) and [Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2000](#) (as amended).

Habitats and Species Protection

Proposed renewable energy developments located within or in proximity to European marine sites fall within the requirements of the [Conservation of Habitats and Species Regulations 2010](#) and [Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#). These Regulations apply the [Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora](#) (the Habitats Directive) and [Directive 2009/147/EC on the Conservation of Wild Birds](#) (the Wild Birds Directive) into national law.

If the project is within or adjacent to a European site³ within internal or territorial waters and there is likely to be a significant effect on that site a Habitats Regulation Appraisal may be required under the [Conservation of Habitats and Species Regulations 2010](#) (as amended)(Regs. 4, 61) prior to any competent authority giving consent, permission or authorisation for a plan or project (Reg.61). The competent authority is required to: consult the appropriate nature conservation body, undertake public consultation where appropriate (Reg.61), consider Regulation 62 (considerations of overriding public interest) and ascertain the effect on the integrity of the European site or the European offshore marine site before deciding whether to agree to the plan or project (with any conditions or restrictions necessary).

Note that projects beyond territorial waters fall within the [Offshore Marine Conservation \(Natural Habitats, &c\) Regulations 2007](#) and are covered by similar provisions to those above under those Regulations, and are not addressed under the [Conservation of Habitats and Species Regulations 2010](#).

Regulation 6 of the [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) (as amended) requires any competent authority (any Minister of the Crown, government department, public or statutory undertaker, or public body of any description or person holding a public office) with functions relevant to marine conservation in the offshore marine area to exercise those functions to secure compliance with the requirements of the European [Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora European Habitats Directive](#) (Habitats Directive) and [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds](#) (Wild Birds Directive). This applies to powers under, *inter alia*, the [Marine and Coastal Access Act 2009](#). The provisions of Regulation 6, however, do not only apply to duties under the enactments listed in the Regulation and thereby extend to a variety of Government departments.

Regulation 23 of the [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) requires competent authorities to also exercise their functions to avoid the disturbance of species and deterioration of habitat for sites (including Special Areas of Conservation and Special Protection Areas) and species listed for various reasons within the [Habitats Directive](#) (*inter alia*, Annex II, Article 4(2) and Article 5(1)). Renewable energy developments are included herein. Regulation 39 also makes it a general offence (including outside designated areas) in relation to wild animals listed in Schedule 1 (European Protected Species - including cetaceans and turtles) of the [2007 Regulations](#) to *inter alia*: deliberately injure, kill, disturb or destroy the eggs of such an animal; or damage, destroy, or do anything to cause the deterioration of, a breeding site or resting place of such an animal. In certain circumstances a Wildlife Licence may be required (Regulation 49 [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) (as amended)), notably for activities where mitigation measures are unable to remove or significantly reduce the risk to European Protected Species. Wildlife Licences are issued by the Marine Management Organisation under the [Marine and Coastal Access Act 2009](#).

Additional provisions for the preservation of amenity are also contained under Section 38 and Schedule 9 of the [Electricity Act 1989](#). This requires a licence holder or a person authorised by exemption to generate, distribute, supply or participate in the transmission of electricity when formulating any relevant proposals to have regard to: (a) the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and (b) to do what can reasonably be done to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites,

³ A European Site is: a special area of conservation; a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the [Habitats Directive](#); a site hosting a priority natural habitat type or priority species protected in accordance with Article 5(4) of the [Habitats Directive](#); an area classified pursuant to Article 4(1) or (2) of the [Wild Birds Directive](#); or a site which has been proposed to the European Commission under Regulation 10 of the [Conservation of Habitats and Species Regulations 2010](#) (selection of sites eligible for identification as of Community importance) ([Conservation of Habitats and Species Regulations 2010](#), Regulation 8).

buildings or objects. In considering proposals for consent under Section 36, the Secretary of State is also required to have regard to the desirability of the matters above and the extent to which the requirement has been complied with.

APPLICATIONS RECEIVED PRIOR TO 1 APRIL 2010

Note that existing renewable energy developments and those for which applications were submitted prior to 1 April 2010 were subject to a different consents process to those stipulated above.

TABLE - PRIMARY LEGISLATION

(Note: in amended form)

Energy Act 2004	Renewable energy zones; navigational considerations; decommissioning
Marine and Coastal Access Act 2009	Renewable energy zones; development consent; marine licensing; navigational considerations; habitats and species protection
Crown Estate Act 1961	Crown leases and licenses
Electricity Act 1989	Development consent (MMO); navigational considerations; decommissioning
Planning Act 2008	Development consent (nationally significant infrastructure projects)
Town and Country Planning Act 1990	Planning permission
Localism Act 2011	Development consent (nationally significant infrastructure projects)
Growth and Infrastructure Act 2013	Development control (national significant infrastructure projects & business/commercial projects)
Coast Protection Act 1949	Decommissioning (above LWL)
Food and Environment Protection Act 1985	Decommissioning (above LWL)

TABLE - DELEGATED (SECONDARY) LEGISLATION (EXAMPLES)

Renewable energy zones	Renewable Energy Zone (Designation of Area) Order 2004 Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996
Development consent	Environmental Assessment of Plans and Programmes Regulations 2004 Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001 Offshore Generating Stations (Exemption) Order 1990 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 The Infrastructure Planning (Business or Commercial Projects) Regulations 2013 The Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012
Marine licence	Marine Licensing (Exempted Activities) Order 2011
Navigational considerations	Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007
Environmental impact assessments	Marine Works (Environmental Impact Assessment) Regulations 2007 Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000

Habitats and species protection	Conservation of Habitats and Species Regulations 2010 Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 Electricity Act 1989
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KEY POLICIES AND SUPPLEMENTARY INFORMATION

- [National Policy Statement for Renewable Energy Infrastructure \(EN-3\)](#). Department of Energy and Climate Change. 2011. London: The Stationery Office
- [Overarching National Policy Statement for Energy \(EN-1\)](#). Department of Energy and Climate Change. 2011. London: The Stationery Office
- [UK Renewable Energy Roadmap](#). Department of Energy and Climate Change. 2011. London: The Stationery Office. (Note: Annual Updates)
- [Offshore Wind Industrial Strategy: Business and Government Action](#). HM Government. 2013. London: London: The Stationery Office



Conservation

INSTITUTIONS

- **The Secretary of State for Environment, Food and Rural Affairs** - government minister with responsibility for nature conservation.
- **Department for Environment, Food and Rural Affairs** – Statutory nature conservation adviser in the English and UK offshore Marine Area and responsible for marine protected areas and species protection in the UK offshore Marine Area (i.e. beyond the 12nm territorial waters).
- **Natural England** – Statutory nature conservation advisor in England and its territorial waters and responsible for terrestrial, inter-tidal and sub-tidal protected areas and species protection up to the 12nm limit.
- **Joint Nature Conservation Committee** – Responsible for leading and coordinating the national initiatives for nature conservation and providing guidance.
- **Marine Management Organisation** – Responsible for: providing information for marine protection area designation and management; producing and implementing byelaws to protect Marine Conservation Zones and European marine sites (Special Areas of Conservation and Special Protection Areas); and issuing and managing wildlife and marine licences.

PROPERTY RIGHTS

Property rights are potentially limited or subject to redistribution by Statute to protect or manage habitats or species being conserved, as through planning constraints and the issue and rights conveyed under marine leases and licences ([Marine and Coastal Access Act 2009](#)).

However, the [European Convention on Human Rights and Fundamental Freedoms 1950](#) (as amended) protects property rights from arbitrary state appropriation (e.g. Case Law: *Aggregate Industries UK Ltd v. English Nature* (2002) All ER (D) 235 (Apr) with regard to Sites of Special Scientific Interest). The key issue is the extent to which the controls imposed by the state are proportionate to the public policy interest that is being pursued and the extent to which the cost of implementing the public policy measures should be borne by the property owners whose rights are being restricted rather than by the public. Compensation for the costs and profits forgone is included in legislation – e.g. s.28M of the [Wildlife and Countryside Act 1981](#).

PRINCIPAL LEGAL MECHANISMS

The national legal framework reflects national agendas and international and European commitments. Examples of international and European commitments include:

- [Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#) (Habitats Directive)
- [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds](#) (Wild Birds Directives)
- [Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy](#) (Marine Strategy Framework Directive)
- [Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy](#) (Water Framework Directive),

- [Oslo Paris Convention for the Protection of the Marine Environment of the North-East Atlantic 1992](#) (OSPAR Convention)
- [Convention on Biological Diversity 1992](#)

At the national level for the Channel, the principal legal mechanisms are:

- [Marine and Coastal Access Act 2009](#)
- [Conservation of Habitats and Species Regulations 2010](#)
- [Offshore Marine Conservation \(Natural Habitats, &c\) Regulations 2007](#)
- [Wildlife and Countryside Act 1981](#) (as amended).

REGULATORY STRATEGY

The regulatory strategy for the conservation of marine and coastal resources comprises 3 main elements:

1. The provision of a network of protected areas
2. The provision of a range of measures for species protection
3. The management of human activities and their impacts on nature conservation through:
 - The mechanism of the marine planning and licensing regimes
 - A general requirement for public authorities to explicitly consider the environmental and conservation implications of plans and projects prior to awarding consent, approval or other authorisation.

Note that the management framework and its legal basis differ between the inter-tidal zone, territorial waters and the UK offshore marine area.

PROTECTED AREAS

There are 5 main designations around England all of which may contribute to the network of protected areas:

- Sites of Special Scientific Interest (SSSI) – designated to protect sites of special scientific interest (primarily terrestrial sites although some extend below low water mark)
- Nature Reserves – designated for the conservation of flora, fauna or geological or physiological features of special interest, potentially in combination with providing opportunities for nature or open-air recreation (terrestrial and inter-tidal areas)
- Marine Conservation Zones (MCZs) - designated to protect nationally important habitats, species and geology (replacing, inter alia, Marine Nature Reserves)
- Special Areas of Conservation (SACs) – designated to protect marine habitats or species of European importance
- Special Protection Areas (SPAs) - designated to protect populations of specific species of birds of European importance

Note: SPAs and SACs constitute ‘European Marine Sites’ or ‘Natura 2000 sites’ (designated under Europe’s [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#) (Habitats Directive) and [Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds](#) (Wild Birds Directive)) and are also the basis of the UK OSPAR Marine Protected Area network.

Sites of Special Scientific Interest

Sites of Special Scientific Interest (SSSI) are statutorily provided by [Wildlife and Countryside Act 1981](#) (Part II), as amended by the [Countryside & Rights of Way Act 2000](#), the [Natural Environment and Rural Communities Act 2006](#) and the [Marine and Coastal Access Act 2009](#) (s.148).

Under [Wildlife and Countryside Act 1981](#) s.28(1) Natural England is under a statutory duty to “notify” any area of land deemed by them to be “of special interest by reason of any of its flora, fauna, or geological or physiographical features”. Notification is made to: local planning authorities, owners and occupiers of that land, and Secretary of State.

SSSIs can apply to land lying above mean low water mark, land covered by estuarial waters, and may also extend below mean low water mark (LWM) where the interest extends below LWM and the area is essential for the identification of the boundary of the SSSI (s.28(1A),(1B)).

Notification specifies ([Wildlife and Countryside Act 1981](#) s.28): the site, the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; any operations likely to damage that flora or fauna or those features; and a statement regarding the management, conservation and enhancement of the flora, fauna or features.

Once notified ([Wildlife and Countryside Act 1981](#)) Ministers, local authorities, public officials, statutory undertakers and other public bodies must consider any SSSI when exercising their functions (s.28G), and potentially damaging operations within an SSSI must either: receive the consent of Natural England, be carried out in accordance with an agreement concluded with Natural England, or be authorised by another public body subject to notification of Natural England. It is an offence to intentionally or recklessly destroy, damage or disturb the subject of special interest without reasonable excuse (s.28P).

Natural England can draw up a management scheme in consultation with land owners; serve a management notice on a landowner; or compulsorily acquire an SSSI not appropriately managed.

Nature Reserves

National Nature Reserves (NNRs) and Local Nature Reserves (LNRs) are designated under Part III of the [National Parks & Access to the Countryside Act 1949](#). They may be foreshore as well as terrestrial areas and include, inter alia, shingle beaches, cliffs, sand dunes and salt marshes.

The sites are designated for the conservation of flora, fauna or geological or physiological features of special interest, potentially in combination with providing opportunities for nature or open-air recreation (terrestrial and inter-tidal areas) ([National Parks & Access to the Countryside Act 1949, s.15](#)).

Nature reserves are designated and managed in different ways. National Nature Reserves are declared by Natural England for the Channel, and may be managed either:

- by Natural England (s.15A(1), s.19),
- through a management agreement (‘nature reserve agreement’) concluded between Natural England and the owner(s) of the land (ss.17-19), or
- by Natural England through compulsory acquisition of the land (ss.17-19) (in the event that the owners have breached a management agreement or it is the only solution and the designation is of national interest).

Natural England also has the power to make byelaws for the protection of the reserves ([National Parks & Access to the Countryside Act 1949, s.20](#)).

Local nature reserves are designated by local authorities that own or hold the area, or in accordance with a management agreement concluded with the owner(s) of the land ([National Parks & Access to the Countryside Act 1949, s.21\(1\)](#)), and managed in consultation with Natural England (s.21(6)).

Note that the provisions for “nature reserve agreements”, compulsory acquisition and byelaws are also extended to local natural reserves, with the local authority taking on the role of Natural England in these respects ([National Parks & Access to the Countryside Act 1949, section 21\(4\)](#)).

Marine Conservation Zones

Marine Conservation Zones (MCZ) are provided for by [Marine and Coastal Access Act 2009](#) Part 5 (ss.116–147) and are designated in England for conserving: marine flora or fauna, marine habitats or types of marine habitat, or features of geological or geomorphological interest (s.117). Economic and social consequences may be considered when designating MCZs (s.117(7)).

The [Marine and Coastal Access Act 2009](#) s.123 sets the broader objectives of designation, specifically the formation of a network that: contributes to the conservation or improvement of the UK marine environment, represents the range of features present in the UK marine area, and recognises the fact that the conservation of a feature may require the designation of more than one site.

The process of designation in England is governed by ss.116-121 [Marine and Coastal Access Act 2009](#) with s.122 providing for amendments or revocations. The Secretary of State designates MCZs using local Orders (s.116) with boundaries specified (s.118). They can be designated within territorial waters, the EEZ or sea bed or subsoil within UK continental shelf (s.116(2)) and can also extend above mean high water of a spring tide under certain conditions. Prior to designation, public consultation and the publication of documentation is required (ss.119-121).

Once designated:

- Any public authority's activities must be conducted in a manner that they consider best furthers, or least hinders, the conservation objectives set for MCZs ([Marine and Coastal Access Act 2009](#), s.125).
- Natural England and the Joint Nature Conservation Committee must be informed of a proposed activity likely to hinder the achievement of the conservation objectives of a MCZ, unless there's standing advice (s.126).
- The statutory nature conservation bodies can also give advice and guidance to public authorities regarding potentially damaging activities, impact mitigation and the advancement of conservation (s.127)

To assist with the management of MCZs the [Marine and Coastal Access Act 2009](#), s.129 the Marine Management Organisation has power to make byelaws to protect MCZs in the English Terrestrial Sea and to further conservation objectives (up to 12nm from the Territorial Sea baselines). The Marine Management Organisation can also issue permits authorising otherwise unlawful acts under the byelaws (s.129(5) [Marine and Coastal Access Act 2009](#)).

European Sites

The [EC Habitats Directive](#) requires EU Member States to create a network of protected wildlife, known as Natura 2000 sites, composed of:

- Special Areas of Conservation (SACs) - designated under the [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#) (EC Habitats Directive) to offer protection to a variety of wild animals, plants and habitats considered important or threatened, in the interests of global biodiversity
- Special Protection Areas (SPAs) - created under Article 4 of the [Council Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds](#) (EC Wild Birds Directive) for the protection of rare and vulnerable birds (as listed on Annex I of the Directive), and for regularly occurring migratory species

SACs and SPAs consisting of marine areas, under Regulation 8 of the [Conservation of Habitats and Species Regulations 2010](#) are together termed 'European Marine Sites'.

Note that the term ‘European Marine Site’ is not a statutory site designation in the UK and refers to Natura 2000 management units that fall outside the scope of protection offered by Site of Special Scientific Interest (SSSI) designation.

European marine sites are protected and managed differently depending on their location, as outlined below:

Terrestrial and Inter-Tidal Sites

Natural England leads the identification of terrestrial and inter-tidal SACs and SPAs. Once designated, they are managed through the mechanism of Sites (or Areas) of Special Scientific Interest, under the [Wildlife and Countryside Act 1981](#) (as amended) and Regulation 17 of the [Conservation of Habitats and Species Regulations 2010](#), with supplementary dedicated provisions.

Regulation 16 of the [Conservation of Habitats and Species Regulations 2010](#) provides for Management Agreements between Natural England and landowners/tenants for the management, conservation, restoration or protection of the site. Where unable to agree, Natural England has the power to acquire the interest in the land compulsorily (Reg.34). Natural England also has the power to make byelaws for the protection of the European site under the [National Parks and Access to the Countryside Act 1949](#), s.20 (Reg.30). Special Nature Conservation Orders can also be issued regarding specific operations deemed particularly damaging, allowing, for example, the issue of a “Stop Notice”.

English Territorial Waters

The designation of “SACs and SPAs with Marine Components” within 12nm of the Territorial Sea baseline falls under provisions of Regulation 10 and Regulation 12A, respectively, of the [Conservation of Habitats and Species Regulations 2010](#), with Natural England leading the identification of and consultation over the sites.

Once a candidate European Marine Site has been approved by the European Commission and designated by the UK Government, under Regulation 15 of the [Conservation of Habitats and Species Regulations 2010](#), Natural England is required to notify: owner or occupiers; local planning authorities; the Marine Management Organisation; and certain other persons as directed of its designation. The notification is to include details of the conservation objectives for the site and also of the operations which may affect its integrity.

Management is via a single Management Scheme, established by any of the competent authorities that exercise functions in the site. The scheme is developed in conjunction with other competent authorities with functions relating to the site, which are then required to exercise their functions in accordance therewith (Reg.36)). Relevant authorities can include, inter alia: water & sewage undertakers, navigation authorities, harbour authorities, lighthouse authority, inshore fisheries and conservation authorities, national park authorities.

Note that there is also a general duty for statutory authorities to comply with the provisions of the [Habitats Directive](#).

UK Offshore Marine Area

Beyond English territorial waters SACs and SPAs are known as Offshore European Marine Site (Regs. 2 & 15 [Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#)) and cover: the UK’s offshore marine area (waters beyond 12nm, within British Fishery Limits and the seabed within the UK Continental Shelf area designated under section 1(7) of the [Continental Shelf Act 1964](#)). The designation of Offshore SACs and SPAs is specified by Regulations 7, 11 and 12 of the [Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#). The Joint Nature Conservation Committee leads their identification and consultation⁴.

⁴ Sites that cross the 12nm line dealt with by an agreement between Natural England and the Joint Nature Conservation Committee.

Once a candidate European Marine Site has been approved by the European Commission and designated by the UK Government, the Joint Nature Conservation Committee creates formal conservation objectives for the site and advises Department of Environment, Food and Rural Affairs and other relevant Competent Authorities on management actions ([Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#), Reg.18). Management is via single Management Schemes, established by any of the competent authorities that exercise functions in the site. These lay out how the authorities propose to undertake their functions to comply with the [Habitats Directive](#) and [Wild Birds Directive](#) regarding the site. They are developed in consultation with the Joint Nature Conservation Committee and other competent authorities with functions relating to the site. The Scheme once finished is then circulated and reviewed every 5 years ([Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#), Regs. 19-21).

In addition to the Management Scheme, there are also general duties to assess the implications of plans and projects for the site, take appropriate conservation measures and avoid the disturbance of certain species and deterioration of certain habitats (e.g. [Offshore Marine Conservation \(Natural Habitats, &c.\) Regulations 2007](#), Reg. 22).

UK OSPAR Marine Protected Areas

The [Convention for the Protection of the Marine Environment of the North-East Atlantic 1992](#), Annex V on Biodiversity Strategy, sets out an objective to establish a network of marine protected areas that is both ecologically coherent and well-managed by 2016.

"an area within the [OSPAR] maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment" (OSPAR 2003 Annex 9 A-4.44a).

The United Kingdom is meeting its commitments by evaluating existing marine protected areas (SACs and SPAs) against the [OSPAR MPA ecological criteria](#). The protection afforded to these sites is, therefore, the same as for SACs and SPAs.

SPECIES SPECIFIC PROVISIONS

The principal statutory provisions in England for the protection of wild birds, animals and plants are:

- the [Wildlife and Countryside Act 1981](#) (as amended)
- [Conservation of Habitats and Species Regulations 2010](#), Part 3, Regulations 40-47 (European protected Species) (as amended)
- [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) (Part 3) (European protected species beyond 12nm) (as amended).

Wildlife and Countryside Act 1981

Schedules 5 to 8 of the [Wildlife and Countryside Act 1981](#) (as amended) list the species that are protected under the Act, which includes a number of inter-tidal and marine species. The Act makes it an offence (subject to exceptions) to intentionally: kill, injure, or take wild birds and animals covered by the Act; take, damage or destroy the nest or shelter thereof; or disturb birds and animals at specific times (ss.1, 9). The Act also prohibits certain methods of killing, injuring, or taking such species (s.5), and specifies a range of penalties.

The Act also covers plant species (primarily terrestrial), making it an offence (subject to exceptions and variations) in relation to the species listed in Schedule 8 to: intentionally or recklessly pick, uproot or destroy wild plants or sell, offer or expose for sale, or possess (for the purposes of trade) wild plants or part or derivations thereof (s.13). There are also provisions for species not listed in Schedule 8.

Section 14 of the [Wildlife and Countryside Act 1981](#) (and its amendments, Sections 14ZA-P) further prohibits, and contains measures to mitigate the effects of, non-native species introductions (animals and plants). Note

that this section does not apply in relation to England to acts falling under Regulation 52 of the [Conservation of Habitats and Species Regulations 2010](#).

To provide for legitimate activities that would otherwise be illegal under the [Wildlife and Countryside Act 1981](#), sections 16-27 provide for the granting of licenses for specific activities (e.g. research, education, conservation and public and livestock health and safety), and their enforcement.

Conservation of Habitats and Species Regulations 2010 and Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007

Part 3 of the [Conservation of Habitats and Species Regulations 2010](#) (as amended) provides for the protection of European protected species (as listed in the Schedules to the Regulations and Annexes to the [Habitats Directive](#) which have a natural range including any area in Great Britain) (Reg.40). Similar protections as listed under the preceding section on the Wildlife and Countryside Act 1981 are provided for plants, animals and wild birds.

Part 3 [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) (as amended) (Regs. 33-43) extends the above provisions beyond the 12nm Territorial Waters. The Regulations create offences for the protection of wild birds, animals and plants similar to those covered in the preceding section, which in some instances are subject to defences (Regs.35, 40).

To provide for legitimate activities that would otherwise be illegal under the Regulations, the Regulations also provide for the granting of Wildlife Licences (e.g. [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#), Reg.49 (as amended)). Wildlife Licences may be awarded by the Marine Management Organisation under the [Marine and Coastal Access Act 2009](#) for certain specified activities where mitigation measures are unable to significantly reduce the risk to protected species. Note that terrestrial Wildlife Licences are granted by Natural England.

Part 4 of both the [Conservation of Habitats and Species Regulations 2010](#) and [Offshore Marine Conservation \(Natural Habitats &c.\) Regulations 2007](#) further addresses the arrangements for the surveillance and monitoring of European species and habitats to determine the conservation status thereof, to comply with the [Habitats Directive](#).

SUPPLEMENTARY PROVISIONS

There are also specific legal provisions providing for the environmental and conservation implications of certain sectors and legislation providing for the protection of specific species (e.g. [Conservation of Seals Act 1970](#) and the [Whaling Industry \(Regulation\) Act 1934](#)).

TABLE - PRIMARY LEGISLATION

(Note: in amended form)

Wildlife and Countryside Act 1981	Sites of Special Scientific Interest (terrestrial and inter-tidal Special Areas of Conservation and Special Protection Areas), species protection with 12nm.
Marine and Coastal Access Act 2009	Sites of Special Scientific Interest, Marine Conservation Zones, wildlife licences, byelaws
National Parks & Access to the Countryside Act 1949	Nature Reserves
Conservation of Seals Act 1970	Species protection
Whaling Industry (Regulation) Act 1934	Species protection

TABLE - DELEGATED (SECONDARY) LEGISLATION (EXAMPLES)

Nearshore and offshore Special Areas of Conservation and Special Protection Areas (i.e. European Marine Sites)	Conservation of Habitats and Species Regulations 2010 Conservation of Habitats and Species (Amendment) Regulations 2012 Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 Offshore Marine Conservation (Natural Habitats, &c.) (Amendment) Regulations 2012
Protection of European protected species	Conservation of Habitats and Species Regulations 2010
Species protection beyond 12nm Territorial waters	Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007

KEY POLICIES AND SUPPLEMENTARY INFORMATION

- [The Natural Choice: securing the value of nature](#). HM Government/ Department for Environment, Food and Rural Affairs. 2011. London: The Stationery Office (NB. [Implementation updates](#) are available)
- [Biodiversity 2020: A strategy for England's wildlife and ecosystem services](#). Department for Environment, Food and Rural Affairs (DEFRA). 2011. London: DEFRA
- [The National Adaption Programme: Making the country resilient to a changing climate](#). Department for Environment, Food and Rural Affairs (DEFRA). 2013. London: DEFRA
- [National Planning Policy Framework](#). Department for Communities and Local Government (DCLG). 2012. London: DCLG
- [UK Marine Policy Statement](#). HM Government. 2011. London: The Stationery Office
- [Red Tape Challenge – Water and Marine Theme Implementation Plan](#). Department for Environment, Food and Rural Affairs (DEFRA). 2013. London: DEFRA
- [Distribution/Maps/Status of UK Conservation Designations](#)

FRENCH WATERS



Marine Planning and Licensing

INSTITUTIONS

- **Ministries:**
 - **The Ministry for Sea Affairs – [Le ministère chargé de la mer](#).** Sets out the major agendas in maritime spatial planning by drafting the national marine and coastal framework strategy (SNML)⁵.
 - **The Ministry for Environmental Affairs – [Le ministère chargé de l’environnement](#).** Tasked with setting up the Network of Protected Marine Areas (AMP)⁶. Decides on the final plans designating AMPs⁷ and checks the coherence of the network against the other public policies.
- **Public bodies in charge of drawing up policies:**
 - **The National Council for Seas and Coasts (CNML) – [Le conseil national de la mer et des littoraux](#)** – Created in 2010⁸, it is chaired by the Prime Minister, or by delegation, the Minister for the Sea⁹. CNML is engaged in strategic reflection and particularly involved in the drafting, implementation, monitoring and assessment of the national marine and coastal framework strategy (SNML). It is always consulted on decrees related to the management of publicly owned maritime domain (DPM). It can also be consulted regarding other texts or issues involving seas and coastlines and can submit proposals to the government. It acts as a facilitator of the maritime seaboard councils (CMFs) and overseas maritime councils (CMUs)¹⁰. At European, national and inter-regional levels, it takes part in working groups engaged in future prospects, observations and assessments of coasts. The inter-ministerial delegate for sustainable development (DIDD) is in charge of the CNML’s general secretariat jointly with the State Commission for Equal Territorial Opportunities (CGET) – [commissariat général à l’égalité des territoires](#) and the General Secretary for the Sea – [secrétaire général de la mer \(SGMer\)](#).
 - **Maritime seaboard councils (CMF)** – The plan is to create CMFs¹¹ for each maritime coastline of Metropolitan France¹². CMFs are tasked with coordinating the use, spatial planning, protection

⁵ In compliance with orientations set by the Inter-ministerial committee for the sea.

⁶ Example: designates Natura 2000 sites and is tasked with creating natural protected marine areas.

⁷ Having previously consulted with, either the National Council for Sea and Coasts (CNML), the National Council for the Protection of Nature ((CNPN), or the Board of Administration of the Agency for Protected Marine Areas (AAMP). The decision is made public by a posting in either the Official Gazette or the Official Bulletin, depending on the case.

⁸ The Act on the national commitment for the environment called the Grenelle II Act – [loi n°2010-788 du 12 juillet 2010 portant engagement national pour l’environnement, dite loi « Grenelle II »](#). The Decree – [décret n°2011-637 du 9 juin 2011](#) clarifies its remit, composition and modus operandi. The CNML was officially set up on January 18, 2013. It comes in lieu of the former National Coastline Council (CNL), instituted via Act n° 2005-157 – [loi n°2005-157 du 23 février 2005 relative au développement des territoires ruraux](#) (Art. 235) ([décret d’application n°2005-1426 du 18 novembre 2005](#)).

⁹ It is made up in equal numbers of members of Parliament and representatives of territorial authorities from Metropolitan France and Overseas France seaboard, as well as representatives of economic and social interest groups, and of civil society, involved in coastal activities and usages.

¹⁰ See *infra*.

¹¹ [Art. L.219-6-1](#) of the Environmental Code. Composed of representatives of the State, territorial authorities, their public establishments, coast and sea professionals, civil society and volunteer organisations working for the protection of the environment. They meet at least once a year. The ministerial decision of 27 September 2011 – [L’arrêté ministériel du 27 septembre 2011](#) specifies their compositions and modus operandi (80

and development of coasts and the sea. There are draft recommendations on all subjects under their competency, in particular, coherence in sea and coastal space allocation. They identify the natural areas to protect because of their wealth in flora and fauna; the areas conducive to the development of economic activities; and potential areas for future allocation. Finally, they produce opinions taken into account by the State when strategic seaboard documents (DSFs) or action plans for the marine environment (PAMM)¹³ are drafted.

- **Devolved authorities:**

- **The regional prefects** – via prefectural decisions, they approve strategic and spatial planning documents at the regional level.
- **The prefects of a *département*** – via prefectural decisions, they approve strategic and spatial planning documents at the “*département*” level.
- **The maritime prefects** – they facilitate and coordinate the State’s action at sea along the three major seaboards of Metropolitan France. In particular, they are in charge of the police at sea; the management of protected marine areas (AMPs); and the coordination of emergency responses¹⁴. Via prefectural decisions, they approve strategic and spatial planning documents at seaboard scale.

- **Devolved agencies:**

- **The inter-regional sea directorates - *les directions interrégionales de la mer (DIRMs)***¹⁵ – Under the authority of the competent regional prefects and with the DREALs¹⁶, they take part in the management and protection of the marine and coastal environment; the integrated coastal zones and public maritime domain management; and the planning of off-shore activities. Under the authority of the regional prefects, they draft planning documents at a regional scale.
- **The delegations for sea and coastal affairs - *les délégations à la mer et au littoral (DML)*** - They report to the *département’s* directorates for land and sea affairs (DDTM)¹⁷. Among other activities, they are tasked with the management of maritime activities as well as the monitoring of urban planning documents at municipality and inter-municipal levels; they are also tasked with the *département’s* water policy and its planning tools. Under the authority of the *département* prefects, they draft the strategy documents applicable to the *département*.

- **Territorial authorities:**

- **The Regional councils - *les conseils régionaux (CR)*** – They draft the regional master plans for territorial planning and development - SRADT and the regional master plans for ecological

members split into 5 colleges, appointed jointly by the Decisions of territorially competent maritime prefects and the regional prefects where inter-regional sea directorates (Direction interrégionales de la mer -DIRMs) have headquarters.

¹² Eastern Channel – North Sea; North-Atlantic - Western Channel; South Atlantic and Mediterranean.

¹³ See *infra*.

¹⁴ Decree n°2004-112 of 6 February 2004 on the organisation of the State’s action at sea - [Décret n°2004-112 du 6 février 2004 relatif à l'organisation de l'action de l'Etat en mer](#); Decision of 22 March 2007 listing the State’s mission at sea in the maritime zone of the Channel – North Sea, the Atlantic, the Mediterranean, the Caribbean, Guyana, the south of the Indian Ocean and in the waters bordering the French southern and Antarctic coasts - [Arrêté du 22 mars 2007 établissant la liste des missions en mer incombant à l'Etat dans les zones maritimes de la Manche-mer du Nord, de l'Atlantique, de la Méditerranée, des Antilles, de Guyane, du sud de l'océan Indien et dans les eaux bordant les Terres australes et antarctiques françaises](#).

¹⁵ Decree n° 2010-130 of 11 February 2010 on the organisation and missions of the Inter-regional sea directorates - [Décret n°2010-130 du 11 février 2010 relatif à l'organisation et aux missions des directions interrégionales de la mer](#).

¹⁶ Decree n° 2009-235 of 27 February 2009 on the organisation and missions of the Regional directorates for the Environment, Spatial Planning and Housing - [Décret n°2009-235 du 27 février 2009 relatif à l'organisation et aux missions des directions régionales de l'environnement, de l'aménagement et du logement \(DREAL\)](#).

¹⁷ Decree n° 2009-1484 of 3 December 2009 on the Inter-ministerial directorates in the *départements* - [Décret n°2009-1484 du 3 décembre 2009 relatif aux directions départementales interministérielles](#).

coherence - SRCE¹⁸. They determine the study perimeter of regional nature parks (PNR)¹⁹ with a maritime frontage.

- **The Public establishment for coastal protection:**
 - **The Seashore and Lakeshore Conservatory - [conservatoire des espaces littoraux et des rivages lacustres](#) (CELRL « conservatoire du littoral »)** – Intervenes in the public maritime domain (DPM) to promote a more integrated coastal management²⁰. It is also systematically consulted whenever a Protected Marine Area (AMP) is being set up.

PRINCIPAL LEGAL MECHANISMS

- [EU Directive: Directive 2008/56/EC of the European Parliament and of The Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy \(Marine Strategy Framework Directive\)](#) (MSFD)
- [Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning](#)²¹
- French Environmental Code - [Code de l'environnement](#) (in particular [Art. L.219-1 et s.](#), [L.219-3](#) and following, and [L.334-1 et s.](#))
- French Town Planning Code - [Code de l'urbanisme](#) (in particular [Art. L.121-1](#) and following);
- Act n°86-2 of 3 January 1986 – the “Coastal Act” [Loi n°86-2 du 3 janvier 1986 relative à l'aménagement, la protection et la mise en valeur du littoral, dite loi « Littoral »](#) ;
- The “so-called” Grenelle II Act on the national commitment for the environment - [Loi n°2010-788 du 12 juillet 2010 portant engagement national pour l'environnement, dite loi « Grenelle II »](#) ([Art. 166](#)) ;
- Decree n° 2011 – 492 on the marine environment action plan - [Décret n°2011-492 du 5 mai 2011 relatif au plan d'action pour le milieu marin](#) ;
- Decree n° 2011 – 637 National Council for Sea and Coasts - [Décret n°2011-637 du 9 juin 2011 relatif aux attributions, à la composition et au fonctionnement du Conseil national de la mer et des littoraux](#) ;
- Decree n° 2012 – 219 National marine and coastal framework strategy and Strategic seaboard documents - [Décret n°2012-219 du 16 février 2012 relatif à la stratégie nationale pour la mer et le littoral et aux documents stratégiques de façade](#) (as codified in [Articles R.219-1 and following](#) of the Environmental Code) ;
- Ministerial Decision of 27 September 2011 on maritime seaboard councils - [Arrêté du 27 septembre 2011 relatif à la composition et au fonctionnement des conseils maritimes de façade](#).

DEFINITIONS

Maritime spatial planning (MSP) - [La planification de l'espace maritime \(PEM\)](#)²² and Integrated Coastal Zone Management (ICZM) - [la gestion intégrée des zones côtières \(GIZC\)](#)²³ are two complementary governance tools of the European Union's integrated maritime policy (IMP) - [politique maritime intégrée de l'Union européenne](#) (PMI)²⁴, used more specifically for the purpose of an ecosystem approach. As inter-sectorial instruments, both

¹⁸ See *infra*.

¹⁹ [Art. L.333-1, III](#) of the Environmental Code.

²⁰ Within its geographic area of competence, it may acquire land by whatever means it chooses.

²¹ COM (2013)133. The expression « Integrated Coastal Zone Management » was removed following advice from the European Parliament.

²² Promoted via the Action plan for “Maritime spatial planning” EU COM (2008) 791 - [feuille de route pour la planification de l'espace maritime dans l'UE \(COM \(2008\) 791\)](#) and the Marine Strategy Framework Directive (MSDF) of 17 June 2008 - [Directive-cadre « stratégie pour le milieu marin » \(DCSMM\) du 17 juin 2008](#).

²³ From a Parliament and Council recommendation of 30 May 2002 - [recommandation du Parlement et du Conseil du 30 mai 2002](#).

²⁴ Featured in the EU Integrated Maritime Policy Blue Book – [livre bleu relatif à une politique maritime intégrée pour l'Union Européenne du 10 octobre 2007](#) and approved by the European Council on 14 December 2007 [le Conseil européen le 14 décembre 2007](#).

MSP and ICZM ensure a planned use of the maritime space as well as comprehensive and integrated coastal zone management.

MSP is the “analysis and planning of human activities in time and space, in the maritime areas” and ICZM is “a holistic process that takes into account the various usages in the coastal areas and allowing for land-sea interaction”²⁵.

MSP²⁶ should allow ICZM to extend all the way into the sea, whereas ICZM operations are too often limited in practice to the land side of the coastal space or to contained maritime spaces, i.e. bays and natural harbours.

France favours the expression “maritime space planning” (or “strategic planning”) rather than “maritime spatial planning” (MSP). It implies that, along with all the other players, a shared vision is constructed, one that can evolve. Locally, spatial planning becomes an operational tool for the implementation of such a strategy.

MSP was introduced in France via integrated sea and coastline management (GIML)²⁷.

THE NATIONAL MARINE AND COASTAL FRAMEWORK STRATEGY (MSP)

Following on from the Grenelle Environmental Conference launched in September 2007 and the Grenelle Sea Conference launched in February 2009, France decided to define a national MSP²⁸.

The French Blue Book for a national sea and ocean framework strategy - [livre bleu pour une stratégie nationale pour la mer et les océans](#)²⁹ was adopted during an inter-ministerial sea committee on 8 December 2009 and set the following guidelines:

- A holistic approach applied to maritime issues, i.e. not in a sectorial approach as has been the case so far;
- Alignment of public policies applied to land issues with those applied to maritime issues;
- Integrated governance i.e. close cooperation between political decision-makers and stakeholders involved in sea or in coastal issues.

The Grenelle II Act - [loi Grenelle II \(Art. 166\)](#)³⁰ specifically enshrined this new approach of dealing with maritime and coastal issues, by adding a new chapter in the Environmental Code entitled “Framework policies for marine environments” ([Art. L.219-1 to L.219-18](#)). It provides for an integrated sea and coastline management approach – GIML ([Art. L.219-1 to L.219-6-1](#)). What the GIML does is in fact expand³¹ on the ICZM principle³² “to a scale extending from the top of the watershed all the way out at sea”³³.

²⁵ Proposal for a Directive of the European Parliament and of The Council establishing a framework for maritime spatial planning and integrated coastal management - [Proposition de directive du Parlement européen et du Conseil du 12 mars 2013 établissant un cadre pour la planification de l'espace maritime et la gestion intégrée des zones côtières](#). See also: [Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning](#)

²⁶ MSP’s spatial scope extends from the baselines to the exclusive economic zone (EEZ) and continental shelf.

²⁷ See *infra*.

²⁸ In line with EU’s policies and regulations. France plays a major role in IMP implementation since it owns the second longest maritime surface in the world with over 11 million sq. kms of EEZs.

²⁹ It was specifically based on forward-looking research by the Poseidon Group of 8 December 2006 - [groupe Poséidon du 8 décembre 2006](#) and on results from the Grenelle of the Sea.

³⁰ It follows on from Act n° 2009-967 on the implementation of “Grenelle 1” - [loi n°2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement dite « Grenelle 1 » \(art. 35\)](#).

³¹ Point 68. b of the French Blue Book on Grenelle II commitments - [livre bleu des engagements du Grenelle de la mer de juillet 2009](#).

³² Adopted in France at the inter-ministerial meeting of 16 February 2004 and relayed via a decision of the Coastline CIADT (Inter-ministerial Committee for Territorial Planning and Development) on 14 September 2004 - [décision du CIADT « littoral » du 14 septembre 2004](#).

³³ Grenelle of the Sea, June 2009.

The national sea and coastal strategy implemented under the EU Marine Strategy Framework Directive is defined in [Article L.219-1](#). The strategy is drawn up by the Minister for the Sea³⁴, in compliance with the policies set out by the Inter-ministerial committee for the sea, and “*in consultation with the relevant territorial authorities, scientific community, social and economic stakeholders, and volunteer organisations for the protection of the environment*”.

The National council for sea and coasts (CNML) carries out consultation at the national level and locally via the maritime seaboard councils (CMFs) as provided in Article [L.219-6-1](#) and via the ultra-marine maritime councils as provided in Article [L.219-6](#). The SNML is revised every six years³⁵.

The SNML implementation mechanisms were established in Decree n°2012-219 of 16 February 2012³⁶. The SNML is defined in a framework document. Six themes are explored³⁷, in particular the protection of the various environments, the re-use of marine resources, and the integrated and joint management of all marine and terrestrial activities³⁸.

The SNML applies to “*the marine spaces under sovereignty or national jurisdiction, the air space above, the seabed and its subsoil*” in Metropolitan France and overseas as well as to “*all terrestrial activities that have an impact on those said areas*”³⁹.

The primary SNML legislation is in the process of being drafted and will be followed by the drafting of secondary strategic documents applicable to Metropolitan France’s seaboard and strategic basin documents applicable overseas. They will translate and supplement the SNML agenda and policies (Art. L.219-3 and following, and R.219-1 et s.)⁴⁰.

INSTRUMENTS FOR MARINE AND COASTAL PLANNING

Instruments for Strategic Planning

Strategic Seaboard Documents

The strategic seaboard documents⁴¹ (DSFs) define the integrated sea and coastline management (GIML) objectives and matching arrangements for each of the four Metropolitan seaboard⁴² defined in the SNML⁴³. Their content is set via a State Council decree⁴⁴.

DSFs contain a number of sections, including an environmental one on the sustainable development of maritime activities: *the marine environment action plan*⁴⁵ - PAMM, pursuant to the Marine Strategy Framework Directive - [directive-cadre « stratégie pour le milieu marin »](#)⁴⁶. PAMMs are drafted⁴⁷, one per

³⁴ Via a State Council decree (*Conseil d’Etat*). The SNML is at present being drafted (due in 2014).

³⁵ [Art. L.219-2](#).

³⁶ Decree n° 2012-219 on national marine and coastal framework strategy and seaboard strategic documents - [Décret n°2012-219 du 16 février 2012 relatif à la stratégie nationale pour la mer et le littoral et aux documents stratégiques de façade](#).

³⁷ [Art. R.219-1-1](#). With long terms objectives and on a 6-year timeline.

³⁸ “Excepting those specifically designed for defence or national security purposes” ([Art. L.219-1](#)).

³⁹ [Art. L.219-1](#).

⁴⁰ See *infra*.

⁴¹ Generated by “Grenelle II” and Decree n° 2012-219 - [décret n°2012-219 du 16 février 2012](#), DSFs are not operational at this time. They have been provided for in Articles [L.219-3](#) to [L.219-6-1](#) and [R.219-1-7](#) to [R.219-1-14](#) of the Environmental Code.

⁴² For overseas territories, “*the territorial authorities and the State draft (...) a strategy for each overseas maritime basin called a maritime basin strategic document; if necessary it can be a cross-border document*”; “*an overseas maritime council is put together at the scale of each maritime basin*” ([art. L.219-6](#)).

⁴³ Eastern Channel – North Sea; North-Atlantic - Western Channel; South Atlantic and Mediterranean.

⁴⁴ [Art. L.219-5](#).

⁴⁵ [Art. L.219-9](#) to [L.219-18](#) and from [R.219-2](#) to [R.219-17](#) of the Environmental Code ; Decree on the marine environment action plan - [Décret n°2011-492 du 5 mai 2011 relatif au plan d’action pour le milieu marin](#).

⁴⁶ Transposed by the Grenelle II Act ([art. 166](#)).

marine sub-region (SRM)⁴⁸ to reach or maintain good environmental status of the marine environment by no later than 2020, thus constituting the environmental pillar of the EU's IMP. They plan for cooperation and coordination with the neighbouring riparian states. Their drafting is done at marine sub-regional level under the supervision of two coordinating prefects⁴⁹.

Each PAMM comprises five elements⁵⁰:

- An initial assessment to check the status of the marine environment (EI) comprising three sections (“environmental condition”; “pressures & impacts”; and “economic and social analysis”);
- A definition of good ecological status (GES)⁵¹;
- A definition of environmental objectives and related indicators (OE)⁵²;
- A surveillance programme (monitoring the marine environmental status) (PdS)⁵³;
- A metrics programme (to measure actions) (PdM)⁵⁴.

[Article L.219-4](#) provides that the strategic seaboard documents may be invoked against:

- Mechanisms, plans and programmes applicable within their perimeter⁵⁵ (for example, any urban planning document⁵⁶);
- Projects and authorisations⁵⁷ located and delivered within their perimeters; may also be invoked against administrative decisions taken to manage the marine space.

The above elements must be compatible with the strategic seaboard document objectives and measures and must take them into account if they are to have any significant impact within that seaboard.

The strategic seaboard documents (DSFs) must also take into account the regional master plans for the development of marine aquaculture⁵⁸ (SRDAM), which are “*drawn up in each region with a sea front in order to list all the existing sites and all those suitable for the development of sustainable marine aquaculture*”.

[Article L.219-6-1](#) provides for the setting up of a dedicated advisory committee in each seaboard of Metropolitan France: the maritime seaboard council⁵⁹. When strategic seaboard documents (DSFs) and marine

⁴⁷ By the administrative authority after it was made available to the general public.

⁴⁸ In the Channel and Atlantic zones, applicable to the following marine sub-regions: Channel – North Sea (*North Brittany, Basse-Normandie ; Haute-Normandie ; Picardy ; North-Pas-de-Calais*); Celtic Seas (*Iroise Sea*) and Bay of Biscay (*South Brittany, Pays de la Loire, Aquitaine*) of the OSPAR Convention of 22 September 1992 (CIF 17 February 1998).

(http://www.ospar.org/html_documents/ospar/html/ospar_convention_e_updated_text_2007.pdf)

Convention For the Protection of the Marine Environment of the North-East Atlantic - [Convention pour la protection du milieu marin de l'Atlantique Nord-Est](#) .

⁴⁹ As per joint prefectural decision, with the support of the interregional director for the sea. For the Channel-North Sea sub-region: the maritime prefect for the Channel and the Regional prefect of Haute-Normandie; for the Celtic Seas: the maritime prefect for the Atlantic and the Regional prefect of the Pays de la Loire; for the Bay of Biscay: the maritime prefect for the Atlantic and the regional prefect of the Pays de la Loire.

⁵⁰ Updated every six years starting with the initial draft.

⁵¹ Done at national level.

⁵² Implementation of those first three elements by 15 July 2012 at the latest.

⁵³ Implementation by 15 July 2014 at the latest.

⁵⁴ Drafting finished no later than 31 December 2015 and rolling out no later than 31 December 2016.

⁵⁵ i.e. “*marine as well as terrestrial*”.

⁵⁶ See *infra*.

⁵⁷ Expl : authorizations issued in the context of offshore renewable energy generation works. RMEs call for sectorial-specific strategic and spatial planning.

⁵⁸ SRDAMs are set up pursuant to [Article L.923-1-1](#) of the French Rural and Maritime Fishing Code (CRPM). The DIRMs draft them and the Regional prefect who publishes a prefectural decision approves them.

⁵⁹ See *supra*.

environment action plans (PAMMs) are drafted, the State takes into account the opinion of the appropriate council⁶⁰.

Spatial Planning Mechanisms

A range of spatial planning mechanisms applies to marine and terrestrial spaces, each within its own area of operation.

Protected Marine Areas

The French agency for protected marine areas ([Agence des aires marines protégées - AAMP](#)) is tasked with the management of the French network of protected marine areas (AMPs). It is not however, acknowledged as a legitimate stakeholder in the planning of maritime spaces, since it is not competent for any maritime area located outside marine protected areas.

The organisation of the MPA network which was launched in 2007, does however bring its contribution to the Maritime Spatial Planning (PEM) objective. The Act of 14 April 2006⁶¹ (as codified in [Article L.334-1](#) of the Environmental Code), draws up a list of six categories of areas that are acknowledged as officially contributing to the network of protected marine areas. The Ministerial Order of 3 June 2011 ([arrêté ministériel du 3 juin 2011](#)), identifying the categories of protected marine areas falling within the scope of the AAMP⁶² finalizes the list with 9 new areas.

The Maritime Spatial Plan is thus developed within some of the AMPs, such as the Natura 2000 sites featuring a maritime zone ([Art. L.414-1](#)). The objectives document⁶³ (DOCOB) is a planning document that provides the guidelines to assess both natural environment and human activities; to define the management choices most adapted to the given marine area; and the financial means of support. In addition, before any implementation can take place, the impact of all mechanisms, plans, programmes and other planning documents must be assessed against the Nature 2000 requirements ([Art. L.414-4](#) and following, plus [R.414-19](#) and following).

In the case of natural marine protected areas (PNMs) ([Art. L.334-3](#)), the management plan sets out the objectives for protection, exploration, enhancement and sustainable development of the given location. The mapping of specific dedicated areas provides a definition of action priorities (protection, enhancement, sustainable development and sustainable exploitation) based on the characteristics of those specific locations. This mapping allows the management plan simply to be spatially located and carries no regulatory weight.

Regional nature parks (PNR) with a coastline, ([Art. L.333-1, III](#)) can also be part in marine action programmes, in order to carry out the basic guidelines and principles of their Charters applicable to their areas on the coast. They carry no weight in the decision-making process of how land or space is used. In a regional nature park, any town planning documents must be compatible with the Park Charter's guidelines.

⁶⁰ On the Channel seaboard, the convening of all marine and terrestrial stakeholders is done within the North-Atlantic - Western Channel maritime seaboard council ; and of the Eastern Channel – North Sea maritime seaboard council.

⁶¹ Act of 14 April 2006 on national parks, national marine parks and regional nature parks - [Loi n°2006-436 du 14 avril 2006 relative aux parcs nationaux, aux parcs naturels marins et aux parcs naturels régionaux](#).

⁶² In application of Decree n° 2006-1266 on the Agency for protected marine areas and marine parks - [décret n°2006-1266 du 16 octobre 2006 relatif à l'Agence des aires marines protégées et aux parcs naturels marins](#).

⁶³ DOCOBs are administrative documents presenting diagnostic results and policies (management plans) approved as per a prefectural order ([Art. R.414-11](#)). A steering committee appointed via an order, is in charge of drafting the DOCOB and of monitoring its implementation. In the case of a marine location, the steering committee is appointed, convened and chaired by the maritime prefect or jointly by the maritime prefect and the prefect of the department ([Art. R.414-9](#)), after which the chair may be devolved to a territorial authority or a grouping of territorial authorities.

The State can award sections of public marine property⁶⁴ ([Art. L.322-1](#)) to the Coastal and Lakeshore Conservation Authority (CELRL), making it efficiently instrumental in integrated coastal management.

Further to the above there are also other mechanisms for the protection of the environment that are not specific to protected marine areas, but must be taken into account for urban spatial planning (i.e. coastal woodlands⁶⁵ and sites of outstanding quality)⁶⁶.

Town Planning Documents

Coastal towns planning documents are operational mechanisms used for spatial planning:

Master plans for marine development - *Les schémas de mise en valeur de la mer*⁶⁷ (SMVM) – In coastal areas, the State⁶⁸ is in charge of drafting them⁶⁹. SMVMs set the objectives for the various sites, the compatibility principles applicable to marine usage and they clarify the measures intended to protect the marine environment⁷⁰. SMVMs are put through a public inquiry procedure in compliance with [Articles L.123-1 and following](#) of the Environmental Code; they are revised ten years after their approval. SMVMs may be invoked against local town planning documents (SCoT - Territorial Cohesion Master Plan and PLU - Local Town Planning Scheme)⁷¹, the latter being compatible with the formers' provisions.

The maritime sections of Territorial Cohesion Master Plans - *Les volets maritimes des schémas de cohérence territoriale* (SCoT) – Due to the near failure of “State SMVMs - State master plans for marine development”⁷², an alternate procedure for their drafting was introduced with Act n°2005-157 of 23 February 2005⁷³. If one or more coastal towns are part of a local authority, the latter is granted the possibility to draft a made-to-measure chapter construed as an SMVM and included in the SCoTs⁷⁴, (Territorial Cohesion Master Plans). If there is a state drafted SMVM for a given area, it will be superseded by this “local SMVM” as provided for by [Article L.122-1-11](#) of the Town Planning Code. It must however have been approved by the State representative⁷⁵, which means a joint decision between the local authorities and the State⁷⁶.

At present, and in the absence of any operational strategic seaboard document (DSF), SMVMs are construed by the French Authorities as their own experience of maritime spatial planning (PEM). The first generation of

⁶⁴ Since the Act of 27 Feb. 2002, called the Proximity Act - [loi dite « proximité » du 27 février 2002](#).

⁶⁵ [Art. L.130-1 to L.130-6](#) and [L.146-6](#) last sub-paragraph of the Town Planning Code.

⁶⁶ [Art. L.146-6](#) of the Town Planning Code.

⁶⁷ [Art. 57](#) of Act n° 83-8 on competences called the Defferre Act - [loi n°83-8 du 7 janvier 1983 portant répartition de compétences entre les communes, les départements, les régions et l'État dite « loi Defferre »](#), modified by Act n° 86-2 on Coastal development - [loi n°86-2 du 3 janvier 1986 dite « loi Littoral »](#) (Art. 18) ; Decree n° 86-1252 on Marine development schemes - [Décret n°86-1252 du 5 décembre 1986 modifié relatif au contenu et à l'élaboration des schémas de mise en valeur de la mer](#).

⁶⁸ The State Council (*Conseil d'Etat*) publishes a Decree approving the master plans, which are then submitted for opinion to the relevant towns, *départements* and Regions.

⁶⁹ Their scope covers both land and sea, which makes them a part of ICZM.

⁷⁰ [Art. R.122-3](#) of the Town Planning Code. They are made up of a report and a set of graphic documents.

⁷¹ See *infra*.

⁷² Rather limited in quantitative terms.

⁷³ Act n° 2005-157 on the development of rural areas - [Loi n°2005-157 du 23 février 2005 relative au développement des territoires ruraux](#) (art. 235).

⁷⁴ Defined by [Article L.122-1](#) of the town Planning Code. Territorial Cohesion Master Plans (SCoTs) must also be compatible (or made to be compatible) with the objectives and guidelines of the Directives for the planning and sustainable development of territories (DTADDs), Flood risk management plans (PGRIs), Master plans for Water Development and Management (SDAGEs), Water Development and Management Schemes (SAGE) and Regional Master Plans for the Development of Aquaculture (SRDMAs) (see *infra*) ([Art. L.111-1-1](#)). Their policies are governed by the compatibility principle and supersede Town Planning Schemes (PLUs) and town maps.

⁷⁵ Order published by the *département* prefect after express agreement by the maritime prefect and public inquiry.

⁷⁶ See in particular [Art. L.122-3](#) (last sub-paragraph), [L.122-7-1](#) and [L.122-8, 1°](#) of the Town Planning Code.

such master plans has unfortunately resulted in far too rigid a zoning system. Strategic planning now appears as a necessary step and must be done ahead of any spatial planning.

Directives on territorial planning and sustainable development - directives territoriales d'aménagement et de développement durable (DTADD) – These are medium term and long term planning mechanisms drafted at a supra-regional level; DTADDs⁷⁷ take the place of Territorial planning directives - directives territoriales d'aménagement (DTA)⁷⁸.

DTADDs apply to given French areas with specific major challenges and often affect coastlines. The State uses them to define its terrestrial and marine spatial planning strategy.

The State's devolved departments⁷⁹ together with both the territorial authorities located within the project's scope and the relevant public agencies⁸⁰, draft a Directive (DTADD) which it submits to them for opinion⁸¹. The DTADD's environmental assessment⁸² is then done and made available to the public for consultation during one month⁸³. The State Council (*Conseil d'Etat*) then passes a decree to approve the DTADD. It may be amended providing it does not jeopardize the nature of the document⁸⁴; the State Council must publish a new decree if the document needs to be revised after an environmental assessment⁸⁵.

Contrarily to DTAs - territorial planning directives, DTADDs may not be directly invoked against other urban planning documents (SCoTs, PLUs, etc.), nor against land use planning permission. They will only have an impact if within twelve (12) years and after advice from the relevant territorial authorities. The prefect qualifies the measures required for the DTADD's implementation as a "project for the good of all" (*projet d'intérêt général* - PIG)⁸⁶.

Regional master plans for territorial planning and development - Schémas régionaux d'aménagement et de développement du territoire (SRADT) – A SRADT⁸⁷ is drafted by the Regional Council. It is not a set of urban planning documents but a document presenting a forward-looking analysis⁸⁸, and listing the Region's fundamental medium term policy measures⁸⁹ for sustainable development.

⁷⁷ Produced by the Grenelle II Act - [loi Grenelle II](#) (Art. 13), as codified in [Articles L.113-1 à L.113-6](#) of the Town Planning Code.

⁷⁸ Instituted by Act n° 95-115 on terrestrial planning and development - [loi n°95-115 du 4 février 1995 d'orientation pour l'aménagement et le développement du territoire](#) (Art. 4), codified at [Article L.111-1-1](#) of the Town Planning Code. DTAs approved before the Grenelle II Act remain effective. Six DTAs only have been adopted for the whole of France, including four "coastal" DTAs: Alpes-Maritimes ([Décret n°2003-1169 du 2 décembre 2003](#)), Bouches-du-Rhône ([décret n°2007-779 du 10 mai 2007](#)), Loire River Estuary ([décret n°2006-884 du 17 juillet 2006](#)) and Seine River Estuary ([décret n°2006-834 du 10 juillet 2006](#)).

⁷⁹ Under the authority of a coordinating prefect (Regional prefect or prefect of the *département*).

⁸⁰ Mentioned at [Article L.122-4](#) of the Town Planning Code.

⁸¹ [Art. L.113-2](#) of the Town Planning Code.

⁸² As per [Articles L.121-10 to L.121-15](#) of the Town Planning Code. If it is reckoned that the implementation of a directive for the territorial planning and sustainable development (DTADD) is likely to produce notable effects on the environment of another EU Member State, said DTADD will be communicated to the authorities of that State who will be invited to give their opinion within a time frame set by the State Council ([Art. L.121-13](#)).

⁸³ Note: the public enquiry phase has been cancelled.

⁸⁴ [Art. L.113-5](#).

⁸⁵ [Art. L.113-6](#).

⁸⁶ [Art. L.113-4](#).

⁸⁷ [Art. 34](#) of the previously quoted Defferre Act - [loi Defferre du 7 janvier 1983](#); [Art. L.4251-1](#) of the General Code governing Local Authorities - [code général des collectivités territoriales](#).

⁸⁸ They are composed of a report, a regional charter and sets of maps.

⁸⁹ The non-prescriptive policy measures are implemented either directly by the Region, or via contracts with the State and local authorities, their public groupings and establishments, and companies.

Local Town Planning Schemes - *Les plans locaux d'urbanisme* (PLU) – PLUs⁹⁰ are drafted at the municipal or inter-municipal level by the competent public institution for inter-municipal cooperation – *établissement public de coopération intercommunale* (EPCI). Although they include coastal and marine specificities⁹¹, their purpose is not to deal with all of the municipalities' maritime territories⁹².

Mechanisms for Coastal Risk Management

Coastal risk management is governed by one single compelling factor: the Prevention principle⁹³. There are two competent Authorities: the mayor and the prefect of the *département*⁹⁴. The major management plans are:

Flood risk management plans - *les plans de gestion des risques d'inondations* (PGRI) – PGRI stem from the transposition of the European Floods Directive of 23 October 2007⁹⁵. Drafted by the coordinating river basin prefects⁹⁶, they must fulfil three objectives: a preliminary assessment of the flood risk for each river basin district (December 2011), the mapping of flood plains and flooding risks⁹⁷ (December 2013) and the drafting of a floods risk management plan for each district⁹⁸ (December 2015)⁹⁹. PGRI include a diagnostic report as well as the objectives that have been set and the measures to reach them. They must also be compatible with the Master plans for water development and management - SDAGEs¹⁰⁰ and with the environmental objectives contained in the Marine environment action plan - PAMM¹⁰¹. They may be invoked against urban planning documents and the relevant administrative programmes and decisions related to water.

Prevention plans for foreseeable natural risks - *Les plans de prévention des risques naturels prévisibles* (PPRNP) – PPRNPs¹⁰² entail legal public easement. Drafted under the authority of the prefect of the

⁹⁰ Defined by [Article L.123-1](#), PLUs supersede land occupancy plans (POS); they are composed of an introductory report; a project for sustainable planning and development; policies for planning and programming; a set of regulations; annexes; and sets of graphic documents.

⁹¹ Coastal community territory extends to the outer boundary of the territorial sea ([CE, 20 février 1981, n°16449, Commune de Saint-Quay-Portrieux](#)). In addition, all land development operations of publicly owned seafront (DPM) must be compatible with the applicable PLUs ([CE ass., 30 mars 1973, n°88151, Schwetzoff](#)). Finally, PLUs guarantee the protection of outstanding locations.

⁹² Only those waters reaching the shores directly, on which community competences are exercised.

⁹³ Adopted and relayed via [Article L.110-1, II, 2°](#) of the Environmental Code, it aims at preventing environmental damage by enforcing the appropriate measures, called preventive measures, before the drafting of a Plan, or the building of a structure or the carrying out of an activity.

⁹⁴ Competent in the case of mayors being unable to manage the risk.

⁹⁵ Directive on Flood risk assessment and management - [Directive n°2007/60/CE du 23 octobre 2007 relative à l'évaluation et à la gestion des risques d'inondation](#), transposed via the Grenelle II Act - [loi Grenelle II](#) (Title V on risk prevention, codified at [Article L.566-7](#) of the Environmental Code) and Decree n° 2011-227 on Flood risk assessment and management - [décret n°2011-227 du 2 mars 2011 relatif à l'évaluation et à la gestion des risques d'inondation](#).

⁹⁶ In particular, by associating territorial authorities and their public groupings, the River basin committee and the territorial River basin public institutions ([Art. R.566-11](#) of the Environmental Code). Pursuant to [Articles L.566-12](#) and [R.566-12](#) of the Environmental Code, the PGRI is submitted for public consultation by the Prefect. In the case of cross-border river basins, the drafting of the PGRI is done in coordination with the riparian countries.

⁹⁷ For rising waters of low, medium and high probability in major flooding risk areas.

⁹⁸ Listing the management objectives that were set and the measures selected to reach them.

⁹⁹ Preventive tools are already available (i.e. preventive action programmes against floods - *programmes d'actions de prévention contre les inondations* (PAPI): contractual agreements between the State and territorial authorities launched in 2002) and serve this purpose; in addition and whenever necessary, they can adapt to the new requirements enshrined in the Floods Directive.

¹⁰⁰ See *infra*.

¹⁰¹ See *supra*.

¹⁰² Arrangements governing the prevention plans for foreseeable natural risks are codified in [Articles L.562-1 to L.562-9](#) of the Environmental Code. They are composed of an introductory report, an official map and a set of regulations.

*département*¹⁰³, their aim is to map out the risk-exposed areas¹⁰⁴ (for instance flooding¹⁰⁵, and include coast-specific measures such as submersion plans) and to regulate given usages using bans, prescriptions or recommendations. PPRNPs can be directly invoked against terrestrial and spatial occupation decisions; they must be compatible with the flood risk management plans (PGRIs) or be made so.

Specific response plans - les plans particuliers d'intervention (PPI): PPIs¹⁰⁶ are local mechanisms instated by the inter-ministerial services for Defence and Public Safety and approved by the Prefectoral authority¹⁰⁷; they are designed to cope with specific risks related to the presence of one or more industrial establishments; and to protect people, goods and the environment. They are specific versions of the *départemental* ORSEC plan¹⁰⁸ implemented to organize emergency responses and identify the public and private means likely to be used in case of a disaster.

The POLMAR Sea Plan - plan POLMAR Mer (marine pollution) – This plan¹⁰⁹ is activated by the maritime prefects in case of accidental marine pollution; it is designed to coordinate the public authorities' response and to bring in all the dedicated resources and appliances to fight against the contamination.¹¹⁰

Planning Water Management

Water development and management policy frameworks - Les schémas directeurs d'aménagement et de gestion des eaux (SDAGE) – SDAGEs¹¹¹ are strategic regulatory documents drafted by water basin committees¹¹² and approved by the coordinating prefect. Updated every 6 years, they set out water quantity and quality objectives as well as the measures¹¹³ taken to reach those objectives in the case of larger water basins¹¹⁴. They are applicable to both surface and underground waters, wetlands and coasts down to the territorial sea limit. If basins extend beyond national borders, "the administrative authority drafts the documents listed in articles [L.212-2-1](#) and [L.212-2-2](#) in coordination with the relevant foreign authorities"¹¹⁵.

¹⁰³ Who approve them after official consultation of municipalities and public inquiry.

¹⁰⁴ As well as the areas not directly vulnerable to risks but where certain development plans could increase risks or generate new ones.

¹⁰⁵ Prevention plan applicable to flooding risks (PPRI).

¹⁰⁶ Provided for in Decree n° 2005-1158 on specific response plans - [décret n°2005-1158 du 13 septembre 2005 relatif aux plans particuliers d'intervention concernant certains ouvrages ou installations fixes et pris en application de l'article 15 de la loi n°2004-811 du 13 août 2004 relative à la modernisation de la sécurité civile](#).

¹⁰⁷ In close cooperation with all public services and agencies in charge of implementation, as well as with relevant territorial authorities and industrial site operators.

¹⁰⁸ (Organization of the public safety response). See above mentioned Decree n° 2005-1157 on ORSEC plans - [Décret n°2005-1157 du 13 septembre 2005 relatif au plan ORSEC et pris pour application de l'article 14 de la loi n°2004-811 du 13 août 2004](#) précitée.

¹⁰⁹ Instituted in 1978 following the Amoco Cadiz disaster. The regulatory package is made up of the instructions of [2 Avril 2001](#), of 4 March 2002 ([1](#) & [2](#)), of [15 July 2002](#) and of [11 January 2006](#).

¹¹⁰ Example : the POLMAR Sea Plan for the Atlantic of 23 November 2004 - [Plan POLMAR Mer Atlantique du 23 novembre 2004](#) was designed to cope with the consequences of a major marine pollution crisis in the area of competence of the Atlantic maritime Prefect.

¹¹¹ Instituted via Act n° 92-3 of 3 January 1992 on water - [loi n°92-3 du 3 janvier 1992 sur l'eau](#) and provided for in [Articles L.212-1 to L.212-2-3](#) of the Environmental Code, they are instruments used to implement the European Water Directive - [directive n°2000/60/CE du 23 octobre 2000 « DCE »](#), transposed into French domestic law via Act n° 2004-338 - [loi n°2004-338 du 21 avril 2004](#).

¹¹² [Art. L.212-2, I](#). At least one year before the date at which it is to be enforced, the SDAGE project is made available for public scrutiny for a minimum of 6 months ; it is then submitted for opinion to territorial authorities, public establishments and other relevant bodies ([Art. L.212-2, II](#)).

¹¹³ In the framework of a multi-annual programme of measures drawn up by the administrative authority and submitted for opinion to the water basin committee ([Art. L.212-2-1](#)). Following the same modalities, a water status monitoring programme is also instated ([Art. L.212-2-2](#)).

¹¹⁴ Metropolitan France has six major water basins including Loire-Brittany, Seine-Normandy and Artois-Picardy.

¹¹⁵ [Art. L.212-2-3](#).

SDAGEs have a limited scope. Their arrangements may not be invoked against third parties. They may however be invoked against administrative decisions involving water, as well as against local urban planning documents which therefore must be compatible with SDAGEs.

Water development and management master plans - schémas d'aménagement et de gestion de l'eau (SAGE) – Within their own territories, SDAGEs map out sub-basins that correspond to hydrographical units (watershed + aquifer) for which SAGEs¹¹⁶ are drafted by a local water commission (CLE)¹¹⁷. Organized by the prefect, a CLE drafts, revises and monitors the SAGE.

SAGEs draw up an assessment of water resources and of the aquatic environment; they list the various existing usages¹¹⁸. They include a plan for the sustainable development and management of water resources and aquatic environments¹¹⁹. Once approved and published, they can be invoked against “any public or private person for the execution of any facility, construction, works or activity mentioned in Article [L. 214-2](#) ». Since SAGEs are local versions of SDAGEs, the former must be compatible with the latter¹²⁰.

Regional master plans for ecological coherence - Les schémas régionaux de cohérence écologique (SRCE) – An SRCE¹²¹ is drafted¹²², updated and monitored¹²³ by State and regional council jointly¹²⁴. An SRCE includes national agendas on the preservation and restoring of ecological continuities¹²⁵ as well as all relevant portions of the SDAGE¹²⁶. SRCEs have no impact on decisions in matters of the land or space use and should merely be acknowledged in the planning and development documents.

TABLE - PRIMARY LEGISLATION

Public bodies in charge of drawing up the national marine and coastal framework strategy	<ul style="list-style-type: none"> • Livre bleu du 8 décembre 2009 pour une stratégie nationale pour la mer et les océans. Blue Book of 8 December 2009 for a national seas and oceans strategy. • Loi n°2010-788 du 12 juillet 2010 portant engagement national pour l'environnement, dite loi « Grenelle II » (art. 166). Act n° 2010-788 of 12 July 2010 on the national commitment for the environment, called the “Grenelle II Act”. • Décret n°2012-219 du 16 février 2012 relatif à la stratégie nationale pour la mer et le littoral et aux documents stratégiques de façade. Decree n° 2012-219 of 16 February 2012 on the national marine and coastal framework strategy and strategic seaboard documents.
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¹¹⁶ Instituted via Act n° 92-3 of 3 January 1992 on water - [loi n°92-3 du 3 janvier 1992 sur l'eau](#) and provided for in [Articles L.212-1 à L.212-2-3](#) of the Environmental Code.

¹¹⁷ [Art. L.212-4, I](#). The CLE submits the draft master plan for opinion to the territorial authorities and, if there is one, to the Water basin public territorial agency as well as to the relevant Water basin commission ([art. L.212-6](#)). The draft document goes through a public inquiry process, is made available to the general public and then approved by the prefect. The CLE is made up, in particular, of representatives of: the State and interested public agencies, territorial authorities and their groupings, users and involved owners.

¹¹⁸ [Art. L.212-5](#).

¹¹⁹ [Art. L.212-5-1](#).

¹²⁰ Within three years following the policy framework update ([art. L.212-3](#)).

¹²¹ Provided for at [Article L.371-3](#) of the Environmental Code.

¹²² The draft SRCE is sent to the communities involved and submitted for opinion to the other authorities and to the national and regional parks (PN & PNR).

¹²³ It can also be adapted in accordance with the conditions defined under Article [L.300-6-1](#) of the Environmental Code.

¹²⁴ Jointly with a “Green and Blue Belt” regional committee created in each region, which is made up among others, of representatives of the relevant territorial authorities and their groupings, public establishments and scientists.

¹²⁵ See [Art. L.371-2](#).

¹²⁶ It is comprised in particular of the following: a non-technical summary ; a presentation and analysis of the regional issues ; a section identifying the relevant locations, a set of maps and the planned measures.

	<ul style="list-style-type: none"> • Code de l'environnement (art. L.219-1 et s.). Environmental Code (Art. L. 219-1 and following).
Public bodies in charge of drawing up policy documents	<ul style="list-style-type: none"> • National Council for Sea and Coasts: <ul style="list-style-type: none"> - Loi Grenelle II. The Grenelle II Act. - Décret n°2011-637 du 9 juin 2011 relatif aux attributions, à la composition et au fonctionnement du Conseil national de la mer et des littoraux. Decree n° 2011-637 of 9 June 2011 on the remit, composition and running of the National council for sea and coasts. • Maritime Seaboard Councils: <ul style="list-style-type: none"> - Code de l'environnement (Art. L.219-6-1). Environmental Code. - Arrêté du 27 septembre 2011 relatif à la composition et au fonctionnement des conseils maritimes de façade. Ministerial decision of 27 September 2011 on the composition and running of the maritime seaboard councils.
Documents applicable to strategic planning	<ul style="list-style-type: none"> • Strategic seaboard documents: <ul style="list-style-type: none"> - Loi Grenelle II. The Grenelle II Act. - Décret n°2011-492 du 5 mai 2011 relatif au plan d'action pour le milieu marin. Decree n° 2011-492 of 5 May 2011 on the action plan for the marine environment. - Décret n°2012-219 du 16 février 2012 relatif à la stratégie nationale pour la mer et le littoral et aux documents stratégiques de façade – Decree n° 2012-219 of 16 February 2012 on the national marine and coastal framework strategy and strategic seaboard documents . - Code de l'environnement (Art. L.219-3 to L.219-6-1 & R.219-1-7 to R.219-1-14) – Environmental Code.
	<ul style="list-style-type: none"> • Protected marine areas: <ul style="list-style-type: none"> - Loi n°2006-436 du 14 avril 2006 relative aux parcs nationaux, aux parcs naturels marins et aux parcs naturels régionaux. Act n° 2006-436 of 14 April 2006 on national parks, national marine parks and regional nature parks. - Décret d'application n°2006-1266 du 16 octobre 2006 relatif à l'Agence des aires marines protégées et aux parcs naturels marins. Implementation decree n° 2006-1266 of 16 October 2006 on the Agency for protected marine areas and on marine nature parks. - Arrêté ministériel du 3 juin 2011 portant identification des catégories d'aires marines protégées entrant dans le champ de compétence de l'Agence des aires marines protégées Ministerial decision of 3 June 2011 identifying the categories of protected marine areas falling within the scope of the Agency for protected marine areas. - Environmental Code : <ul style="list-style-type: none"> - General arrangements (Art. L.334-1). - Natura 2000 sites with a maritime section (Art. L.414-1). - Marine nature parks (Art. L.334-3). - Regional nature parks with a coast (Art. L.333-1, III). - The publicly owned seafront portions managed by the Seashore and Lakeshore Conservation Authority (Art. L.322-1). • Urban planning documents: <ul style="list-style-type: none"> - Urban planning code : <ul style="list-style-type: none"> - The maritime sections of Territorial Cohesion Master Plans (Art. L.122-1-11). - The territorial directives on planning and sustainable development (Art. L.113-1 to L.113-6). - The local town planning documents (Art. L.123-1). - Code général des collectivités territoriales – General Local Authorities Code: <ul style="list-style-type: none"> - The regional master plans for territorial planning and development (Art. L.4251-1). - Décret n°86-1252 du 5 décembre 1986 modifié relatif au contenu et à l'élaboration des schémas de mise en valeur de la mer) – Decree n° 86-1252

Documents applicable to space planning	<p>of 5 December 1986 revised on the content and drafting of master plans for marine development.</p> <ul style="list-style-type: none"> • Mechanisms for the management of coastal risks: <ul style="list-style-type: none"> - Environmental Code : <ul style="list-style-type: none"> - Flood risk management plans (Art. L.566-7). - Prevention plans for foreseeable natural risks (Art. L.562-1 to L.562-9). - Décret n°2005-1158 du 13 septembre 2005 relatif aux plans particuliers d'intervention concernant certains ouvrages ou installations fixes et pris en application de l'article 15 de la loi n°2004-811 du 13 août 2004 relative à la modernisation de la sécurité civile. – Decree n° 2005-1158 of 13 September 2005 on Specific response plans applicable to given fixed works or facilities and taken in application of Article 15 of Act n° 2004-811 of 13 August 2004 on modernisation of public safety. - Plan POLMAR Mer Atlantique du 23 novembre 2004 . POLMAR Sea plan of 23 November 2004 applicable to the Atlantic. • Water – related planning: <ul style="list-style-type: none"> - Environmental Code: <ul style="list-style-type: none"> - The Water development and management policy frameworks (Art. L.212-1 to L.212-2-3). - The Water development and management master plans (Art. L.212-3 to L.212-11). - The Regional master plans for ecological coherence (Art. L.371-3).
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Fisheries

INTRODUCTORY NOTE

Since 1983, the French policy on sea fisheries and aquaculture is to be construed within the wider context of the European Common Fisheries Policy (CFP)¹²⁷. Its objectives, as found in the French Rural and Sea Fisheries Code (CRPM)¹²⁸ at Article [L.911-2](#), were first defined by the Decree of 9 January 1852¹²⁹ and the implementing Decrees of 4 July 1853¹³⁰ and 19 November 1859¹³¹ “*in compliance with the principles and rules of the Common Fisheries Policy and in accordance with all international commitments*”. Their aim is, in particular, to allow for a sustainable exploitation of resources; to ensure that the fleet is maintained and renewed; and to develop marine aquaculture activities.

DEFINITIONS

Sea fishing is defined by the CRPM ([Art. L.911-1](#)) as “*the catching of animals and the harvesting of sea plants, in the sea or in the areas of rivers, ponds and canals where brackish waters run*”. Sea fishing stops at the salt-water intrusion limit¹³².

Sea fishing is defined as:

- Boat-fishing by fisherman-owner; and boat-fishing without owner on board;
- Professional fishing (commercial)¹³³ and recreational fishing (non commercial)¹³⁴;
- Growing and harvesting sea plants;
- Farming marine animals.

INSTITUTIONS

Actions decided by the State are carried out at national or regional level either by the administrative authority alone¹³⁵ or, as is mostly the case, in partnership with professional organisations and in the framework of a “co-management” system¹³⁶.

¹²⁷ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC - [Règlement \(UE\) n°1380/2013 du Parlement européen et du Conseil du 11 décembre 2013 relatif à la politique commune de la pêche, modifiant les règlements \(CE\) n°1954/2003 et \(CE\) n°1224/2009 du Conseil et abrogeant les règlements \(CE\) n°2371/2002 et \(CE\) n°639/2004 du Conseil et la décision 2004/585/CE du Conseil](#).

¹²⁸ Note that the CRPM’s regulatory section is in the process of being codified.

¹²⁹ Decree of 9 January 1852 on sea fisheries - [Décret du 9 janvier 1852 sur l'exercice de la pêche maritime](#), codified (CRPM).

¹³⁰ Amended Decree of 4 July 1853 on inshore fisheries in the 2nd maritime district - [Décret du 4 juillet 1853 modifié portant règlement sur la pêche maritime côtière dans le deuxième arrondissement maritime](#).

¹³¹ Amended Imperial Decree of 19 November 1859 on fisheries police in the 5th maritime district - [Décret impérial du 19 novembre 1859 modifié sur la police de la pêche dans le Vème arrondissement maritime](#).

¹³² Decrees set the salinity boundaries of the waters used to determine where fisheries can work. Anywhere inshore from these limits, the area is policed by the river police.

¹³³ [Art. L.931-1](#) of the CRPM “*Any professional fisheries activity on board a vessel and with a view to selling the catch, is deemed as a commercial enterprise except if done individually with vessels no more longer 12 meters or usually as a fishing trip lasting less than 24 hours.*” This implies that the fisherman-owner of the fishing boat must be registered with the Trade and Companies Register.

¹³⁴ Decree n° 90-618 on recreational sea fishing, amended - [Décret n°90-618 du 11 juillet 1990 relatif à l'exercice de la pêche maritime de loisir](#).

- **Directorate for sea-fisheries and aquaculture (DPMA)**, lodged with the Ministry for ecology, sustainable development and energy, under the authority of the Minister reporting to the Minister for transport, the sea and fisheries –Sits on international and European bodies to coordinate French policy; has the support of the Permanent Representation of France to the European Union (RPFUE) in Brussels.
- **Professional organisations** – take part in the definition and implementation of the conservation and resource management policy. The standards are drawn up in the framework of a “co-management” process set up between professional organisations and competent administrative authorities:
 - **Professional organization for sea fisheries and sea farming (OPMEM)** ([Art. L.912-1 and following](#) of the CRPM, Decree n° 2011-776 - [décret n°2011-776 du 28 juin 2011](#)) – Mostly tasked with representing and promoting the profession’s interests and of taking part in the drafting of regulations on the management of fishing stocks and on environmental protection. It is made up of the following: the National committee for sea fisheries and sea farming (CNPOMEM), 14 regional committees (including 4 on the Channel seaboard) and 12 committees at *départements* or groupings of *départements* level. Among other tasks, the CNPOMEM reflects on the compulsory measures taken by the Minister of Fisheries on conservation and the management of fishing stocks (Decree n°2011-776, [Art. 11](#)).
 - **Professional organization for shellfish farming (OPC)** ([Art. L.912-6 and following](#), of CRPM) – Made up of a national committee and of regional committees ; mostly tasked with representing and promoting shell farming professional interests; taking part in the organization of a balanced management of resources; and harmonising production and commercialization practices.
 - **Organisations of French sea fisheries producers (OP)** ([Art. L.912-11 and following](#) of the CRPM) – Were established in compliance with EU regulation¹³⁷ to promote fishing and aquaculture products; adapt production to market needs; reduce the impact of fisheries on the environment; improve commercialisation and prices; and develop access to consumers. They also take part in regulatory activities. (See below).
 - **Fishermen’s corporations - Prud’homies** – The amended Decree of 19 November 1859 - [décret du 19 novembre 1859](#), grants them regulatory powers (measures to prevent conflicts of interest); judiciary police powers (establishing an offence); jurisdictional powers (competence of a labour court to decide in matters of minor civil proceedings); and disciplinary powers (disciplinary fines in the case of an offence).
- **“Competent” regional prefects**¹³⁸ – Appointed specifically as competent administrative authorities on the Channel seaboard. Holding special sea-fisheries police powers, they exercise general common law

¹³⁵ Generally after advice from the professional organisation. See. [Art. L.921-2-1](#) and [L.921-2-2](#) of the CRPM.

¹³⁶ Art. 14 of Decree n° 2011-776 of 28 June 2011 setting organisational rules and running of National Committee for sea fisheries and sea farming, as well as of regional, *département* and inter-*départements* committees for sea fisheries and sea farming - [décret n°2011-776 du 28 juin 2011 fixant les règles d'organisation et de fonctionnement du Comité national des pêches maritimes et des élevages marins ainsi que des comités régionaux, départementaux et interdépartementaux des pêches maritimes et des élevages marins](#).

¹³⁷ Regulation (EU) No 1379/2013 of 11 December 2013 on common organisation of markets in the fishery and aquaculture industries, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 - [Règlement \(UE\) n°1379/2013 du 11 décembre 2013 portant organisation commune des marchés dans le secteur des produits de la pêche et de l'aquaculture, modifiant les règlements \(CE\) n°1184/2006 et \(CE\) n°1224/2009 et abrogeant le règlement \(CE\) n°104/2000](#).

¹³⁸ [Art. 1](#) of Decree n° 90-94 of 25 January 1990 implementing Title II and of Title IV of Book IX of the Rural and Sea Fisheries Code - [décret n°90-94 du 25 janvier 1990 pris pour l'application du titre II et du titre IV du livre IX du code rural et de la pêche maritime](#), amended by Decree n° 2011-1240 of 4 October 2011 - [décret n°2011-1240 du 4 octobre 2011](#) ; [Art. 5](#) of Decree n° 90-95 of 25 January 1990 implementing Title II of Book IX of the Rural and Sea Fisheries Code in fishing areas outside those covered by Community regulations on conservation and management - [décret n°90-95 du 25 janvier 1990 pris pour l'application du titre II du livre IX du code rural et de la pêche maritime dans les zones de pêche non couvertes](#)

competence for the delivery of fishing authorizations; the setting of usage conditions and characteristics for fishing nets and fishing gear; and to decide upon disciplinary and precautionary measures. DIRMs are tasked with supporting them (see below).

- **Prefects in a region “where the committee sits”¹³⁹** – As is the case with “competent” regional prefects, these prefects have been invested with the powers to deliver fishing authorisations. They are competent in defining and standardizing fishing gear characteristics; setting fishing calendars; and defining specific zones or grids. By issuing a prefectural order¹⁴⁰, the prefect can enforce decisions made by regional committee councils.
- **Inter-regional sea directorates (DIRMs)** – Their missions were defined in Decree n°2010-130¹⁴¹. Placed under the authority of regional prefects, DIRMs are competent in sea fishing regulations; and controlling activities and management of regional fisheries committees and regional shellfish farming committees.
- **Prefects of départements** – They exercise general common law competence for sea farming. With regard to fisheries, they only exercise residual powers (authorizations The *Département’s* directorate for terrestrial and sea affairs (DDTM) is tasked with supporting them (see below).
- **Delegations for sea and coastal affairs (DML)** - They report to the *département’s* directorate for terrestrial and sea affairs (DDTM)¹⁴² – Tasked with the implementation of fisheries regulations at the level of a *département* (8 DMLs are spread along the Channel seaboard).

LEGAL BASIS FOR FRANCE’S POLICY

The French policy for maritime fisheries, marine aquaculture, and seafood activities, is implemented “in compliance with the Common Fisheries Policy (CFP) principles and regulations and in keeping with all international commitments” ([Art. L.911-2](#) of the CRPM).

The CFP has provided technical arrangements on fishing gear; catch quotas; days at sea; fishing effort management measures; protection regime for certain species; and fishing activities control measures.

The EU key principles are:

- The principle of the EU’s exclusive competence with regard to resource management¹⁴³,
- The principle of equal access to EU waters and resources for all fisheries of Member States (Art 5.1 of regulation n°1380/2013 of 11 December 2013) (Community fishing zone (CFZ) stretching out to 200 miles, [Resolution of 3 November 1976](#)).

The domestic law key principles are:

- The freedom of fishing principle ([Order “by Colbert” of 31 July 1681, Art. 1](#)).
- The monopoly principle applying to all vessels flying the French flag in seawaters under French sovereignty or jurisdiction ([Art. L.921-9](#) of the CRPM).
- The fishing resources that constitute a collective heritage ([Art. L.911-2, 1°](#) of the CRPM) are all those resources to which France has access “in the waters under its jurisdiction or sovereignty, as well as in the waters for which France has fishing rights by virtue of international agreements; or in high seas

[par la réglementation communautaire de conservation et de gestion](#), amended by Decree n° 2000-273 of 22 March 2000 - [décret n°2000-273 du 22 mars 2000](#).

¹³⁹ Decree n°2011-776 of 28 June 2011. Note: authorities appointed by this Decree are all prefects of coastal regions except the Picardy region prefect. (There is no CRPMEM in Picardy).

¹⁴⁰ Art.22. In practice, this right is implemented by DIRMs.

¹⁴¹ Decree n° 2010-130 of 11 February 2010 on inter-regional directorates organisation and missions - [Décret n°2010-130 du 11 février 2010 relatif à l’organisation et aux missions des directions interrégionales de la mer](#).

¹⁴² Decree n° 2009-1484 of 3 December 2009 on inter-Ministerial directorate at *département* level- [Décret n°2009-1484 du 3 décembre 2009 relatif aux directions départementales interministérielles](#).

¹⁴³ [TFEU, Art.3§1](#). However, the French State remains competent, as do the other Member States, in the setting of conservation and management measures within the 12 nm stretch. (See below).

areas”. France decides on the method to be used for the allocation of fishing opportunities, ([Art. 345 of the TFEU](#) - Treaty on the Functioning of the European Union) and keeps the Commission informed.

INTEGRATION OF ENVIRONMENTAL ASPECTS

The CFP guarantees that fisheries and aquaculture activities prove environmentally sustainable on the long term by:

- Applying the precautionary approach to fisheries management and reaching the objective of a maximum sustainable yield - by 2020 at the latest;
- Implementing an ecosystem-based approach to fisheries management (deterioration of marine environment by fisheries and aquaculture activities must be avoided).

Measures adopted by France, as well as by all other Member States, must be compatible with the EU’s environmental regulation.

The marine environment policy arrangements enshrined in the Environmental Code¹⁴⁴ must be taken into account in the fisheries management policy. These arrangements are meant to transpose the various arrangements of the European “Marine Strategy Framework Directive”¹⁴⁵. This protection and conservation objective is translated into domestic law by Article L.219-7, 3° of the Environmental Code. In the Channel / Atlantic area, the marine environment action plans (PAMMs) are implemented on a marine sub-regional scale (SRMs) as per the 1992 OSPAR Convention¹⁴⁶.

Sea fisheries activities must also comply with the Environmental Code arrangements on the protection of wild flora and fauna and endangered habitats¹⁴⁷. Hence, as a network of marine protected areas is being developed under the Habitat Directive¹⁴⁸, fisheries must take into account the limitations imposed by those arrangements in all their activities.

Whenever habitat and species conservation of the “Natura 2000” sites network calls for fishery management measures, France informs the Union so that the necessary rules may be set, without prejudice to its right to take conservation and management measures for resources within the 12 nm zone¹⁴⁹. A Ministerial circular of 30 April 2013 by the Minister of Ecology, Sustainable Development and Energy ([circulaire du 30 avril 2013 du ministre de l’écologie, du développement durable et de l’énergie](#)) makes allowances for professional sea fisheries activities in the drafting or revision of Objectives documents for the “Natura 2000” sites where such activities take place¹⁵⁰.

¹⁴⁴ [Title 1, Book II, Chapter IX.](#)

¹⁴⁵ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) - [Directive n°2008/56/CE du Parlement et du conseil du 17 juin 2008 établissant un cadre d’action communautaire dans le domaine de la politique pour le milieu marin \(directive-cadre « stratégie pour le milieu marin »\).](#)

¹⁴⁶ (OSPAR) *Convention on the protection of the marine environment of the North-East Atlantic of 22 September 1992.* [Convention pour la protection du milieu marin de l’Atlantique Nord-est \(OSPAR\) du 22 septembre 1992.](#)

¹⁴⁷ [Art. L.921-10, 2nd subparagraph](#) of the CRPM. See [chapter IV of title 1 of Book IV of the Environmental Code.](#)

¹⁴⁸ *Council Directive 92/43/EEC of 21 May 1992 on the “conservation of natural habitats and of wild fauna and flora” - Directive n°92/43/CEE du Conseil du 21 mai 1992 « concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvage ».*

¹⁴⁹ EU Regulation n°1380/2013 - [Règlement \(UE\) n°1380/2013](#) see above, Art.20.

¹⁵⁰ Also, the draft Bill on biodiversity ([projet de loi sur la biodiversité](#)) submitted at the Ministers’ Council on 26 March 2014, proposes in Article 37, that, when necessary, regulatory measures be set in the Natura 2000 sites where such activities take place, in order to guarantee that these would have no detrimental impact on those relevant sites. They would therefore also be exempted from the incident assessment procedure, one not particularly relevant to their specificity.

France can therefore take “technical” measures (minimum reference size; banned fishing techniques; fishing gear characteristics, etc.) as well as order and precaution measures¹⁵¹ (to standardize sea fishing and organize compatibility between the various professions). France can also set time and space restrictions (ban or regulate the fishing of given species; or the use of specific gear; classify natural shellfish harvesting sites; measures that establish boundaries around nature reserve areas; or boxes where any form of fishing is banned; etc.)¹⁵².

Finally, special sea fishing arrangements apply to specific marine protected areas such as national parks; wilderness areas; nature reserves and marine nature parks¹⁵³.

CONSERVATION & MANAGEMENT OF FISHING RESOURCES IN FRANCE

The CRPM arrangements apply “in the areas under French jurisdiction or sovereignty as well as in any location, to all French nationals and ships flying the French flag, in keeping with international agreements and the sovereignty of third countries” ([Art. L.911-3](#)).

The inshore fishing regime is set by the CRPM and by Decrees [n°90-94](#) & [n°90-95](#) of 25 January 1990; by legal texts on Professional organization for sea fisheries and sea-farming (OPMEM) ([Art. L.912-1 to L.912-3](#) of the CRPM); and by Decree n° 2011-776 of 28 June 2011 - [décret n°2011-776 du 28 juin 2011](#). Activities that fall outside the scope of the Union’s regulation are governed by a series of specific texts¹⁵⁴. Special regimes have been established for French overseas authorities¹⁵⁵.

The “Right to fish” System

Catch Control

For most of the major commercial species, the EU Council sets the Total Allowable Catch (TACs) distributed to the Member States in the form of quotas. The Minister of Fisheries sets the quotas for those species falling outside the European regulation and fished inland and in French territorial waters¹⁵⁶. These quotas are then split into sub-quotas allocated either to professional organizations (OP) (or to their unions) that manage them, or to ships or groups of ships when the latter are not members of an OP¹⁵⁷. The competent administrative authority (Minister or prefect of a region) can also render mandatory, the decisions made by professional committees on the capping the catch levels for given species¹⁵⁸.

Controlling Fishing Effort

Control is based on two types of instruments: quotas and prior approvals.

Fishing Effort Quotas

A Decree¹⁵⁹ is to be published setting a programme to adapt professional fisheries catch capacities to available resources. In the mean time, fishing effort limitation¹⁶⁰ in France is done in two ways: in the case of specific fisheries, via ad hoc decisions on the spreading of the effort allocated by the Union to the French State¹⁶¹; in the case of other fisheries, via the national fishing effort regime. The fishing effort is spread in the same way as

¹⁵¹ [Art. L.921-2-1](#) & [L.922-2](#) of the CRPM ; [Title VI of Decree n°90-94](#) & [Title VIII of Decree n°90-95](#).

¹⁵² [Art. L.922-2](#) of the CRPM.

¹⁵³ [Art. L.921-10, 1 subparagraph](#) of the CRPM.

¹⁵⁴ See CRPM & Decrees [n°90-94](#) and [90-95](#).

¹⁵⁵ Not covered here.

¹⁵⁶ [Art. 14](#) and [16](#) of Decrees n°90-94 and 90-95, mentioned above.

¹⁵⁷ [Art. L.921-4](#) of the CRPM.

¹⁵⁸ [Art. 11](#) and [22](#) of Decree n°2011-776, mentioned above.

¹⁵⁹ Provided for at [Article L.921-6](#) of the CRPM.

¹⁶⁰ Pursuant to Article 22 of EU Regulation n° 1380-2013, [règlement \(UE\) n°1380-2013](#), mentioned above.

¹⁶¹ Example: Decision of 12 February 2014 on distribution of fishing effort quotas allocated to France for the replenishment of certain benthic stocks and cod (in particular in ICES zone VII d) and in view of exemption planned in cod replenishment zones for year 2014 - [arrêté du 12 février 2014 portant répartition des quotas d'effort de pêche alloués à la France dans le cadre de la reconstitution de certains stocks d'eau profonde et de cabillaud \(notamment dans la zone CIEM VII d\) et dans le cadre de l'exemption prévue dans les zones de reconstitution du stock de cabillaud pour l'année 2014](#).

it is for quotas¹⁶². Decree n°90-94 (Art. [10](#) & [14](#)) specifies the terms under which the Minister grants to the holders of fishing authorizations or to quota holders, fishing effort ceilings allocated by the Union authorities to each one of these categories of holders. The competent administrative authority (Minister or regional prefect) can also render mandatory those decisions made by professional committees on measures to match fishing capacity with available resources, particularly by an adjustment of the fishing effort¹⁶³.

Prior Approval

A two-pronged system of prior approval has been set up. It is often cumulative:

Authorisations for Vessels Entering into Service

The permit for the entering into service (PME) is an authorisation granted prior to the delivery of a European fishing license. French law¹⁶⁴ requires it for all professional fishing vessels (with certain exceptions) before they can enter into service; it is issued by the regional prefect at the location where the vessel is registered and calls for prior consultation of the regional commission for sea fisheries and marine aquaculture. The Minister of Fisheries sets the quotas available, on a yearly basis (expressed in tonnage and engine power).

Fishing Authorisations

Professional fishing activities are generally subject to the delivery of a temporary authorisation (valid for a maximum of 12 months) and non transferrable¹⁶⁵. [Article L.921-2](#) of the CRPM distinguishes between:

- Fishing authorisations for TAC species or species under European quotas, delivered either by the Administration, or under its supervision, by professional organizations (OP) or OP unions;
- And fishing authorizations for non-TAC or non-quota species, delivered either by the Administration, or under its supervision by the National committee for sea fisheries and sea-farming (CNPMEM) or by regional committees for sea fisheries and sea-farming (CRPMEMs).

Authorisations produced by the Administration are, for all practical purposes, delivered after CNPMEM approval by the Directorate for sea-fisheries and aquaculture (DPMA) or by the competent regional prefect, or mostly by the Inter-regional sea directorate (DIRM) having received the authority to do so from the prefect. Authorisations managed by an OP are delivered to applying “vessel-ship-owner” parties who belong to that particular OP.

Authorizations regarding non-TAC or non-quota species apply to vessels flying the French flag and, under certain conditions, to vessels under foreign flag¹⁶⁶. They are usually regional “licenses” on which are listed a number of caveats such as fishing period, fishing area(s), vessel characteristics, type of fishing gear, etc. In practice, CRPMEMs deliver those licenses that only apply to activities carried out in inland and territorial waters within their jurisdiction.

Authorisation Allocation

In the case of non-allocated fishing activities, any vessel may file an authorisation request providing, if necessary, it complies with all authorization delivery requirements or fishing opportunities. In the case of allocated fishing activities, only the “vessel-ship-owner” party complying with the requirements set down by the regulation may apply for an authorisation. For each of the authorisation regimes in force, the Minister of fisheries¹⁶⁷ draws up a list of eligible “vessel-ship-owner” parties.

¹⁶² See [Art. L.921-4](#) of the CRPM.

¹⁶³ [Art. 11](#) and [22](#) of Decree n°2011-776, mentioned above.

¹⁶⁴ [Art. L.921-7](#) of the CRPM; Decree n° 93-33 of 8 January 1993 on permit for the entering into service of fishing vessels pursuant to amended Article 3-1 of Decree of 9 January 1852 on sea fishing - [décret n°93-33 du 8 janvier 1993 relatif au permis de mise en exploitation des navires de pêche pris pour l'application de l'Article 3-1 du décret du 9 janvier 1852 modifié sur l'exercice de la pêche maritime](#). Note: a new Decree is being examined.

¹⁶⁵ [Art. L.921-1](#) of the CRPM.

¹⁶⁶ [Art. L.921-9](#) of the CRPM.

¹⁶⁷ [Art. 10](#) & [14](#) of Decrees n°90-94 and 90-95, mentioned above.

Allocation of Fishing Rights: Applicable Criteria

The Decision of 26 December 2006¹⁶⁸ specifies the criteria applicable to fishing quota allocation mechanisms, which also apply to the allocation of prior authorisations¹⁶⁹. They are:

- Passed catch statistics (ship-owner);
- Market trends;
- Social and economic balancing criteria.

When allocating quotas, the Minister of fisheries may exercise discretionary powers since regulations require no specific arrangements that would call for taking these criteria into account.

In addition, [Article L.921-3](#) of the CRPM specifies that “a fishing vessel flying the French flag may only receive a fishing authorization or may only be authorized to fish from national quotas when there is a genuine economic connection with the French Republic’s territory (criteria set by State Council Decree) and when the vessel is managed and controlled by a stable establishment based on French soil”.

Marine Aquaculture

The CRPM contains a number of regulations that apply to sea-animal farming and sea-plant cultivation; their various industries (fish farming; shellfish farming; shrimp farming; seaweed farming) are generally grouped under the generic term of marine aquaculture.

These activities are “construed as farming activities whatever the **social status** of those carrying them out”¹⁷⁰. They are regulated by specific arrangements, in particular because of the conservation and management of fishing resources¹⁷¹ and the professional management of shellfish farming¹⁷². **Decree n°83-228 of 22 March 1983**¹⁷³ governs the conditions under which they are authorised.

Regional master plans for the development of marine aquaculture (SRDAMs) are implemented pursuant to Article L.923-1-1 of the CRPM. The Article provides for drawing up a list of all existing sites and of those conducive to the development of such activities in each coastal region. Those master plans are drafted by the inter-regional sea directorates (DIRMs)¹⁷⁴ and approved by a Decision of the regional prefect. The *Département’s* directorate for land and sea (DDTM) studies them during the appraisal of the management actions associated with authorization requests to operate marine farms; and during the drafting of strategic seaboard documents (DSFs)¹⁷⁵, the latter being the tool to implement the national integrated maritime policy.

Controls and Penalties

In France, the overall organisation of fisheries controls and surveillance is mostly governed by Title IV (controls and penalties) of Book IX¹⁷⁶ of the CRPM and by the Ministerial circular of 8 September 2000¹⁷⁷.

¹⁶⁸ Decision of 26 December 2006 on the allocation and collective management mechanisms of fishing opportunities (catch quotas and fishing effort quotas) for French vessels registered in the European Union - [Arrêté du 26 décembre 2006 établissant les modalités de répartition et de gestion collective des possibilités de pêche \(quotas de captures et quotas d’effort de pêche\) des navires français immatriculés dans la Communauté européenne.](#)

¹⁶⁹ See [Art. L.921-2, subparagraph 1](#) of the CRPM.

¹⁷⁰ [Art. L.311-1](#) of the CRPM.

¹⁷¹ [Art. L.923-1 to L.923-3](#) of the CRPM.

¹⁷² [Art. L.912-6 to L.912-10](#) of the CRPM.

¹⁷³ Decree n° 83-228 of 22 March 1983 setting the regime authorising marine culture operations - [Décret n°83-228 du 22 mars 1983 fixant le régime de l’autorisation des exploitations de cultures marines, amended by Decree n° 2009-1349 of 29 October 2009 - décret n°2009-1349 du 29 octobre 2009.](#)

¹⁷⁴ “In conjunction with elected officials of territorial authorities, representatives of public establishments and relevant professional authorities, as well as qualified persons selected because of their expertise in environmental protection and in the use and development of the sea and the coast.”

¹⁷⁵ [Art. R.219-1-7 and following](#) of the Environmental Code.

¹⁷⁶ [Art. L.941-1 à L.981-14](#) of the CRPM.

Controls and Enforcement

- *At sea:* the competent regional prefect is responsible for controlling ([Decrees n°90-94](#) and [90-95](#)). Control implementation is carried out by DIRMs ([Decree n°2010-130](#)). Control operations are the responsibility of the Regional Operations Centre for Supervision and Rescue (CROSS). The maritime prefect, in charge of the coordination of State resources at sea, must be kept informed of all fisheries control operations;
- *On land:* in coastal areas, the competent DIRM facilitates and coordinates all State agency actions. Outside coastal areas, each administration takes part in fisheries control operations in the normal course of their responsibilities, either under the authority of the competent regional prefect, or in answer to a request for support from the DIRM.

The public prosecutor is informed before any control operation is carried out pursuant to the terms of [Articles L.941-3 to L.941-8](#) of the CRPM. Competent civil servants record offenses ([Art. L.942-1](#)) and draft formal statements. Charges are pressed by the administrators, technical officers, or maritime affairs inspectors and investigated by the public prosecutor ([Art. L.944-3](#)).

Judgment and Penalties in the Case of an Offence

Major and minor sea-fisheries offenses are judged ([Art. L.944-1](#)) :

- *In the case of French vessels:* by the court of the port where the offense was identified; by the court of the port where the vessel was routed; or, by default, by the court of the port where the vessel was registered;
- *In the case of foreign vessels:* by the court of the port where the vessel was routed; or, if it is not routed to a port, by the court of the administrative residence of the civil servant who recorded the offence.

Criminal penalties are provided for at [Articles L.945-1 to L.945-4](#). Examples:

- Two years' imprisonment and a 375,000 € fine: the act of destroying, misappropriating or attempting to destroy or to misappropriate nets, appliances, material, equipment, vehicles, vessels, floating crafts or fishing products apprehended or seized and entrusted for safety; to stand in the way of apprehension of, or seizure of nets, appliances, material, equipment, vehicles, instruments, vessels, floating crafts used for fishing, in violation of regulations.
- One year imprisonment and a 75,000 € fine: the act of evading or attempting to evade controls; concealing or forging a vessel's identification features; also applicable to vessels flying under the flag of a non-EU State and fishing without authorisation or in violation of regulations.

Enhanced sentences are set at [Article L.945-5](#) and can, in particular, lead to the suspension or withdrawal of all fishing authorisations or even forbidding the exercise of a professional or a social activity.

Administrative penalties can also be passed against nationals pursuant to [Article L.946-1 and following](#) i.e. fines; penalty points (see regulation n° 1124/2009 - [Règlement n°1224/2009](#)); suspensions or the withdrawal of fishing authorisations.

¹⁷⁷ Ministerial circular of 8 September 2000 on the general organisation of controls of sea fisheries and fishery products - [Circulaire du 8 septembre 2000 relative à l'organisation générale du contrôle des pêches maritimes et des produits de la pêche.](#)

TABLE - PRIMARY LEGISLATION

General arrangements	<ul style="list-style-type: none"> Rural and Sea Fisheries Code - Code rural et de la pêche maritime, Legislative section, Book IX “Sea fisheries and marine aquaculture”, Title I, Chapter I, Art. L.911-1 to L.911-4.
Professional organisations	<ul style="list-style-type: none"> Rural and Sea Fisheries Code - Code rural et de la pêche maritime, Legislative section, Book IX “Sea fisheries and marine aquaculture”, Title I, Chapter II, Art. L.912-11 to L.912-17. Decree n° 2011-776 of 28 June 2011 setting the organisational rules and running of the National Committee for sea fisheries and sea farming, as well as the regional, <i>département</i> and inter-<i>départements</i> committees for sea fisheries and sea farming - Décret n°2011-776 du 28 juin 2011 fixant les règles d'organisation et de fonctionnement du Comité national des pêches maritimes et des élevages marins ainsi que des comités régionaux, départementaux et interdépartementaux des pêches maritimes et des élevages marins.
Conservation & management of fishing resources	<ul style="list-style-type: none"> Rural and Sea Fisheries Code - Code rural et de la pêche maritime, Legislative section, Book IX Title II : <ul style="list-style-type: none"> Authorisations : Art. L.921-1 to L.921-7. Technical measures: Art. L.922-1 to L.922-3. Decree n° 90-94 of 25 January 1990 taken in application of Title II and of Title IV of Book IX of the Rural and Sea Fisheries Code - décret n°90-94 du 25 janvier 1990 pris pour l'application du titre II et du titre IV du livre IX du code rural et de la pêche maritime, amended by Decree n° 2011-1240 of 4 October 2011. Decree n° 90-95 of 25 January 1990 taken in application of Title II of Book IX of the Rural and Sea Fisheries Code in fishing areas outside the areas covered by Community regulations on conservation and management - décret n°90-95 du 25 janvier 1990 pris pour l'application du titre II du livre IX du code rural et de la pêche maritime dans les zones de pêche non couvertes par la réglementation communautaire de conservation et de gestion, amended by Decree n° 2000-273 of 22 March 2000 - décret n°2000-273 du 22 mars 2000. Decree n° 93-33 of 8 January 1993 on permits for the entering into service of fishing vessels pursuant to Article 3-1 of amended Decree of 9 January 1852 on sea fishing - Décret n°93-33 du 8 janvier 1993 relatif au permis de mise en exploitation des navires de pêche pris pour l'application de l'Article 3-1 du décret du 9 janvier 1852 modifié sur l'exercice de la pêche maritime. Decision of 26 December 2006 on the allocation and collective management mechanisms of fishing opportunities (catch quotas and fishing effort quotas) for French vessels registered in the European Union - Arrêté du 26 décembre 2006 établissant les modalités de répartition et de gestion collective des possibilités de pêche (quotas de captures et quotas d'effort de pêche) des navires français immatriculés dans la Communauté européenne.

Marine aquaculture	<ul style="list-style-type: none"> • Rural and Sea Fisheries Code - Code rural et de la pêche maritime, Legislative section, Book IX, Title II, Chapter III, Art. L.923-1 to L.923-3. • Decree n° 83-228 of 22 March 1983 setting the regime authorising marine culture operations (amended) - Décret n°83-228 du 22 mars 1983 fixant le régime de l'autorisation des exploitations de cultures marines (modifié).
Controls & penalties	<ul style="list-style-type: none"> • Rural and Sea Fisheries Code - Code rural et de la pêche maritime, Legislative section, Book IX, Title IV: <ul style="list-style-type: none"> - Controls: Art. L.941-1 to L.941-8. - Investigations and establishing offence: Art. L.942-1 to L.942-11. - Prosecution: Art. L.944-1 to L.944-5. - Sentencing: Art. L.945-1 to L.945-5 (criminal penalties), Art. L.945-5 (enhanced sentences), Art. L.946-1 to L.946-7 (administrative penalties). • Ministerial circular of 8 September 2000 on the general organisation of controls of sea fisheries and fishery products - Circulaire du 8 septembre 2000 relative à l'organisation générale du contrôle des pêches maritimes et des produits de la pêche.



Renewable Energy

INSTITUTIONS

- **The General Directorate for Energy and Climate (DGEC)** of the Ministry for ecology, sustainable development and energy (*MEDDE*) - [ministère de l'écologie, du développement durable et de l'énergie](#). Drafts and implements energy policies. The Ministry defines the French agenda for the development of marine renewable energies (MREs)¹⁷⁸.
- **The Minister for Energy** – In charge of assessing the needs and programming generating capacity¹⁷⁹ as well as monitoring the energy policy implementation¹⁸⁰. The Minister is competent in delivering consent for the operation of a power generating station¹⁸¹.
- **The Energy Regulation Commission (CRE)** - [commission de régulation de l'énergie](#)¹⁸² – Independent administrative authority tasked with regulating the energy markets.
- The devolved authorities:
 - **The prefects of *Départements*** – Competent in the delivery of consents for the installation of MRE installations: for concessions of usage of maritime public domain (DPM)¹⁸³; and in the delivery of consents for MRE installations: under the Water legislation¹⁸⁴.
 - **The Maritime Prefects**– Competent in the delivery of consents for occupying space in the Exclusive Economic Zone, in the Ecological Protection Zone and on the continental shelf¹⁸⁵. The maritime *préfectures* are in charge of MRE planning and more particularly the development of anchored offshore wind installations. They work with the SGARs (general secretariats for regional affairs).
- Devolved services:
 - **The SGARs (general secretariats for regional affairs)**– They report to the regional prefects, and are in charge of MRE planning.
 - **Inter-regional sea directorates (DIRMs)**¹⁸⁶ – Along with the Regional departments for the environment; space planning and housing (DREALS)¹⁸⁷, they take part in the planning of marine activities and therefore to MRE related activities.

¹⁷⁸ The DGEC publishes inter alia, support documents for the development of MREs. Example: [Etude méthodologique des impacts environnementaux et socio-économiques des énergies marines renouvelables](#) (version 2012).

¹⁷⁹ [Art. L.141-1 and following](#), of the Energy Code.

¹⁸⁰ [Art. L.142-1 and following](#), of the Energy Code.

¹⁸¹ See Act No 2000-108 of 10 February 2000 on the modernization and development of the public electricity services, Art. 7 - [Loi No 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité, Art. 7](#) repealed by Ordinance No 2011-504 of 9 May 2011 on the coding of the legislative section of the Energy Code - [ordonnance No 2011-504 du 9 mai 2011 portant codification de la partie législative du code de l'énergie. Art. L.311-5 and following, & L.311-10 and following](#), of the Energy Code.

¹⁸² [Art. L.131-1](#) to L.135-16 of the Energy Code.

¹⁸³ [Art. R.2124-1 and following](#) of the General Code on public property (GENERAL CODE ON PUBLIC PROPERTY).

¹⁸⁴ [Art. L.214-2 and following](#), of the Environmental Code.

¹⁸⁵ Art. 3 of Decree No 2013-611 of 10 July 2013 - [décret No 2013-611 du 10 juillet 2013 \(see below\)](#).

¹⁸⁶ Decree No 2010-130 of 11 February 2010 on the organisation and missions of the inter-regional sea directorates - [Décret No 2010-130 du 11 février 2010 relatif à l'organisation et aux missions des directions interrégionales de la mer](#).

¹⁸⁷ Decree No 2009-235 of 27 February 2009 on the organisation and missions of the regional departments for the environment, space planning and housing - [Décret No 2009-235 du 27 février 2009 relatif à l'organisation et aux missions des directions régionales de l'environnement, de l'aménagement et du logement](#).

- **Département directorates for land and sea affairs (DDTM)**¹⁸⁸ – Tasked with the appraisal of applications for occupation of the public maritime domain (DPM); applications for the occupation of space beyond the territorial sea; and applications related to the Water legislation.
- Territorial authorities:
 - **The regional councils** –involved in pro-active policies applicable to MREs, inter alia via the Sea missions¹⁸⁹, Regional master plans for economic development (SRDEs) and State & region project contracts (CPEP).
 - **The Councils at *département* level**– also involved in the implementation of pro-active policies to support MREs, in particular by financing local projects and by the economic development and the development of port and harbour infrastructure.
- Public structures driving MRE technological development:
 - **The French Research Institute for the exploitation of the sea (IFREMER)** - [institut français de recherche pour l'exploitation de la mer](#)– a public industrial and commercial establishment¹⁹⁰; very involved in the development of this industry; present in a large number of industrial projects.
 - **The MRE group of the National alliance for energy research coordination (ANCRE)** - [alliance nationale de coordination de la recherche pour l'énergie](#)– Brings together the main research bodies to strengthen synergies between operators and produce concrete proposals for R&D programmes.
 - **France Marine Energy (FEM)** - [France énergies marines](#)– Institute contributing to the industrial development of the MRE sector; it brings together all of the key players of this industry.
 - **The Sea competitiveness clusters** – Bring together the players who wish to work in synergy to implement economic development projects for innovation (example: Bretagne Sea cluster, commission 3 on “marine energy resources”).
- Public scientific and technical expertise bodies working on MRE projects:
 - **The Agency for protected marine areas - [agence des aires marines protégées \(AAMP\)](#)** – Offer to MRE project developers to cooperate with the Protected marine area managers (PMAs) in order to understand the potential challenges and conflicts and look at technical solutions.
 - **The Marine nature parks** – Among other tasks, they deal with the sustainable development of sea-dependant activities. Management advice is produced (assent procedure) as per delegation from the AAMP, on the opportune authorisation or rejection of a project that would produce a notable impact on the marine environment (Art. [L.334-5](#) of the Environmental Code).
- There are also a number of *forums for dialogue and consultation* through regular meetings of the various players of the industry:
 - **The national committee for offshore renewable energies (CNEM)** – Meets annually and monitors MRE development and electricity mix diversification in the context of the energy transition.
 - **The regional sea and coast conference (CRML)** – Co-chaired by the regional prefect, the president of the regional council and the maritime prefect, it brings together two to three times a year all the members of the territorial conference, the State services and sea-related public establishments, local authorities, professional organisations, NGOs and community groups.

¹⁸⁸ Decree No 2009-1484 of 3 December 2009 on the inter-ministerial directorates for the *département* - [Décret No 2009-1484 du 3 décembre 2009 relatif aux directions départementales interministérielles](#).

¹⁸⁹ Example: the Brittany sea mission and its charter on Breton coastal areas.

¹⁹⁰ Placed under the joint authority of the Ministry for higher education and research, the MEDDE and the Ministry for agriculture.

FRENCH NATIONAL STRATEGY FOR MARINE RENEWABLE ENERGIES

The French energy policy has been progressively implemented¹⁹¹ in the context of the multi-annual investment programme (PPI)¹⁹² for the production of electricity that the Minister for energy established.

The production of electricity is governed by the Energy Code¹⁹³. Articles [L.211-2](#) (along the list of other renewable energies) and [L.314-1](#) (purchasing conditions of produced electricity) inter aliadeal with MREs. Tidal in-stream energy is dealt with in the Code's Title V on hydro-electricity¹⁹⁴.

[Article L.100-1](#) of the Energy Code sets the following objectives to be pursued :

- Ensure security of supply;
- Maintain a competitive energy price;
- Preserve human health and the environment;
- Guarantee social and territorial cohesion by ensuring access to energy for all.

The 'Blue Energies' plan, instated by the Blue book ([livre bleu](#)), adopted by the inter-ministerial committee for the sea on 8 December 2009 (following on from the July 2009 Grenelle of the sea) set the following objective for 2020: a production of MRE energy of 6,000 megawatts (MW), which represents approximately 1,200 wind turbines. The plan specifies once again that MRE development is one of the priority agendas of the French maritime policy.

By adopting the Grenelle I Act¹⁹⁵, France set for itself an objective: that by 2020¹⁹⁶ the country will have reached in the energy consumption, a mix of 23% in renewable energies, including 3% of marine energies¹⁹⁷.

To reach this objective, France submitted to the European Commission in August 2010, a renewable energy national action plan¹⁹⁸. This plan recaps on the course set by the multi-annual investment programme (PPI) and details the major supportive measures. The roadmap to ecological transition - [feuille de route pour la transition écologique](#), one of the outputs of the September 2012 Environmental Conference, also ranks renewable energies very high in terms of priority.

¹⁹¹ Successively: Act No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity services: [Loi No 2000-108 du 10 février 2000 relative à la modernisation et au développement du service public de l'électricité](#) ; Act No 2004-803 of 9 August 2004 on the public electricity and gas services and electricity and gas utilities - [loi No 2004-803 du 9 août 2004 relative au service public de l'électricité et du gaz et aux entreprises électriques et gazières](#) ; Act No 2005-781 of 13 July 2005 on the energy policy agenda – [loi No 2005-781 du 13 juillet 2005 de programme fixant les orientations de la politique énergétique](#) ; Act No 2006-1537 of 7 December 2006 on the energy sector - [loi No 2006-1537 du 7 décembre 2006 relative au secteur de l'énergie](#) ; Act No 2010-1488 of 7 December 2010 on the new organisation of the electricity market - [loi No 2010-1488 du 7 décembre 2010 portant nouvelle organisation du marché de l'électricité](#).

¹⁹² Art. [L.121-3](#), [L.141-1](#) & [L.311-1](#) of the Energy Code.

¹⁹³ Since the publication of Ordinance 2011-504 of 9 May 2011 - [ordonnance 2011-504 du 9 mai 2011](#) (text codifying the legislative section of the law on Energy).

¹⁹⁴ [Art. L.511-1 and following](#).

¹⁹⁵ Planning Act No 2009-967 of 3 August 2009 on the implementation of the Grenelle environmental decision - [Loi No 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement](#) (of September 2007). It aims, inter alia, at fulfilling the objectives set by Directive 2009/28/EC of the European Parliament and Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amends and repeals Directives 2001/77/EC & 2003/30/EC - [directive 2009/28/CE du Parlement européen et du Conseil du 23 avril 2009 relative à la promotion de l'utilisation de l'énergie produite à partir de sources renouvelables et modifiant puis abrogeant les directives 2001/77/CE et 2003/30/CE](#).

¹⁹⁶ Ministerial decision of 15 December 2009 on the multi-annual scheduling of investments in the electricity production - [Arrêté ministériel du 15 décembre 2009 relatif à la programmation pluriannuelle des investissements de production d'électricité](#).

¹⁹⁷ Thanks to its energy potential among the most productive in the world with its maritime zones under jurisdiction covering 11 million sq km.

¹⁹⁸ National action plan in favour of renewable energies for 2009 to 2020 - [Plan d'action national en faveur des énergies renouvelables - Période 2009-2020](#) (MEDDE) August 2010.

Pursuant to the 5 March 2009 Circular, the competent authorities, namely the prefects of the relevant regions jointly with the maritime prefects, established planning documents identifying the zones most suited to the development of anchored wind turbines.

Based on information and advice collected and following a Call for expression of interest (CEI)¹⁹⁹, a first public procurement tender²⁰⁰ for offshore wind installations was published on 5 July 2011²⁰¹ and the names of the successful bidders, EDF and Iberdrola were announced on 6 April 2012. A deployment of nearly 2,000 wind turbine installations should spread over four farms in the Brittany, Pays de la Loire, Basse-Normandie and Haute-Normandie regions between 2016 and 2020²⁰². The second tendering call for offshore wind installations was published on 16 March 2013²⁰³ and on 7 May 2014, the MEDDE selected the GDF Suez-led Consortium as the successful bidder; they will build two wind-farms in the Pays de la Loire and Haute-Normandie regions for a total installed capacity of 1,000 MW by 2021-2023.

The State has also announced its intention to launch a tendering process for the building and operation of pilot wave and tidal energy farms in 2015-2016²⁰⁴, for floating wind turbines in 2014, and for ocean wave energy installations in 2015-2016.

PRINCIPAL LEGISLATION

The legal framework applicable to MREs reflects the various legal specialties: it stems from the various bodies of law:

- *Law implementing the [United Nations Convention on the law of the Sea](#) (UNCLOS) of 10 December 1982²⁰⁵ :*
 - Act No 68-1181 of 30 December 1968²⁰⁶ ;
 - Act No 76-655 of 16 July 1976²⁰⁷ ;
 - Decree No 2013-611 of 10 July 2013²⁰⁸ .
- *The Energy Law:*
 - Energy Code: inter alia, Art. [L.311-5 and followings](#). & [L.311-10 and following](#) ;
 - Act No 2013-312 of 15 April 2013 known as the “Transition towards a low-carbon energy generation system”²⁰⁹ .
 - Programming Bill for a new French energy generation model²¹⁰ of 18 June 2014.

¹⁹⁹ CEI of 2009 on “Marine Renewable Energies”.

²⁰⁰ Legislation applicable to public procurement: see below.

²⁰¹ Procurement call No 2011/S 126-208873 - [Appel d’offres No 2011/S 126-208873](#).

²⁰² *If all goes according to plan, that is if no legal action hinders the project.*

²⁰³ Procurement call No 2013/S 054-088441 - [Appel d’offres No 2013/S 054-088441](#).

²⁰⁴ The CEI on “Renewable Marine Energies – pilot stream turbine farm” was published in September 2013 as part of the multi-annual investment programme.

²⁰⁵ Ratified by France in 1996.

²⁰⁶ Act No 68-1181 of 30 December 1968 on continental shelf exploration and exploitation of natural resources - [Loi No 68-1181 du 30 décembre 1968 relative à l’exploration du plateau continental et à l’exploitation de ses ressources naturelles](#).

²⁰⁷ Act No 76-655 of 16 July 1976 amended on the economic zone and the ecological protection zone off the Republic’s coasts - [Loi No 76-655 du 16 juillet 1976 modifiée relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République](#).

²⁰⁸ Decree No 2013-611 of 10 July 2013 on regulations applicable to artificial islands, installations, works and their ancillary installations on the continental shelf and in the economic zone and in the ecological protection zone, as well as subPublic Maritime Domainmarine pipeline and cable routes - [Décret No 2013-611 du 10 juillet 2013 relatif à la réglementation applicable aux îles artificielles, aux installations, aux ouvrages et à leurs installations connexes sur le plateau continental et dans la zone économique et la zone de protection écologique ainsi qu’au tracé des câbles et pipelines sous-marins](#).

²⁰⁹ Act No 2013-312 of 15 April 2013 to prepare the transition towards a low-carbon energy generating system including a number of arrangements on water tariffs and wind turbines - [Loi No 2013-312 du 15 avril 2013 visant à préparer la transition vers un système énergétique sobre et portant diverses dispositions sur la tarification de l’eau et sur les éoliennes](#).

²¹⁰ Submitted during Council of Ministers.

- *Coastline legislation:*
 - Town Planning Code: inter alia, Art. [L.122-1-11](#), [L.123-1](#), [L.146-4](#) and [6](#), [L.421-5](#), [L.2124-2](#);
 - Act No 86-2 of 3 January 1986 known as the “Coastline Act”²¹¹.
- *State-owned public domains legislation:*
 - General Code on Public Property: inter alia, Art. [L.2124-1 and following](#). and [R.2124-1 and following](#).
 - Decree No 2004-308 codified of 29 March 2004²¹².
- *Environmental legislation:*
 - Environmental Code: inter alia, Art. [L.122-1 and following](#)., [L.123-1 and following](#)., and [L.214-2 and following](#).
 - ct No 2006-1772 of 30 December 2006 known as the “LEMA” Act²¹³ ;
 - Act No 2009-967 of 3 August 2009 known as the “Grenelle I” Act²¹⁴ ;
 - Act No 2010-788 of 12 July 2010 known as « Grenelle II” Act²¹⁵ ;

PLANNING FOR MRES

MRE planning must fit within the Integrated Coastal Zone Management logic (ICZM)²¹⁶. It is included in legal mechanisms used for strategic and regulatory planning.

Town planning documents of coastal local authorities

The local town planning schemes ([Art. L.123-1](#) of the town planning Code.) do include marine and coastal features²¹⁷ but are not meant to encompass all of the municipalities’ maritime territory²¹⁸ and therefore, the development of MRE projects far removed from the coasts.

The Territorial Cohesion Schemes (SCOT) may include a tailored section to be construed as a Master Plan for Marine Development” (SMVM) when they “encompass one or more coastal towns” ([Art. L.122-1-11](#) of the Town Planning Code.). The local SMVMs²¹⁹ include a coastal and marine component²²⁰ and may cover MREs. However, they don’t appear to have been designed for “high seas” but rather in the framework of a land and sea interface. Furthermore, Prefects must be consulted on the scope of the local SMVM²²¹ and the tailored section to be construed as an SMVM is subject to their approval²²².

²¹¹ Act No 86-2 of 3 January 1986 on the planning, protection and development of the coastline - [Loi No 86-2 du 3 janvier 1986 relative à l'aménagement, la protection et la mise en valeur du littoral](#).

²¹² Decree No 2004-308 codified on 29 March 2009 on usage concessions of the Public Maritime Domain excluding ports - [Décret No 2004-308 codifié du 29 mars 2004 relatif aux concessions d'utilisation du domaine public maritime en dehors des ports](#).

²¹³ Act No 2006-1772 of 30 December 2006 codified on water and aquatic environments - [Loi No 2006-1772 du 30 décembre 2006 codifiée sur l'eau et les milieux aquatiques](#).

²¹⁴ See below.

²¹⁵ Act No 2010-788 of 12 July 2010 on the national commitment for the Environment - [Loi No 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement](#).

²¹⁶ See report of the task force on marine renewable energies - [rapport de la mission d'étude sur les énergies marines renouvelables](#), CGEDD/CGEJET, March 2013.

²¹⁷ Coastal town territory extends to the territorial sea’s seaward limit ([EC, 20 February 1981, No 16449, Commune de Saint-Quay-Portrieux](#)). Furthermore, the Public Maritime Domain development projects must be compatible with the applicable Local Town Planning Schemes ([EC ass., 30 March 1973, No 88151, Schwetzoff](#)). Finally, these Local Town Planning Schemes guarantee the protection of outstanding areas (see below).

²¹⁸ Only the shoreline waters, where the town competences apply.

²¹⁹ The “State SMVMs”, promoted and approved by the State are different from “local SMVMs” as the latter are integrated within a SCOT (Territorial Coherence Scheme), as they are more important in quantitative terms.

²²⁰ They apply to a section of land with a single maritime and geographical character and specify, inter alia, the conditions under which there can be compatibility between the different usages of the maritime area on the one hand, and the marine environment protection measures on the other ([Art. R.122-3](#) of the Town Planning Code).

²²¹ [Art. L.122-3, IV](#) of the Town Planning Code.

²²² [Art. L.122-7-1](#) of the Town Planning Code.

Strategic Seaboard Documents

Strategic Seaboard Documents²²³ (DSFs) ([Art. L.219-3](#) of the Environmental Code) must be drawn up for each of the four maritime seabords²²⁴ identified in the National Marine and Coastal Framework Strategy (SNML) ([Art. L.219-1](#)) and may be invoked against the various schemes, programmes and master plans applicable each within their own perimeter²²⁵ ([Art. L.219-4](#)). Therefore, authorisations issued for the development of MRE farms must comply with them. The development and approval procedure for these DSFs is done under the authority of both the relevant Maritime Prefects and Regional Prefects²²⁶.

ADMINISTRATIVE AUTHORISATIONS RELATED TO MRES

The Administrative Authorisation for MRE Generation

Act No 2000-108 of 10 February 2000²²⁷ ([Art. 8](#)²²⁸) specifies that it may be obtained:

- Either after a “spontaneous” application by potential operators according to the procedure in [Articles L.311-5 and following](#) of the Energy Code;
- Or as the result of a public procurement tendering procedure for offshore wind turbines, pursuant to [Articles L.311-10 and following](#) of the same Code.

The Authorisation to Operate

The authorisation procedure under [Articles L.311-5 and following](#) of the Energy Code is used in the case of a spontaneous application from project developers²²⁹ wishing to generate marine energy. They must seek authorisation from the Minister for Energy²³⁰ pursuant to the relevant Code procedure²³¹. If the applicant is the successful bidder of a procurement tendering process, the authorisation to operate is to be deemed as duly granted. To date, because of its random nature and of the high buy-in tariff, this procedure has not been implemented, to the benefit of the procurement tendering process.

The Offshore Wind Energy Public Procurement Tendering Process

The French State (MEDDE) considered the public procurement tendering process provided for at [Article L.311-10](#) of the Energy Code²³² as a favoured procedure²³³. The tendering procedure offers a transparent and non-discriminatory competitive access to the MRE market and allows the State to select the economically most advantageous tender. The State guarantees free access to this market, the organisation and monitoring of which is entrusted to the Energy Regulatory Board.

²²³ Pursuant to the Grenelle II Act - [loi Grenelle II](#) and Decree No 2012-219 of 16 February 2012 on the national marine and coastal framework strategy and the strategic seaboard documents - [décret No 2012-219 du 16 février 2012 relatif à la stratégie nationale pour la mer et le littoral et aux documents stratégiques de façade](#). These documents, which include Marine Environment Action Plans (PAMM) ([Art. L.219-9 and following](#).) are not currently in force.

²²⁴ Eastern Channel-North Sea ; North Atlantic – Western Channel; South-Atlantic and Mediterranean.

²²⁵ i.e. “out at sea or along the coast”.

²²⁶ By joint decision, with the support of the Interregional Director for Sea Affairs.

²²⁷ [Act No 2000-108 of 10 February 2000 amended on the modernisation and development of public electricity services](#) , transposing [directive 2009/72](#), in lieu of the identical arrangements of [directive 96/92](#) and [directive 2003/54/EC](#) which it repeals.

²²⁸ Codified at [Article L.311-10](#) of the Energy Code.

²²⁹ See Decree No 2011-1893 of 14 December 2011 on the authorisation to operate power generation facilities (Art 2) - [décret No 2011-1893 du 14 décembre 2011 relatif à l'autorisation d'exploiter les installations de production d'électricité \(Art. 2\)](#).

²³⁰ [Art. 2](#) of Decree No 2000-877 of 7 September 2000 - [décret No 2000-877 du 7 septembre 2000](#), amended by Decree No 2011-1893 of 14 December 2011 - [décret No 2011-1893 du 14 décembre 2011](#). The application is published in the French Republic's Official Gazette.

²³¹ Facilities generating less than given thresholds (30 MW for windfarms) benefit from a de-facto authorisation since the publication of Decree No 2011-1893 - [décret No 2011-1893](#).

²³² See [Directive No 2009/72/EC of 13 July 2009](#) (Art. 8); Act No 2000-108 of 10 February 2000 on the modernisation and development of public electricity services (Art. 8) - [loi No 2000-108 du 10 février 2000 relatif à la modernisation et au développement du service public de l'électricité \(Art. 8\)](#) ; Decree No 2002-1434 of 4 December 2002 amended, on the tendering procedure for the power generating installations - [décret No 2002-1434 du 4 décembre 2002 modifié relatif à la procédure d'appel d'offres pour les installations de production d'électricité](#).

²³³ Tender is published in European Union's Official Journal.

Successful bidders²³⁴ are granted an authorisation to operate their energy generating infrastructure against the repurchasing of the electricity at the tariff included in their bids²³⁵.

They must apply with the competent regional Prefect to obtain a certificate of obligatory purchase of electricity (CODOA)²³⁶. This certificate is an individual, nominative and non-transferrable administrative act which grants the right to obligatory purchase of electricity for the full duration of the contract.

Finally, the purchasing contract is signed between the MRE producer and the buyer²³⁷ pursuant to [Article L.311-12](#) of the energy code. It must be signed within six months following the request filed by the successful bidder²³⁸.

ADMINISTRATIVE AUTHORISATIONS RELATED TO THE USE OF THE MARINE ENVIRONMENT FOR OFFSHORE MRE DEVELOPMENTS

Legislation Applicable to the Coast and Maritime Public Domain

The development of renewable energy generation facilities on the coast and within the maritime public domain must comply with a body of legal rules.

Coastal Legislation

It is important to highlight that, under the Town Planning Code,²³⁹ town planning rules do not apply to MREs²⁴⁰. Furthermore, the list of activities exempted from applying for a building permit under [article L.421-5](#) of the Code²⁴¹ includes offshore installations located within the Maritime Public Domain beyond the low watermark.

MREs are covered by several arrangements under the Coastline Legislation - [loi Littoral](#):

The connection of MRE-generating facilities to the land-based power grid requires terrestrial works on the coastline, an area covered by specific arrangements. Under the Coastline Legislation, [Article L.2124-2](#) of the General Code on Public Property prescribes that: “*the natural condition of the seashore cannot be disturbed*” “*except for the development of projects or facilities serving the interests of a public service or the execution of public work (...), provided a ‘Declaration of Public Utility’ was issued*”. Circular of January 2012 for an integrated and sustainable management of the natural Maritime Public Domain - [circulaire du 20 janvier 2012 relative à la gestion durable et intégrée du DPM naturel](#) provides that this legal exemption²⁴² applies to the development of electrical connections for MREs.

²³⁴ Decision authorising the successful bidders is published in French Republic’s Official Gazette.

²³⁵ Art 10 of Act of 10 February 2000 - [Art. 10 de la loi du 10 février 2000](#), codified in [Articles L.314-1 and following](#) of the Energy Code. Pursuant to Directive No 2009/72/EC of 14 August 2009 - [directive No 2009/72/CE du 14 août 2009](#) replacing Directive No 96/92/EC of 19 December 1996 - [directive No 96/92/CE du 19 décembre 1996](#) on the common rules for the domestic electricity market (Art. 8).

²³⁶ Enforced by Decree No 2001-410 of 10 May 2001 - [décret No 2001-410 du 10 mai 2001](#), its delivery allows State services to ensure compliance with technical and administrative rules.

²³⁷ [Electricité réseau distribution France](#) (ERDF – Manager of the French Electricity Grid) manages 95% of the French grid and is required to sign the purchase contract as soon as the generating facilities are connected to the French grid ([Art. L.314-1](#) of the Energy Code). The adoption of regional schemes to connect to the renewable energy grid has been provided for ([Art. L.321-7](#)).

²³⁸ [Art. 7-1](#) of Decree No 2002-1344 of 4 December 2002 on the tendering process for power generating installations - [décret No 2002-1434 du 4 décembre 2002 relatif à la procédure d’appel d’offres pour les installations de production d’électricité](#).

²³⁹ [Art. L.421-5, e\)](#) and [R.421-8-1](#) of the town planning Code; Decree 2012-41 of 12 January 2012 - [Décret No 2012-41 du 12 janvier 2012](#).

²⁴⁰ Ex: Rule on the extension of urban areas, in line with existing ones ([Art. L.146-4, I](#) of the town planning code). However, these rules apply to land-based wind turbines (ref. [EC, 14 November 2012, No 347778, Sté Néo Plouvien](#)).

²⁴¹ Under Grenelle II Act - [loi Grenelle II](#).

²⁴² [Article L.2124-2](#) includes other exceptions, notably for sea defence facilities and facilities which are needed for fishing or aquaculture.

[Article L.146-4, III](#) of the town planning code²⁴³ provides for the connection of MRE facilities in the list of exceptions to the building constraints in the 100 meter strip²⁴⁴.

[Article L.146-6](#) of the town planning code provides that town planning documents must ensure the protection of outstanding areas²⁴⁵ with adequate zoning²⁴⁶. Building constraints²⁴⁷ apply in these areas, but the regulator has included the possibility to develop “light facilities” there²⁴⁸ and, importantly, the authorisation to connect MRE facilities to the grid²⁴⁹.

Regulations Underlying the Public Maritime Domain

A licence of occupation of the domain within territorial seas (occupation authorisation) must be issued for the purpose of developing MRE-related facilities within the natural Public Maritime Domain²⁵⁰. It aims at controlling the compatibility of the installation with the objective for, and conservation of that area²⁵¹.

The licence is issued under Codified Decree of 29 March 2004 - [décret codifié du 29 mars 2004](#)²⁵², in view of assigning the areas of the Public Maritime Domain to a project serving general interests, such as the development of a windfarm²⁵³.

The MRE project developer must send an application to the *Département’s* Prefect, who is responsible for appraising the application²⁵⁴. He is also required to consult with the relevant Maritime Prefect as well as municipalities and public agencies working in cooperation for the benefit of the local community²⁵⁵. The application must include an Impact Survey²⁵⁶ and give rise to a public consultation process²⁵⁷. The licence is issued for 30 years via a Prefectoral Decision²⁵⁸.

²⁴³ As amended by Grenelle II Act - [loi Grenelle II](#).

²⁴⁴ The banning of new constructions or facilities does not apply to “*public connection facilities for the transportation and distribution of electricity from offshore facilities generating renewable energy*”.

²⁴⁵ An area is defined as “outstanding” if it is characteristic of the cultural and natural heritage of the coastline and/or necessary to maintain biological balance. The system related to offshore Natura 2000 sites (which can be considered as outstanding areas) ([Art. L.414-1 and s.](#) of the Environmental Code) does not prevent, in principle, the development of MRE facilities (see. [EC, 3 September 2009, No 306298, Commune de Canet-en-Roussillon](#)).

²⁴⁶ “N – outstanding”.

²⁴⁷ See [EC, 27 September 2006, No 275922, Commune du Lavandou](#).

²⁴⁸ [Art. R.146-2](#) of the Town Planning Code.

²⁴⁹ Law of 15 April 2013 on energy transition - [loi du 15 avril 2013 sur la transition énergétique](#): “*Provided a public consultation process is conducted, the installation of ducts for the development of the public electricity transportation and distribution network aimed at promoting the use of renewable energies can be authorised*”. The construction must resort to underground techniques and “*always be the ones with the least environmental impact*”.

²⁵⁰ Current projects are located on the territorial sea floor, which belongs to the Public Maritime Domain, under [Article L.2111-4](#) of the General Code on Public Property.

²⁵¹ [Art. L.2124-1 and following](#) of the General Code on Public Property. (The second form of private occupation of the Public Maritime Domain is the Temporary Occupation Authorisation, which cannot apply in this case).

²⁵² [Art. R.2124-1 and following](#) of the General Code on Public Property.

²⁵³ See Ministerial Circular of 20 January 2012 for a sustainable and integrated management of the natural Public Maritime Domain - [circulaire ministérielle du 20 janvier 2012 relative à la gestion durable et intégrée du DPM naturel](#).

²⁵⁴ The appraisal procedure is the responsibility of the agency in charge of managing the Public Maritime Domain, i.e. the *Département’s* Directorate for Land and Sea Affairs (DDTM).

²⁵⁵ [Article L.2124-1](#) of General Code on Public Property must be taken into account. It defines that decisions to use the Maritime Public Domain must take account of “*the imperatives of preservation of coastal sites, landscapes and biological resources*”.

²⁵⁶ [Art. L.122-1 and following](#) of the Environmental Code. [Article R.122-2](#) (section 27 of the Appendix - [Annexe](#)) provides that an impact survey must be conducted for all offshore power generating facilities.

²⁵⁷ [Art. L.123-1 and following](#) of the Environmental Code. The enquiry is conducted based on the methodology described in [Articles R.11-14-3 to R.11-14-15](#) of the Compulsory purchase in the public interest Code.

²⁵⁸ The decision can, inter alia, impose the implementation of a maritime traffic management plan during works and maintenance.

The licence holder must, in exchange, pay a royalty, part of which is a lump sum calculated on the basis of the ground surface covered by installations²⁵⁹. The other part is variable and based on revenues generated by the facilities. The licence does not give access to full rights; it cannot be transferred and is revocable at any time for reasons of general interest. Furthermore, the Prefect can implement any measure that is deemed necessary for the conservation of the Public Maritime Domain, without creating a right to compensation of the licence holder.

Applicable Regulations in the Exclusive Economic Zone and on the Continental Shelf

- The Exclusive Economic Zone (EEZ): France has sovereign rights for the construction, authorisation and regulation of artificial islands, facilities and buildings assigned to “*economic purposes such as the generation of tidal, marine current and wind energies*” in the EEZ²⁶⁰ and *mutatis mutandis* on the continental shelf²⁶¹. The construction and operation of MRE farms in the EEZ is regulated under law No 76-655 of 16 July 1976 - [loi No 76-655 du 16 juillet 1976](#) and its underlying application decision [No 2013-611 of 10 July 2013](#)²⁶².
- The Continental Shelf (CS): [Law No 68-1181 of 30 December 1968](#) defines the laws and regulations which apply to floating “*systems and facilities*” (protection of life at sea, prevention of collisions, registrations, circulation licences...). The laying of underwater cables on the Continental Shelf falls within the remit of the Coastal State²⁶³.

The project developer who has been awarded the contract and who benefits from an authorisation to operate, must seek from the relevant Maritime Prefect²⁶⁴ an authorisation to occupy the EEZ and the EPZ area²⁶⁵ as well as the Continental Shelf. The request for authorisation is sent by electronic mail. It contains a file which includes a request for information about the applicant, their financial and technical capacity, but also information about the project itself, its multiple impacts and their mitigation measures, and a non-technical summary²⁶⁶.

Regarding project impacts:

- If the activity is covered by the list appended to [article R.122-2](#) of the Environmental Code²⁶⁷, an Environmental Impact Survey must be conducted, pursuant to [article L.122-2](#) of this Code.
- An assessment of the impacts pursuant to Natura 2000 legislation, can be integrated in the impact survey ([Art. L.414-4](#) and [R.414-19](#) of the Environmental Code.).
- A joint decision by the Minister in charge of the Environment and the Minister in charge of Maritime Fisheries can provide waivers from protective measures of certain species or habitats listed in [article L.411-2](#) of the Environmental Code ([Art. R. 411-6](#) and [R. 411-9](#)).

The Maritime Prefect can then proceed to the publication²⁶⁸ and start a series of consultation meetings²⁶⁹. A simple notification from the Regional Prefect and the relevant Military Authorities is required, as well as the

²⁵⁹ The amount, defined by a Decision of 2 April 2008 - [arrêté du 2 avril 2008](#), is 1,000 € per wind turbine and 1 € per linear meter of cable.

²⁶⁰ Art. 56, 1 of [UNCOLS](#).

²⁶¹ In compliance with article 80 of [UNCOLS](#). France has an exclusive jurisdiction for these constructions.

²⁶² The Decision establishes a framework for the installation and operation of energy generation facilities on the continental shelf, within the Economic Zone and the Ecological Protection Zone. This is pursuant to Articles 56, 60, 79, 80 and 87 of [UNCOLS](#).

²⁶³ Art. 79 of [UNCOLS](#).

²⁶⁴ [Art. 3](#) of Decision No 2013-611. The Département’s Directorate for Land and Sea Affairs (DDTM) is responsible for appraising the application.

²⁶⁵ Ecological Protection Zone.

²⁶⁶ [Art. 4](#).

²⁶⁷ All offshore energy generation facilities are listed (27°) as well as certain power transportation and distribution facilities (28°).

²⁶⁸ [Art. 6](#) of Decision No 2013-611. Competing requests can be filed within 30 days and the full application must be sent within 3 months.

assent of the Agency for Marine Protected Areas (or the delegated management committee) if the marine environment of a natural marine park is likely to be notably impacted by the project. The project must also be compatible with the Strategic Seaboard Document and the Marine Environment Action Plan. If the project is deemed to have significant impact on the environment in another Member State of the EU or a Member of the Espoo Convention²⁷⁰, the Maritime Prefect must inform the authorities of that State about the existence of such an application and send them the file²⁷¹. Note that the authorisation procedure, under the Water Act (see *below*) also applies in the EEZ.

The Authorisation request will be submitted to a public inquiry pursuant to Articles [L.123-2](#) & [R.123-1](#) of the Environmental Code. [Article 8](#) of [Decree No 2013-611](#) specifies that the general public will be consulted via the Web when no impact study is required for that project.

The decision to authorise is made by the Maritime Prefect, via a Decision ([Art. 10](#)). It must be explicit²⁷². It can give rise to a joint Decision of the relevant Prefects, if the project also requires an authorisation related to the Maritime Public Domain and when several Maritime Prefects are involved. The authorisation, issued to one individual and for a maximum duration of 30 years ([Art. 14](#)), defines the measures and arrangements for which the authorisation holder is liable so as to ensure preservation of the environment, safety of maritime cultural resources and navigation activities, and to guarantee proper operation of the installation ([Art. 12](#)). The authorisation holder is also liable, at his/her own expense, for the decommissioning of any installation when the authorisation expires or at the end of operations/use ([Art. 13](#)).

Furthermore, “as soon as the application refers to a scientific or experimental project, with no commercial operations” the Maritime Prefect can issue a temporary authorisation, for a duration of less than 2 years, based on the application mentioned under [article 4](#) “without having to roll out the publicity and consultation processes described under articles [6](#), [7](#) and [8](#)”.

Environmental Rules and Regulations

The environmental integration principle applies in the framework of implementation of MRE projects.

MRE activities must be treated from the perspective of an ecosystemic approach, taking into account their impact on marine environment and potential conflicts with other sea usages; hence the development of joint planning schemes under the authority of Regional Prefects. Future Strategic Seaboard Documents containing the Marine Environment Action Plans must also be used as a framework for MRE planning with integrated management of the sea and coast rationale as a backdrop.²⁷³

Furthermore, MREs escape the system of facilities classified for the protection of the environment (ICPE)²⁷⁴ pursuant to a Decision of 23 August 2011²⁷⁵.

The development of MRE power generation installations requires an authorisation, or declaration under the act known as the “LEMA” Act 2006-1772 of 30 December 2006 - [loi No 2006-1772 du 30 décembre 2006](#) which takes account of impacts on the aquatic environment ([Art. L.214-2 and following](#) of the Environmental

²⁶⁹ [Art. 7](#). Individuals and agencies must answer within 4 months from their referral and any absence of answer will be construed as a validation.

²⁷⁰ The Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 - [Convention sur l'évaluation de l'impact sur l'environnement dans un contexte transfrontière du 25 février 1991](#), entering into force on 10 September 1997 and approved by France on 15 June 2011.

²⁷¹ [Art. L.123-7](#) of the Environmental Code. “Authorities of the Relevant State are invited to participate in the public enquiry pursuant to [Article L.123-1](#), or in the procedure for project availability to the general public, pursuant to [Article L.122-1-1](#)”.

²⁷² Absence of any response during the 4 months following the public consultation procedure shall be construed as a rejection of the project application.

²⁷³ [Art. L.219-1 and following](#) of the Environmental Code.

²⁷⁴ Defined under [Article L.511-2](#) of the Environmental Code.

²⁷⁵ Decision No 2011-984 of 23 August 2011 amending the nomenclature of classified facilities. The *Conseil d'Etat* has recognised the legal validity of this Decree via a Decision of 16 April 2012, « *Volkswind France and Innovent* », req. No 353577. Only land-based wind turbines fall under this system.

Code). [Article R.214-1](#) (section 4.1.2.0 of the nomenclature) clearly defines the “*facilities developed in contact with the marine environment which have a direct impact on said environment*”²⁷⁶. The project developer sends an application to the *Département’s* Prefect or the Prefect of any other relevant *Département*. An impact study²⁷⁷ and a public enquiry²⁷⁸ are called for in that context²⁷⁹. The MRE installation project must also give rise to a public debate²⁸⁰. After that, the Prefect renders an authorising Decision which includes the specific arrangements imposed upon the operator²⁸¹.

The interactions between MRE development projects and Marine Protected Areas (MPAs) issue also needs to be treated. Indeed, depending on the category of MPA, projects fall under varying regulations. In an offshore Natura 2000 site²⁸², an impact assessment²⁸³ must be conducted and its conclusions must validate compatibility between the project’s development site and the habitats and species involved. Similarly, MRE development projects can be subject to the assent of a natural marine park management committee²⁸⁴.

Finally, under the Public Maritime Domain occupation authorisation process, the concessionnaire must also proceed to the rehabilitation, restoration or refurbishment of the site at the time of licence expiry or at the end of site use ([Art. R.2124-2, 8°](#) of the General Code on Public Property)²⁸⁵.

Grid Connection and Elimination of Risks

RTE (Réseau de transport d’électricité), manages the French public electricity transportation network and acts both as main contractor and project leader for surveys and works required for the development of grid connection facilities. RTE operate and maintain these facilities. They apply for the required administrative authorisations for grid connection (declaration of public interest, request for occupation of the Public Maritime Domain, environmental survey and building permit for the grid connection station).

The specifications contained in the tendering package define that the successful bidder must proceed, within 24 months following the publication of results, to the removal of risks (surveys conducted so as to remove the risks that hinder the development of the project in line with the proposed price conditions, at the risks and costs of the successful bidder and in contact with the relevant State departments)²⁸⁶. The competent Ministers can withdraw an authorisation to operate if the successful bidder is unable to develop the project in compliance with the defined conditions. *Engagement and monitoring bodies to bring together all stakeholders will also be done.*

²⁷⁶ They are subject to a single declaration system, when their value is between 1.6M€ and 1.9M€, and need to seek authorisation when over 1.9M€.

²⁷⁷ [Art. L.122-1 and following](#) of the Environmental Code. It includes: a project description; an analysis of the initial condition of the site and its environment; a survey of the project’s impacts on the environment or human health; the proportionate measures envisaged; a presentation of the main methods implemented to follow up these measures and their impacts on the environment or human health, as well as an overview of the main alternate solutions ([Art. L.122-3, 2°](#)).

²⁷⁸ [Art. L.123-1 and following](#) of the Environmental Code. The Departmental Council for the Environment and Health and Technological Risks (CODERST) is consulted and delivers its opinion. [Article L.123-6, I](#) of the Environmental Code specifies that only one (joint) public enquiry can be led within the framework of the authorisations which are required for the development of MREs.

²⁷⁹ Note that the procedure underlying the impact study is not fully adapted, as it does not formally take account of all impacts produced by these facilities on the marine environment because of the lack of scientific data.

²⁸⁰ Art. L.121-8 and following. A Special Public Debate Committee (CPDP), an independent administrative authority composed of the National Commission for Public Debate (CNDP), was set up for each offshore windfarm project, to guarantee the participation of the general public in the decision-making process on the relevant environmental issues.

²⁸¹ Ex: setting up a system to deter cetaceans; banning the use of anti-fouling paints.

²⁸² [Art. L.414-1](#) of Environmental Code.

²⁸³ Under Articles [L.414-4](#) and following & [R.414-19](#) and following, of the Environmental Code.

²⁸⁴ [Art. L.334-3](#) of the Environmental Code.

²⁸⁵ And aforementioned Circular of 20 January 2012 - [circulaire du 20 janvier 2012](#).

²⁸⁶ Thus, to remove all environmental risks, the successful bidder must conduct a Natura 2000 impact survey (see above), as well as additional studies on marine fauna and flora.

TABLE – PRIMARY LEGISLATION

<p>Legislation pursuant to the United Nations Convention on the Law of the Sea</p>	<ul style="list-style-type: none"> • Act No 68-1181 of 30 December 1968 on the exploration of the continental shelf and the exploitation of its natural resources - Loi No 68-1181 du 30 décembre 1968 relative à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles. • Act No 76-655 of 16 July 1976 amended on the economic zone and the ecological protection zone off the Republic's coasts - Loi No 76-655 du 16 juillet 1976 modifiée relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République. • Decree 2013-611 of 10 July 2013 on regulations applicable to artificial islands, installations, works and their ancillary installations on the continental shelf and in the economic zone and in the ecological protection zone, as well as submarine pipeline and cable routes Décret No 2013-611 du 10 juillet 2013 relatif à la réglementation applicable aux îles artificielles, aux installations, aux ouvrages et à leurs installations connexes sur le plateau continental et dans la zone économique et la zone de protection écologique ainsi qu'au tracé des câbles et pipelines sous-marins : <ul style="list-style-type: none"> - Request for authorisation to occupy the area within the EEZ, the EPZ and the continental shelf: Articles. 3 to 18 : <ul style="list-style-type: none"> -Competence of the Maritime Prefect; -Environmental assessment procedures (impact study, impact study for Natura 2000 sites) and public survey; -Authorisation procedure pursuant to the Water Act; -Decision by the Maritime Prefect.
<p>Energy legislation</p>	<ul style="list-style-type: none"> • Energy Code - Code de l'énergie : - Authorisation to exploit : L.311-5 et s. : <ul style="list-style-type: none"> -Competence of the Minister in charge of Energy Affairs; -Publication of the application in the French Republic's Official Gazette. - Public Procurement Tendering Procedure for offshore wind farms: L.311-10 and following : <ul style="list-style-type: none"> - Competence of the Minister in charge of Energy Affairs and the Maritime Prefect; -Publication of the tender in the Official Journal of the European Union; -Publication of the Decision to Authorise, in the French Republic's Official Gazette; -Purchase certificate and contract; -Administrative Authorisations. • Act No 2013-312 of 15 April 2013 to prepare the transition towards a low-carbon energy generating system including a number of arrangements on water tariffs and wind turbines - Loi No 2013-312 du 15 avril 2013 visant à préparer la transition vers un système énergétique sobre et portant diverses dispositions sur la tarification de l'eau et sur les éoliennes. • Draft Programming Bill on the new French energy model of 18 June 2014 - Projet de loi de programmation pour un nouveau modèle énergétique français du 18 juin 2014.

	<ul style="list-style-type: none"> • Amended Decree No 2002-1434 of 4 December 2002 on the Public Procurement Tendering Procedure for power generating installations - Décret No 2002-1434 du 4 décembre 2002 modifié relatif à la procédure d'appel d'offres pour les installations de production d'électricité. • Decree No 2011-1893 of 14 December 2011 on the Authorisation to operate power generating installations - Décret No 2011-1893 du 14 décembre 2011 relatif à l'autorisation d'exploiter les installations de production d'électricité.
Coastal legislation	<ul style="list-style-type: none"> • Urban Planning Code - Code de l'urbanisme : - Disapplication of town & country planning rules : L.421-5 & R.421-8-1; - Coastline (notion of public service) : L.2124-2; - Disapplication of the building constraints principle (the 100 meter strip): L.146-4, III; - Outstanding areas, authorisation for grid connection: L.146-6; - Planning: L.123-1 (PLU), L.122-1-11 (SCOT). • Act No 86-2 of 3 January 1986 on the planning, protection and development of the coastline - Loi No 86-2 du 3 janvier 1986 relative à l'aménagement, la protection et la mise en valeur du littoral, called the "Coastline" Act.
Legislation on state owned public domains	<ul style="list-style-type: none"> • General Code on Public Property - Code général de la propriété des personnes publiques : - Concession of public domain occupation in French territorial waters: L.2124-1 et s. et R.2124-1 and following: <ul style="list-style-type: none"> -Competence of the Regional Prefect and of the Département's directorate for land and sea - DDTM, -Environmental issues to be considered; -Impact study and public survey; -Decision by the Regional Prefect; -Operations at end of entitlement or end of use. • Decree No 2004-308 codified in 29 March 2004 on the concessions for the use of the Public Maritime Domain excluding ports - Décret No 2004-308 codifié du 29 mars 2004 relatif aux concessions d'utilisation du domaine public maritime en dehors des ports. • See Ministerial Circular of 20 January 2012 for a sustainable and integrated management of the natural Public Maritime Domain - Circulaire ministérielle du 20 janvier 2012 relative à la gestion durable et intégrée du domaine public maritime naturel.
Environmental legislation	<ul style="list-style-type: none"> • Environmental Code - Code de l'environnement : - Planning (Integrated management of the sea and coast - GIML (L.219-1), Strategic Seaboard Document - DSF (L.219-3)) ; - Disapplication of the regime of Equipment Listed under Environment Protection Regulations - ICPE (L.553-1); - Impact study (L.122-1 et s.); - Public survey (L.123-1 et s.); - Authorisation or declaration pursuant to the Water Act : L.214-2 and following & R.214-1; <ul style="list-style-type: none"> -Competence of the Regional Prefect;

	<p><u>-Impact study and public survey:</u> <u>-Decision by the Regional Prefect.</u></p> <ul style="list-style-type: none">- <u>Interaction with the MPAs</u> (Natura 2000 sites (<u>L.414-4</u> and following & <u>R.414-19</u> and following), marine nature parks (<u>L.334-3</u>)).• Act No 2006-1772 of 30 December 2006 codified on water and aquatic environments - <u>Loi No 2006-1772 du 30 décembre 2006 codifiée sur l'eau et les milieux aquatiques</u>, called the “LEMA” Act.• Programming Act No 2009-967 of 3 August 2009 on the implementation of the Grenelle of the Environment - <u>Loi No 2009-967 du 3 août 2009 de programmation relative à la mise en œuvre du Grenelle de l'environnement</u>, also called the “Grenelle I” Act.• Act No 2010-788 of 12 July 2010 on the national commitment for the environment - <u>Loi No 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement</u>, also called the “Grenelle II” Act.
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Conservation

INSTITUTIONS

- **The Ministry for Environment - [ministère chargé de l'environnement](#)** – Tasked with drawing up the various categories of marine protected areas (MPA)²⁸⁷. It determines the definitive designation of MPAs²⁸⁸ and ensures that arrangements dovetail with all other public policies.
- **The maritime prefects** – Invested with general policing powers, their authority extends to environmental matters²⁸⁹ and, in particular, to the management of MPAs²⁹⁰.
- **Inter-regional sea directorates (DIRMs)**²⁹¹ – Placed under the authority of regional prefects competent in environmental protection, DIRMs take on a coordinating role by collaborating with all other competent State services.
- **Regional directorates for the environment, spatial planning and housing (DREALs)**²⁹² – They are devolved State services; they share the management and facilitation of protected areas at a regional level.
- **Delegations for sea and coastal affairs (DMLs)**, reporting to the *département's* directorates for terrestrial and sea affairs (DDTMs)²⁹³ – Tasked with MPA management at the level of a *département* (8 DMLs are spread along the Channel seaboard).

The following bodies also deal with MPA issues:

- **The Agency for marine protected areas - [agence des aires marines protégées \(AAMP\)](#)** – A public establishment under the Minister for Environment²⁹⁴ tasked with the following main assignments: supporting public policies to create and manage marine protected areas (MPAs) in all French territorial waters; facilitation of the MPA managers' network; technical and financial support to marine nature parks; and increasing French potential in international sea negotiations.

²⁸⁷ Example: designating Natura 2000 sites and creating marine nature parks.

²⁸⁸ Depending on the case, having previously consulted the National Council for Sea and Coasts (CNML); the National Council for the Protection of Nature (CNPN); or the AAMP Board of Administration. The decision is made public by a posting in either the Official Gazette or the Official Bulletin, depending on the case.

²⁸⁹ Decree n° 2004-112 of 6 February 2004 on the organisation on the State's action at sea - [Décret n°2004-112 du 6 février 2004 relatif à l'organisation de l'action de l'Etat en mer](#).

²⁹⁰ Ministerial decision of 22 March 2007 establishing the list of State missions at sea in the maritime zones of the Channel–North-Sea, the Atlantic, the Mediterranean, the Caribbean, Guyana, the south of the Indian Ocean and the waters bordering the French southern and Antarctic coasts - [Arrêté du 22 mars 2007 établissant la liste des missions en mer incombant à l'Etat dans les zones maritimes de la Manche-mer du Nord, de l'Atlantique, de la Méditerranée, des Antilles, de Guyane, du sud de l'océan Indien et dans les eaux bordant les Terres australes et antarctiques françaises](#).

²⁹¹ Decree n° 2010-130 of 11 February 2010 on the organisation and missions of the inter-regional sea directorates - [Décret n°2010-130 du 11 février 2010 relatif à l'organisation et aux missions des directions interrégionales de la mer](#).

²⁹² Decree n° 2009-235 of 27 February 2009 on the organisation and missions of the regional directorates for environment, spatial planning and housing - [Décret n°2009-235 du 27 février 2009 relatif à l'organisation et aux missions des directions régionales de l'environnement, de l'aménagement et du logement](#).

²⁹³ Decree n° 2009-1484 of 3 December 2009 on inter-ministerial directorates at *département* level - [Décret n°2009-1484 du 3 décembre 2009 relatif aux directions départementales interministérielles](#).

²⁹⁴ Created by Act n° 2006-436 of 14 April 2006, on national parks, marine nature parks and regional nature parks - [loi n°2006-436 du 14 avril 2006 relative aux parcs nationaux, aux parcs naturels marins et aux parcs naturels régionaux](#) and by Decree n° 2006-1266 of 16 October 2006 on the Agency for marine protected areas and marine nature parks, [décret n°2006-1266 du 16 octobre 2006 relatif à l'Agence des aires marines protégées et aux parcs naturels marins \(Art. L.334-1](#) and following; and Regulation [R.334-1](#) and following of the Environmental Code).

- **The National Museum of Natural History** - [muséum national d'histoire naturel \(MNHN\)](#) – French research establishment disseminating natural science culture and, with regard to marine protected areas, tasked with: fundamental and applied research; management and conservation of collections; teaching and educational science; dissemination of knowledge and scientific expertise.
- **The Seashore and Lakeshore Conservation Authority** - [conservatoire des espaces littoraux et des rivages lacustres \(CELRL « conservatoire du littoral »\)](#) – intervenes in the public maritime domain (DPM) and is systematically consulted for the setting up of an MPA (example: implementation of Natura 2000; management of nature reserves, of marine nature parks.)²⁹⁵.
- **Regional Councils** - **Les conseils régionaux (CR)** – The 2002 “Grassroots Democracy” Act - [loi « Démocratie de Proximité » de 2002](#) entrusted to Regional Councils the competence of listing regional nature parks (RNR). They also set territorial study perimeters for regional nature parks (PNRs).

PRINCIPAL LEGISLATION

International and European legal mechanisms have provided an enhanced protection regime for specific species or environments considered as endangered - examples:

At global level

- The Convention on Wetlands of International Importance, especially as Waterfowl Habitat of 2 February 1971 (RAMSAR) - (CIF in France on 1 October 1986) - [Convention relative aux zones humides d'importance internationale particulièrement comme habitats des oiseaux d'eau \(RAMSAR\) du 2 février 1971](#);
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973 - (CIF on 11 August 1978) - [Convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction \(CITES\) du 3 mars 1973](#);
- The Convention on Biological Diversity (CBD) of 5 June 1992 - (CIF on 29 September 1994) - [Convention sur la diversité biologique \(CDB\) du 5 juin 1992](#).

*At the regional level*²⁹⁶

- The Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS) of 13 September 1991 (CIF on 4 July 2005) - [Accord sur la conservation des petits cétacés de la mer Baltique, du nord-est de l'Atlantique et des mers d'Irlande et du Nord \(ASCOBANS\) du 13 septembre 1991](#);
- The Convention For the Protection of the Marine Environment of the North-East Atlantic (OSPAR) of 22 September 1992 - (CIF on 17 February 1998) - [Convention pour la protection du milieu marin de l'Atlantique du Nord-Est \(OSPAR\) du 22 septembre 1992](#).

At European level

- Directives applicable to Natura 2000 sites: the “Habitats” Directive 92/43/EC of 21 May 1992, [Directive « Habitats » 92/43/CE du 21 mai 1992](#), the “Birds” Directive 2009/147/EC of 30 November 2009 amended - (CIF on 5 June 1994 & 6 April 1981) - [Directive « Oiseaux » 2009/147/CE du 30 novembre 2009](#);

²⁹⁵ [Art. L.322-1](#) and following of the Environmental Code.

²⁹⁶ This list, which is by no means an exhaustive one, concerns the Channel specifically. (Other mechanisms: the [Convention for the Protection of the Mediterranean Sea Against Pollution \(Barcelona Convention of 16 February 1976\)](#) and its Specially Protected Areas and Biological Diversity Protocol of 10 June 1995 - [protocole relatif aux aires spécialement protégées du 10 juin 1995](#); the Nairobi Convention on the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region of 21 June 1985 - [Convention de Nairobi pour la protection, la gestion et le développement de l'environnement marin et côtier de la région de l'Afrique de l'Est du 21 juin 1985](#), etc.)

- The “Water” Framework Directive 2000/60/EC of 23 October 2000 - (CIF on 22 December 2000) - [Directive 2000/60/CE du Parlement européen et du Conseil du 23 octobre 2000 établissant un cadre pour une politique communautaire dans le domaine de l’eau \(Directive-cadre sur l’eau \(DCE\)\)](#);
- The Marine Strategy Framework Directive of 17 June 2008 (MSFD) (CIF on 15 July 2008) - [Directive 2008/56/CE du Parlement Européen et du Conseil du 17 juin 2008 établissant un cadre d’action communautaire dans le domaine de la politique pour le milieu marin \(Directive-cadre stratégie pour le milieu marin \(DCSMM\)\)](#).

At national level, the principal legal mechanisms are:

- The Environmental Code - [code de l’environnement](#) : Book II, Title 1 on marine environments - [livre II, titre 1er](#); Book III & IV, Title 1 on the protection of endangered habitats, flora and fauna) - [livres III et IV, titre 1er](#) (particularly [Article L.334-1](#) and following);
- Act n° 2006-436 of 14 April 2006, on national parks, marine nature parks and regional nature parks - [loi n°2006-436 du 14 avril 2006 relative aux parcs nationaux, aux parcs naturels marins et aux parcs naturels régionaux](#);
- The Bill on Biodiversity - [loi relative à la biodiversité](#)²⁹⁷;
- Decree n° 2006-1266 of 16 October 2006 on the Agency for marine protected areas and marine nature parks - [décret n°2006-1266 du 16 octobre 2006 relatif à l’Agence des aires marines protégées et aux parcs naturels marins](#);
- The Ministerial decision of 3 June 2011 on the identification of the categories of marine protected areas falling within the scope of the Agency for marine protected areas - [L’arrêté ministériel du 3 juin 2011 portant identification des catégories d’aires marines protégées entrant dans le champ de compétence de l’Agence des aires marines protégées](#);
- All Decisions drawing up the list of protected species and habitats on French soil.

NATIONAL STRATEGY FOR MARINE PROTECTED AREAS (MPAS)

The national strategy for the creation and management of marine protected areas - [stratégie nationale pour la création et la gestion des aires marines protégées](#), adopted on 18 April 2012, should allow reaching the State’s objective of 20% of the French territorial waters under protection by 2020. 5 principles govern the MPA network:

1. Contribution to knowledge;
2. Contribution to the good conservation of ecosystems;
3. Contribution to the sustainable development of activities;
4. Dovetailing with the various policies on integrated management of coastal area; and contribute to the land & sea logic in public policies;
5. Achieve the purposes set at multiple levels.

MARINES PROTECTED AREAS IN FRANCE

Act of 14 April 2006 - [loi du 14 avril 2006](#) (as codified in [Article L.334-1](#) of the Environmental Code) listed 6 categories of MPAs²⁹⁸:

- National parks with a maritime section ([Art. L.331-1](#));
- Natural reserves with a maritime section ([Art. L.332-1](#));
- Biotope protection orders with a maritime section ([Art. L.411-1](#));
- Marine nature parks ([Art. L.334-3](#));
- Natura 2000 sites with a maritime section ([Art. L.414-1](#)).

²⁹⁷ See below.

²⁹⁸ Note: those regional nature parks with a maritime section not listed in Article L.334-1 are provided for in Article [L.333-1, III](#).

- The maritime sections of the French domain managed by The Seashore and Lakeshore Conservation Authority ([Art. L.322-1](#)).

Municipal order of 3 June 2011 identifying the MPA categories falling within the AAMP's scope the competence²⁹⁹ - [arrêté ministériel du 3 juin 2011](#), - it adds to the list, in particular³⁰⁰:

- National sites with a maritime section listed as World Heritage;
- National biosphere reserves with a maritime section;
- National sites with a maritime section arising from the Ramsar Convention;
- Marine protected areas arising from the OSPAR Convention;
- The marine sections of the national game and wild fauna reserves³⁰¹.

Concerning French overseas³⁰², the *départements* are governed by French national legislation³⁰³; however some territorial authorities, competent in environmental protection and management, have their own legal MPA status (example: Wallis & Futuna, New-Caledonia and French Polynesia). Other MPA categories have been designed, for example the Wilderness Areas (RNI); the resource sustainable management zones (AGDR), and New Caledonia's provincial parks³⁰⁴.

An MPA should generically comply with 3 criteria:

- A legal basis in domestic law (order, decree or act);
- Regulations on main sea usages;
- And a managing authority with a legal status (public institution; national, regional or local administration; non-profit or community based organisation, etc.).

International³⁰⁵ Marine Protected Areas

International Designations

- **Wetlands of international importance** – They are protected by the Ramsar Convention - [convention de Ramsar](#), adopted on 2 February 1971. France ratified the Convention via Decree n° 87-126 of 20 February 1987 - [décret n° 87-126 du 20 février 1987](#). The inter-ministerial circular of 24 December 2009 - [circulaire interministérielle du 24 décembre 2009](#) sets down of the Convention's enforcement conditions on French soil. It applies to French territorial waters.
- **UNESCO world heritage sites** with a maritime section – They have been provided for under the Convention concerning the Protection of World Cultural and Natural Heritage - [convention concernant la protection du patrimoine mondial, culturel et naturel](#), adopted on 16 November 1972. France ratified the Convention via Decree n° 76-160 of 10 February 1976 - [décret n°76-160 du 10 février 1976](#). Its scope extends to territorial waters, EEZs and the continental shelf.

²⁹⁹ Pursuant to Decree n° 2006-1266 of 16 October 2006 on the Agency for marine protected areas and marine nature parks - [décret n°2006-1266 du 16 octobre 2006 relatif à l'Agence des aires marines protégées et aux parcs naturels marins](#).

³⁰⁰ Art. 1. The 4 other categories of recognised MPAs are: the special protected areas of Mediterranean interest arising from the Barcelona agreement - [convention de Barcelone](#); the protected areas arising from the Cartagena agreement - [convention de Carthagène](#); the protected areas arising from the Nairobi agreement - [convention de Nairobi](#); the protected areas arising from the Antarctic Treaty - [Traité de l'Antarctique](#). 9 new categories arise from international conventions excepting the national hunting and wild fauna reserve.

³⁰¹ Art. 2.

³⁰² Made up of four *départements* (Guyana, Guadeloupe, Martinique, Reunion) and of seven territorial authorities (French Polynesia, New Caledonia, Wallis & Futuna, Saint Pierre & Miquelon, Mayotte, Saint Martin, Saint Barth's), 1 territory (French Southern and Antarctic Territories) as well as one island with a legislative status (Clipperton).

³⁰³ In particular the Articles of the Environmental Code, subject to possible adaptations.

³⁰⁴ Non-exhaustive list.

³⁰⁵ The MPA typology identified by the MAIA study project is used here (see "*État des lieux des cadres législatifs en vigueur concernant les aires marines protégées dans les pays de l'arc Atlantique, partenaires du projet MAIA*" published by AAMP on 11 October 2013).

- **Biosphere reserves**– They were ratified in the March 1995 Seville Strategy - [stratégie de Séville de mars 1995](#) and acknowledged by UNESCO under their Man and the Biosphere programme (*MAB*) to promote sustainable development. Its scope extends to territorial waters, EEZs and the continental shelf.

Designations via Regional Convention

- **Marine Protected Areas** – They are designated in compliance with the OSPAR Convention of 22 September 1992 - [convention OSPAR du 22 septembre 1992](#). Its scope extends to territorial waters, EEZs and the continental shelf as well as to high seas. Decree n° 2005-145 of 14 February 2005 promulgates Annex V of the Convention on the protection and conservation of ecosystems and biological diversity - [décret n° 2005-145 du 14 février 2005](#).
- Marine Protected Areas arising from other conventions for regional seas, i.e. *Marine and Coastal Specially Protected Areas (SPAs)* and Specially Protected Areas of Mediterranean Interest (SPAMIs) arising from the Barcelona [convention](#) and [protocol](#); the Protected Areas arising from the Protocol on specially protected zones and wildlife of the Convention on the protection and development of the Marine environment in the Wider Caribbean Region of 24 March 1983 - [protocole relatif aux zones et à la vie sauvage spécialement protégées à la convention pour la protection et la mise en valeur du milieu marin dans la région des Caraïbes du 24 mars 1983](#).

European Designations

The Natura 2000 network is made up of listed sites, pursuant to the “Habitat Fauna Flora” and “Birds” Directives:

- **Special areas of conservation (SACs)** – are designated pursuant to the “Habitat Fauna Flora” Directive n° 92/43/EC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora - [directive « Habitats Faune Flore » n°92/43/CE du 21 mai 1992 concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages](#); are designed for the conservation of habitats, plants and animals of Community interest.
- **Special protection areas (SPAs)** – arise from the “Birds” Directive n° 2009/147/EC of 30 November 2009 on wild birds conservation - [directive « Oiseaux » n°2009/147/CE du 30 novembre 2009 concernant la conservation des oiseaux sauvages](#) - (codified version of amended directive n°79/409/EEC), are designed for the conservation of endangered bird species and migratory species.

In charge of achieving the Directives’ objectives, the Ministry for Environment has turned to the AAMP; to the National Museum of Natural History (MNHN)³⁰⁶; and the Technical workshop for natural areas (ATEN)³⁰⁷ - [atelier technique des espaces naturels](#) to provide technical expertise at national level.

Presidential Ordinance n°2001-321 of 11 April 2001 - [ordonnance n°2001-321 du 11 avril 2001](#) completed the transposition into French legislation of the two Directives by adding to the Environmental Code. Articles [L.414-1](#) to L.414-7 and [R.414-1](#) to R.414-24 of said code specify the designation and management framework of Natura 2000 sites.

The initial designation of a Natura 2000 site calls for:

- A decision by the European Commission drawing up the list of Sites of Community Importance (SCI);
- A proposal for a site, drawn up by the competent prefect (maritime and/or of the *département*) after advice from the towns and public inter-municipal cooperation establishments; the proposal is forwarded to the Minister for Environment ([Art. R.414-3](#) of the Environmental Code).

³⁰⁶ Technical expertise.

³⁰⁷ Technical support provided to the Natura 2000 professionals.

The final Natura 2000 site designation procedure varies according to the nature of the site:

- For SPAs: a Decision by the Minister for Environment or the Minister for Defence, designates the site and notifies the Commission ([art. R.414-5](#));
- For SACs: the Commission is notified of proposals for sites of Community importance (pSCI) which then renders a Decision drawing up the bio-geographical lists of selected SCIs. The Minister for Environment then issues an order designating the area as an SAC. ([art. R.414-4](#)).

When a site includes all of, or part of a military site, or marine areas, the proposal is then made jointly to the Commission, by the Minister for Environment and the Minister for Defence.

For Natura 2000 sites at sea, the Directives' scope extends to territorial waters, the EEZ and the continental shelf.

Management measures applicable to SPAs and SACs are provided for in Articles [L.414-2](#) and [L.414-3](#) of the Environmental Code. Two mechanisms are available:

- Specific management plans in the form of Objectives Documents (DOCOBs), i.e. administrative diagnostic roadmap acts approved by prefectural decision ([Art. R.414-11](#)),
- And the Natura 2000 contracts, i.e. operational mechanisms³⁰⁸ between the State and the holder of personal and movable real rights to that land ([Art. R.414-13](#)).

A Steering Committee (SC) is appointed by an official decision; it will lead the DOCOB drafting and monitor its implementation. In the case of a marine site, the SC is appointed, convened and chaired by the maritime prefect or jointly by the maritime prefect and the prefect of the *département* ([Art. R.414-9](#)). The chair may be devolved to a territorial authority or a grouping of territorial authorities at a later stage.

Act of 23 February 2005 on the development of rural territories - [La loi du 23 février 2005 relative au développement des territoires ruraux](#) has also added the possibility of making a commitment to a Natura 2000 Charter³⁰⁹; it is a tool designed for holders of personal and movable real rights to join the DOCOB. A commitment to the Charter “*doesn't prevent the member from signing a Natura 2000 contract*”.

Finally, the “Habitats” Directive requires that, in Natura 2000 sites, plans or projects be first submitted to an impact assessment before they are implemented. ([Art. L.414-4](#) and following & [R.414-19](#) and following.).

National Marine Protected Areas

“National” Types of Designations

There are 6 protected areas in France that are considered as national MPAs:

- **National parks** (PN) with a maritime section – They are governed by the Environmental Code ([Art. L.331-1](#) to L.331-7, [R.331-1](#) to R.331-12 & [R.331-15](#) to R.331-17); Act n° 2006-436 of 14 April 2006 - [loi n° 2006-436 du 14 avril 2006](#) and the implementing decrees of 28 July 2006 - [décrets d'application n°2006-943](#) & [n°2006-944](#). A State Council (*Conseil d'Etat*) decree is passed to create them. The law requires that the stakeholders jointly draw up a management plan (a charter). They indicate the type of governance (by a public establishment; jointly) and of financing (public and/or private). To date, there is no national park with a maritime section on the Channel seaboard.
- **National natural reserves** (RNN) with a maritime section – Their creation, designation and management are governed by the Environmental Code ([Art. L.332-1](#) to L.332-27, [R.332-1](#) to R.332-29 & [R.332-68](#) to R.332-81) and by ministerial circulars n°95-47 of 28 March 1995, n°97-93 of 7 October 1997 and n°2006-3 of 13 March 2006. A State Council (*Conseil d'Etat*) decree or a simple³¹⁰ decree is passed to create reserves on the public maritime domain or in French territorial waters. The legal texts require that a management plan be drawn up. They also indicate that the type of governance

³⁰⁸ Valid for a three-year period.

³⁰⁹ [Art. R.414-12](#) and following of the Environmental Code.

³¹⁰ If all the owners agree.

will be concerted management³¹¹; no funding mode is indicated. The applicable regulation is defined in the designation text.

- **Marine nature parks** (PNMs) – They are governed by the Environmental Code ([Art. L.334-3](#) to L.334-8 & [R.334-27](#) to R.334-38) and Act of 14 April 2006 - [loi du 14 avril 2006](#). A Decree is passed to create those areas where the waters under French sovereignty or French jurisdiction, as well as when the areas are part of the public maritime domain in order to “*contribute to the knowledge of the marine heritage as well as to the protection and sustainable development of the marine environment*”. They are managed by the AAMP – the Agency for protected marine areas. A Management board drafts the management plan³¹². The funding mode (public and/or private) is also specified. The site designation text doesn’t specify what the applicable regulation is. Any activity likely to jeopardize the marine environment requires an authorization from the AAMP or via delegated powers, from the Management board (assent procedure; not applicable to activities related to National Defence needs; or those of law and order, maritime safety and pollution control)³¹³. At present, there are only two parks on the Atlantic / Channel seaboard: the Iroise Sea Marine Nature Park and the Marine Nature Park of the Picardy river estuaries and Opal Coast. The Marine Nature Park of the Normandy & Brittany Bay is under consideration.
- **The maritime sections belonging to the Seashore and Lakeshore Conservation Authority (CELRL)** – In terms of regulations, they are governed in particular by the Environmental Code ([Art. L.322-1](#) to L.322-14 & [R.322-1](#) to R.322-42), the Urban Planning Code ([Art. L.142-2](#) to L.142-3) and the General Code on Public Property ([Art. L.5331-7](#)); these texts specify both the implementation of a management plan and the funding mode (public and / or private). The type of governance is not specified as it varies depending on the site manager’s specific status (case by case arrangements between the CELRL and their chosen Managing Authority). The Managing Authority suggests what regulation would be implemented.
- **Biotope protection orders**– The Environmental Code defines them ([Art. L.411-1](#) to L.411-2, [R.411-15](#) to R.411-17 & [R.415-1](#)) and ministerial circular n°90-95 of 27 July 1990 on the protection of biotopes needed for living species in aquatic environments. The above texts provide neither the drafting of a management plan, nor the governance, or funding modes but lay out the applicable legislation. A Decree by the State Council sets out the enforcement rules.
- **The national terrestrial game and wildlife reserves** – The Environmental Code defines them ([Art. L.422-27](#) & L.422-28, [R.422-82](#) and following., [R.422-92](#) and following.). The fact that they are deemed protected marine areas is enshrined in the Ministerial Order of 3 June 2011. The above texts provide neither for the drafting of a management plan, nor for the governance, or funding modes. Applicable regulations are defined in the designation text (Decree by the State Council).

*“Territorial” Types of Designations*³¹⁴

- The only “territorial” types of PMA that are recognised are **Regional nature reserves** (RNRs) with a maritime section (example: the “Talbert off-shore sand and shingle bar” Regional Nature Reserve on the Atlantic / Channel seaboard). The Environmental Code ([Art. L.332-1](#) to L.332-27, [R.332-30](#) to R.332-48 & [R.332-68](#) to R.33-81) defines reserves. They are created via Regional Council decision or a State Council decree³¹⁵ passed on the maritime public domain and on French territorial waters. The drafting and implementation of a management plan are specified, as well as the various methods of governance (delegated management or private governance; individual or by a non profit

³¹¹ The maritime prefect is the consultative committee vice-chair.

³¹² In the case of Natura 2000 sites within the park’s scope, the management plan serves as DOCOB.

³¹³ In June 2011, the Iroise Sea Marine Nature Park Management Board agreed to the administrative regularisation of a pig farm operation but refused the farmer’s project to extend the farm by an additional 900 head of livestock.

³¹⁴ Term used in the above mentioned study by the MAIA project.

³¹⁵ If one or more owners disagree.

organization), but not how it is to be financed. The competent administrative authority sets the applicable regulations at the time of site designation.

Some Designations are not Officially Considered as “National” Types of MPAs.

In France, there are also a number of marine protected areas that are not considered as officially contributing to the official MPA network. For example:

- **Regional nature parks with a maritime section (PNR)** – They are provided for under [Article L.333-1, III](#) of the Environmental Code. The Regional Councils set the scope of a park’s study perimeter³¹⁶. A charter sets the orientations and basic protection principles that will govern that park³¹⁷. The file is then sent first to the Regional Prefect, then to the Minister for Environment for PNR ranking. A three-year plan provides for the funding; passed that time, a budget is provided on a multi-annual basis.
- **Regulated Fishing Areas** – They are governed by the Rural and Maritime Fishing Code ([Art. L.922-2](#)). The Ministry for Fisheries or the regional prefect can set the regulations in those areas according to the professional fisheries’ requests and proposals. There are at present 25 regulated fishing areas in the Channel / Atlantic region.
- **Listed and classified sites**– They are governed via the Environmental Code ([Art. L.341-1](#) and following & [R.341-1](#) and following). Regulations provide nothing on the management, governance or financing of these sites.

ROADMAP FOR THE FUTURE

The bill on biodiversity - [projet de loi relatif à la biodiversité](#)³¹⁸, was introduced on 26 March 2014³¹⁹ at the Council of Ministers and introduces a revision of the regulatory framework. Title V called “*Natural spaces and protection of species*” deals specifically with the implementation of tools in order to reach the objectives set for restoring biodiversity. The main contributions are:

- *A new integrated public operator* (Art. 9) – The French Agency for Biodiversity, a public administrative establishment, will bring project developers both technical and financial support. It will incorporate and take over the duties of existing structures such the AAMP and the ATEN. It should be operational in 2015.
- *Enhanced monitoring of professional fisheries activities at Natura 2000 sites* (Art. 37) – Whenever necessary and in order to counter any detrimental effect on those nature sites, regulatory measures will be taken at Natura 2000 sites where fisheries are actively present. They would therefore not be required to carry out an impact assessment, as it would be ill suited to their specific situation.
- *A new authorisation scheme for activities on the continental shelf and the exclusive economic zone* (Art. 39 & 40) – Any activity in these maritime areas involving exploration or exploitation of natural resources or the use of marine environments and their ecosystems will be regulated.
- *The setting up of “fishing conservation zones”* (Art. 43 to 46) – They are to be construed as MPAs as per Article L.334-1 of the Environmental Code. The State will be able to ban or regulate (via a Decree), all activities likely to jeopardize the functional areas of fishing resources (limitations: in territorial sea as well as in river areas).
- *Specific action of the Seashore and Lakeshore Conservation Authority (CELRL)* (Art. 47 to 50) – Its competences will be dedicated to cultural heritage when it is specifically linked to its missions and to land-sea interface management.

³¹⁶ Which can encompass a maritime area adjacent to the terrestrial areas and spaces belonging to the State’s public maritime nature domain, but cannot include zones belonging to a marine nature park.

³¹⁷ Per decision of the Region, a local organisation (grouping of towns or community group) is in charge of drafting it.

³¹⁸ Made up of 72 articles split into 6 titles.

³¹⁹ The text should be filed with the National Assembly between 24 and 26 June 2014.

- *Government Enabling* – To pass ordinances for technical measures that would clarify or simplify Natura 2000 Policy implementation (Art. 64) ; to pass ordinances for experimenting in natural protected areas when they overlap in a same area (Art. 67).

TABLE - PRIMARY LEGISLATION

<p style="text-align: center;"><u>Environmental Code</u></p>	<ul style="list-style-type: none"> • Book II, title I (marine environment) (in particular, Art. L.334-1 and following.). • Books III & VII (protection of endangered habitats). • Book IV, title I (protection of flora and fauna). - National Parks with a maritime section (Art. L.331-1) ; - Natural reserves with a maritime section (Art. L.332-1) ; - Biotope protection orders with a maritime section (Art. L.411-1) ; - Marine nature parks (Art. L.334-3) ; - Natura 2000 sites with a maritime section (Art. L.414-1) ; - Maritimes sections of the Seashore and Lakeshore Conservation Authority domain (Art. L.322-1). - Regional nature parks with a maritime section (Art. L.333-1, III and following).
<p>Act n° 2006-436 of 14 April 2006, on national parks, marine nature parks and regional nature parks - Loi n°2006-436 du 14 avril 2006 relative aux parcs nationaux, aux parcs naturels marins et aux parcs naturels régionaux ;</p> <p>Decree n° 2006-1266 of 16 October 2006 on the Agency for marine protected areas and marine nature parks - Décret d'application n°2006-1266 du 16 octobre 2006 relatif à l'Agence des aires marines protégées et aux parcs naturels marins</p>	<p>Creation of the Agency for marine protected areas and marine nature parks (Chapter IV (Art. 18 to 19)) ; specificities of the six categories of MPAs.</p>
<p>Ministerial decision of 3 June 2011 on the identification of the categories of marine protected areas falling within the scope of the Agency for marine protected areas - Arrêté ministériel du 3 juin 2011 portant identification des catégories d'aires marines protégées entrant dans le champ de compétence de l'Agence des aires marines protégées</p>	<p>Enlarged list of MPAs (in particular):</p> <ul style="list-style-type: none"> - National sites with a maritime section listed as world heritage; - National biosphere reserves with a maritime section; - National sites with a maritime section arising from the Ramsar Convention; - Protected marine areas arising from the OSPAR Convention; - Marine sections of national game and wild fauna reserves.