

Hornsea Offshore Wind Farm

Project Two

Environmental Statement
Volume 1 – Introductory Chapters

Chapter 2 **Policy and Legislative Context**

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SMart Wind Limited

**Hornsea Offshore Wind Farm
Project Two – Environmental Statement**

Volume 1 – Introductory Chapters
Chapter 2 – Policy and Legislative Context

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Acronyms

| Acronym | Full term |
|----------|--|
| AA | Appropriate Assessment |
| CFD | Contracts for Difference |
| DCO | Development Consent Order |
| DECC | Department of Energy and Climate Change |
| EIA | Environmental Impact Assessment |
| EMR | Electricity Market Reform |
| EPS | European Protected Species |
| EU | European Union |
| GHG | Greenhouse Gases |
| HRA | Habitat Regulations Assessment |
| IPC | Infrastructure Planning Commission |
| LDF | Local Development Framework |
| MCAA | Marine and Coastal Access Act 2009 |
| MCZ | Marine Conservation Zone |
| MHWS | Mean High Water Springs |
| MMO | Marine Management Organisation |
| MPS | Marine Policy Statement |
| NPPF | National Planning Policy Framework |
| NPS | National Policy Statement |
| NPS EN-1 | Overarching National Policy Statement for Energy |

| Acronym | Full term |
|----------|---|
| NPS EN-3 | National Policy Statement for Renewable Energy Infrastructure |
| NPS EN-5 | National Policy Statement for Electricity Networks Infrastructure |
| NSIP | Nationally Significant Infrastructure Project |
| PEI | Preliminary Environmental Information |
| PINS | Planning Inspectorate |
| PPG | Planning Policy Guidance |
| PPS | Planning Policy Statement |
| RES | Renewable Energy Strategy |
| REZ | Renewable Energy Zone |
| ROC | Renewables Obligation Certificates |
| RPP | Regional Planning Policy |
| RSS | Regional Spatial Strategy |
| SAC | Special Area of Conservation |
| SEA | Strategic Environmental Assessment |
| SoCC | Statement of Community Consultation |
| SPA | Special Protection Area |
| TCPA | Town and Country Planning Act 1990 |
| UK | United Kingdom |

2 POLICY AND LEGISLATIVE CONTEXT

2.1 Policy and Legislation

Introduction

2.1.1 This section of the Environmental Statement provides a summary of the policy and legislative context for Project Two with reference to the following:

- International obligations, including European legislation for climate change and reducing carbon emissions; and
- National legislation and policy.

2.1.2 Where policy or legislation exists in respect of specific topics, particularly in respect of Environmental Impact Assessment (EIA), it is identified in the relevant chapters of the Environmental Statement.

2.1.3 A full assessment of Project Two in terms of planning policies is provided in the Planning Statement. The Planning Statement, together with this Environmental Statement, accompanies the application for development consent.

International Obligations on Climate Change and Reducing Carbon Emissions

2.1.4 In 2008, the European Parliament and Council agreed a climate and energy package known as the '20-20-20' targets. The targets to be achieved by 2020 include:

- A reduction in European Union (EU) greenhouse gas (GHG) emissions of at least 20% below 1990 levels;
- 20% of EU energy consumption to come from renewable sources; and
- A 20% reduction in primary energy use compared with projected levels, to be achieved by improving energy efficiency.

2.1.5 In order to meet these targets the EU introduced Directive 2009/28/EC on the promotion of the use of energy from renewable sources (Renewable Energy Directive). Article 3 and Annex I of this Directive set out the mandatory national targets for individual Member States to meet by 2020. As part of this, the United Kingdom (UK) is subject to a mandatory national target of deriving 15% of gross final energy consumption from renewable sources by 2020.

UK Climate Change and Energy Legislation

Climate Change Act 2008

2.1.6 The Climate Change Act 2008 commits the UK to a net reduction in GHG emissions of 80% (against the 1990 baseline) by 2050. This is implemented through a system of carbon budgets, which are set by the Government for a period of five years each. The UK Government has legislated for the first four carbon budgets to cut emissions by 23% below 1990 levels by 2012, 29% by 2017, 35% by 2022 and 50% by 2027 (The Carbon Budget Order 2009 and The Carbon Budget Order 2011). The first target, 23% below 1990 levels by 2012, was met by the UK (Committee on Climate Change, 2013).

2.1.7 The Climate Change Act 2008 also established the Committee on Climate Change. The Committee on Climate Change advises the UK and devolved administration governments on setting and meeting the carbon budgets, and on preparing for climate change. In May 2011, the Committee published the Renewable Energy Review which sets out a detailed vision of the role of renewable energy in meeting longer term emissions targets. The Renewable Energy Review concludes that the development of renewable energy is a potential significant contributor to delivering decarbonisation of the power sector by 2030 at reasonable cost. It also underlined that firm commitments of support for offshore wind and marine generation through to the 2020s should be made now (Committee on Climate Change, 2011).

Energy Act 2013

2.1.8 The Energy Act 2013 received Royal Assent on 18 December 2013. The Energy Act makes provisions to incentivise investment in low carbon electricity generation, ensure security of supply, and help the UK meet its emission reduction and renewables targets. In particular the Energy Act contains provisions from the Department of Energy and Climate Change (DECC) for Electricity Market Reform (EMR).

2.1.9 The EMR sets out the framework for replacing Renewables Obligation Certificates (ROCs) with Contracts for Difference (CFD) to provide stable financial incentives to encourage investment in low carbon electricity generation. Eight projects, including Hornsea Project One, were awarded early stage CFD in April 2014. Further CFDs are due to be awarded in the next application round which opened on 14 October 2014 and ROCs will be closed to new projects from 1 April 2017.

Policy Relevant to Project Two

Introduction

- 2.1.10 The central objective of Government energy policy is to ensure the security of energy supply whilst responding to the challenge of climate change by reducing carbon emissions. To meet these objectives, more energy infrastructure is required with an increased emphasis on energy generation from renewable and low carbon sources.
- 2.1.11 The need for this infrastructure is fully recognised in many areas of Government policy. The need to reduce carbon emissions is enshrined in European law and international obligations and has been transposed into a range of UK legislation.

Energy policy

- 2.1.12 In response to the requirement in Article 4 of the Renewable Energy Directive, DECC published the National Renewable Energy Action Plan for the UK in July 2010 (DECC, 2010). This plan sets out a 'lead scenario' to achieve the 15% renewable energy target for 2020 (the UK target under the Renewable Energy Directive). The lead scenario suggests that the UK could see around 30% of electricity, 12% of heat and 10% of transport energy come from renewable sources by 2020.
- 2.1.13 Specific measures for renewables were set out in the UK Renewable Energy Strategy (RES) which was published alongside and in parallel with the UK Low Carbon Transition Plan in July 2009 (DECC, 2009a; 2009b). The RES sets out the path by which the UK can meet the legally-binding target of 15% energy consumption from renewable sources by 2020.
- 2.1.14 The Renewable Energy Roadmap (DECC, 2011a; 2012; 2013) updated some of the aims within the RES and identified eight technologies capable of providing 90% of the renewable energy required to meet the UK's 2020 target of 15% of energy consumption derived from renewable sources. It suggests that offshore wind is an ideal technology for the UK in which shallow seas and strong winds make it an important national asset which will play a key role in enabling the UK to meet its legally binding 2020 renewable energy targets. Offshore wind has the potential to be generating up to 16 GW by 2020. Beyond 2020, there is a very high potential for further deployment, with up to 39 GW possible by 2030 (DECC, 2013).

- 2.1.15 In December 2011, the Government published its Carbon Plan (DECC, 2011b). The Carbon Plan states that electricity demand may rise by between 30% and 60% by 2050 which may require today's electricity capacity to double in order to deal with peak demand. It goes on to state that "*renewable energy, particularly onshore and offshore wind farms*" is likely to be one of the three main low carbon sources to produce electricity (paragraph 44; DECC, 2011b). This document further sets out the policies for meeting the commitment of an 80% reduction in GHG emissions made under the Climate Change Act. It also describes the measures proposed to meet the first four carbon budgets (from 2008 to 2027).

National Policy Statements

- 2.1.16 National Policy Statements (NPSs) were designated under the Planning Act 2008. They describe the national case for certain types of infrastructure development, as well as issues that should be considered by the examining body and decision maker when considering a request for development consent.
- 2.1.17 The NPSs of relevance to Project Two are:
- i) Overarching National Policy Statement for Energy (EN-1; hereinafter referred to as NPS EN-1);
 - ii) National Policy Statement for Renewable Energy Infrastructure (EN-3; hereinafter referred to as NPS EN-3); and
 - iii) National Policy Statement for Electricity Networks Infrastructure (EN-5; hereinafter referred to as NPS EN-5).

Overarching National Policy Statement for Energy (EN-1)

- 2.1.18 NPS EN-1 sets out the Government's policy for the delivery of major energy infrastructure (DECC, 2011c), and supports the requirements of the Renewable Energy Directive. The policy states that new projects are urgently needed in order to ensure that the UK's renewable energy target of sourcing 15% of its energy from renewable sources is met by 2020 (NPS EN-1, paragraph 3.4.1). Offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets (NPS EN-1, paragraph 3.4.3). In addition, NPS EN-1 identifies that approximately a quarter of the UK's generating capacity is due to close by 2018 and that new low-carbon generation is required which is reliable, secure and affordable (NPS EN-1, paragraph 2.2.16).

2.1.19 The NPS states that the Secretary of State should consider all applications for development consent for energy infrastructure covered by NPS EN-1 on the basis that the Government has demonstrated there is a need for those types of projects (NPS EN-1, paragraph 3.1.3). NPS EN-1 establishes that, given the level of demand and urgency of the need for large scale energy infrastructure, the Secretary of State should start with a presumption in favour of granting a Development Consent Order (DCO) for energy Nationally Significant Infrastructure Projects (NSIPs) unless any more specific and relevant policies set out within the NPSs clearly indicate that consent should be refused or that Section 104 of the Planning Act 2008 applies (NPS EN-1, paragraph 4.1.2).

2.1.20 Section 104 states that an application for energy infrastructure must be decided in accordance with the relevant NPSs except where in doing so it would cause one or more of the following:

- Lead to the UK being in breach of its international obligations;
- Be in breach of any statutory duty that applies to the Secretary of State;
- Be unlawful;
- Result in adverse impacts from the development outweighing the benefits; or
- Be contrary to regulations about how decisions are to be taken.

2.1.21 In considering proposals, and particularly when weighing up adverse impacts and benefits, the Secretary of State should take into account the proposal's:

- Potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
- Potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts (NPS EN-1, paragraph 4.1.3).

National Policy Statement for Renewable Energy Infrastructure (EN-3)

2.1.22 NPS EN-3 recognises the need for 25 GW of new offshore wind-derived generating capacity in the UK Renewable Energy Zone (REZ) and the territorial waters of England and Wales (NPS EN-3, paragraph 2.6.15; DECC, 2011d). It also refers to the Offshore Energy Strategic Environmental Assessment (SEA) which concludes that there are no overriding environmental considerations preventing the plans for 33 GW of offshore wind capacity, if mitigation measures are implemented (NPS EN-3, paragraph 2.6.15).

2.1.23 NPS EN-3 confirms the role of the Secretary of State in the offshore consenting process, including the power of the Secretary of State to grant deemed Marine Licences as part of a project's DCO (NPS EN-3, paragraph 2.6.9). It also calls for flexibility in the application process for offshore wind NSIPs to allow for situations where full details of the project specification may be unknown at the time of submission (NPS EN-3, paragraph 2.6.43). NPS EN-3 highlights the use of the 'Rochdale Envelope' (from here on referred to as the 'Design Envelope') method in such circumstances, which allows for the maximum adverse case scenario (i.e., worst case) to be assessed in the Environmental Statement and a DCO granted on this basis (NPS EN-3, paragraph 2.6.43). The approach for the Design Envelope is described further in paragraphs 2.2.16 to 2.2.19 below.

2.1.24 NPS EN-3 identifies certain environmental topic-specific policy considerations. Where appropriate, these are outlined within the relevant Environmental Statement chapters.

National Policy Statement for Electricity Networks Infrastructure (EN-5)

2.1.25 NPS EN-5 (DECC, 2011e) relates to applications for electricity networks infrastructure. NPS EN-3 sets out that the onshore element of the grid connection including electricity lines for transmission and substations should be determined in accordance with NPS EN-5 (NPS EN-3, paragraph 2.6.41). NPS EN-5, together with NPS EN-1, provides the primary basis for decisions on applications for electricity networks infrastructure development.

2.1.26 NPS EN-5 identifies certain topic-specific policy considerations. Where appropriate, these are outlined within the relevant Environmental Statement chapters.

Rationalising a programme for offshore wind development

2.1.27 An SEA was carried out by DECC in 2008/2009 to identify the environmental effects of further rounds of offshore wind farm licencing in the UK REZ. This was undertaken in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004. These Regulations apply Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive). The SEA Post Consultation Report, published in June 2009 (DECC, 2009c), concluded that there were no significant impediments to the adoption of a plan/programme for an additional 25 GW of offshore wind farm generation capacity.

Marine legislation

The Marine and Coastal Access Act 2009

2.1.28 The Marine and Coastal Access Act 2009 (MCAA) introduced a new planning system for overseeing the marine environment and a requirement to obtain marine licences for works at sea. The geographical extent of the MCAA is shown in Figure 2.1 below.

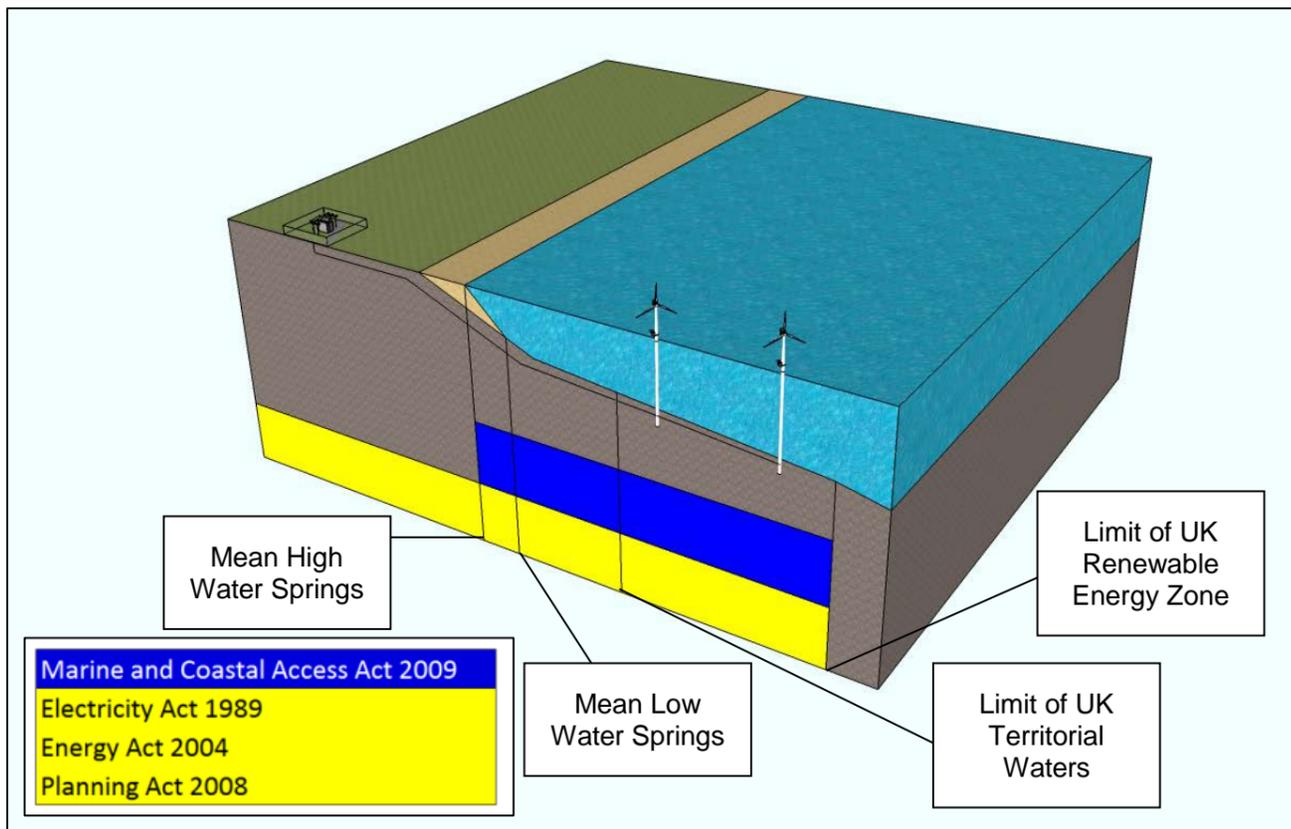


Figure 2.1 Geographical extent of principal legislation applicable to Project Two (not to scale).

- 2.1.29 The MCAA inserted a new section (Section 149A) into the Planning Act 2008 which enables an applicant for a DCO to apply for deemed marine licences as part of the DCO process. The Marine Management Organisation (MMO) is the responsible authority and works with the Planning Inspectorate (PINS) to ensure that the deemed marine licences are transposed properly into the DCO. The MMO remains the monitoring and enforcement body in respect of the conditions and restrictions set out in the deemed marine licences within the DCO.
- 2.1.30 The MCAA also enables the designation of Marine Conservation Zones (MCZs). MCZs are a type of marine protected area which protect a range of nationally important marine wildlife, habitats, geology and geomorphology. MCZs can be designated anywhere in English and Welsh inshore and UK offshore waters. The designation of MCZs fulfils some of the UK's obligations under international agreements such as the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).

Marine Policy

Marine Policy Statement (MPS)

- 2.1.31 The UK-wide Marine Policy Statement (MPS) was published in March 2011, under the MCAA, in order to provide a framework for marine spatial planning, specifically for the preparation of Marine Plans and taking decisions that affect the marine environment (Defra, 2011).
- 2.1.32 The MCAA requires all public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area to do so in accordance with the MPS and the relevant Marine Plans.
- 2.1.33 The MPS provides that the following issues should be taken into account by decision makers when examining and determining applications for energy infrastructure:
- *"The national level of need for energy infrastructure, as set out in the Overarching National Policy Statement for Energy (EN-1)";*
 - *"The positive wider environmental, societal and economic benefits of low carbon electricity generation and carbon capture and storage as key technologies for reducing carbon dioxide emissions"; and*
 - *"The potential impact of inward investment in offshore wind, wave, tidal stream and tidal range energy related manufacturing and deployment activity; as well as the impact of associated employment opportunities on the regeneration of local and national economies. All of these activities support the objective of developing the UK's low carbon manufacturing capability;" (paragraph 3.3.4; Defra, 2011).*
- 2.1.34 The MPS does acknowledge that renewable energy developments can potentially have adverse impacts on fish, mammals and birds and that further research is required to better understand potential impacts, however it goes on to state that:
- "The UK has some of the best wind resources in the world and offshore wind will play an important and growing part in meeting our renewable energy and carbon emission targets and improving energy security by 2020, and afterwards towards 2050"* (paragraph 3.3.19; Defra, 2011).
- 2.1.35 In addition it states that offshore wind:
- ".....has the potential to have the biggest impact in the medium-term on security of energy supply and carbon emission reductions through its commercial scale output"* (paragraph 3.3.19; Defra, 2011).

Marine plans

2.1.36 In 2011 the Department for Environment, Food and Rural Affairs (Defra) recommended a series of marine plan areas for the English inshore and offshore marine regions to the MMO. The East Inshore and East Offshore areas, which include the Project Two proposed development area, were the first two areas in England to be selected for marine planning. The East Inshore and East Offshore Marine Plans were published on 2 April 2014. The plans do not establish new requirements or policies, but provide clarification on the intent of national policy to the plan areas, taking into account the characteristics of these two areas.

2.1.37 Objective 3 of the East Inshore and East Offshore marine plan is:

"To realise sustainably the potential of renewable energy, particularly offshore wind farms, which is likely to be the most significant transformational economic activity over the next 20 years in the East marine plan areas, helping to achieve the United Kingdom's energy security and carbon reduction objectives." (page 26; MMO, 2014)

2.1.38 In addition, the plan policies for offshore wind state that:

"Proposals for offshore wind farms inside Round 3 zones, including relevant supporting projects and infrastructure, should be supported." (page 121; MMO, 2014)

2.1.39 The relevant plan policies have been taken into account in preparing the Environmental Statement.

Planning Legislation

The Planning Act 2008

2.1.40 The Planning Act 2008 provides for national policy guidance to assist in the delivery of NSIPs. This led to the development of the NPSs (discussed in paragraph 2.1.16 above) to guide the decision making process for NSIPs.

2.1.41 One of the objectives of the introduction of the Planning Act 2008 was to address the need for, and to speed up the delivery of, large infrastructure projects, referred to as NSIPs. Further details on the consent application process for NSIPs (including Project Two) under the Planning Act 2008, is provided in Section 2.2 below. The geographical extent of the Planning Act is shown in Figure 2.1 above.

2.1.42 A number of amendments were made to the Planning Act 2008 following the enactment of the Localism Act 2011. The key change being the abolition of the Infrastructure Planning Commission (IPC) on 1 April 2012. Following the abolition of the IPC, PINS became the agency responsible for operating the consenting process for NSIPs. The IPC's decision making functions were transferred to the Secretary of State for Energy and Climate Change (in the case of energy infrastructure) and the examining functions are now administered by the National Infrastructure Directorate of PINS. The other statutory processes within the Planning Act 2008 remain largely unaltered.

Planning Policy

Planning Policy Guidance (PPG)/Statements (PPS)

2.1.43 NPS EN-1 confirms that the energy NPSs have taken account of relevant planning policy held previously within Planning Policy Statements (PPSs) and Planning Policy Guidance (PPGs) in England (paragraph 4.1.5; DECC, 2011c). Although reference to the NPS should be sufficient in principle for compliance purposes, Smart Wind is adopting the approach set out in NPS EN-3 (paragraph 2.2.1; DECC, 2011d), which states that applicants and the Secretary of State should still have regard to extant planning policy guidance specifically related to renewable energy projects, although *"Whether an application conforms to the guidance or the targets will not, in itself, be a reason for approving or rejecting the application"* (paragraph 2.2.1; DECC, 2011d).

The National Planning Policy Framework (NPPF)

2.1.44 The NPPF is the set of national planning policies for England and provides guidance to local authorities and others in assessing planning applications for development. On 6 March 2014, the Department for Communities and Local Government (DCLG) launched the Planning Practice Guidance as a web-based resource. Section 5 sets out guidance on *"Renewable and Low Carbon Energy"*. Paragraph 001 states that:

"Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses." (DCLG, 2014)

2.1.45 The NPSs for NSIPs operate separately from the NPPF. NSIPs do not require planning permission and the NPPF does not contain specific policies for NSIPs. However, matters that the Secretary of State considers *"important and relevant"* when making decisions on NSIP applications, may include the NPPF itself.

Regional Planning Policy (RPP)

2.1.46 Regional Planning Policies (RPP) and associated Regional Spatial Strategies (RSS) are documents produced at a regional level containing policies and strategic level plans that are used to inform local planning documents within that region. The Regional Strategies for Yorkshire and Humber (as far as relevant to Project Two), and the East Midlands have been formally revoked (as of February and April 2013 respectively). These RSS therefore, no longer form part of the Statutory Development Plan.

The Statutory Development Plan

2.1.47 NPS EN-1 (paragraph 4.1.5) provides that the policies contained within Development Plan Documents and other Local Development Framework (LDF) documents may be considered important and relevant in decision making. However, in the event of a conflict, the NPSs prevail for the purpose of the Secretary of State's decision making (DECC, 2011c).

2.1.48 A full summary of the relevant Statutory Development Plan documents in all the local authority areas affected by the onshore infrastructure for Project Two is provided in the Planning Statement, which accompanies the Environmental Statement. Particular considerations relevant to the assessment of environmental and socio-economic effects are identified in the specific Environmental Statement topic chapters.

2.1.49 The LDF Core Strategy for North Lincolnshire aspires for the area to become a "renewable energy capital" and identifies:

"Significant interest in the area to develop various forms of green energy generation facilities, particularly on the South Humber Bank." (paragraph 1.6; North Lincolnshire Council, 2011).

2.1.50 The Strategy goes on to state that:

"The area's proximity to the recently announced offshore wind energy zones could allow the area to become a key location for the manufacturing of wind turbines" (paragraph 1.6; North Lincolnshire Council, 2011).

2.2 Consenting Process

Introduction

2.2.1 The following section provides a summary of the consenting process which Project Two will follow, as required by the Planning Act 2008.

2.2.2 The consenting process for Project Two is summarised with reference to the following:

- Planning legislation and infrastructure planning regulations under which the DCO application will be submitted;
- Overview of the DCO application process;
- EIA, Habitat Regulations Assessment (HRA) and associated legislation and guidance; and
- Other consents and licences.

Planning Legislation under which the Development Consent Order (DCO) Application has been submitted

2.2.3 Section 31 of the Planning Act 2008 provides that development consent is required for development which is, or forms part of, a NSIP. In accordance with Section 15(3) of the Planning Act 2008, an offshore energy generating station with a generating capacity of more than 100 MW constitutes a NSIP. The proposed Project Two development in the Hornsea Zone has a maximum generating capacity of up to 1,800 MW and so satisfies this criterion.

2.2.4 Section 37 of the Planning Act 2008 requires that an application for an order granting development consent must be made to the Secretary of State. In accordance with Section 104(2) of the Planning Act 2008, in deciding applications the Secretary of State must have regard to:

- Any NPS which has effect in relation to development of the description to which the application relates (a relevant National Policy Statement);
- Any local impact report (within the meaning given by Section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under Section 60(2);
- Any matters prescribed in relation to development of the description to which the application relates;
- Any other matters which the Secretary of State thinks are both important and relevant to the decision; and
- The appropriate marine policy documents (if any), determined in accordance with Section 59 of the MCAA 2009.

- 2.2.5 Section 104(3) establishes the primacy of the NPSs in determining DCO applications. It requires applications to be decided "*in accordance with any relevant National Policy Statement, except to the extent that one or more of subsections (4) to (8) applies*". Subsection (4) concerns a breach of international obligations, (5) a breach of a statutory duty, (6) illegality by virtue of any enactment, (7) where the Secretary of State "*is satisfied that the adverse impact of the proposed development would outweigh its benefits*" and (8) where a "*condition prescribed for deciding an application otherwise than in accordance with a National Policy Statement is met*".
- 2.2.6 Section 106 of the Planning Act 2008 sets out matters that may be disregarded, including representations which "*relate to the merits of policy set out in a [NPS]*".
- 2.2.7 The Planning Act 2008, and corresponding secondary legislation, sets out a comprehensive statutory framework for the granting of all of the principal consents required to develop, operate and decommission NSIPs and their associated infrastructure.
- 2.2.8 The Planning Act 2008 provides that a DCO will replace the need for certain other consents to be obtained, specifically planning permission under the Town and Country Planning Act 1990, listed building and conservation area consent under the Planning (Listed Buildings and Conservation Areas) Act 1990 and scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979.
- 2.2.9 In addition, other consents can either be deemed within the DCO (i.e., a Marine Licence under Section 149A of the Planning Act 2008), or the requirement for them removed.
- 2.2.10 The Project Two Draft DCO makes provision for, or removes the need for, the following consents and licences in relation to Project Two:
- Development consent under section 37 of the Planning Act 2008;
 - Marine Licences for the construction, operation and maintenance of the offshore aspects of Project Two under Part 4 of the Marine and Coastal Access Act 2009;
 - Consent to carry out works in, on, under or over watercourses and to obstruct watercourses under section 109 of the Water Resources Act 1991, section 23 of the Land Drainage Act 1991 and any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991 or section 66 of the Land Drainage Act 1991;
 - Street works under Part III of the New Roads and Street Works Act (NRSWA) 1991;
 - Traffic regulation orders in relation to temporarily stopping up of streets under the Road Traffic Regulation Act 1984;
 - Compulsory powers for acquisition of land and rights under the Compulsory Purchase Act 1965;

- Consent for the removal of hedgerows under regulation 5 of the Hedgerows Regulations 1997;
- Consent under regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 to carry out works to trees subject to tree preservation orders; and
- Consent under section 25 of the River Humber Conservancy Act 1852, section 9(ii) of the Humber Conservancy Act 1899 and section 6(2) of the Humber Conservancy Act 1905.

2.2.11 It is expected that the following consents, which are not provided for in the DCO, will be required:

- Generation licences under section 6 of the Electricity Act 1989 (obtained for Optimus Wind Limited and Breesea Limited);
- A licence from the MMO under regulation 49 of the Offshore Marine Conservation (Natural Habitats, c.) Regulations 2007 (i.e. an EPS Licence beyond 12 NM);
- Approvals from the Secretary of State, relevant local planning authority and relevant highway authority pursuant to the requirements contained in the DCO;
- Approvals from the MMO, Secretary of State and Maritime and Coastguard Agency pursuant to the conditions contained in the deemed Marine Licences;
- A safety zone notice under section 95 of the Energy Act 2004;
- Consent for works near to or crossing Government Pipeline and Storage System (GPSS) Pipelines under section 16 of the Land Powers (Defence) Act 1958; and
- A decommissioning scheme under Chapter 3 of Part 2 of the Energy Act 2004.

2.2.12 It is expected that the following consents, which are not provided for in the DCO, may be required:

- A licence from Natural England under regulation 53 of the Conservation of Habitats and Species Regulations 2010 (i.e. an EPS Licence above mean high water springs (MHWS));
- A licence from the MMO under regulation 53 of the Conservation of Habitats and Species Regulations 2010 (i.e., an EPS Licence below MHWS to 12 NM);
- Consents from Natural England under sections 16 and 28E of the Wildlife and Countryside Act 1981;
- A licence under section 10 of the Protection of Badgers Act 1992;
- Temporary traffic regulation orders under section 14 of the Road Traffic Regulation Act 1984 in relation to traffic management not included within the DCO;
- Consent for placing apparatus in protected streets under section 61 of the NRSWA 1991;

- An exemption for ship to ship transfers under the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010;
- A wireless telegraphy licence under Section 8 of the Wireless Telegraphy Act 2006;
- An environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 in relation to discharge to water or groundwater; and
- A licence under section 24 of the Water Resources Act 1991 in relation to abstraction.

2.2.13 The Consents Management Plan sets out the consents and licences that will be sought within the DCO and those consents and licences that, if required, will be progressed outside the DCO.

Development Consent Order (DCO) Application Process

2.2.14 The DCO will provide statutory consent for the development of Project Two. The process for obtaining a DCO is split into the following phases: pre-application; acceptance; pre-examination; examination; decision; and post decision (Figure 2.2). This Environmental Statement represents one of the supporting documents in the DCO application.

2.2.15 The Project Two application will be submitted to PINS with the prescribed forms and documents as required by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Regulation 5(2)(a) requires that, where applicable, an application must be accompanied by "the environmental statement required pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any scoping or screening opinions or directions". A number of other supporting documents are also required to be submitted, including:

- A Consultation Report;
- A Draft DCO and Explanatory Memorandum; and
- A HRA Report.

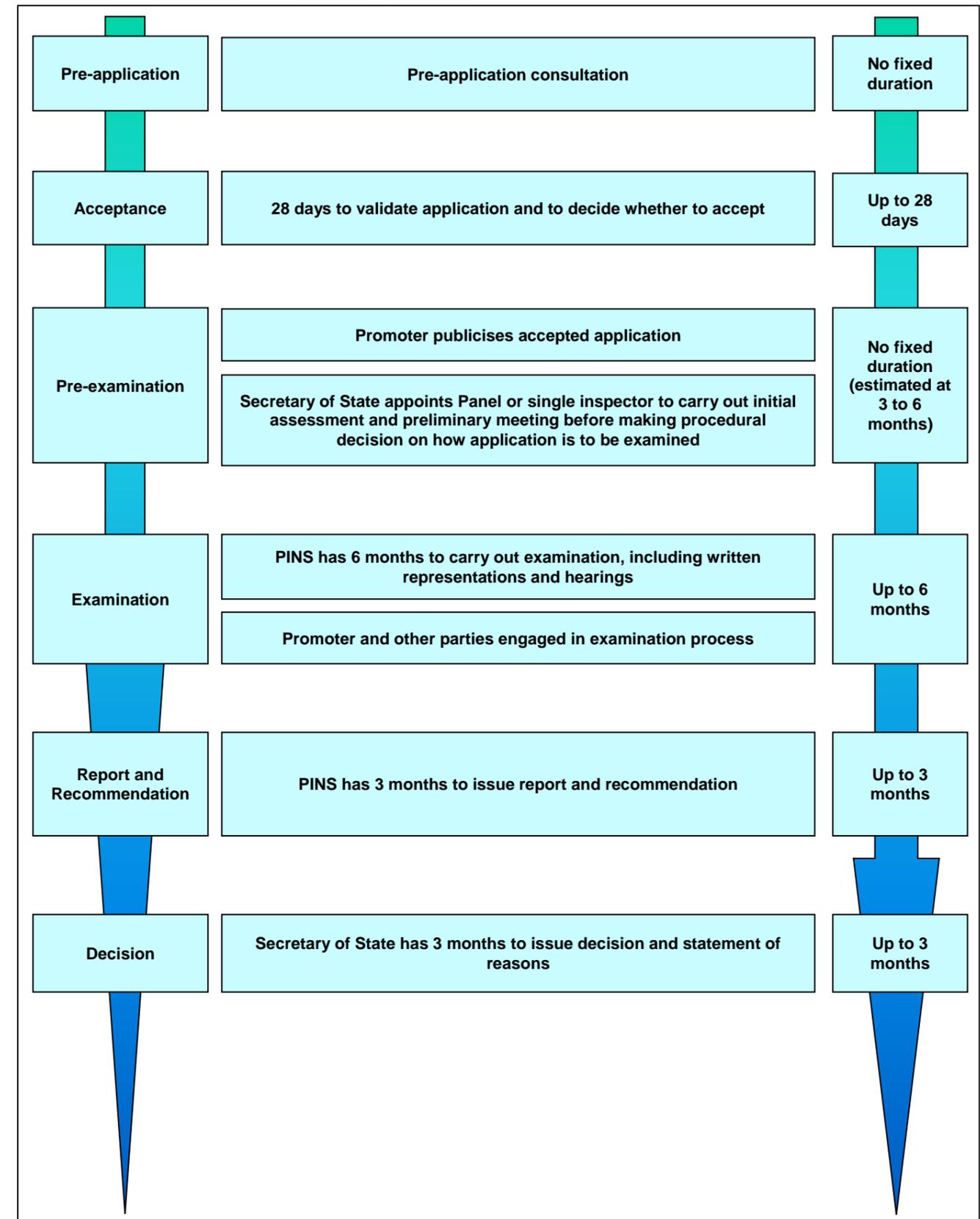


Figure 2.2 Flow diagram of the DCO process.

Design Envelope Approach

- 2.2.16 It is acknowledged within NPS EN-3 (paragraph 2.6.43; DECC, 2011d) that some flexibility may be necessary in the description of a NSIP for which development consent is being applied for. In relation to offshore wind farm development this is due to the complex nature of the projects and the fact that many of the details such as the precise location of the turbines, foundation type, and exact turbine tip height and cable route may not be known at the time of application (paragraph 2.6.42; DECC, 2011d). At the same time it is important that the environmental effects of a proposal are robustly assessed. As accepted in the NPSs, developers may apply a 'Design Envelope' to describe the maximum extent of the project to be assessed in the EIA. This approach has also been accepted in the Scoping Opinion from PINS on Project Two (PINS, 2012a).
- 2.2.17 PINS Advice Note Nine: Rochdale Envelope (PINS, 2012b) considers further the degree of flexibility in the design envelope that may be appropriate with regard to an application for a NSIP under the Planning Act 2008 regime.
- 2.2.18 The design envelope approach has been used in the majority of offshore wind farm applications. The use of the design envelope approach has also been recognised in NPS EN-1 and NPS EN-3. NPS EN-3 states that:
- "The 'Rochdale [Design] Envelope' is a series of maximum extents of a project for which the significant effects are established. The detailed design of the project can then vary within this 'envelope' without rendering the [Environmental Statement] inadequate"* (page 32; DECC, 2011d).
- 2.2.19 It further states that:
- "The [Secretary of State] should accept that wind farm operators are unlikely to know precisely which turbines will be procured for the site until some time after any consent has been granted. Where some details have not been included in the application to the [Secretary of State], the applicant should explain which elements of the scheme have yet to be finalised, and the reasons. Therefore, some flexibility may be required in the consent. Where this is sought and the precise details are not known, then the applicant should assess the effects the project could have (as set out in [NPS] EN-1 paragraph 4.2.8) to ensure that the project as it may be constructed has been properly assessed (the Rochdale [Design] Envelope)." (paragraph 2.6.43, DECC, 2011d).*

Environmental Impact Assessment (EIA)

Legislation

- 2.2.20 The EIA regime originated from European Council Directive 85/337/EEC which was amended by Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC. In 2011, the initial 1985 Directive and its three amendments were codified by Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive). Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment was brought into force on 15 May 2014. However, Directive 2014/52/EU is to be implemented over the next three years with a deadline of 16 May 2017. Paragraph 39 of the Explanatory Notes states that in accordance with the principles of legal certainty and proportionality the provisions of Directive 2011/92/EU should apply in its un-amended form if the *"environmental impact assessment report is submitted before the time-limit for transposition"*. Therefore, a view has been taken that Directive 2014/52/EU will not be applicable to Project Two. Any reference made to 'EIA Directive' in the course of this chapter is to Directive 2011/92/EU as it was prior to any amendments made by Directive 2014/52/EU.
- 2.2.21 The EIA Directive requires that an EIA be undertaken in support of an application for development consent for certain types of project. Offshore wind farms are listed in Annex II of the EIA Directive as *"installations for the harnessing of wind power for energy production (wind farms)"*.
- 2.2.22 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) implement the EIA Directive for consent applications made under the Planning Act 2008. However, only certain types of project require an EIA to be carried out under the EIA Regulations. Schedule 1 to the EIA Regulations sets out those developments that are required to undergo an EIA. Schedule 2 sets out the developments that may need an EIA, whilst Schedule 4 provides details of the information to be included in an Environmental Statement. According to Schedule 2 of the EIA Regulations, an EIA is required for installations for the harnessing of wind power for energy production likely to have significant effects on the environment.
- 2.2.23 The main aim of the EIA Directive is to ensure that when an authority giving consent for a particular project makes its decision, it does so in the knowledge of any likely significant effects on the environment. The EIA Directive sets out a procedure that must be followed for certain types of project before they can be given development consent and it is this procedure which is known as an EIA. An EIA provides for the systematic assessment of a project's likely significant environmental effects for consideration by both the public and the relevant competent authority before a decision is made.

2.2.24 Generic advice on EIA relevant to Project Two is provided by NPS EN-1, NPS EN-3 and NPS EN-5. As discussed in paragraphs 2.1.18 to 2.1.24 above, these NPSs provide the primary basis for decisions by the Secretary of State on applications for nationally significant renewable energy infrastructure (defined in Section 1.8 of NPS EN-3; DECC, 2011d).

Environmental Impact Assessment (EIA) in the context of Project Two

2.2.25 The main stages in the EIA process in respect of Project Two are as follows:

- Screening to determine the need for EIA;
- Scoping to determine the subject matter of the EIA and to identify potentially significant issues;
- Data review involving compiling and reviewing available data and/or undertaking of baseline surveys to generate site-specific data;
- Assessment and design iteration whereby the potential impacts of the development during the construction, operational and decommissioning stages of its life are assessed and feedback is provided to the design and engineering team(s) to modify the development in order to avoid, prevent, reduce and, where possible, offset any significant adverse effects on the environment;
- Assessment of the construction methodology and the final design of the development;
- Identifying any residual effects and any further mitigation or compensation requirements;
- Preparing the Environmental Statement, reporting on the EIA; and
- Controlling and monitoring the effects of the project during construction, operation and decommissioning in accordance with the mitigation measures identified in the Environmental Statement and/or the requirements identified in the DCO.

Screening

2.2.26 Any activity that falls within the definition of Schedule 2 to the EIA Regulations can be subject to screening, allowing for the examination of the project by the Secretary of State or the relevant authority to determine whether an EIA is required. Project Two is a Schedule 2 activity and a decision to undertake an EIA was made without a formal Screening Opinion being requested.

Scoping

2.2.27 A developer can request advice from the Secretary of State on the information to be included in the Environmental Statement. The request is known as a "Scoping Opinion Request"; the formal written advice from the Secretary of State is known as a "Scoping Opinion". A Scoping Opinion Request, supported by a Scoping Report, for Project Two was submitted to PINS in October 2012 (SMart Wind, 2012a) with a Scoping Opinion provided by PINS in November 2012 (PINS, 2012a).

Consultation

2.2.28 Under the Planning Act 2008, it is the responsibility of the developer to ensure that pre-application consultation fully accords with the requirements of the Planning Act 2008 and associated regulations and guidance, including the EIA Regulations. Consultation with statutory consultees has been undertaken on a regular basis throughout the development of proposals for Project Two. The Statement of Community Consultation (SoCC) (SMart Wind, 2012b) identifies the approach taken by SMart Wind to formal community consultation.

2.2.29 In addition, the Secretary of State has statutory obligations under the EIA Regulations which impose procedural requirements in relation to notifying and consulting prescribed consultation bodies in reference to Project Two and the DCO application.

Preliminary Environmental Information (PEI)

2.2.30 The EIA Regulations require Preliminary Environmental Information (PEI) to be provided for public consultation by those seeking a DCO for NSIPs. The level of detail required in PEI is not defined by the EIA regulations however it must include the information specified in Part 1 of Schedule 4 to the EIA Regulations.

2.2.31 The Draft Environmental Statement, together with the other documents issued at Phase 2 Consultation, constituted the PEI for Project Two. The PEI was intended to allow those taking part in the consultation to understand the nature, scale, location and potential significant environmental effects of the project. This allowed individuals and organisations taking part in the consultation to make an informed contribution to the pre-application process under the Planning Act 2008 and to the EIA process generally.

Environmental Statement

- 2.2.32 The aim of an Environmental Statement is to demonstrate that the potential significant environmental effects have been adequately considered. It is also intended to support the DCO application. An Environmental Statement should include a description of the project, the main alternatives studied by the applicant and an indication of the main reasons for site selection, a description of aspects of the environment with the potential to be affected and any inter-relationships between different environmental parameters. The potential significant effects of the development on the environment should also be included in the Environmental Statement together with a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects. A non-technical summary of the conclusions of the Environmental Statement is also required.
- 2.2.33 Potential significant effects considered should include the direct effects and any indirect, secondary, cumulative, short, medium, long-term, permanent, temporary, positive and negative effects.
- 2.2.34 Where significant adverse effects on the environment are identified in the Environmental Statement, mitigation measures, which aim to reduce or remove such adverse effects and, if appropriate, monitoring, are outlined.

Habitat Regulations Assessment (HRA)

- 2.2.35 The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations) and the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) (Offshore Habitat Regulations) require the assessment of any significant effects on internationally important nature conservation sites that are likely to arise as a result of a proposed project. These internationally important sites include Special Areas of Conservation (SACs), or candidate SACs, Special Protection Areas (SPAs) or potential SPAs, sites of community importance, and Ramsar sites. These are often referred to as European sites. This assessment is to be undertaken by the 'competent authority', which in the case of Project Two is the Secretary of State.
- 2.2.36 In order to carry out the HRA the competent authority requires a separate report to be submitted alongside the Environmental Statement (as described in PINS Advice Note Ten: Habitat Regulations Assessment) (PINS, 2013). This is also required formally under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. As such, the HRA does not form part of the Environmental Statement, although the baseline presented contains some of the same information.

2.2.37 PINS Advice Note Ten describes HRA as a step by step process which helps determine likely significant effects and (where appropriate) assesses adverse impacts on the integrity of European sites (PINS, 2013). The assessment that is carried out by the competent authority in the context of HRA is called an Appropriate Assessment (AA).

2.2.38 The information intended to inform the competent authority in the HRA/AA process for Project Two is titled "Habitats Regulation Assessment Report: Information to Support the Appropriate Assessment for Project Two" (SMart Wind, 2014). The HRA is submitted as a supporting document for the DCO application, together with the Environmental Statement.

Other Consents and Licences

European Protected Species licences

2.2.39 The Habitats Regulations and Offshore Habitats Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (as amended) (Habitats Directive) into domestic law and implement aspects of the MCAA. These Regulations provide protection for European Protected Species (EPS), which are those animal species listed in Schedule 2 and the plant species listed in Schedule 5 of the Habitats Regulations and those species listed in Schedule 1 of the Offshore Habitats Regulations. The Regulations make it an offence to:

- Deliberately capture, injure or kill any wild animal which is a European Protected Species;
- Deliberately disturb wild animals of any such species;
- Deliberately take or destroy the eggs of such an animal; or
- Damage or destroy a breeding site or resting place of such an animal.

2.2.40 The Regulations provide that 'disturbance' of animals includes any disturbance likely to impair their ability to survive, breed or reproduce, or to rear or nurture their young, or in the case of animals of a hibernating or migratory species, any disturbance likely to impair their ability to hibernate or migrate. Any disturbance likely to significantly affect the local distribution or abundance of the species to which they belong is also included.

2.2.41 With respect to both the onshore and offshore elements of Project Two, the European Protected Species present have been identified and the likely effects assessed within the Environmental Statement and HRA. Where possible, effects on protected species have been avoided or minimised. However, if disturbance cannot be avoided SMart Wind will be required to apply for an EPS licence.

Energy Act 2004 (Safety Zones)

- 2.2.42 Where an offshore renewable energy installation is proposed to be constructed, extended, decommissioned or operated, a notice declaring that specified areas of the sea are to be designated as safety zones may be issued by the Secretary of State under the provisions of the Energy Act 2004. Safety zones may exclude non-wind farm vessels from navigating through the designated area for the designated period.
- 2.2.43 The developer of Project Two will make an application for standard safety zones of 500 m during construction and major maintenance activities, and of 500 m around all offshore platforms including accommodation platforms and all offshore substations during the operational phase of Project Two.
- 2.2.44 The application for safety zones around Project Two offshore infrastructure will be made separately to the main DCO application. However the potential implications of any such zone on other marine users are assessed as part of the navigational assessment (see Volume 2, Chapter 7: Shipping and Navigation) and as part of the commercial fisheries assessment (see Volume 2, Chapter 6: Commercial Fisheries). A 'safety zone statement' is included with the DCO application as required by Regulation 6(1)(b)(ii) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.

Energy Act 2004 (Decommissioning)

- 2.2.45 Sections 105 to 114 of the Energy Act 2004 introduced a requirement for decommissioning schemes for offshore wind and marine energy installations to be approved by DECC prior to commencement of construction of such projects.
- 2.2.46 This Environmental Statement assesses the potential impacts of decommissioning. However, final details of decommissioning will not be agreed until later in the project's life and consent for decommissioning will be sought under the Energy Act 2004 process. In particular, SMart Wind will consult on a decommissioning programme which is required to be approved by DECC prior to the commencement of construction of Project Two.

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