A GUIDE TO DEVELOPERS FOR
PROPOSED WORKS IN THE ISLE OF
MAN TERRITORIAL SEAS

Executive Summary

November 2014
# Contents

Executive Summary........................................................................................................ i  

1.0 Introduction......................................................................................................... i  
1.1 Extent of territorial seas .................................................................................... i  
1.2 Territorial Seas Committee............................................................................... i  

2.0 Overview of Legislation......................................................................................... ii  
2.1 Legislation – Department of Infrastructure....................................................... ii  
2.2 Legislation – Department of Environment, Food and Agriculture.................... ii  
2.3 Legislation – Department of Economic Development....................................... ii  
2.4 Manx National Heritage................................................................................... ii  
2.5 Health and Safety Inspectorate ....................................................................... iii  

3.0 Process for consideration of applications ............................................................... iv  

4.0 Flow chart of process ........................................................................................ v  

5.0 Overview of Known Development Considerations .............................................. x  

A GUIDE TO DEVELOPERS FOR PROPOSED WORKS IN THE ISLE OF MAN TERRITORIAL SEAS...................................................................................................................... 0  

1.0 Purpose of this Guide ......................................................................................... 1  
1.1 Introduction to the Isle of Man.......................................................................... 2  
1.2 The Isle of Man Territorial Sea ....................................................................... 3  
1.3 Role of the Territorial Seas Committee and its responsibilities....................... 4  

2.0 Legislative Framework - Acts under Department of Infrastructure.................... 7  
2.1 Harbours Act 2010 ........................................................................................... 8  
2.1.1 Extent of the Act ...................................................................................... 8  
2.1.2 Section 26 Restriction of works ............................................................. 8  
2.1.3 Council of Ministers call in applications ............................................... 9  
2.1.4 Appeal to a Tribunal............................................................................... 9  
2.1.5 Further provisions.................................................................................... 9  
2.2 Submarine Cables Act 2003.......................................................................... 10
2.2.1 Extent of the Act ................................................................. 10
2.2.2 Exemptions (works not requiring authorisation) .................. 10
2.2.3 Application for Authorisation ........................................... 11
2.2.4 Requirement for an Environmental Impact Assessment ........ 11
2.2.5 Schedule 1 Contents of an Environmental Impact Assessment . 11
2.2.6 Determination of an application (Schedule 1 of the Submarine Cables Act 2003) ...................................................... 12
2.2.7 Duration of authorisations .................................................. 13
2.3 Water Pollution Act 1993 ....................................................... 14
2.3.1 Extent of the Act ................................................................. 14
2.3.2 Part 1 Inland and Coastal Waters ...................................... 14
2.3.3 Part 2 Deposits in the Sea .................................................. 14
2.4 The Petroleum Act 1986 ......................................................... 15
2.4.1 Extent of the Act ................................................................. 16
2.4.2 Requirement for an Environmental Impact Assessment ........ 16
2.4.3 Schedule - Contents of Environmental Impact Assessment .... 16
2.4.4 Application process ............................................................ 18
2.5 Wreck and Salvage (Ships and Aircraft) Act 1979 .................... 19
2.5.1 Extent of this Act ............................................................... 19
2.6 The Town and Country Planning Act 1999 ............................. 20
2.6.1 Extent of this Act ............................................................... 20
2.6.2 Meaning of development .................................................. 20
2.6.3 Further Information .......................................................... 20
3.0 Acts under other Government Departments - Department of Environment, Food and Agriculture ...................................................... 21
3.1 Wildlife Act 1990 ................................................................. 21
3.1.1 Extent of this Act ............................................................... 21
3.1.2 Provisions under this Act .................................................. 21
3.2 Water Pollution Act 1993 ............................................................................................................ 24
  3.2.1 Extent of this Act .................................................................................................................. 24
3.3 Fisheries Act 2012 ..................................................................................................................... 25
  3.3.1 Extent of this Act .................................................................................................................. 25
4.0 Acts under other Government Departments - Department for Economic Development.
.......................................................................................................................................................... 27
4.1 Minerals Act 1986 ..................................................................................................................... 27
  4.1.1 Extent of the Act .................................................................................................................... 27
  4.1.2 Granting prospecting licences ............................................................................................. 28
  4.1.3 Granting Mining Leases ....................................................................................................... 28
  4.1.4 Mineral Workings (Offshore Installations) (Isle of Man) Act 1974 ...................................... 29
  4.1.5 Extent of the Act .................................................................................................................... 29
4.2 Manx National Heritage .......................................................................................................... 30
4.3 Health & Safety Inspectorate – the Health and Safety at Work etc Act 1974 ....................... 30
5.0 Broad Indicative description of the process from tender to decommissioning ..................... 32
  5.1 Stage 1 Tender/Bid Process leading to Agreement for Lease and Lease negotiations
.......................................................................................................................................................... 32
  5.2 Stage 2 Survey Work for EIA and any survey work linked or separate to that EIA ........... 34
  5.3 Stage 3 Lease and detailed application (and EIA if appropriate) submitted for
consideration ........................................................................................................................................ 36
  5.4 Stage 4 Construction Phase ...................................................................................................... 39
  5.5 Stage 5 Post Construction Monitoring .................................................................................. 40
  5.6 Stage 6 Decommission Phase .................................................................................................. 40
  5.7 Flow chart of process ................................................................................................................ 41
6.0 Known Development Considerations within the Isle of Man territorial waters .................... 46
  6.1 Environment .............................................................................................................................. 47
    6.1.1 Physical Environment ......................................................................................................... 47
    6.1.2 Coastal and Offshore Geology ............................................................................................ 47
    6.1.3 Marine pollution .................................................................................................................. 47
6.2 Ecology and Biodiversity ................................................................. 48
  6.2.1 Conservation ............................................................................. 49
  6.2.2 Primary Areas of interest ......................................................... 50
  6.2.3 Secondary Areas of Interest ...................................................... 50
6.3 Sea Fisheries and Aquaculture ....................................................... 52
  6.3.1 The Manx Fish Producers Organisation ...................................... 54
6.4 Historic Environment ................................................................. 55
6.5 Infrastructure .................................................................................. 56
  6.5.1 Cables and Pipelines ................................................................. 56
  6.5.2 Shipping and Navigation ............................................................ 56
  6.5.3 Other development impacts ...................................................... 60
  6.5.4 Isle of Man Airport ................................................................. 60
6.6 Energy, Mines and Minerals .......................................................... 64
  6.6.1 Hydrocarbons ............................................................................ 64
  6.6.2 Unconventional Coal Gasification .............................................. 64
  6.6.3 Shale Gas .................................................................................. 64
  6.6.4 Carbon Capture and Storage .................................................... 65
  6.6.5 Marine Aggregates ................................................................. 65
  6.6.6 Renewable Energy ................................................................. 65
6.7 Tourism and Recreation .............................................................. 67
6.8 Non-Site specific issues .............................................................. 68
7.0 Consideration of survey work prior to submission of application .... 69
8.0 Types of works ............................................................................. 71
  Table 1 Overview of types of proposed works and consents required ......... 72
9.0 Points of Contact ......................................................................... 75
Appendix 1 ......................................................................................... 77
Glossary ............................................................................................ 77
Note:
This Guide to Developers is written in general terms and it is not intended to be a complete or authoritative statement of law. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts are authoritative. No responsibility can be accepted for errors or omissions, or their consequences.
Executive Summary

1.0 Introduction
The Guide to Developers is intended to provide an overview of the current consenting process for applications for development within the Isle of Man territorial seas for anyone wishing to develop. It also provides an overview of the relevant marine legislation, a summary of the known development considerations based on the Manx Marine Environmental Assessment and outlines where further information on these considerations can be found. This Executive Summary outlines the contents of the Guide.

The Guide relates primarily to large scale developments which most likely will require consenting for under more than one piece of legislation. Smaller scale activity will continue to be consented for under the Harbours Act 2010 and / or the Water pollution Act 1993 without the need to follow the full process as set out in the guide.

1.1 Extent of territorial seas
The Isle of Man Department of Infrastructure owns its territorial seas out to 12 nautical miles (nms) in most directions with the exception to the north of the Island where the UK/Scottish coastline is less than 24 nautical miles (nm) away. It is within this area that the territorial limit only goes to the median line. The Department of Infrastructure has a similar role to that of the UK Crown Estate and is responsible for any leases granted for the seabed.

1.2 Territorial Seas Committee
The Territorial Seas Committee was established following the acquisition by the Isle of Man Government of the territorial seas from 3-12nms. It co-ordinates all matters including legislative requirements regarding the territorial sea and oversees the management of all major activities within the Island’s territorial sea. The membership is drawn entirely from Government Departments which have an interest in, or are responsible for, the various activities which occur within the territorial sea. It is chaired by the Chief Executive of Department of Infrastructure, with representatives from the Cabinet Office, Department of Environment, Food and Agriculture, Department of Economic Development, Department of Infrastructure, the Attorney General’s Chambers and the Manx Utilities Authority. The Territorial Seas Committee may invite other parties to attend as the agenda requires and at any other times as required at the discretion of the Committee.
2.0 **Overview of Legislation**

There are a number of pieces of legislation which apply within the Isle of Man territorial seas, some of which may be relevant for the consideration of any applications. These are listed below. Further information about these Acts is contained within the Guide.

2.1 **Legislation – Department of Infrastructure**

The Department of Infrastructure is responsible for a number of pieces of marine legislation. These Acts are listed below and outlined in greater detail in the Guide.

- Harbours Act 2010
- Submarine Cables Act 2003
  - The Submarine Cables (Application for Authorisation) Regulations 2004
  - The Submarine Cables (Fees) Regulations 2012
  - The Submarine Cables (Authorised Persons) Regulations 2004
  - The Submarine Cables (Safety) Regulations 2004
- Water Pollution Act 1993 (Part 2)
- Petroleum Act 1986
- Wreck and Salvage (Ships and Aircraft) Act 1979
- Town and Country Planning Act 1999

2.2 **Legislation – Department of Environment, Food and Agriculture**

There are also a number of Acts which fall under the responsibility of other Departments, including the Department of Environment, Food and Agriculture and the Department of Economic Development. These Acts are listed by Department below, and outlined in greater detail in the Guide.

- Wildlife Act 1990
- Fisheries Act 2012
- Water Pollution Act 1993 (Part 1)

2.3 **Legislation – Department of Economic Development**

- Minerals Act 1986
- Mineral Workings (Offshore Installations) (Isle of Man) Act 1974

2.4 **Manx National Heritage**

Manx National Heritage operating under the terms of the Manx Museum and National Trust Acts 1959-86, is statutorily responsible for the protection of terrestrial cultural heritage on the Isle of Man down to the High Water Mark. Relevant parts of the Manx National Museum and National Trust Act 1959 provides for the protection of archaeological remains, including
sites and lands, and certain buildings; the safeguarding of individual sites as designated monuments; areas of land held in trust for the nation by MNH; and the conservation of the landscape generally. No consideration of this Act is required for applications within the territorial seas. However, Manx National Heritage may have a general interest in the marine environment with how their responsibilities relate to natural and cultural heritage, and it will have an interest under the Wreck and Salvage (Ships and Aircraft) Act 1979, in particular, how this Act relates to protected wrecks.

2.5 Health and Safety Inspectorate
The onshore health and safety system in the isle of Man, the Health and Safety at Work etc. Act 1974 (as applied to the Isle of Man) ("HSW") is based on the concept of reasonable practicability and it allows the current enforcing authority (DEFA) to work proactively with duty holders to ensure that they identify risks specific to their undertaking and introduce proportionate solutions to control them. The majority of technologies and risks associated with renewable power can be adequately covered by the provisions of this Act, but oil and gas risks need a more specific and extremely comprehensive suite of tailored legislation. The fact that the concept of reasonable practicability is also enshrined in UK legislation means that developers, constructors and producers operating in Manx waters will be able to claim compliance within the Isle of Man’s HSW Act if they can demonstrate that they have applied the standards referred to in the UK version of the HSW Act, and, in the case of oil and gas operations, the recently updated UK package of offshore regulations (or equally effective standards).

2.6 Note
The colloquial term ‘territorial seas’ is used interchangeably with ‘territorial waters’, which is used as a defined term in the majority of the legislation (Acts) mentioned in this Guide. Unless otherwise specifically stated, all Acts referred to are Acts of Tynwald, the Island’s legislature.
3.0  Process for consideration of applications

It is envisaged that there are a number of stages relating to marine developments, all of which are in the Guide. In addition to these main stages, there are a number of steps which must be followed to ensure the process has adhered to the correct procedure as set out in the relevant legislation. As previously stated, this process will relate to the larger scale applications for development which may require consent under more than one of the relevant marine Acts. There will be no requirement for the smaller scale applications to follow all of the steps in this process.

The stages have been identified as follows:

Stage 1  Tender / Bid Process leading to Agreement for Lease and Lease negotiations
Stage 2  Survey Work for Environmental Impact Assessment (“EIA”) and any survey work linked or separate to that EIA
Stage 3  Lease and detailed application (and EIA if appropriate) for relevant consents submitted for consideration
Stage 4  Construction Phase
Stage 5  Post Construction / Monitoring Phase
Stage 6  Decommission Phase

The flow chart below provides a diagrammatical overview of the process for consideration of an application as it passes from the tender / bid process through to the decommission phase. Further detailed information on this process is contained within the guide in Section 5.0 “Broad Indicative description of the process from tender bid to decommissioning”.

### 4.0 Flow chart of process

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Tender Bid Process leading to Agreement for Lease and Lease negotiations</th>
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</thead>
<tbody>
<tr>
<td>Expressions of Interest Issued (if required).</td>
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<table>
<thead>
<tr>
<th>Stage 2</th>
<th>Survey Work for EIA and any survey work linked or separate to that EIA</th>
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<tbody>
<tr>
<td>Tenders / bids returned to the Department of Infrastructure (as required).</td>
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<tr>
<th>Stage 3</th>
<th>Lease and detailed application (and EIA if appropriate) submitted for consideration</th>
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<tbody>
<tr>
<td>Detailed application to be submitted along with appropriate fee (if required), EIA and all other particulars as directed by the Department of Infrastructure in collaboration with the Territorial Seas Committee.</td>
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<tr>
<th>Stage 4</th>
<th>Construction phase</th>
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<table>
<thead>
<tr>
<th>Stage 5</th>
<th>Post Construction Monitoring phase</th>
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<table>
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<tr>
<th>Stage 6</th>
<th>Decommission Phase</th>
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These stages of a development will be subject to conditions in relation to any approvals and / or lease of the sea-bed.

There are powers within the Acts and the lease of the sea-bed for enforcement of conditions and subsequent revocation should this be considered necessary. The responsibility will most likely be that of the applicant to demonstrate their compliance with any conditions of an approval or lease of the sea-bed.

Should it be necessary to amend any consent, there is provision within the legislation which would accommodate this. However, this may require additional applications which would possibly require the successful completion of the steps outlined in Stage 2 and 3 above. For any amendments to an approval, it would be advisable to seek advice from the Department of Infrastructure / Territorial Seas Committee as to the manner in which this should be considered.
<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
<th>Stage 5</th>
<th>Stage 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Infrastructure may issue a Press Release to advise the public of the process as necessary.</td>
<td>The Territorial Seas Committee will consider the proposal details submitted and determine the screening and scoping for EIA (to be submitted with an application). It will identify which elements of proposed survey work will require consents and under which Acts. It will also identify particulars to be submitted by an applicant as part of a detailed application for consideration.</td>
<td>The Territorial Seas Committee will advise as to whether there is a need to advertise the proposal.</td>
<td>Progress to Stage 5</td>
<td>Progress to Stage 6</td>
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<tr>
<td>Department of Infrastructure / Department of Economic Development initial consideration of tenders / bids received.</td>
<td>Minutes from the Territorial Seas Committee will be noted at the Environment and Infrastructure Committee and the Council of Ministers.</td>
<td>The Department of Infrastructure Minister will present the application for review at Environment and Infrastructure Committee.</td>
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<tr>
<td>Stage 1</td>
<td>Stage 2</td>
<td>Stage 3</td>
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<tr>
<td>Consideration by Territorial Seas Committee of proposed development / preferred tenderer / bid party.</td>
<td>Following consideration of the further details regarding a proposed development by the Territorial Seas Committee, the Chair will co-ordinate a report on behalf of the Territorial Seas Committee which will notify an applicant of the outcome and advise which consents will be required. An applicant will then apply for the appropriate consents prior to any survey works being undertaken.</td>
<td>The Department of Infrastructure Minister will notify the Council of Ministers of the proposed course of action.</td>
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<tr>
<td><strong>Stage 1</strong></td>
<td><strong>Stage 2</strong></td>
<td><strong>Stage 3</strong></td>
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<tr>
<td>A report detailing the tender / bid process undertaken by the Department of Infrastructure and the subsequent consideration of proposals submitted will be co-ordinated by the Chair of the Territorial Seas Committee to Department of Infrastructure Minister. The report will contain a recommendation outlining the Department’s preferred bid party.</td>
<td>Survey work applications will be considered by the appropriate Departments and the relevant Departments will issue the necessary consents.</td>
<td>The Department of Infrastructure Minister issues the relevant approvals under Department of Infrastructure legislation and signs the lease of the seabed (with conditions if appropriate). Once Ministerial approval has been obtained, the Department will apply for Treasury concurrence. The lease will be concluded once this has been received.</td>
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<tr>
<td>Environment and Infrastructure Committee to review the Department’s preferred bid party and details of their proposal.</td>
<td>The developer to commence survey works to assist the preparation and subsequent completion of the EIA.</td>
<td><strong>Progress to Stage 4</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Stage 1</strong></td>
<td><strong>Stage 2</strong></td>
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<tr>
<td>Council of Ministers to be notified of the proposed course of action.</td>
<td>Progress to Stage 3</td>
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<tr>
<td>Department of Infrastructure Minister will issue their decision to approve the preliminary award of the tender to the preferred developer. An Agreement for lease will be concluded subject to Treasury Concurrence.</td>
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<td>Progress to Stage 2</td>
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5.0 Overview of Known Development Considerations

The Manx Marine Environmental Assessment ("MMEA") brought together technical information that is currently available for the marine environment of the Isle of Man and is based on best practice in strategic environmental assessment. The MMEA was consulted upon from 1st October 2012 – 16th November 2012 and was revised in light of responses from a wide range of key marine user groups and marine experts. In summary, the MMEA:

- Provides an overview of the current Manx marine environment including physical environment, habitats and species, industry and infrastructure;
- Provides information on some of the current uses of the Manx territorial waters derived from engaging with stakeholders as contributors to the project; and,
- Identifies gaps in our current knowledge.

The MMEA is structured around a number of “Themes”, which include Physical Environment, Ecology/Biodiversity, Fisheries, Historic environment, Infrastructure, and Tourism/Recreation/Education. Each of these “Themes” is listed below for information. These are summarised within the Guide, and more detail has been compiled within the specific MMEA Chapters which should be consulted to provide a broader understanding of the issues. Individual contributors can be contacted for further information or clarification regarding their areas of expertise.

Within the MMEA, the section relating to the general environment topic is very broad and contains the following:

1. Physical environment section has chapters on Hydrology, Weather and Climate; Climatology; Climate Change; Coastal and Offshore Ecology and Marine Pollution; and,
2. Ecology/Biodiversity section has chapters on Plankton in Manx Waters;

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1 The Manx Marine Environmental Assessment was undertaken as part of the Isle of Man Marine Plan Project, a cross Government Department project which undertook to review the mechanisms for the management and sustainable development of Manx territorial waters. It was written in close collaboration with Government Officers and key marine stakeholders.
3 A full list of contributors is contained within the appendix to the MMEA.
Coastal Ecology; Subtidal Ecology; Marine Mammals – Cetaceans and Seals; Basking Sharks; Birds; Marine and Coastal Conservation and Sea Turtles in Manx Waters.

A brief summary of each consideration and Chapter is provided in Section 6.0 of this Guide “Known Development Considerations in the Isle of Man territorial waters” while a more detailed overview can be found within the MMEA.

There are a number of initial considerations included within the MMEA which relate to:

- Coastal and offshore geology;
- Marine pollution;
- Impacts on marine species and habitats;
- Sea fisheries and aquaculture;
- Historic environment;
- Cables and pipelines;
- Shipping and navigation; and,
- Environmental risks of renewable energy generation in relation to fish, marine mammals and commercial fishing.

In addition to the above derived from the MMEA, the Department of Environment, Food and Agriculture may also supply site specific information in relation to certain known areas of environmental interest. These are detailed further in Sections 6.2.2 and 6.2.3 of the Guide.

A number of initial considerations for future marine developments and their potential impact on Sea Fisheries and Aquaculture have been clearly set out in Section 6.3 of the Guide to Developers. The Manx Fish Producers Organisation (“MFPO”) has assisted with providing locational guidance for some fisheries and co-ordinates have been supplied for this (see Section 6.3.1 for further details).

The Isle of Man Steam Packet Company, the Island’s ‘lifeline’ freight and passenger ferry service can provide both the direct routes, and the weather routes which their vessels travel along. This is included within Section 6.5.2 of the Guide.

The Isle of Man airport (which is part of the Department of Infrastructure) can provide locational guidance which relates to the routes currently operating to and from the Islands airport (see Section 6.5.4 for further details).
In addition to all of the above, the Department of Environment, Food and Agriculture can provide some non-site specific issues which relate to:

- Birds;
- Basking sharks;
- Cetaceans;
- Fisheries; and,
- The marine environment in general.

All of the above are discussed in greater detail in Section 6.8 of the Guide.
A GUIDE TO DEVELOPERS FOR PROPOSED WORKS IN THE ISLE OF MAN TERRITORIAL SEAS

November 2014
1.0 Purpose of this Guide

At Tynwald Court in June 2014⁴, the Minister for Infrastructure outlined that:

“Pending the introduction of the new primary legislation, the Department will continue to assess all applications for development within the territorial seas through the existing consenting regimes in partnership with stakeholders via the Territorial Seas Committee and the Environment and Infrastructure Committee and in accordance with the views of the Council of Ministers. The Department will produce a Guide to the existing regimes for both developers and other stakeholders”.

The purpose of this Guide to Developers is to provide anyone with an interest in developing within the Isle of Man territorial seas with an overview of the legislative framework and an indication of the associated consenting processes which apply in that area. It will also provide indicative guidance on the application process, how that application will be considered, a summary of the known initial development considerations based on the Manx Marine Environmental Assessment and supplementary guidance provided by relevant stakeholders. Details have also been provided which set out where further information on these considerations can be sought.

The Guide relates primarily to large scale developments which most likely will require consenting for under more than one piece of legislation. Smaller scale activity will continue to be consented for under the Harbours Act 2010 and / or the Water pollution Act 1993 without the need to follow the process in this guide.

Note:

This Guide to Developers is written in general terms and it is not intended to be a complete or authoritative statement of law. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts are authoritative. No responsibility can be accepted for errors or omissions, or their consequences.

1.1 Introduction to the Isle of Man

The Isle of Man is a self-governing British Crown Dependency centrally located in the Irish Sea between Great Britain and the island of Ireland. The Isle of Man has its own Government, laws and currency but is inextricably linked to the UK through shared history. Over the centuries, the Island has been ruled by Norse, Scots and English Kings and by sovereign Lords of Mann from 1406 until 1765, when it was acquired by the British Crown. Her Majesty Queen Elizabeth II “Lord of Mann”, is the Head of State and is represented in the Island by the Lieutenant Governor.

Tynwald, the Isle of Man’s parliament, was founded more than 1,000 years ago and is believed to be the oldest continuous parliament in the world. Tynwald has two branches which separately consider legislation. These are the House of Keys, with 24 members (MHKs) elected at general elections every five years, and the Legislative Council (the Upper Branch), whose 7 members are voted in by MHKs. The House of Keys and the Legislative Council sit together as Tynwald. The Isle of Man generally has no party political system and the leader of its Government, the Chief Minister, is chosen by Tynwald after each general election. The current Chief Minister, elected in October 2011, is Hon Allan Bell MHK.

The Chief Minister is part of a nine strong Council of Ministers, which includes the Ministers of the seven current Government Departments. The eight Ministers are each selected by the Chief Minister. The Council of Ministers is the central executive body or Manx ‘cabinet’, accountable to Tynwald. Its purpose is to set policy and provide clear leadership to the separate legal entities of Departments, Offices and Statutory Boards which make up the Isle of Man Government. It also has some statutory decision making functions and importantly has a reserved power to give a Department, Office or Statutory Board direction with regard to the exercise of its functions where it considers to do so is in the public interest. To this extent, the Council of Ministers is the highest level decision making body within the Isle of Man Government, even if a statute provides that a decision is ultimately to be made by a Department.

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5 Treasury; Infrastructure; Economic Development; Environment, Food & Agriculture; Health & Social Care; Education & Children; Home Affairs.
1.2 The Isle of Man Territorial Sea

The closest part of the Isle of Man to the coast of Great Britain is the Point of Ayre (the Island’s northern most point) which is 26 km or 14 nautical miles south of Burrow Head, Scotland. For the vast majority of the Island’s coasts, the nearest ‘foreign’ coastlines are considerably in excess of 24 nautical miles away.

Historically the Island has long laid claim to territorial seas out to a limit of three nautical miles, encompassing an area of 770 square kilometres.

In 1991, the Island’s territorial seas were extended to 12 nautical miles in most directions with the exception to the north of the Island where the UK/Scottish coastline is less than 24 nautical miles away. It is within this area that the territorial limit only goes to the median line. In securing this extension to Manx waters, the Isle of Man also secured ownership of all petroleum, gas and all minerals other than coal within the extended area. In 1995, further arrangements were sought to acquire the coal rights, which were confirmed in Manx law under the Territorial Sea (Rights to Coal) Act 1996.

The Department of Infrastructure owns the sea-bed to the extent of the Isle of Man territorial waters, and as such, plays a similar role to that of The Crown Estate in the UK. The Department has the ability to issue a lease of the sea-bed for a specified time period provided the Department is satisfied that the application and appropriate accompanying information is acceptable, usually after a tender process and entry into an Agreement for Lease (“AfL”) with the successful party. Any AfL and Lease will have been reviewed by the Territorial Seas Committee (see 1.3 below for details about this Committee). Thereafter following relevant scoping, surveys etc. a report with a recommendation is given to the Minister of Infrastructure who will determine whether the appropriate consents under relevant legislation are to be granted alongside the commercial Lease for the sea-bed which may have a number of conditions attached to it. Any commercial Lease for longer than 21 years will require Treasury Concurrence.

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6 The extension of the territorial sea is set out in the Territorial Sea Act 1987 as “the breadth of the territorial sea adjacent to the Isle of Man shall for all purposes be 12 nautical miles; and the baselines from which the breadth of that territorial sea is to be measured shall for all purposes be those established by Her Majesty by Order in Council”.

Baselines are further defined within the Territorial Waters Order in Council 1964 as “except as otherwise provided in Articles 3 and 4 of this Order, the baseline from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured shall be low-water line along the coast of all Island comprised in these territories”.

Guide to Developers November 2014
Most activity within the territorial seas is controlled through a number of different pieces of legislation. Some of this belongs to the Department of Infrastructure who will administer the process and issue the appropriate consents that the Department is responsible for while other Government Departments will follow applicable procedure for consenting using their legislation. The Department of Infrastructure will still be required to grant a lease of the seabed for proposed developments as owner of the sea-bed.

1.3 Role of the Territorial Seas Committee and its responsibilities
The Territorial Seas Committee ("TSC") was established following the purchase of the territorial seas from 3-12 nautical miles from the UK Crown Estate in 1991. Membership of the TSC comprises civil servant officers from the Department of Infrastructure (Chair); Department of Environment, Food & Agriculture; Treasury; Department of Economic Development; Cabinet Office; the Manx Utilities Authority and the Attorney General’s Chambers.

The Chairman is the Chief Executive of Department of Infrastructure ("DOI"), with the following Departments invited to send representatives; Department of Environment, Food and Agriculture ("DEFA"), Department of Economic Development ("DED"), DOI, HM Attorney General’s Chambers and the Manx Utilities Authority. A minimum of five officers including at least one from each of the three Departments is required for the meeting to be a quorate. The TSC may invite other parties as the agenda requires. The TSC is a non-statutory body and it has no statutory powers.

The role of the TSC is that of an advisory body whereby it will review applications made to the Department of Infrastructure (under the Harbours Act 2010, the Submarine Cables Act 2003 and the Water Pollution Act 1993). In doing so, it will have regard to the member officers Departmental responsibilities and any appropriate consultation responses from outside of the TSC. The Chair will consider any representations from the TSC members and will then formulate a preliminary recommendation for initial consideration by the Minister for the Department of Infrastructure.

The TSC has agreed that TSC member Departments will exercise a level of discretion with regards the consideration of applications for consent within the territorial seas. If necessary, applications can be referred to the TSC for its full assessment, with a view to presenting a
recommendation to the DOI Minister. If it is determined the application should be considered by the relevant Department, the subsequent decision will be noted at a TSC meeting.

If the TSC is to further consider the application, it will then decide whether an Environmental Impact Assessment (EIA) should accompany it on submission. If an EIA is required, the TSC will determine its scope and will outline to an applicant what ought to be submitted along with an application for assessment for each proposal.

The Chair of the TSC will be responsible for the circulation of the application and EIA (if required) to the TSC member Departments and will co-ordinate responses which will form part of an overall TSC recommendation to the DOI Minister. DEFA will have a key role to play in the assessment of an EIA submitted in line with their statutory responsibilities. If and when appropriate to do so, services may be required outside of Government to assist with this assessment.

In its report to the DOI Minister, the TSC will be able to suggest a number of conditions to be attached to any consents and / or lease which are necessary, reasonable and enforceable as part of its recommendation. Detailed discussions with any applicant would be welcomed by the TSC. This would allow an applicant to demonstrate how the development proposal could comply with any conditions.

Following their initial consideration, the Minister for Infrastructure will then ordinarily enable both the Environment and Infrastructure Committee and the Council of Ministers to review the matter under consideration. The Minister for Infrastructure will then issue their decision as required under the applicable legislation. Should approval/consent be granted, the appropriate consents will be issued to the applicant and the previously agreed commercial Lease will become operative.

The TSC member Departments will exercise a level of discretion with regards applications which seek to vary / amend any approvals previously granted in line with the extant legislation and determine how they can best be considered. If necessary, applications can be referred to the TSC for its assessment. If it is determined the application should be considered by the relevant Department, the subsequent decision will be noted at a TSC meeting.
2.0 Legislative Framework - Acts under Department of Infrastructure

There is currently no one bespoke piece of legislation covering marine developments in the territorial seas. At present there are various pieces of legislation across Government, each of which cover different aspects. Any one development proposal may require consideration under one or more pieces of legislation. The Department of Infrastructure is committed to preparing primary legislation for the marine area but until such a time that this is in place, the extant legislation will remain in force.

This following section gives initial guidance on an Act by Act basis. It is intended to give a succinct overview and should not be relied upon to replace the requirement to seek full professional advice on how the Acts operate and how they are of relevance to any individual proposal.

What is given below is a summary of the process as set out in each of the Acts. In order to ensure greater co-ordination across Government, the Territorial Seas Committee ("TSC") will be used in an advisory capacity to support the process and the final Ministerial decision. The indicative process is set out in the flow chart in section 5.0 of the Guide. It must however be borne in mind by any applicant that any processes and procedural matters prescribed by statute must be fulfilled in order to insulate the substantive proposal from legal challenge, appreciating there are many competing interests.

There are a number of different Acts which have consenting processes under the responsibility of the Department of Infrastructure – the Harbours Act 2010, the Submarine Cables Act 2003 and, parts of the Water Pollution Act 1993 and the Petroleum Act 1986 are the main Acts which govern activities within the Isle of Man territorial seas. In addition to these Acts, the Wreck and Salvage (Ships and Aircraft) Act 1979 and the Town and Country Planning Act 1999 are also the responsibility of the Department of Infrastructure. All of these will be discussed and a short narrative will outline what the Act covers, the extent of these Acts and the process for consideration of any application. A glossary of terms will be included within Appendix 1.
2.1 Harbours Act 2010
This Act relates to the control, operation and maintenance of harbours and the restriction of certain works, particularly those affecting navigation\textsuperscript{7}. In essence this Act covers most forms of major development activity in the sea.

2.1.1 Extent of the Act
Although this Act is primarily concerned with the workings of the Isle of Man Harbours, it also controls activities which have the potential to be detrimental to navigation or use of a vessel. This is covered in Section 26 of the Act which applies to the foreshore, sea-bed and Manx territorial waters.

2.1.2 Section 26 Restriction of works
Section 26 of this Act relates to “Restriction of works” (works detrimental to navigation or use of vessels). This section sets out that none of the following can be done without the consent of the Department if an obstruction or danger to navigation or to the lawful use of vessels is caused or is likely to result:

(a) construct, alter or improve any works on, under or over any part of the foreshore or sea-bed;

(b) deposit any object or materials in Manx waters or on any part of the foreshore or sea-bed; or

(c) remove any object or materials from any part of the foreshore or sea-bed.

The Department shall have regard to the nature and extent of the obstruction or danger to navigation and the lawful use of vessels and it may, grant consent either unconditionally or subject to such conditions as it considers appropriate; or refuse consent.

Discharge of Conditions
There is provision within the Act to enable a person who has a legal or equitable interest in the sea-bed, foreshore or Manx waters in respect of which consent has been granted under this Act to apply to the Department for the variation or discharge of the conditions. Following consideration, the Department may then vary or discharge the conditions and add new conditions on the basis of the variation or discharge.

\textsuperscript{7} Section 26 - Construction, alteration or improvement of any works on, under or over any part of the foreshore or seabed; deposition of any objects or materials in Manx waters or on any part of the foreshore or seabed; or the removal of objects of materials from any part of the foreshore or seabed.
2.1.3 Council of Ministers call in applications
This Act also provides the Council of Ministers with the ability to have the application referred to them for their determination (see section 2.2.6). This can happen either if it appears to Council that the proposal raises considerations of general importance to the Island or for some other reason ought not to be determined by the Department, for example if the Department is itself proposing to undertake the works. If this occurs, their decision shall be laid before Tynwald. Tynwald may resolve that the decision be annulled, whereupon the application shall be deemed to have been refused.

2.1.4 Appeal to a Tribunal
There is the ability for a person who is aggrieved by a decision of the Department to appeal to a Tribunal. This decision can either be to grant or to refuse permission, or to grant or refuse to vary, discharge or add new conditions. The Tribunal shall confirm, vary or revoke the decision in question. A decision made by a Tribunal on an appeal is binding on the Department and the applicant. An appeal from a decision of the Tribunal lies to the High Court on a question of law.

2.1.5 Further provisions
There are further provisions within the Act which relate to unauthorised works or failure to comply with a condition of a consent. A person guilty of an offence is liable on conviction to custody or a fine or both. The Department may also serve a notice on a person requiring that they take remedial action within a specified time period.

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8 Section 27
9 See Section 28; and as Under section 8 of the Tribunals Act 2006
10 Section 28
11 Section 29
2.2 Submarine Cables Act 2003
Including:
The Submarine Cables (Application for Authorisation) Regulations 2004
The Submarine Cables (Fees) Regulations 2012
The Submarine Cables (Authorised Persons) Regulations 2004
The Submarine Cables (Safety) Regulations 2004

This Act also falls under the responsibility of the Department of Infrastructure, and it seeks to control the placing of cables in the territorial waters of the Isle of Man.

The Submarine Cables (Application for Authorisation) Regulations 2004 sets out how an application for authorisation to the Department should be made and what it should contain. This is very useful for potential applicants to read and understand as it will assist with the preparation of an application for works. There is a requirement on the applicant to advise at this stage whether an application has been made for a licence under section 19 of the Water Pollution Act 1993 to deposit any such rock or spoil in the sea, and the result of the application (if any), and whether any application has been made for consent under section 26 of the Harbours Act 2010. It is possible that an application for development which requires more than one statutory consent may be capable of being processed and ultimately assessed together. However, if any consents already exist, the applicant should disclose this at the time of application.

2.2.1 Extent of the Act
This Act relates to the laying of a cable in, under or over territorial waters\(^{12}\).

2.2.2 Exemptions (works not requiring authorisation)
The Act states that the following are not works for the laying of a cable-
(a) Works at any place in, under or over territorial waters for the purpose of determining whether the place is suitable as part of the site of a proposed cable; and
(b) The carrying out of surveying operations for the purpose of settling the route of a proposed cable\(^{13}\).

\(^{12}\) See appendix 1 for glossary of terms
\(^{13}\) Section 11
2.2.3 Application for Authorisation
The Submarine Cables (Application for Authorisation) Regulations 2004 ("the Application regulations") usefully sets out how an application for authorisation should be provided to the Department, outlines the information and appropriate fee\(^\text{14}\) which must accompany it.

2.2.4 Requirement for an Environmental Impact Assessment
The Application Regulations sets out that an application shall be accompanied by an Environmental Impact Assessment of the effects of the construction works and the future operation of the cable. The Regulations further set out that the content of the Environmental Impact Assessment shall reflect the requirements of Council Directive 85/337/EEC\(^\text{15}\) on the assessment of the effects of certain public and private projects on the environment in so far as it relates to the effects on the environment of certain offshore submarine cable projects. Potential applicants should review Schedule 1 of the Regulations for further clarification (summarised below).

2.2.5 Schedule 1 Contents of an Environmental Impact Assessment
An Environmental Impact Assessment shall contain the following information. The detailed content will be determined in liaison with the relevant statutory authorities through the Territorial Seas Committee at the scoping stage.

1. A description of the works comprising information on the site, design and size of the works.
2. A description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects on the environment.
3. The data required to identify and assess the main effects which the project is likely to have on the environment.
4. Where relevant to the particular characteristics of the works or the environmental features likely to be affected and to the extent that the application might reasonably be required to compile the data having regard to current knowledge and methods of assessment –
   a. particulars of the land and sea-bed use requirements during the works and the operation of the cable;
   b. a description of specific aspects of the environment likely to be significantly affected (review Schedule 1 for further information);

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\(^{14}\) As set out in the Submarine Cables (Fees) Regulations 2012

\(^{15}\) The Isle of Man is not a member state of the European Union and is not bound by its Regulations or Directives. Nevertheless, it does, as a matter of good practice and taking account of the membership of the European Union of the jurisdictions surrounding the Island’s territorial sea, has some regard to European Union Directives.
c. a description of the likely significant effects on the environment arising from the existence of the works (review Schedule 1 for further information) and;

d. an indication of any difficulties (technical difficulties or lack of know-how) encountered by the applicant in compiling the required information.

5. An outline of the main alternatives (if any) studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effect.

6. A non-technical summary of the information provided under the above headings.

**2.2.6 Determination of an application (Schedule 1 of the Submarine Cables Act 2003)**

Once the Department has received an application for authorisation, it will determine whether or not it will consider the application and will advise the applicant of this initial decision. If the Department is to consider it further, it shall set out what it will require the applicant to comply with before a final decision on authorisation will be issued. The advisory views of the Territorial Seas Committee will be sought to assist the Department of Infrastructure Minister in reaching an informed preliminary view before the matter is referred to the Environment & infrastructure Committee and the Council of Ministers before the Department of Infrastructure Minister comes to a final decision regarding the application.

The Department has the ability to request that a proposed route of the cable be amended (see Schedule 1 which sets out the purposes for which the route of the cable could be amended). If the Department issues a notification for an amendment to the applicant, it must also serve this notice on people other than the applicant\(^\text{16}\) which will advise that representations can be made to the Department within an identified time period.

Having advised the applicant to amend the proposed cable route, the Department will give the applicant and any others previously notified of their determination in respect of the proposed route, the ability to be heard at a hearing\(^\text{17}\). Again, representations are welcomed at this stage within an identified time period.

\(^{16}\) The Act specifies that the Department will serve notice of its opinion on the applicant, any persons whom the Department considers are likely to be affected by the alteration; or any person appearing to the Department to represent such persons [Schedule 1; 4(2)(a-c)].

\(^{17}\) The ability to be heard will be on the basis that the Department does not cause an Inquiry to be held under paragraph 6.
Should the Department consider it necessary, it can cause an Inquiry to be heard where the applicant and any other people, who have been identified by the Department as having an interest, will have the opportunity to be heard. The appointed person will consider all representations made during the Inquiry, and formulate a report to the Department. This report will then be circulated to the applicant and those identified by the Department.\(^\text{18}\)

Following from this, the Department will then decide whether to grant or refuse an authorisation. If a refusal is issued, the Department will serve a notice on the applicant and those previously identified, and outline the reasons for refusal. If an authorisation is granted, the Department shall lay this before Tynwald, serve notice on the applicant and those previously identified, and it shall contain such particulars as set out in paragraph 9, Schedule 1. An authorisation in respect of a cable may contain such terms as the Department thinks appropriate, including particular terms as to the matters specified in Schedule 2.

### 2.2.7 Duration of authorisations

An authorisation under the Submarine Cables Act 2003 is time limited and this authorisation can:

- cease to be in force at the earliest of the time at which that duration expires as specified under the terms of authorisation,
- at a time agreed in writing by the holder and the Department as the time at which the authorisation is to cease to be in force and,
- if it appears to the Department that the execution of works authorised has not begun at the expiry of the period set out in the authorisation, it shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

An authorisation granted under this Act is generally for a period of three years unless an alternative time period has been agreed between the applicant and the Department.\(^\text{19}\)

\(^{18}\) See Schedule 1, paragraph 6 of the Submarine Cables Act 2003

\(^{19}\) See Section 2 Duration of Authorisations
2.3 Water Pollution Act 1993
This Act falls under the responsibility of both the Department of Environment, Food and Agriculture (Part 1) and the Department of Infrastructure (Part 2) and controls deposits in the sea. This includes the introduction of material to the sea bed such as concrete to form the foundations of other structures (it also covers more minor, in terms of impact, forms of activity such as the scattering of ashes at sea).

2.3.1 Extent of the Act
This Act applies to the deposit of any substance or article within Manx waters, either in the sea or under the sea-bed\(^\text{20}\).

2.3.2 Part 1 Inland and Coastal Waters
This Part of the Act relates to controlled waters (these being Inland Waters, Coastal Waters and relevant Territorial Waters out to 3 nautical miles from coastal baselines). Part 1 of this Act falls under the responsibility of the Department of Environment, Food and Agriculture. Further details on this can be found later in this Guide, section 3.2.

2.3.3 Part 2 Deposits in the Sea
This section provides guidance and information on Part 2 as it relates to Deposits in the Sea. Section 17 of the Act sets out the Prohibition of deposits etc at sea, whereby “no person shall cause or permit the deposit of any substance or article within Manx waters, either in the sea or under the sea-bed”.

A licence is required to be issued by the Department of Infrastructure for any activities identified in 17 (1) and (2)\(^\text{21}\).

Exemptions
Nothing in this Part of the Act shall apply to anything done for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of Part III of the Petroleum Act 1998 an Act of Parliament as it has effect in the Island) is in force or for the purpose of establishing or maintaining an offshore installation within the meaning of Part IV of that Act\(^\text{22}\).

\(^{20}\) See Appendix 1 for glossary of terms but it should be noted that for the purposes of Part 2 of the Act “sea” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river. (section 26).

\(^{21}\) Section 18 “Authority for deposits etc” – unless these operations are specified in an order made by the Department of Infrastructure as operations not needing a licence. Section 19 Licences for deposits etc.

\(^{22}\) Section 18A “Application of Part 2: Further Provisions”.
The Department of Infrastructure can request an applicant to supply information it requires in order to determine whether a licence should be issued, and also enables a determination as to what, if any, conditions it ought to include. The Department of Infrastructure is then able to include appropriate licence conditions it sees fit in order to protect the marine environment and to prevent interference with legitimate uses of the sea. Additional conditions may be included should the Department deem it necessary\textsuperscript{23}.

2.3.4 Variation or revocation of licences
The Department of Infrastructure has the power to vary or revoke a licence if it appears that there has been a breach of any of its conditions.

Schedule 1 “Right to make representations” sets out the process for an applicant to seek from the Department reasons for the inclusion of conditions within a licence and provides the ability to make representations when an application has been refused or a licence varied or revoked without their consent. Where representations have been made to the Department, it shall appoint a person who will consider these. The appointed person shall offer the person making the representations the ability to make oral representations, and will provide details of where and when this will take place.

The appointed person shall consider all representations made in respect of this application, and shall make a report to the Department who will then reconsider the initial decision. The Department will notify the person who made representations of the outcome of their reconsideration and provide its reasons for this.

2.4 The Petroleum Act 1986
The Petroleum Act 1986 ("\textit{the 1986 Act}") vests, in the Department of Economic Development, the property in petroleum and natural gas within the Island and controls for the searching and boring for, and getting of, petroleum and natural gas. It also provides for the application to the Island of certain pieces of legislation of Parliament relating to petroleum and pipelines.

The Petroleum Act 1998 (an Act of Parliament) ("\textit{the 1998 Act}") is extended to the Isle of Man subject to certain exceptions, adoptions and modifications by an Order in Council (the

\textsuperscript{23} Further information on conditions and what they can require an applicant to undertake can be found in Section 19(7)

### 2.4.1 Extent of the Act

The 1986 Act extends to the Island, whereby the “island” is defined as including the sea-bed and subsoil under the territorial waters of the Island and the word “land” shall be construed accordingly.\(^{24}\)

The 1998 Act (as extended to the Isle of Man) sets out the relevant legislation relating to submarine pipelines (section 14 onwards) and Schedule 2 outlines the process for authorisations under section 14.

### 2.4.2 Requirement for an Environmental Impact Assessment

The Submarine Pipelines (Assessment of Environmental Effects) Regulations 2001 made under the 1998 Act as it extends to the Isle of Man sets out that if an application is made to the Department [of Infrastructure] under paragraph 14 for a works authorisation in connection with the construction of a submarine pipeline, the undertaker\(^ {25}\) shall submit an Environmental Impact Assessment of the pipeline works to the Department. The Environmental Impact Assessment shall contain the information specified in the Schedule of the Regulations.\(^ {26}\) The content will reflect the requirements of Council Directive 85/337/EEC as amended by Council Directive 97/11/EC on the assessment of the effects of certain public and private projects on the environment in so far as it relates to the effects on the environment of certain offshore oil and gas projects.

### 2.4.3 Schedule - Contents of Environmental Impact Assessment

An Environmental Impact Assessment shall contain the following information. The detailed content will be determined in liaison with the relevant statutory authorities through the Territorial Seas Committee at the scoping stage.

1. A description of the project comprising information on the site, design and size of the project, and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker

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\(^{24}\) Section 9

\(^{25}\) “undertaker” means any person who carries out, or may reasonably be taken to propose carrying out of the construction of a submarine pipeline in the territorial sea adjacent to the Isle of Man.

\(^{26}\) As previously set out, The Isle of Man is not a member state of the European Union and is not bound by its Regulations or Directives. Nevertheless, it does, as a matter of good practice and taking account of the membership of the European Union of the jurisdictions surrounding the Island’s territorial sea, has some regard to European Union Directives.
might reasonably be required to compile the information having regard to current knowledge and methods of assessment, such a description shall include –

a. the land and sea-bed use requirements during the construction and operational phases;

b. a description of the main characteristics of the production processes including the nature and quantity of the materials used; and

c. an estimate by type and quantity of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed project.

2. A description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects on the environment.

3. The data required to identify and assess the main effects which the project is likely to have on the environment and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the data having regard to current knowledge and methods of assessment such data shall include-

a. a description of specific aspects of the environment likely to be significantly affected including in particular human population, fauna, flora, soil including the sea-bed and its subsoil, water including the sea and any aquifers under the sea-bed, air, climatic factors, the landscape or the seascape, tangible property, architectural and archaeological heritage and the interaction between any of the foregoing; and

b. a description of the likely significant effects on the environment arising from the existence of the project, the use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste together with details of the forecasting methods used to assess the effects on the environment;

4. An outline of the main alternatives (if any) studied by the undertaker and an indication of the main reasons for his choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under the above headings; and

6. Where relevant to the particular characteristics of the project and the environmental features likely to be affected and to the extent that the undertaken might reasonably be required to compile the information having regard to current knowledge and
methods of assessment, an indication of any difficulties (technical difficulties or lack of know-how) encountered by the undertaker in compiling the required information.

2.4.4 Application process
Schedule 1 of the 1998 Act (as extended to the Isle of Man) sets out the process for works authorisation.
2.5 Wreck and Salvage (Ships and Aircraft) Act 1979
This Act relates to wreck and salvage in the case of ships and aircraft, and for other connected purposes.

2.5.1 Extent of this Act
Provisions within this Act which are of most interest to potential developments, are contained within Part III “Protection of Certain Wrecks”. Section 28 “Protection of sites of historic wrecks” provides that (1) “If the Department of Infrastructure is satisfied with respect to any site in Manx Waters that-

(a) it is or may prove to be, the site of a vessel lying wrecked on or in the sea bed; and

(b) on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed in or near the wreck, the site ought to be protected from unauthorised interference, the Department may by Order designate an area round the site as a restricted area”.

An Order under this section shall identify the site of the vessel (where it currently lies or where it formerly lay or where it is supposed to lie) and identify the restricted area within such distance (as specified) of the site (excluding any area above high water mark of ordinary spring tides). The Protection of Wrecks (Designation) Order 1982 is the only order made by the Department under this Act and it is the site of what is, or may prove to be, the wreck of HMS ‘Racehorse’ which is of historical and archaeological importance.

An offence is committed if, within the identified restricted area, a person tampers with, damages or removes any part of a vessel lying wrecked on or in the sea-bed, they carry out diving or salvage operations directed to the exploration of any wreck or removes objects from it or from the sea-bed, or they deposit anything which if it fell, could wholly or partly obliterate the site or obstruct access to it, or damage any part of the wreck. Before making an Order under this Act, the Department shall consult with the Manx Museum and National Trust and such other persons the Department considers appropriate. Further information relating to the granting of licences can be found in Section 28 of the Act. This Act also applies to aircraft (Section 37).

27 See Glossary in Appendix 1
28 The site to which this Order applies is Latitude 54°03’.12 North, Longitude 04°37’.73 West. There is a restricted area around the site, and is described as the area within a distance of 350 metres of Latitude 54°03’.12 North, Longitude 04°37’.73 West but excluding any part of that area which lies above high water mark of ordinary spring tides (Off Langness).
2.6 The Town and Country Planning Act 1999
This Act falls under the responsibility of the Department of Infrastructure and deals with
town and country planning which includes the protection of buildings and areas of
archaeological or historic interest.

2.6.1 Extent of this Act
The primary legislation is contained within the Town and Country Planning Act 1999 which
extends to the whole of the Island, and does not currently extend to the territorial seas. This
Act is applied for any developments on land specifically up to mean low water mark.

If applicants require further information on this, they are encouraged to contact Planning
and Building Control (details provided below). It may be the case that applications for
consent within the territorial seas may require additional approval under this Act if part of
that application crosses above the mean low water mark.

2.6.2 Meaning of development
Part 2 of the Act explains what is meant by “development”, and states that in this Act,
“development” means the carrying out of building, engineering, mining or other operations
in, on, over or under land, or the making of any material change in the use of any buildings
or other land\(^{29}\). This is subject to provisions outlined within section 6 of the Act. Planning
approval is required for the carrying out of any development of land (based on the above
description of development). The Town and Country Planning (Development Procedure) (No
2) Order 2013 sets out the process for the consideration and determination of planning
applications. It also outlines the particulars to be included with applications for planning
permission as well as setting out the appeal process following the issue of a decision notice.

2.6.3 Further Information
Further information can be obtained from [http://www.gov.im/categories/planning-and-
building-control/] , by emailing planning@gov.im, or by telephone +44 1624 685950:

Michael Gallagher,
Director, Planning and Building Control
Department of Infrastructure
First Floor, Murray House
Mount Havelock, Douglas
IM1 2SF

\(^{29}\) Section 6
3.0 Acts under other Government Departments - Department of Environment, Food and Agriculture

There are also a number of Acts which fall under the responsibility of other Departments, including Department of Environment, Food and Agriculture and Department of Economic Development. These Acts will be discussed by Department below.

3.1 Wildlife Act 1990

This Act provides for the protection of species and habitats.

3.1.1 Extent of this Act

This Act extends to the Isle of Man and its territorial waters.

3.1.2 Provisions under this Act

Specific areas have been designated with special measures under this Act. It provides for the designation of Marine Nature Reserves under section 32 and for the formulation of byelaws for their protection (section 33). “Where, in the case of any land covered (continuously or intermittently) by tidal waters or parts of the sea in or adjacent to the Island up to the seaward limits of territorial waters it appears to the Department expedient, on an application made by the Wildlife Committee that the land and waters covering it should be managed by the Department for the purpose of-

(a) conserving marine flora or fauna or geological or physiographical features of special interest in the area; or

(b) providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to marine flora and fauna and the physical conditions in which they live, or for the study of geological and physiographical features of special interest in the area,

the Department may, subject to section 37(3), by order designate the area comprising that land and those waters as a marine nature reserve; and the Department shall manage any area so designated for either or both of those purposes”.

The Ramsey Bay (Marine Nature Reserve) (No2) Byelaws 2011 came into operation on 1st January 2012 and set out the general restrictions within the Reserve (Part 2 section 4). Part 2 sets out that there is a prohibition of aggregate extraction, of dumping of dredged material, of netting, of long-lining, of dredging, of littering and of construction. With regards

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30 The Ramsey Bay Nature Reserve means the area indicated on the map in the Schedule and designated by the Department under the Ramsey Bay (Marine Nature Reserve) (Designation) Order 2011, and referred to in these Byelaws as “the Reserve”
to construction, it states that “no person shall construct any pipeline or other structure within the Reserve except under the authority of a licence issued by the Department”\textsuperscript{31}. Further provisions are included in Part 3 “Research and Investigations” for additional restrictions within specified zones in Part 3 for Scientific Research. Section 14 “Permit to undertake scientific research” sets out that the Department may, if it considers it necessary, issue a permit to any person to undertake research or investigations within the Reserve and attach conditions and limitations to that permit.

The Act also provides for Areas of Special Scientific Interest under section 27 and though not a specifically marine designation they include coastal areas and may extend down to the level of astronomical low water. Sites are still being designated. The current list, maps and citations are available on the www.gov.im website. Coastal and landfall areas will therefore require ASSI consent from DEFA where these include operations that are listed for a particular site.

Species protection measures are provided in Part 1 and Schedules 1 (birds), 5 (other animals) and 7 (plants in addition to some saltmarsh and coastal species) and offences include the reckless disturbance of protected wild animals. The animal species protected under schedule 5 include basking sharks, all species of marine mammals (seals and cetaceans) and all species of turtles. Only one marine plant is listed in Schedule 7, eelgrass (\textit{Zostera marina}). The introduction of species is covered in section 14 and Schedule 8. Licensing is provided for in section 16, for purposes including public health and public safety but not for the purpose of development, for which species protection is covered under consent procedures in other legislation but subject to Wildlife Act section 36.

Section 36, on the ‘duty to have regard for the environment etc’ states:

‘Section 36 (1) In regard to any functions of the Department which may affect the physical environment, the Department shall, so far as may be consistent with the proper discharge of such functions, endeavour to secure a reasonable balance between-

(a) the promotion and maintenance of a stable and efficient agricultural industry; and

(b) the conservation and enhancement of the natural beauty and amenity of the countryside, the protection of wildlife habitat, and the conservation of flora and fauna and geological or physiographical features of interest.

\textsuperscript{31} Section 10
(2) Without prejudice to subsection (1), in the exercise of any functions which may affect the physical environment, a department, statutory board or local authority shall, so far as may be consistent with the proper discharge of those functions, have regard to the matters specified in subsection (1)(b).’

Therefore wildlife conservation issues on prospective development sites will be considered via section 36 in the consenting regimes under other legislation, and operations that may be required, have been given consent, but might remain damaging to some extent after mitigation, might be accepted as an ‘incidental result of a lawful operation that could not reasonably have been avoided’. Applicants will therefore be required to provide information on the likely wildlife impacts, sufficient for a regulator to determine what is reasonable in the circumstances.

Under this Act, if applicants consider that the proposed development may have an impact on the marine environment, they should contact:
Dr Fiona Gell
Senior Marine Biodiversity Officer
Department of Environment, Food and Agriculture,
Thie Slieau Whallian,
Foxdale Road,
St John's,
Isle of Man,
IM4 3AS
Telephone - +44 1624 685835
3.2 Water Pollution Act 1993
This Act makes provision for the protection of inland and coastal waters from pollution.

3.2.1 Extent of this Act
This Act sets out that two Departments are responsible for ensuring its provisions are adhered to. The Department of Environment, Food and Agriculture is responsible for Part 1 of this Act, and the Department of Infrastructure is responsible for Part 2 (which has been detailed in Section 2.3).

Part 1 of this Act relates to Inland and Coastal Waters (Controlled Waters) which includes (a) the waters which extend seaward for 3 miles from the baselines from which the breadth of the territorial sea adjacent to the Island is measured (‘relevant territorial waters’); (b) any waters which are within the area which extends landward from those baselines as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the fresh-water limit of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area (‘coastal waters’); inland waters and ground waters.

This Part of the Act enables the issuing of licences for discharges of trade and sewage effluent, the taking of legal proceedings for discharging effluent without or in breach of the conditions of a licence, and the provision for setting regulations for preventing pollution.

If applicants consider that the proposed development may result in pollution under this Act within the controlled waters described above, they must contact:

Dr Calum McNeil, Environment Protection Officer
Environment, Safety and Health Directorate,
Department of Environment, Food and Agriculture,
Thie Slieau Whallian,
Foxdale Road,
St John's,
Isle of Man,
IM4 3AS
Telephone: +44 1624 685856
3.3 Fisheries Act 2012
This Act controls the inland and sea fisheries of the Isle of Man. The Act allows for the supervision and protection, establishment and development of inland and sea fisheries.

3.3.1 Extent of this Act

This Act applies to the mean high water mark. Further clarification is provided within the Act. The Act provides that, with the approval of the Treasury that the Department may conduct, or assist (by grants or otherwise) any person in conducting, research or investigation into any matter relating to fish or any inland fishery or sea fishery” (section 7). The Department has the ability to grant a licence, permit or authorisation (other than a sea fishing licence) as well as the power to modify, withdraw, a general licence, permit or authorisation to all persons or to persons of a specified description. The Act provides that if the holder of a licence is convicted of an offence under this Act, a licence may be cancelled or suspended and provides for further conviction (section 82).

The Department may authorise a person to do such things as are so specified for some scientific purpose in or in relation to such inland waters, or such part of the sea as may be so specified (section 75). In addition, in “exercise of its functions under this Act, the Department shall have regard to the need to conserve marine flora and fauna and the marine environment, to conserve features of geological or geomorphological interest and to protect buildings and other objects or architectural or historic interest, so far as those matters are capable of being affected by that exercise”.

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32 This Act can, with the consent of the Department of Infrastructure and the Water Authority (now the Manx Utilities Authority) define (by order) any area of the sea (which is defined, subject to subsection (2) includes the coast up to the mean high water mark of ordinary spring tides) – Section 3. For the purposes of this Act, “(a) waters on the seaward side of the mouth of a river defined under section 4(1) shall be treated as part of the sea and not as part of the river, and (b) waters on the landward side of a mouth so defined shall be treated as part of the river and not as part of the sea” – Section 3(2)
33 Department of Environment, Food and Agriculture
34 Section 8(1)
35 Section 5(2)(c, d, e)
If applicants consider that the proposed development may have an impact on sea fisheries in the Isle of Man territorial seas, they should contact:

Karen McHarg, Director of Fisheries  
Fisheries Directorate  
Department of Environment, Food and Agriculture  
Thie Slieau Whallian  
Foxdale Road, St. Johns  
IM4 3AS  
Telephone – 01624 685857, email – karen.mcharg@gov.im
4.0 Acts under other Government Departments - Department for Economic Development

The following Acts are the responsibility of the Department of Economic Development (DED) and will be discussed below.

4.1 Minerals Act 1986
This Act, which was amended by the Minerals (Amendment) Act 2006 introduces controls for the discovery and working of minerals. With the exceptions outlined in Schedule 1, the property in all minerals existing in a natural condition on the Island, and in all mines for the working of such minerals, is hereby vested in the DED.

4.1.1 Extent of the Act
The Act gives the DED certain powers in relation to mines and minerals. For example, Section 2 enables the DED to prospect or grant prospecting licences to search for mines and minerals vested in the DED. Section 5 allows the DED rights to work mines and minerals themselves. Section 7 allows the DED to sell any estates of mines and minerals provided it has the approval of Tynwald. Section 8 permits the DED to grant a Mining Lease for the working of mines and minerals up to a maximum of 21 years. Although Section 9 enables the DED to grant a Mining Licence for the extraction of minerals, it is considered that a Mining Lease would be the appropriate Mining Agreement for the extraction of minerals from the sea-bed.

The DED has had more experience with the application of this Act for land won minerals rather than within the marine environment and it has worked within the well-established planning process\(^\text{36}\). For its application within the territorial seas, a lease of the sea-bed (issued by the Department of Infrastructure) would also be required to be acquired by the applicant prior to any works being permitted to be undertaken.

\(^\text{36}\) Planning Permission is required on land before any extraction of minerals etc can take place. As part of this process, there is a requirement for an Environmental Impact Assessment to be submitted along with any applications for extraction, as set out within the Isle of Man Strategic Plan 2007. A decision on planning would then be given prior to a licence being issued by Department of Economic Development.

However, given that this requirement does not apply within the marine environment, an appropriately scoped Environmental Impact Assessment could be requested either as a condition of an exploratory / extractive mineral licence or as a condition precedent prior to grant of the seabed lease.
4.1.2 Granting prospecting licences
The Act sets out that four weeks prior to a licence being issued, the DED serve notice of its intention to do so on:

“(a) every local authority within whose area the land, or any part of the land in relation to which the right or power is proposed to be exercised is situation;
(b) every Department, Statutory Board or other public body which, in the opinion of the Department, will be materially affected by, or interested in, any activity likely to be carried on in the exercise of the right or in consequence of the exercise of the power; and,
(c) the owners and occupiers of the land in which the mines and minerals to be affected by the exercise of the power are situated” [Section 2(3)].

Following service of this notice, the DED shall take into account any representations which are made to it by the person by whom such a notice was served, before the expiration of a period of 4 weeks from the date of the service of the notice on him [Section 2(4)].

Prior to the grant of a Prospecting Licence, the DED will need to be satisfied that adequate arrangements have been made by the Prospecting Licensee to pay every owner of an estate affected by the Prospecting Licence a reasonable sum allowing the Licensee rights to enter onto the land for the purpose of searching for mines and minerals [Section 2(5)].

The Licensee shall only work the mines and minerals to such as extent as reasonable necessary to ascertain the existence, character and value of the mines and minerals, and shall not sell such minerals except to establish their character and value [Section 4(1)]. The Licensee shall provide to the DED copies of all information obtained on such mines and minerals.

4.1.3 Granting Mining Leases
Section 11 of the Act requires the DED not less than four weeks prior to a Mining Lease being issued, to serve notice of its intention to do so on:

(a) every local authority within whose area of land, or any part of the land in relation to which the right or power is proposed to be exercised is situated;
(b) every Department, Statutory Board or other public body which, in the opinion of the DED, will be materially affected by, or interested in, any activity likely to be carried out in the exercise of the right or in consequence of the exercise of the power; and,
(c) the owners and occupiers of the land in which the mines and minerals to be affected by the exercise of the powers are situated [Section 11(1)].
Following service of this notice, the DED shall take into account any representations which are made to it by the person by whom such notice was served, before the expiration of a period of 4 weeks from the date of the service of the notice [Section 11(2)].

Where royalties are to be payable for the disposal of minerals worked under a Mining Lease, the level of such royalties shall be agreed between the DED and Treasury [Section 11(3C)].

Prior to the grant of a Mining Lease, the DED will need to be satisfied that adequate arrangements have been made by the Leasee to pay to every owner of an estate affected by the Mining Lease a reasonable sum for the working of such mines and minerals [Section 11(4)].

4.1.4 Mineral Workings (Offshore Installations) (Isle of Man) Act 1974
This Act provides for the safety, health and welfare of persons on installations concerned with the underwater exploitation and exploration of mineral resources in the waters in or surrounding the Isle of Man.

4.1.5 Extent of the Act
The Act applies to any activity which includes (a) the exploitation or exploration of mineral resources in or under the shore or bed of controlled waters; (b) the storage of gas in or under the shore or bed of controlled waters or the recovery of gas so stored; (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of controlled waters; and (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a), (b) or (c) of this paragraph.37

For further information, please contact:
Mr Dave Roberts,
Development Executive,
Department of Economic Development
St. George’s Court, Upper Church Street
Douglas, IM1 2EX,
Telephone 01624 686400; Email ded@gov.im

37 Section 1
4.2 Manx National Heritage

Manx National Heritage (MNH) also has legislation which may be of relevance to development activities in the sea if proposals are likely to affect an ancient/protected monument or its property, land and the assets, built or natural on MNH property, or involve the removal of archaeological objects from the Island. Whether any particular development activity would require consent from MNH would depend on the circumstances of what is proposed.

Currently, the Manx National Museum and National Trust Act 1959 (and subsequent amendments) applies only to land above the mean high water mark and so no consideration of this Act is required for applications within the territorial seas. However, Manx National Heritage may have a general interest in the marine environment and how their responsibilities relate to heritage, and it will have an interest under the Wreck and Salvage (Ships and Aircraft) Act 1979, in particular, how this Act relates to protected wrecks.

For further information, please contact:
Manx National Heritage,
The Manx Museum,
Kingswood Grove
Douglas, IM1 3LY
Telephone – 01624 648000; email – enquiries@mnh.gov.im

4.3 Health & Safety Inspectorate – the Health and Safety at Work etc Act 1974

The onshore health and safety system in the Isle of Man, the Health and Safety at Work etc. Act 1974 (as applied to the Isle of Man) ("HSW Act") is based on the concept of reasonable practicability and it allows the current enforcing authority (DEFA) to work proactively with duty holders to ensure that they identify the risks specific to their undertaking and introduce proportionate solutions to control them. The majority of technologies and risks associated with renewable power can be adequately covered by the provisions of this Act, but oil and gas risks need a more specific and extremely comprehensive suite of tailored legislation. The fact that the concept of reasonable practicability is also enshrined in UK legislation means that developers, constructors and producers operating in Manx waters will be able to claim compliance within the Isle of Man’s HSW Act if they can demonstrate that they have applied the standards referred to in the UK version of the HSW Act, and, in the case of oil and gas
operations, the recently updated UK package of offshore regulations (or equally effective standards).

For further information, please contact:

Bernard Warden, Director of Environment Safety and Health
Department of Environment, Food and Agriculture
Thie Slieau Whallian
Foxdale Road, St. Johns
IM4 3AS
Telephone – 01624 686247,
Email – Bernard.Warden@gov.im
5.0 Broad Indicative description of the process from tender to decommissioning

It is envisaged that there are a number of stages relating to marine developments, all of which will be detailed below. In addition to these main stages, there are a number of steps which must be followed to ensure the process has followed the correct procedure as set out in the relevant legislation (as previously outlined). A summary flowchart has been included in Section 5.7 and provides a diagrammatical overview of the process for consideration of an application as it passes from the tender/bid process through to the decommission phase.

The Territorial Seas Committee (“TSC”) has agreed that TSC member Departments will exercise a level of discretion with regards the consideration of applications for consent within the territorial seas. If necessary, applications can be referred to the TSC for its full assessment, with a view to presenting a recommendation to the DOI Minister. If it is determined the application should be considered by the relevant Department, the subsequent decision will be noted at a TSC meeting. This process as set out will relate to the larger scale applications for development which may require consent under more than one of the relevant marine Acts. There will be no requirement for the smaller scale applications to follow all of the steps outlined within this process.

The stages have been identified as follows:

**Stage 1** Tender / Bid Process leading to Agreement for Lease and Lease negotiations  
**Stage 2** Survey Work for EIA and any survey work linked or separate to that EIA  
**Stage 3** Lease and detailed application (and EIA if appropriate) submitted for consideration  
**Stage 4** Construction Phase  
**Stage 5** Post Construction Monitoring Phase  
**Stage 6** Decommission Phase

5.1 Stage 1 Tender/Bid Process leading to Agreement for Lease and Lease negotiations

The tender / bid process is administered by the Department of Infrastructure with assistance from the Department of Economic Development. Most recently tenders/bids have been sought for development of both wind and tidal energy within the Isle of Man territorial seas. As part of the tender process, potential applicants were provided with the following:

- Invitation to Tender document and draft legal paperwork;
• Locational and Guidance from Isle of Man Stakeholders; and,
• Guidance Document for Bidders.

Following receipt of the tenders/bids, the Department of Infrastructure with assistance from the Department of Economic Development and other Government Departments as appropriate will assess them and will make recommendations to the Department of Infrastructure Minister indicating which of the applicants should proceed to the next stage (2) as the successful tenderer/bid party. The Department of Infrastructure may issue a press release to advise the public of the process as necessary.

Once the Department of Infrastructure Minister has been advised of the recommended schemes and preferred bid party, the TSC becomes involved at looking at the detail. At this first stage, the information submitted by potential developers will contain the details of the broad scope of the development and the proposed location which may assist with confirming the proposed site location.

In general terms, the role of the TSC is to co-ordinate all relevant and material matters, including legislative requirements, regarding the territorial sea. It oversees the management of all major activities within the territorial sea and it provides an opportunity to bring together representatives of all Departments which have a responsibility for matters relating to the territorial sea.

As described at paragraph 1.3 above, the membership of the TSC is drawn entirely from Government Departments which have an interest in or are responsible for the various activities which occur within the territorial seas. It will report to and advise the Minister for the Department of Infrastructure on matters related to the determination of applications for consents/authorisations under relevant Acts.

Before the Department of Infrastructure Minister formally awards ‘successful tenderer / bid party’ status, the Environment and Infrastructure Committee and the Council of Ministers will be advised of the proposed course. This is to ensure that there is an awareness and understanding across Government. The Environment and Infrastructure Committee and the Council of Ministers have no powers to veto the decision of the Minister in relation to awarding preferred developer status as successful tenderer/bid party, but they may wish to comment on the proposal.
Consideration of any tenders/bids and as appropriate identification of the preferred party at the TSC will be undertaken in line with the Terms of Reference for the TSC, and comments on the proposal will be given to the Minister for the Department of Infrastructure who will report these to both the Environment and Infrastructure Committee and to the Council of Ministers.

It will be the responsibility of the Department of Infrastructure Minister to notify the Environment and Infrastructure Committee and the Council of Ministers of the Department’s intention to award leases of easement to successful parties.

Following this, the Department of Infrastructure Minister will then award the agreement for lease to the successful party which will enable them to work on the preparation of a detailed application. Having awarded the agreement to lease to the successful party, developers will have the assurance that the general principle of the proposed development (subject to it gaining all the necessary consents and licences) has been deemed to be acceptable by the Isle of Man Government.

An Agreement for Lease prepared by the Attorney General’s Chambers (which is subject to Treasury Concurrence) will then be executed between the Department of Infrastructure and the successful tenderer.

5.1.1 Outcome:
The outcome of this stage is an award to a preferred developer which will enable the Agreement for lease between the Department and the preferred developer to be entered into (subject to treasury concurrence).

5.2 Stage 2 Survey Work for EIA and any survey work linked or separate to that EIA
It will be necessary at this stage for the successful party to further consider their proposal and recognise whether there is a requirement to undertake an element of survey work to accompany the detailed application. The Department will advise of the next step in this process. This step will also include any preparation work to inform, and to assist with the completion of an EIA if appropriate. They will need to consider the further details of their proposal which may include the proposed output of the project, the footprint of the proposed development, the proposed technology which will be required in order to achieve the desired output as well as the proposed methodology in order to ensure the appropriate
construction of the proposal. The proposed site location of the project will already have
been considered and agreed in the tender assessment process (Stage 1).

All of the above will be necessary to enable the TSC to consider the detailed proposal and
advise on the following:

- The requirement for, and the content of, an EIA (screening and scoping);
- Which elements of survey work will be required to address the scoping decision for
  the EIA; and,
- Consideration of the above survey work and determine which elements of this may /
  may not require consents under the extant legislation (and outline which Acts will
  consent for this).

Minutes reflecting a discussion of the above will be noted at the Environment and
Infrastructure Committee and the Council of Ministers. The Chair of the TSC will then co-
ordinate a report to the successful party outlining any requirements for inclusion within an
EIA and which consents under different legislation are required in order to undertake this.
Any consents required under the legislation will be dealt with by the respective Departments
which have responsibility for ensuring it is complied with. The report will also identify any
particulars to be submitted by an applicant as part of a detailed application.

The relevant Departments will consider any applications for survey work submitted by the
developer and will issue the relevant consents as appropriate. The developer will then
commence any survey works which will assist with the preparation and subsequent
completion of an EIA which will be submitted for consideration along with a detailed
application. The applicant should then prepare their application for submission along with
any other particulars as the Department directs (in collaboration with the TSC) and move to
Stage 3.

5.2.1 Outcome:
The successful party will be advised by the TSC of the outcome of a screening and scoping
opinion for an EIA and it will be the applicants responsibility to ensure all of this has been
included as part of an application submission. The applicant will also be advised what they
will be required to submit as part of the detailed application to the Department. The
successful party also be advised which consents they need to seek in order to address the
screening and scoping opinion (and any necessary survey work), and under which pieces of
legislation an application must be submitted for consideration. The developer should have all
the necessary consents in place prior to progressing to Stage 3.

5.3 Stage 3 Lease and detailed application (and EIA if appropriate)
submitted for consideration
This section relates to an application wholly located within the territorial seas (from mean
low water mark to the full extent of the territorial seas). If an application is being submitted
for development which crosses above the mean low water mark, a planning application will
be required to be submitted for consideration. This application will be governed by the Town
and Country Planning Act 1999 and the procedures contained within it. Further information
is available from Planning and Building Control, Department of Infrastructure (contact details
are provided in Section 9.0).

This stage will be governed by the following legislation\(^{38}\), which is the responsibility of the
Department of Infrastructure (explained in detail in section 2.0 of the Guide):

- The Petroleum Act 1986 (if applicable).

The following legislation may also be necessary to be considered at this stage:
Responsibility of the Department of Environment, Food and Agriculture (explained in detail
in section 3.0 of the Guide):

- The Wildlife Act 1990
- The Fisheries Act 2010
- The Water Pollution Act 1993

Responsibility of the Department of Economic Development (explained in detail in section
4.0 of the Guide):

- The Minerals Act 1986

\(^{38}\) All Primary Legislation can be found http://www.legislation.gov.im/cms/ and statutory
documents http://www.tynwald.org.im/links/tls/SD/Pages/default.aspx
It may be necessary to consult additional pieces of legislation depending on what an application is proposing, and this will be considered on a case by case basis. For example, if part of the overall development proposal is going to cross the mean low water mark from the sea to the land there will be a requirement to seek planning approval for the land based element.

Following on from Stage 2, it is anticipated that any successful party will have worked to address the issues identified for inclusion within an EIA which will be submitted as part of a detailed application for the necessary consents\(^\text{39}\) or as required under the terms of any commercial lease of easement.

The particulars which should be included as part of an application will be as the Department directs and previously advised in Stage 2 (in line with the provisions of the above legislation and in collaboration with the TSC). This is set out in a more prescriptive manner within the Submarine Cables (Application for Authorisation) 2003 (for applications which include a submarine cable)\(^\text{40}\). There are varying requirements from the legislation as to whether the application should be publically advertised, and this will be initially determined by the TSC and the developer will be notified of their requirements by the Chair. If appropriate, the application will be advertised\(^\text{41}\).

If an application is being made under the Submarine Cables Act 2003 or the Petroleum Act 1986, the Department can determine whether it will further consider the application at this stage. If it chooses not to, notification is required to be passed to the applicant providing a justification of this decision. If the application is to be considered further, all particulars submitted are distributed to the TSC for their consideration.

The application will be circulated to the members of the TSC who will consider it and determine whether, from their respective Departments, the application and accompanying EIA (if appropriate) has the necessary information that was requested to be submitted, and whether any EIA complies with the scoping opinion previously issued to them. The outcome of their consideration of the application and any supplementary information will be detailed

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\(^{39}\) Harbours Act 2010 “Consent”; Submarine Cables Act 2003 “Authorisation”; Water Pollution Act 1993 “Licence”; “Lease” of the seabed (as permitted by Department of Infrastructure); Petroleum Act 1986 “works authorisation”

\(^{40}\) See paragraph 2 of the Submarine Cables (Application for Authorisation) Regulations 2004

\(^{41}\) This currently depends on the legislation under which it has been submitted for consideration
within a report which the Chair will present for consideration to the Department of Infrastructure Minister. Upon receipt of this report, the Minister will review and further consider the application (along with the proposed terms of the lease of easement), after which, it will be brought to the attention of the Environment and Infrastructure Committee for their review. Following on from this, the Council of Ministers will be notified of the intention of the Department of Infrastructure Minister to grant or refuse the application (which will include consents under the appropriate Acts as well as conclusion of the commercial the lease of the sea-bed, as landowner).

Once the above steps have been completed, if it has been determined that the application should be approved, the Department of Infrastructure Minister will issue the appropriate consents under the relevant Acts and a lease of the sea-bed will be concluded. A number of conditions may be attached to both the approvals as well as conditions of the lease. Detailed discussions would be welcomed by the TSC which would allow an applicant to demonstrate how the development proposed could comply with any conditions which may form part of any lease / approval granted.

5.3.1 Financial Bonds
As a condition of a lease or an authorisation, it will ordinarily be necessary to include the ability to request a financial sum, bond or appropriate parent company guarantee which would cover any restorative works following the decommissioning of a development. It might also be possible to include the provision to ensure, should a successful party find themselves liquidated, that the development will either be completed or decommissioned without the financial burden passing to the Isle of Man Government.

5.3.2 Referral of an application to the Council of Ministers
There is the provision within some of the legislative Acts to have an application referred to the Council of Ministers. The Harbours Act 2010 sets out that if it appears to the Council of Ministers that either an initial application or an application to vary or discharge conditions of an approval by the Department (a) raises considerations of general importance to the Island; or (b) for some other reason ought not to be determined by the Department, it may direct that the application shall be referred to and determined by it. Where the Council of
Ministers grants consent on an application referred to them, the decision shall be laid before Tynwald\(^{32}\).

### 5.3.3 Outcome:
Following the consideration of a successful application, the developer will be awarded the appropriate consents for development.

The preferred developer will then serve an option notice on the Department outlining their intent and proposed development along with proof all necessary consents have been obtained. The Department will then conclude the commercial lease of the sea-bed subject to conditions. For unsuccessful applications, notification will be given to the applicant and justification of the outcome provided.

Notification of approvals vary, but should be undertaken in line with the provisions of the respective Acts under which they have been granted.

### 5.4 Stage 4 Construction Phase
During the construction phase, it will be the responsibility of the successful party to demonstrate compliance with all of the conditions attached to both the consents obtained and the lease of the sea-bed. This will include the Isle of Man’s Health & Safety legislation, which broadly replicates applicable UK legislation.

There are provisions within the legislation to revoke the licences and consents given and to institute criminal proceedings should there be reason to believe works have been carried out not in accordance with consents provided. The terms of the lease of the sea-bed will also set out that there will be a requirement that all statutes must be complied with.

Should it be necessary to amend the consent given, there is provision within the legislation which would accommodate this. However, this may require additional applications which would possibly require the successful completion of the steps outlined in Stage 2 and 3 above. The TSC member Departments will exercise a level of discretion with regards applications which seek to vary/amend any approvals previously granted in line with the extant legislation and determine how they can best be considered. If necessary, applications can be referred to the TSC for its assessment. If it is determined that the application should

\(^{32}\) See Harbours Act 2010 section 27 for further information
be considered by the relevant Departments, the subsequent decision will be noted at a TSC meeting.

5.5 Stage 5 Post Construction Monitoring
During the post construction phase, it will be the responsibility of the successful party to demonstrate compliance with all of the conditions attached to both the consents obtained and the lease of the sea-bed, particularly how they may relate to post construction monitoring. This may include the Isle of Man’s Health & Safety legislation, which broadly replicates applicable UK legislation.

There are provisions within the legislation that gives the Department the ability to revoke any licences granted under the respective Acts should it be determined that any of the conditions contained within it have been breached.

5.6 Stage 6 Decommission Phase
Conditions relating to the lifespan of the development and its subsequent decommissioning will be included within the consents awarded under the appropriate legislation as well as any conditions which have been applied as part of the lease of the sea-bed. It will be the responsibility of the successful tenderer to demonstrate that these conditions have been wholly complied with.
### 5.7 Flow chart of process

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<tr>
<th>Stage 1 Tender Bid Process leading to Agreement for Lease and Lease negotiations</th>
<th>Stage 2 Survey Work for EIA and any survey work linked or separate to that EIA</th>
<th>Stage 3 Lease and detailed application (and EIA if appropriate) submitted for consideration</th>
<th>Stage 4 Construction phase</th>
<th>Stage 5 Post Construction Monitoring phase</th>
<th>Stage 6 Decommission Phase</th>
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<tr>
<td>Expressions of Interest Issued (if required).</td>
<td>The Department will advise an applicant of the next step in this process and will outline what will be required to be submitted for initial consideration by the Territorial Seas Committee in respect of EIA and any survey work linked or separate to that EIA.</td>
<td>Detailed application to be submitted along with appropriate fee (if required), EIA and all other particulars as directed by the Department of Infrastructure in collaboration with the Territorial Seas Committee.</td>
<td>These stages of a development will be subject to conditions in relation to any approvals and/or lease of the sea-bed.</td>
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<tr>
<td>Tenders / bids returned to the Department of Infrastructure (as required).</td>
<td>Detailed application (and EIA if one has been submitted) to be circulated to members of the Territorial Seas Committee for their consideration.</td>
<td>There are powers within the Acts and the lease of the sea-bed for enforcement of conditions and subsequent revocation should this be considered necessary. The responsibility will most likely be that of the applicant to demonstrate their compliance with any conditions of an approval or lease of the sea-bed.</td>
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<td>Should it be necessary to amend any consent, there is provision within the legislation which would accommodate this. However, this may require additional applications which would possibly require the successful completion of the steps outlined in Stage 2 and 3 above. For any amendments to an approval, it would be advisable to seek advice from the Department of Infrastructure / Territorial Seas Committee as to the manner in which this should be considered.</td>
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<td>Stage 1</td>
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<tr>
<td>Department of Infrastructure may issue a Press Release to advise the public of the process as necessary.</td>
<td>The Territorial Seas Committee will consider the proposal details submitted and determine the screening and scoping for EIA (to be submitted with an application). It will identify which elements of proposed survey work will require consents and under which Acts. It will also identify particulars to be submitted by an applicant as part of a detailed application for consideration.</td>
<td>The Territorial Seas Committee will advise as to whether there is a need to advertise the proposal.</td>
<td>The Chair of the Territorial Seas Committee will co-ordinate a report with a recommendation to the Department of Infrastructure Minister following its consideration of the application. This will be reviewed by the Minister alongside the proposed terms of the lease of easement.</td>
<td>Progress to Stage 5</td>
<td>Progress to Stage 6</td>
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- Department of Infrastructure / Department of Economic Development initial consideration of tenders / bids received.
- Minutes from the Territorial Seas Committee will be noted at the Environment and Infrastructure Committee and the Council of Ministers.
- The Department of Infrastructure Minister will present the application for review at Environment and Infrastructure Committee.
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<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
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<tr>
<td>Consideration by Territorial Seas Committee of proposed development / preferred tenderer / bid party.</td>
<td>Following consideration of the further details regarding a proposed development by the TSC, the Chair will co-ordinate a report on behalf of the TSC which will notify an applicant of the outcome and advise which consents will be required. An applicant will then apply for the appropriate consents prior to any survey works being undertaken.</td>
<td>The Department of Infrastructure Minister will notify the Council of Ministers of the proposed course of action.</td>
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<td><strong>Stage 1</strong></td>
<td><strong>Stage 2</strong></td>
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<tr>
<td>A report detailing the tender / bid process undertaken by the Department of Infrastructure and the subsequent consideration of proposals submitted will be co-ordinated by the Chair of the Territorial Seas Committee to Department of Infrastructure Minister. The report will contain a recommendation outlining the Department’s preferred bid party.</td>
<td>Survey work applications will be considered by the appropriate Departments and the relevant Departments will issue the necessary consents.</td>
<td>The Department of Infrastructure Minister issues the relevant approvals under Department + of Infrastructure legislation and signs the lease of the seabed (with conditions if appropriate). Once Ministerial approval has been obtained, the Department will apply for Treasury concurrence. The lease will be concluded once this has been received.</td>
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<tr>
<td>Environment and Infrastructure Committee to review the Department’s preferred bid party and details of their proposal.</td>
<td>The developer to commence survey works to assist the preparation and subsequent completion of the EIA.</td>
<td>Progress to Stage 4</td>
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<td>Stage 1</td>
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<td>Council of Ministers to be notified of the proposed course of action.</td>
<td>Progress to Stage 3</td>
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<tr>
<td>Department of Infrastructure Minister will issue their decision to approve the preliminary award of the tender to the preferred developer. An Agreement for lease will be concluded subject to Treasury Concurrence.</td>
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<td>![Down Arrow]</td>
<td>Progress to Stage 2</td>
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6.0 Known Development Considerations within the Isle of Man territorial waters

The Manx Marine Environmental Assessment (MMEA)\(^{43}\) brought together technical information that is currently available for the marine environment of the Isle of Man. The MMEA was consulted upon from 1\(^{st}\) October 2012 – 16\(^{th}\) November 2012 and was revised in light of responses from a wide range of key marine user groups and marine experts and an updated version uploaded online in December 2013\(^{44}\). In summary, the Manx Marine Environmental Assessment:

- Provides an overview of the current Manx marine environment including physical environment, habitats and species, industry and infrastructure;
- Provides information on some of the current uses of the Manx territorial waters derived from engaging with stakeholders as contributors to the project; and,
- Identifies gaps in our current knowledge.

The MMEA is structured around a number of “Themes”, which include physical environment, Ecology/Biodiversity, Fisheries, Historic environment, Infrastructure, and Tourism/Recreation /Education. Each of these “Themes” is summarised below for information, with a brief outline of its evidence base (namely the MMEA) and how it is considered to influence or impact upon development. More detail has been compiled within the specific MMEA Chapters which should be consulted to provide a broader understanding of the issues. Individual contributors\(^{45}\) can be contacted for further information or clarification in their areas of expertise.

This section of the Guide provides a brief summary of the MMEA content and should not be read in place of it. In preparing submissions for consideration, potential developers will be required to refer to the full MMEA.

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\(^{43}\) The Manx Marine Environmental Assessment was undertaken as part of the Isle of Man Marine Plan Project, a cross Government Department project which undertook to review the mechanisms for the management and sustainable development of Manx territorial waters. It was written in close collaboration with Government Officers and key marine stakeholders.


\(^{45}\) A full list of contributors is contained within the appendix to the MMEA.
6.1 Environment

Within the MMEA, the section relating to the general environment topic is very broad and contains the following:

1. Physical environment which includes chapters on Hydrology, Weather and Climate; Climatology; Climate Change; Coastal and Offshore Ecology and Marine Pollution; and,

2. Ecology/Biodiversity which includes chapters on Plankton in Manx Waters; Coastal Ecology; Subtidal Ecology; Marine Mammals – Cetaceans and Seals; Basking Sharks; Birds; Marine and Coastal Conservation and Sea Turtles in Manx Waters.

A brief summary of each consideration and Chapter is provided below.

6.1.1 Physical Environment

6.1.2 Coastal and Offshore Geology

Within the Coastal and Offshore Geology chapter of the MMEA, it is set out that the most sensitive geological coastal sites are most likely those along the soft sediment coasts of the Northern Plain. There are a number of secondary potential threats to geodiversity which were identified within the chapter, and these include impacts from marine development on the Isle of Man territorial environment. These impacts can be summarised as:

- Sea level rise and increased storm events due to climate change, leading to accelerated erosion of soft sediment cliffs;
- Coastal defences e.g. rock armour obscuring cliff sections;
- Coastal defences leading indirectly to increased erosion outside the protected area;
- Coastal development, though less of a threat than it might be due to current land use planning controls;
- Infill;
- Aggregate extraction;
- Infrastructure projects including pipelines, cables coming ashore; and
- Disruption of sediment flows in longshore drift which replenishes the Ayres beaches.

6.1.3 Marine pollution

The chapter on Marine Pollution addresses marine pollution within the marine environment. Marine pollution can impact on human health and can be a hindrance to marine activities including fishing. The discharge of pollutants to the marine environment can occur via many pathways including discharge from land through industrial, agricultural and domestic activities, and discharges from development activities within the marine environment itself.
Other marine processes such as dredging and harbour activities could also lead to marine pollution.

6.2 Ecology and Biodiversity

The Ecology and Biodiversity chapters of the MMEA can be divided into habitats and marine species.

The Subtidal Ecology chapter provides information on the priority habitats in Manx waters which include the horse mussel reefs, maerl beds and eelgrass beds. Horse mussel reefs are one of the habitats most vulnerable to human impacts, along with other reefs formed by animals or plants (biogenic reefs). Horse mussels along with queen scallops and other filter feeders require good water quality and careful consideration must be given to these areas in order to minimise impacts from development.

The MMEA highlights that any future developments undertaken may have localised, short and long term effects on species numbers and distribution. Any disruption of mobile sediments can release nutrients into the water column. This may encourage the mobility of certain noxious algal forms that could stimulate algal blooms which can impact upon aquaculture and fisheries.

The other chapters of the MMEA within the Ecology/Biodiversity section summarise the main marine species found within the Isle of Man marine environment which include marine mammals, seals, basking sharks, sea turtles and birds. Impacts upon marine species may include:

- direct injury/loss by collision or other direct impact;
- piling or percussive underwater noise;
- disturbance to breeding and haul-out sites;
- disturbance to migration routes; and,
- behavioural effects.

Marine life may also be affected as a result of development that can occur pre-construction, during construction and post construction and these impacts may be temporary or long term.
6.2.1 Conservation

The MMEA chapter on Conservation provides details on the International Agreements and Conventions to which the Isle of Man is signed up to for marine protection and conservation. The EU Habitats Directive does not extend to the Isle of Man but the Isle of Man is signed up (via the UK) to a number of Conventions identifying priority species and habitats for conservation, including:

· The Convention for the Protection of the Marine Environment of the North-East Atlantic;
· Convention on the Conservation of European Wildlife and Natural Habitats Convention on Wetlands of International Importance; and,
· Convention on Biological Diversity.

A more detailed list of all International Agreements and Conventions to which the Isle of Man is signed up to is provided in Chapter 3.7 of the MMEA.

In addition, the MMEA Chapter on Conservation sets out the species and habitat protection under Manx Law that has resulted in approximately 2.6% of Manx territorial waters being designated as a Marine Nature Reserve or protected from scallop dredging as part of the network of Fisheries Closed Areas and Restricted Areas. Protection is also afforded to all birds, basking sharks, seals (all species), turtle (marine) (all species), whales (all species), and one marine plant species, eelgrass, and a number of coastal plants under the Wildlife Act (1990).

In 2012 the Isle of Man designated a The Ramsey Bay Marine Nature Reserve. The MMEA Chapter 3.7 provides information on the reserve including its management zones.

Areas of Special Scientific Interest have been designated down to the level of astronomical low water and the boundaries area available at [www.gov.im/maps/](http://www.gov.im/maps/)

The Department of Environment, Food and Agriculture has supplied the following information for inclusion within the “Locational and Guidance from Isle of Man Stakeholders” as supplied by the Department of Infrastructure to Potential developers as part of a tender/bid process in 2014. Further clarification and advice on this is available from Department of Environment, Food and Agriculture.
6.2.2 Primary Areas of interest

In addition to the known development constraints identified through the MMEA and explained briefly above, the Department of Environment, Food and Agriculture (DEFA) has assisted with providing locational guidance for the Expressions of Interest exercise undertaken in 2014. These are areas DEFA consider would be unsuitable for development and should therefore be avoided (see MMEA Chapter 3.3 for further information and mapping). The following relates to features of conservation interest that are not considered replaceable or mitigable:

- Eelgrass (*Zostera* Spp.) sites (see MMEA Chapter 3.3) (specifically protected and very limited number of sites). This is an OSPAR listed habitat;
- *Modiolus* Reef (Point of Ayre, North-west area of the Fisheries Management Zone, Little Ness, south of Langness, exact area boundaries should be confirmed by survey)(see MMEA Chapter 3.3). This is an OSPAR listed habitat;
- *Sabellaria* reef (southern part of territorial sea) (see MMEA Chapter 3.3);
- Ramsey Bay Marine Nature Reserve;
- Wart Bank – this is a fish spawning / nursery ground, Located East of Chicken Rock Light and South-East of the Calf of the Man; and,
- Basking sharks.

6.2.3 Secondary Areas of Interest

There are areas where effects could potentially be mitigated but this is dependent on specific details of both the site and the proposed development.

- Maerl beds (see MMEA Chapter 3.3);
- Other relevant priority conservation species (see MMEA Chapter 3.3);
- Marine Protected Areas (Fishery Closed and Restricted Area), all within 3 nautical miles and therefore presumed relevant only for tidal developments;
- Calf of Man, including Kitterland and Calf Sound. There are numerous marine conservation and pot fishing issues;
- Seals (protected species) – important haul-out and breeding sites are present on the Calf, Kitterland (Calf Sound), Maughold coast (Port Lewaigue to Cornaa), coast between Bradda Head and Stroin Vuigh), (see MMEA Chapter 3.4b). Noise impacts should be considered;
- Scallop and Queenie fishing grounds (see MMEA Chapter 4.1);
- Herring spawning area (Douglas Bank) (see MMEA Chapter 4.1);
- Bahama, Ballacash and King Williams Banks – fish habitat areas (plaice and others) and potentially other species (e.g. *Modiolus modiolus*);
• Whelk potting areas (see below in information provided by the Manx Fish Producers Organisation, MFPO, section 5.3.1);

• Significant lobster and crab potting activity within 2 nautical miles of almost entire coast, specifically from Peel south, including the Calf, around the south coast, up to and including Ramsey Bay. Little potting activity on the west coast from Peel to the Point of Ayre;

• Offshore crab potting areas – west coast to 10 nautical miles offshore (Peel to the Calf) (See MMEA Chapter 3.3);

• Limited Nephrops potting (seasonal) more than 3 nautical miles offshore from Peel south) (See MMEA Chapter 3.3); and,

• Crab breeding and Nephrops trawl area of soft sediment in the south west of the territorial sea area (see MMEA Chapter 3.3).
6.3 Sea Fisheries and Aquaculture

For centuries, the fishing industry has been an important sector of the Manx economy, intimately bound up with traditional ways of Manx life. The current Manx commercial fisheries are dependent on good stocks of molluscs and crustaceans including: the king and queen scallops, brown crab, lobster, langoustine and the common whelk.

The Manx fishing industry currently supports approximately 400 jobs and generates an approximate direct turnover of £12 million per annum. The main fishery is for the king scallop although in recent years the queen scallop has also grown in local commercial importance.

The Isle of Man promotes itself on its achievements towards sustainable fisheries management, and the close collaboration along with a shared local knowledge with the fisheries stakeholders has benefitted both fisheries management and marine conservation initiatives. There are several successful closed and restricted areas in Manx waters (within 3 nautical miles) supported by the Manx fishermen.

The Fisheries chapter of the MMEA sets out initial considerations for future marine development. Effects and relevance to fisheries species and habitats will vary greatly depending on the nature of any proposed development, the area of a development, the footprint and the sensitivity and recoverability of the receiving area. Impacts from development may include the following considerations:

- Fishing grounds and nursery grounds are complex in terms of their ecology. Any alterations to these areas through dredging, construction and/or usage could have a profound effect on the viability of a fishery or nursery ground.
- Underwater noise and vibration associated with construction activities such as piling operations and/or cable laying may affect the distribution and disrupt the ecological behavioural patterns of species. Other operations such as the use of sonar for survey work may also have a profound impact; however such impacts may be short-term e.g. during the construction phase only.
- The installation and construction of devices and cables has the potential to cause the death of, reduce the quality of, or to impact upon the economic viability of commercially important shellfish species. This very much depends upon the type of
construction methods employed but may have a detrimental impact and therefore requires consideration.

• Certain fish and shellfish species are sensitive to electromagnetic fields (EMF) generated from power passing through underwater cables (inter-array and export power cables).

• Introducing non-native materials to a marine environment e.g. physical structures, may have several other effects on habitats and species as they may cause harm or encourage the introduction of new invasive species.

• Disturbance or damage to the sea-bed during construction may affect species that live at the bottom of the sea. Habitats such as biogenic reefs are of particular importance. The effects of any potential development will be dependent on species and habitat sensitivity and recoverability.

• Construction and installation activities can mobilise sediments which could render shellfish and crustaceans susceptible to smothering as a result of the excess sediment in the water column.

• Disturbance of the sea-bed may cause re-mobilisation of contaminants or nutrients to the detriment of species and habitats. Pollution from the introduction of marine lubricants, oil leaks and the use of antifoul paints pose a potential risk to marine species. Pollution incidents may cause temporary restrictions in fishing activities and harvest with economic and biodiversity consequences.

• The potential collision or entanglement risks associated with any future developments include mobile gear fishing too close to structures and/or over cables; pots, nets, or longlines shot too close to any offshore structures and potting vessels using grapnels to obtain lost gear.

• Future offshore development within Manx waters may lead to exclusion or displacement of fishing activities from an area thereby increasing pressures upon alternative fishing grounds. The extent of such displacement will be dependent on the scale of the development and its location. The presence or otherwise of any exclusion zone to certain forms of fishing may also affect the level of displacement experienced.

Further clarification and advice on all of the above is available from the DEFA. DEFA also holds contact details of all fishermen licensed to fish in Manx waters.
6.3.1 The Manx Fish Producers Organisation

The Manx Fish Producers Organisation (MFPO) is the main fisherman’s membership organisation on the Island. Its thirty members are mostly from mobile gear vessels that fish with scallop dredges and queenie trawls but includes five static gear vessels which fish mainly for lobster, brown crab and buckie whelk. The MFPO promotes sustainability in its main fisheries of scallop dredging and queenie trawling, both supporting and driving technical conservation measures.

The MFPO wishes to draw attention to the following issues:

There are approximately 70 registered fishing vessels in the Isle of Man, not all of them members of the MFPO. The average size of vessels in the Manx fleet is in the region of 12-13m. They mostly work in the territorial sea and as such are particularly vulnerable to displacement from offshore wind farm development.

Locational Guidance:

Spatial information on the scallop fisheries has been provided above in the guidance supplied by the DEFA. Whelk fishery information is not available from the DEFA due to the lack of relevant VMS (Vessel monitoring system) data however the fishery takes place in the areas bounded by the following co-ordinates. These should be plotted and illustrated:

10-12 miles east of Douglas

54°07.15N, 4°08.43W
54°04.76N, 4°12.49W
54°03.66N, 4°09.33W
54°06.70N, 4°05.68W

Between 6-8 miles east of Mackie Head

54°16.07N, 4°13.50W
54°13.14N, 4°10.86W
54°14.25N, 4°06.81W
54°16.79N, 4°10.46W

East of Douglas across 6 nautical mile boundary

54°11.80N, 4°21.60W
54°03.55N, 4°33.75W
53°59.45N, 4°25.55W
54°07.80N, 4°11.25W
When looking at the requirements of an Environmental Impact Assessment, the Territorial Seas Committee will consider the suggestions of the MFPO for example that an environmental assessment process be undertaken for any wind farm in Manx territorial waters and include a scientific stock assessment of relevant commercial species. For other proposed renewable energy generation projects, the Territorial Seas Committee will consider whether a scientific stock assessment should be included within an Environmental Impact Assessment.

6.4 Historic Environment
Developments in the marine area have the potential to uncover, disturb or destroy historic remains lying on or under the sea-bed. Any impacts should be taken into account in decision making as informed environmental impact assessment procedures.

The installation of structures on and/or in the sea-bed has the potential to damage or destroy wreck sites. It is possible to avoid damaging them by undertaking detailed pre installation surveys. Ancient land surfaces may also be damaged during installation. This may be avoided by siting structures in areas where the sea-bed is rocky. Initial, exploratory operations such as coring to investigate the geology and grabs which are used to collect sea-bed samples should be considered potentially damaging and cores should be inspected for any archaeological materials. Indirect impacts are not always fully appreciated and can include changes to local current patterns, sediment movements and scour from cables and structures. Other impacts can include:

- Cable and pipe laying operations which may damage sites and artefacts; and
- Dredging and fishing methods (sea-bed trawling) will disturb the sea bed and damage sites, wrecks or underwater landscape features.
6.5 Infrastructure
This section of the MMEA details the infrastructure within the Isle of Man marine environment and contains the following chapters: Cables and Pipelines; Shipping and Navigation; Energy, Mines and Minerals; and the Isle of Man Airport, all of which are summarised below.

6.5.1 Cables and Pipelines
The Cables and Pipeline chapter of the MMEA outlines the existing submarine infrastructure, including gas pipelines, power and telecommunications cables, and their connectivity to the existing infrastructure network on the Isle of Man. The following matters should be taken into account when proposing any cable and pipeline infrastructure, and should any elements of what is proposed cross the mean low water mark\(^{46}\) within Manx territorial waters, they may then be required to be considered under the terrestrial planning system (under the Town and Country Planning Act 1999, as explained in the Legislation section).

- The interactions of potential developments with existing cables already laid on the sea bed; and
- The main impacts from activities such as cable laying which may temporarily disturb habitats, increase underwater noise and provide an artificial hard substrate. The operation of power cables may also disturb electromagnetically sensitive or temperature adapted species. Basking sharks are a particular example of an electromagnetically sensitive species of conservation importance in Manx waters.

6.5.2 Shipping and Navigation
The Shipping and Navigation chapter of the MMEA provides information on the shipping activities within the Isle of Man marine environment. The Isle of Man currently has eight statutory harbours located around the Island: Douglas, Ramsey, Laxey, Port St Mary, Castletown, Port Erin, Peel and Derbyhaven all of which are under the responsibility of the Department of Infrastructure.

Manx territorial waters are of particular importance to marine shipping within the Irish Sea, with many ships passing through on a daily basis (between UK and Ireland) as indicated by the number of routes and volume of traffic crossing the Irish Sea. Shipping also provides essential lifeline links for the Island to enable the transport of food, fuel and the wide range

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\(^{46}\) The mean low water mark is the point by which the extent of the Town and Country Planning Act 1999 is applied, and it is the point at which the extent of the territorial seas is measured from.
of raw materials, consumer goods and consumables required by the Island’s community, businesses and services.

In terms of shipping/navigation routes, there are a number of well-established routes for navigation in the Irish Sea and through Manx waters. It is essential for the Isle of Man that direct strategic routes between the Isle of Man, England, Northern Ireland and Ireland are preserved including the adverse weather routes. The Island also has a strategic position in the Irish Sea and as such provides a location for recreational and commercial boats to shelter from adverse weather and sea conditions whilst en route across the Irish Sea.

The MMEA chapter also provides information on hazards to navigation, which can include submarine cables and pipelines, floating debris, subsurface structures, static fishing gear, the presence of basking sharks during the summer months (as the Manx marine environment acts as a popular site for them to be seen), as well as current and disused military exercise areas and shipwrecks.

The Shipping and Navigation chapter also provides some initial considerations for future marine developments which include:

- Developments in Manx waters and the wider Irish Sea have the potential to cause the temporary and permanent displacement of current and long-established shipping navigational routes. Any impacts to established routes are of serious concern to the Isle of Man particularly if offshore developments adversely impact on vital Isle of Man ferry routes.
- Compromising direct routes could lead to increased weather related cancellations, disruptions to supplies, additional costs linked with an increase in journey times and turn around in ports, weather discomfort as well as losses of volumes/revenues for the Isle of Man and tourism. All such impacts could be expected to have an adverse impact on the Isle of Man’s economic well-being and potential to grow its economy in the future.
- Route diversions could add significant time to each crossing, which combined with the journey time and an allowance for adverse weather means there is a real potential for service disruption. Any additional journey length for shipping routes may also reduce the Isle of Man Steam Packet’s ability to achieve the required number of daily and seasonal rotations (providing services to Belfast, Dublin, Heysham and Liverpool) to meet its contractual obligations to the Department of Infrastructure.
• The risk of collision with any offshore structures, increased vessel traffic, and increased concentration of vessels due to their displacement has been identified in the MMEA as a potential impact. There is also a risk regarding anchors snagging on any associated structures including cables.
• Impacts of developments on shipping routes can have a detrimental effect on safety and loss of service. The effects of weather routing and the ability of a vessel to make safe heading in adverse conditions need to be taken into consideration. Developments such as offshore wind farm turbines may also impact on the navigational systems of boats in the vicinity of the site.
• The positioning of one or a number of turbines may also have a deleterious effect on aviation radar installations by interference with radar signals.
• The cumulative effects of one development must be considered in all contexts for potential and/or existing developments. Cumulative developments may increase the impacts of developments e.g. air and sea radar signals, marine species etc.
• The impact of shipping activities on marine species, in particular marine mammals and basking sharks.

The Isle of Man does not have a directly operated marine defence capability as this is provided by the UK. Royal Navy vessels operate in and through Manx Waters and visit Isle of Man harbours on occasion.

Detailed information about the intensity of defence use of Manx waters is not available for reasons of national security. Submarine exercise areas, firing practice areas and areas of unexploded ordnance are all clearly marked on the Admiralty Charts. Actual exercises may be restricted to a limited number of weeks per year and cover a proportion of the area at any one time.

The following information has been included from the ”Locational and Guidance from Isle of Man Stakeholders” as supplied by the Department of Infrastructure to Potential developers as part of a tender/bid process in 2014.

**Ports Division (Harbours) – Responsibilities and Issues**
The Isle of Man Sea Terminal in Douglas sits alongside the Isle of Man Airport as one of the two main gateways to the Island. The Isle of Man depends on reliable shipping for the movement of passengers, essential food and medical supplies, urgent goods for retailers,
manufacturers, the construction industry and other public services. The long established routes serving UK / Isle of Man carry over 500,000 passengers and 400,000 metres of freight per annum and are therefore considered to be lifeline routes for the Isle of Man.

The Isle of Man Steam Packet Company is the oldest continually operating Passenger Shipping Company in the world (established 1830) and provides these freight, passenger and vehicle services between the Isle of Man Sea Terminal and ports in the UK and Ireland.

Areas for leases of the sea-bed are therefore unlikely to be forthcoming for development directly affecting important lifeline services and ferry routes to the Isle of Man. The Department of Infrastructure has sought the views of the Isle of Man Steam Packet Company in developing the proposed offshore wind programme.

**Locational Guidance:**
The Isle of Man Steam Packet Company has provided the following information regarding its direct and weather routing:

**Direct routes:**
Douglas / Heysham: 107/287 degree;
Douglas / Liverpool: 133/313 degree;
Douglas / Belfast: (North about) from No.1 buoy to Point of Ayre 023-345-293 degree and the reciprocal for the return;
Douglas / Belfast: (South about) from No. 1 buoy until passed Chicken Rock 177-226-269-330 degree and the reciprocal for the return; and,
Douglas / Dublin from No. 1 buoy 177-226-230 degree and the reciprocal for the return.

**Weather Routes Range:**
For the Heysham / Liverpool routes, the weather routing courses range between 095-175 degrees;
For the Belfast route North, no real variation while the South route may opt to shadow the Isle of Man west coast until west of Jurby;
For the Dublin route, the routes range between heading on a course due south from Douglas then West when approach North Anglesey to a course due west from Chicken Rock then proceed due south.
In addition to the above information, as supplied by the Isle of Man Steam Packet Company, Potential developers are advised to consider the other main ferry routes serving the Isle of Man together with the interests of recreational vessel owners. Potential developers may also choose to refer to the information provided by the Isle of Man Steam Packet Company in relation to the proposed extension of the Walney Offshore wind farm which can be found on the National Infrastructure Planning Portal (Please see http://infrastructure.planningportal.gov.uk/projects/north-west/walney-extension-offshore-wind-farm/).

6.5.3 Other development impacts
Development that would impact above the marine waters is also of importance as developments may lead to air pollution and/or interference to marine and aircraft radar systems. A reliable and secure air service network is of fundamental importance to the economy, tourism and quality of life on the Isle of Man. Chapter 6.4 of the MMEA (Isle of Man Airport) provides a summary of the aircraft industry and current activities from the Isle of Man Airport as well as giving an overview of the environmental studies which were submitted for consideration as part of the runway extension project which was completed in 2010. As part of this application, it was necessary to consider the impact of the extension on the natural landscape and visual amenity, noise and vibration, air quality as well as archaeology. These are areas for consideration for any proposed development in the Isle of Man marine environment.

The following information has been included from the ”Locational and Guidance from Isle of Man Stakeholders” as supplied by the Department of Infrastructure to Potential developers as part of a tender/bid process in 2014.

6.5.4 Isle of Man Airport
The Isle of Man Airport is the main civilian airport on the Isle of Man, owned and operated by the Department of Infrastructure. Along with the Isle of Man Sea Terminal, it is one of the two main gateways to the Island. The airport has scheduled services to the United Kingdom, Ireland and the Channel Islands on which there is a high level of dependence. Any proposal which is likely to affect the safe operation of the Isle of Man Airport or its air traffic management will be unlikely to be considered as suitable for development.
Locational Guidance:
The Isle of Man Airport has provided spatial guidance as shown in Figure 1 below. On the basis of perceived impacts on this lifeline facility, for the Isle of Man, Agreements for Lease are unlikely to be forthcoming for development within the central shaded area in the figure unless it can be demonstrated to the satisfaction of the Ports Division, Department of Infrastructure that any adverse impact can be fully mitigated.

Figure 1 - Isle of Man Airport Spatial Constraints

Additionally, the Airport advises that Potential developers should consider the likely effects of development within the line of sight of the airport’s primary and secondary surveillance radars. Potential impacts on the following routes should also be considered by Potential developers:

- L10 – Belfast City, Belfast International, Transatlantic
- W988D – Glasgow, Prestwick
- W911D – Newcastle, Edinburgh
- W2D – Blackpool, Leeds
- L10 – Liverpool, Manchester, Birmingham, Gatwick, London City
- W911D – Dublin
Air Traffic Control at Isle of Man Airport relies on two surveillance systems in the provision of Air Traffic Services to aircraft, Primary Surveillance Radar (PSR) and Secondary Surveillance Radar (SSR). PSR works by transmitting a pulse of electromagnetic radiation which is then reflected off an object and picked up by the receiver. The return is then displayed on the Air Traffic Control Officers’ (ATCO(s)) surveillance display. The blades of wind turbines are moving objects and are detected by the PSR and displayed as a multitude of returns on the ATCOs display. The returns collectively are known as ‘clutter’ and they have the effect of obscuring any aircraft in the area making them invisible to the ATCO. SSR uses a system of ground interrogation of an airborne transponder and therefore requires that, for an aircraft to display in an area of clutter, it must have a serviceable transponder.

PSR is still the ‘gold’ standard for the provision of radar services as it displays aircraft regardless of whether they have a serviceable SSR transponder or not.

**Operational Implications**

The SSR at IOM Airport has already been optimised to reduce, as far as possible, wind farm interference by specifying areas of non-initiation of aircraft tracks. This can and does result in the complete loss of PSR targets as they transit through windfarm areas eg the current Walney Island wind farm. With the soon to be commissioned new SSR at Ronaldsway, a Multilateration (MLAT) Mode S surveillance system, there is the possibility of ‘multi-path’ returns from the turbine blades which can cause the SSR target to jump or stagger. This has been observed in the area of Walney wind farm during evaluation of this new system.

Air Traffic Controllers at IOMA are licensed and approved to provide De-confliction, Traffic, Procedural and Basic Services outside controlled airspace under a suite of services called Air Traffic Services Outside Controlled Airspace (ATSOCAS). Whilst providing ATSOCAS, ATC is required to adhere to certain separation minima which depends on the type of service being provided. This is to ensure that pilots/aircraft are provided a safe distance from, or adequate warning of, traffic observed on radar.

It is accepted that no radar is guaranteed to show all aircraft all of the time but as the area in which IOM Airport would be providing the service would have a known issue, i.e. lack of visibility of PSR targets due to interference from wind farms, IOM Airport would probably be unable to offer the highest level of service, namely a De-confliction Service, to aircraft that
requested it. This would be an obvious degradation of service provision with the subsequent lowering of safety margins for aircraft operating in that area.

**Possible effects on other Navigational Aids**

*Instrument Landing System (ILS)*

The ILS Localiser for IOM Airport’s main runway, Runway 26, has a declared operational coverage (DOC) out to a range of 25 nm and within ±10$^\circ$ of the centreline. It is therefore legitimate for Air Traffic Controllers to position aircraft to establish on the ILS out to this range, which is outside CAS.

*Radio Coverage*

There are known issues with radio coverage ‘holes’ over wind turbine areas.

The Ports Division of the Department of Infrastructure, being responsible for the safe and efficient operation of IOM Airport, the Harbours and Manx Territorial Waters, would be pleased to give developers more detailed information upon request. Potential developers may also choose to refer to the information provided by the Isle of Man Airport in relation to the proposed extension to the Walney Offshore Wind farm (which can be found on the National Infrastructure Planning Portal, see [http://infrastructure.planningportal.gov.uk/projects/north-west/walney-extension-offshore-wind-farm/](http://infrastructure.planningportal.gov.uk/projects/north-west/walney-extension-offshore-wind-farm/)).
6.6 Energy, Mines and Minerals
The Energy, Mines and Minerals chapter of the MMEA describes how energy and minerals are essential to the Island’s prosperity, quality of life and how they help to create and develop sustainable communities. The chapter details the responsibilities of the Department of Economic Development which holds the Islands mineral and aggregate rights and provides an overview of the application process for exploration and extraction within the Isle of Man territorial sea. A summary is provided below.

6.6.1 Hydrocarbons
Ownership of all petroleum and natural gas existing on the Isle of Man and the Islands seas is vested in the Department of Economic Development (DED) under the terms of the Petroleum Act 1986.

Various activities are associated with exploration for and eventual production of oil and gas. These can include: seismic surveys, exploration drilling, use and handling of hazardous substances, gas flaring, transportation of wastes and gas and oil and installation of production facilities. Seismic surveys can have a damaging impact on marine mammals, fish spawning (fish spawning is of particular relevance in Manx waters) and other species and habitats. These impacts should be fully considered and appropriately mitigated for in seismic surveys. Further advice on this is available from DEFA.

6.6.2 Unconventional Coal Gasification
Using unconventional coal gasification (UCG) technology, it is possible for the partial in-situ combustion of a deep underground coal seam to produce a gas for use as an energy source. It is achieved by drilling two boreholes from the surface, one to supply oxygen and water/steam, the other to bring the product gas to the surface. This combustible gas can be used for industrial heating, power generation or the manufacture of hydrogen, synthetic natural gas or other chemicals. The gas can be processed to remove carbon dioxide (CO₂) before it is passed onto end users, thereby providing a source of clean energy with minimal greenhouse gas emissions.

6.6.3 Shale Gas
Fracking, or hydraulic fracturing, is the process of extracting natural gas from shale rock layers deep within the earth. Fracking makes it possible to produce natural gas extraction in shale plays that were once unreachable with conventional technologies. Horizontal drilling (along with traditional vertical drilling) allows for the injection of highly pressurized fracking
fluids into the shale area. This creates new channels within the rock from which natural gas is extracted at higher than traditional rates.

6.6.4 Carbon Capture and Storage
Carbon capture and storage (CCS) captures CO$_2$ from fossil fuel power stations. The CO$_2$ is then transported via pipelines and stored offshore in deep underground structures such as depleted oil and gas reservoirs as well as in a range of geological formations including depleted hydrocarbon reservoirs and coal seams.

6.6.5 Marine Aggregates
Marine aggregates including sub-tidal sediments, sand, and gravel are also vested in the Department of Economic Development’s ownership. Removal of any of the above could potentially be detrimental to the ecology of the area. Any type of extraction from the seabed or bedrock could impact on the biodiversity of the marine environment.

6.6.6 Renewable Energy
Renewable energy generation includes offshore wind farms and marine renewables (including tidal stream, tidal range and wave technologies). There may be the potential for offshore energy generation in the waters around the Isle of Man. The Island’s close proximity to the UK could be a cost effective approach to supply energy to the UK market.

Chapter 6.3 of the MMEA outlines the environmental risks of renewable energy generation to fish, marine mammals and commercial fishing. It also raises the issue of the cumulative impacts that would be required to be assessed.

Development within Manx territorial waters may have a range of effects, some of these have been identified through the MMEA and include the following:

- Potential environmental impacts should be considered, including possible impacts on herring spawning and marine megafauna;
- Noise from seismic survey and piling during installation and decommissioning activities;
- Noise from turbines, drilling rigs (e.g. intertidal and subtidal workings), rock placement, production facilities or vessels;
- Physical damage to sea-bed features e.g. habitats, features of archaeological interest from anchoring, pipeline construction and cable laying;
- Physical damage from sediment movements and smothering;
- Physical presence of structures, colonisation of structures by organisms,
avoidance of wind farm areas e.g. by birds, animal collisions with structures 
and turbine blades and barriers to movement of birds, fish and marine 
mammals;

• Physical presence of structures giving rise to interference with other users of 
the sea;
• Physical presence of structures giving rise to visual intrusion;
• Post-decommissioning effects;
• Change to sedimentation and hydrography regime;
• Chemical contamination from spills, drilling and other discharges and antifouling 
coatings;
• Atmospheric emissions from fuel combustion and venting;
• Contribution or reduction in net greenhouse gas emissions;
• Electromagnetic fields giving possible effects on electrically or magnetically 
sensitive species from subsea power cables. In Manx waters, particular 
consideration should be given to the potential impacts on marine mammals;
• Physical damage to submerged heritage / archaeology from infrastructure 
construction and impact on the setting of coastal historical sites; and
• Visual impacts and seascape effects including change to character.
6.7 Tourism and Recreation

The tourism and recreation chapter of the MMEA sets out that the Isle of Man marine environment is extremely diverse and provides a resource for a myriad of activities. Interest is strong in water sports and there is a growing uptake of marine and coastal leisure activities off the coast such as kayaking, scuba diving, jet skiing, kite surfing, coasteering, surfing, wind surfing, recreational sea angling and sea swimming. An overview of these recreational activities is provided within the MMEA Chapter. Associated infrastructure for leisure uses includes marinas, yacht moorings, dingy parks and launching slips for sail and powerboat activities.

There are a number of initial considerations for future marine development, many of which have previously been discussed and include:

- Access;
- Visual impact/seascape;
- Water quality;
- Noise;
- Collision risks and access restrictions to certain areas;
- Disturbance to marine wildlife;
- Survey work;
- Local beach changes – energy effects;
- Artificial reef; and,
- The tourism and recreational industry.
6.8 Non-Site specific issues

In addition to the information above which briefly summarises the MMEA, the Department of Environment, Food and Agriculture has also provided the following to be included within the "Locational and Guidance from Isle of Man Stakeholders“ as supplied by the Department of Infrastructure as part of a tender/bid process in 2014. The following issues will be relevant to the assessment of for example offshore wind development:

**Birds** – strike, disturbance, displacement or barrier effects, loss of habitat, changes in habitat and availability of prey. Links to significant breeding colonies may be important. These relate to marine species but migrant birds must also be assessed where relevant. Key feeding sites for marine birds will be an important consideration where based on unique, site specific characteristics or combinations. These issues would need to be considered as part of Environmental Impact Assessment surveys.

**Basking sharks** – Boat strikes, disturbance effects including those from noise, seasonal considerations, changes in habitat and food supply (e.g. any effect on plankton aggregations). West coast in particular, although potentially all around the island. Sensitivity of elasmobranchs to electromagnetic fields (EMF) in relation to cables. The area from Peel to the Calf of Man out to 3 nautical miles is considered to be particularly important for the protection of basking sharks and should be specifically considered.

**Cetaceans** – strike, disturbance / damage (including noise), impacts on prey species. The territorial sea is internationally relevant for Risso’s dolphins.

**Fisheries** – considerations in relation to interactions with different gear types, otter trawl, toothed dredge, non-toothed dredge, crustacean pot, whelk pot, migratory salmonids.

**Marine environment** – bathing water quality, pollution to 3 nautical miles, underwater noise both pre and post construction.
7.0 Consideration of survey work prior to submission of application

There are two main areas of work which will be considered to constitute survey work; firstly, for scientific and research purposes and secondly, to assist with the preparation of a proposed development application.

In order to assist with the determination and subsequent consideration of potential survey work, the following should initially be provided to the Department of Infrastructure who will arrange appropriate distribution either through the TSC (with representatives from other Government Departments) or on an ad hoc basis as appropriate.

Survey work for scientific and research purposes:
- Provide full research and survey methodology and clearly set out what it is hoped this research will achieve.

Survey work to assist with the preparation of a proposed development application:
- Justification of proposed survey works to inform potential further works;
- Type of proposed survey work and methodology for these works;
- Location of proposed survey works;
- When proposed survey works are to take place;
- Duration and frequency of the proposed survey works;
- Wider implications of the proposed survey works (for example, additional boat traffic within Manx territorial waters etc).
- Consideration of environmental impacts of survey work and steps to mitigate them (spatial and seasonal measures can be used very effectively).

There may be provisions within some of the consenting regimes previously discussed to require a licence to be issued prior to any survey work being undertaken (depending on the types of works and any impacts which may arise from this). Some elements of survey work may be exempt from additional consents and licence requirements but in order to determine this, the information above should be supplied to assist with this determination. A submission for survey work will be considered by the appropriate Departments through the TSC and should it be determined that an approval is required, the applicant will be advised at that stage.
Licences may also be required under both the Fisheries Act 2012 and the Wildlife Act 1990, however, this can be confirmed once the above has been supplied to the Department of Environment, Food and Agriculture for their consideration.
8.0 Types of works
There is a long list of activities which could constitute works within the Isle of Man territorial seas. The list below is not exhaustive and serves to show how varied marine works can be. Some of these works may require more than one consent under the various Acts (as outlined in this Guide to Developers) and will be administered through the current system before a lease of the sea-bed can be granted. The list below has been included in Table 1 overleaf which acts as a guide to understand which Acts may consent for these works.

1) Laying/alteration of pipelines/cables
2) Offshore Oil/Gas installations for exploratory and/or for extraction
3) Navigational Aids
4) Land reclamation/ Coastal defences
5) Dredging – extraction of aggregates
6) Depositing of waste
7) Offshore renewable energy generation infrastructure
8) Extension of piers into Territorial seas
9) Maintenance of harbours
10) Creation of new harbours
11) Marine aquaculture
12) Floating helipads in a fixed position
13) Moorings
14) Installation of Weather Masts
15) Installation of Scientific Instruments
16) Decommissioning activities
Table 1 Overview of types of proposed works and consents required

Table 1 below provides a guide to the types of proposed works which could require consent for, and the Acts which may consent for these. Consents will rarely be required under the Wildlife Act or the Fisheries Act but consideration of impacts that could be offences under these Acts need to be considered for all developments.

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### 9.0 Points of Contact

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<td>Director of Ports</td>
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| Environment, Food and Agriculture | **For Fisheries**  
Thie Slieau Whallian  
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IM4 3AS | Senior Marine Biodiversity Officer |
|  | **For Biodiversity:**  
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Foxdale Road  
St John's  
IM4 3AS | Principal Biodiversity Officer |
|  | **For Health and Safety:**  
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St John's  
IM4 3AS | Director, Environment, Safety and Health |
|  | **For Environmental Protection and Government Analysts (Water Quality)**  
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St John's  
IM4 3AS | Director, Environment, Safety and Health |
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|  | **For Mines and Minerals:**  
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Upper Church Street  
Douglas  
IM1 1EX | Development Manager Mines and Minerals |
|  | **Ship Registry**  
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Upper Church Street  
Douglas  
IM1 1EX | Director |
Appendix 1

Glossary

**Harbours Act 2010**

**Foreshore** - “the foreshore between the mean high water mark and the mean low water mark of ordinary spring tides”,

**Sea-bed** - the sea-bed means “the land seaward of the mean low water of ordinary spring tides comprising the sea-bed beneath Manx waters”,

**Manx waters** - defined as “any waters within the seaward limits of the territorial sea adjacent to the Island”.

**Submarine Cables Act 2003**

**Territorial waters** – is defined as “the territorial sea adjacent to the island, and any waters within the area which extends landward from the baselines from which the breadth of the territorial sea is measured as far as the mean high water mark of ordinary spring tides”.

**Water Pollution Act 1993**

**Manx waters** means “any part of the sea within the seaward limits of the territorial waters adjacent to the Island.”

**The sea** includes “any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river”\(^47\).

**Wreck and Salvage (Ships and Aircraft) Act 1979**

**Wreck** “includes jetsam, flotsam, lagan and derelict found on or near the coasts of the Island or the shores of any tidal water”.

**Salvage** “includes all expenses properly incurred by the salvor in the performance of salvage services”.

**Manx waters** means “any part of the sea adjacent to the Island within the seaward limits of territorial waters and includes any part of a river within the ebb and flow of ordinary spring tides”.

**Vessel** “includes any ship or boat and any other vessel used in navigation and also includes a non-displacement craft”.

\(^{47}\) Section 26
Minerals Act 1986

Controlled Waters means “tidal waters and parts of the sea in or adjacent to the Island up to the seaward limits of territorial waters”.

Offshore installation means “any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which this Act applies”. Installation includes

(a) any floating structure or device maintained on a station by whatever means; and,
(b) in such cases and subject to such exceptions as may be prescribed by the Department by order, any apparatus or works which are by virtue of section 4(3) of the Mineral Workings (Offshore Installations) Act 1988 to be treated as associated with a pipe or system of pipes, but does not include any part of a pipe-line within the meaning of that section (Section 1(4)).