

Establishing marine Special Protection Areas

Special Protection Areas (SPAs) are classified under the Birds Directive (EC Directive on the conservation of wild birds (79/409/EEC) to protect rare, vulnerable and migratory birds. The suite of SPAs on land in England is well established, but further work is needed to complete a network at sea. The UK government has committed to identifying a network of SPAs in the marine environment by 2015. This information note has been written for stakeholders to explain the processes and responsibilities for establishing marine SPAs. For links to websites and more detailed information see *Further information* on page 9.

Background

The Birds Directive requires member states to identify SPAs for:

- rare or vulnerable bird species (as listed in Annex I of the Directive); and
- regularly occurring migratory bird species.

It was adopted in 1979 due to increasing concerns about declines in Europe's wild bird populations caused by pollution, loss of habitats and unsustainable exploitation. The Directive recognises that wild birds, many of which are migratory, are a shared heritage of the member states and that their conservation needs international co-operation.

By creating a network of protected sites across Europe, SPAs help ensure that the populations of rare, vulnerable and migratory bird species are given sufficient protection from habitat loss and degradation.

In England just two entirely marine SPAs have been classified. These are Outer Thames and Liverpool Bay/Bae Lerpwl, an English/Welsh cross-border site. There is also an entirely Welsh marine SPA at Bae Caerfyrddin/Carmarthen Bay. In Scotland thirty-

one marine extensions to seabird colony SPAs have been classified.



Razorbill - a regularly-occurring migratory bird protected by the Birds Directive. © Natural England/Andy Brown

Further work is required to complete a marine UK-wide network of SPAs at sea in order to meet the needs of our breeding and wintering seabirds and our wintering waterbirds.

The Joint Nature Conservation Committee (JNCC) have been working over the past decade on behalf of all the country

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Statutory Nature Conservation Bodies (SNCBs) to complete a programme of survey work and provide advice on possible sites.

Using JNCC's advice, Natural England will identify potential sites and make recommendations for classification to Defra following a public consultation.

Marine SPAs will help deliver the Government's vision for a marine environment that delivers 'clean, healthy, safe, productive and biologically diverse oceans and seas'.

They will also contribute to delivering the Good Environmental Status required by the Marine Strategy Framework Directive and the Habitats Directive, which sets out the legal requirements for managing SPAs and Special Areas of Conservation (SACs). See *Further information* below for links to more details.

Marine Protected Areas

The UK government is committed to halting, and where possible reversing, the loss of marine biodiversity. To help deliver this, the UK government will create a coherent network of Marine Protected Areas (MPAs) in the UK.

In addition to marine SPAs this network will be made up of:

- Special Areas of Conservation (SACs);
- Marine Conservation Zones (MCZs);
- Sites of Special Scientific Interest (SSSIs); and
- Ramsar sites.

For more details about the different types of protected sites and the UK MPA network see *Further information* on pages 9 and 10.

Timescales

The UK government has committed to identifying a network of SPAs in the marine environment by 2015 and classifying as many as possible by then.

The UK MPA network must be in place by the end of 2016, with management measures that help deliver the network's ecological coherence by conserving representative marine habitats.

This will mean that, alongside other measures, by 2020 further degradation of marine biodiversity will have been halted and where possible, restoration is underway.

Other SPAs may, potentially, still be identified after 2015, as the government has a commitment under the Birds Directive to keep the SPA network under review.

Roles and responsibilities for consultation and classification

- JNCC carries out surveys and research to assist in the identification of marine SPAs in a UK context.
- Natural England is responsible for recommending potential SPAs in English waters to the Department for the Environment, Food and Rural Affairs (Defra) for classification, taking scientific advice from JNCC.
- The Defra Secretary of State decides whether the site should be classified.

JNCC

The role of the JNCC in progressing marine SPAs differs between inshore and offshore waters. For sites in English waters (out to 12 nautical miles), JNCC provides scientific advice on the evidence base to help Natural England identify potential SPAs. Beyond 12 nm, JNCC is responsible for site identification.

Natural England requires JNCC approval before bringing forward a potential SPA for formal consultation, to ensure the selection guidelines has been appropriately applied and to assess the contribution to the UK network of SPAs.

JNCC conducts and commissions analyses, research and surveillance of birds at breeding colonies and at sea to help identify an appropriate suite of SPAs in the UK.

The Birds Directive does not set out formal selection criteria for SPAs, so JNCC has developed selection guidelines in association with the country SNCBs and government departments. These guidelines provide the basis for identifying the "most suitable territories in

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area and number” as required by the Birds Directive. See *Further information* below for a link to the selection guidelines.

Natural England

Natural England is responsible for recommending potential SPAs in English waters (out to 12 nm) and provides the scientific evidence base required for these SPAs to be classified by Defra’s Secretary of State, taking advice on the evidence base and SPA selection guidelines from JNCC.

Natural England ensure that all its advice and decisions are underpinned by sound evidence, and that the rationale that supports its decisions is transparent and understandable.

It has published a set of evidence standards which sets out the framework for achieving this, and the International Site Designation Processes, which explains what will be published and when, and when stakeholders will be consulted.

Where a potential SPA could extend into Scottish or Welsh waters, Natural England will work closely with Scottish Natural Heritage (SNH) or Natural Resources Wales (NRW), the relevant SNCBs for those countries.

See page 8 on *How will new marine SPAs be managed and who will manage them?*

Defra

Defra determines which SPAs are classified, and is the key decision-maker in the classification process.

Defra is responsible for responding to Natural England’s recommendations, and influencing and directing the final decision by Government on whether to classify a given SPA.

Where a potential SPA could extend into Scottish or Welsh waters, Defra will work jointly with the Scottish Executive Office or Welsh Government as well as the relevant SNCBs.

In contrast to SACs, which are submitted to the EU for approval before being formally

designated, SPAs are classified by the Defra Minister.

Defra informs the European Commission once the Minister has classified an SPA.

The process for classifying marine SPAs in English waters

This section describes the process in English waters for:

- identifying SPAs;
- consulting and drawing up the recommendations; and
- the development of the associated socio-economic impact assessment (if required).

On cross-border sites with Scotland and Wales, all government departments and SNCBs will work together jointly to classify the site.

Stage 1: Developing recommendations and submitting advice to Defra

Natural England will:

- Collate and assess the scientific evidence regarding a potential area, taking advice on site boundaries and features from JNCC.
- Commission peer-review of the evidence base where JNCC has not already sought such a review as part of its survey work and analyses.
- Develop initial recommendations for a potential SPA in consultation with JNCC.
- Carry out informal dialogue with stakeholders who have interests in a given area as soon as initial recommendations (including a boundary) have been developed.

The Impact Assessment

Under a European ruling, the UK government cannot take socio-economic considerations into account when considering whether to classify an SPA. However, in some cases Defra may want more information on the possible impacts that an SPA might have on activities in the area. In these cases an Impact Assessment (IA) may be developed. This document is drafted by Natural England and submitted to Defra along with Natural England’s formal scientific recommendations. The government can use this

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document to better understand the socio-economic benefits and costs of site classification. An IA may not be required for every proposed site.

A vulnerability assessment may be produced by Natural England to better understand which activities could affect the site's interest features. If government does request an IA to be drafted, then this will be underpinned by the results of the vulnerability assessment.

Stage 2: Formal consultation stage, development of final recommendations

The scientific recommendations will be submitted to Defra and Ministerial approval to consult on the proposal will be sought.

If approval is granted Natural England then consults on:

- the scientific case for proposing the SPA; and
- the assessment of the socio-economic costs and benefits in the IA (if required).

Natural England considers comments on the scientific justification for the sites and whether to incorporate any changes when making its recommendations to Government.

Responses on socio-economic grounds are used to update or amend the Impact Assessment which will accompany the site recommendation to Government.

Following consultation:

- Natural England produces a consultation report detailing all consultee comments and its response to them, and submits this to Defra with the final recommendations.
- If substantial changes to site boundaries and or features are recommended, there will be a further period of formal consultation, following the approach set out above.

Stage 3: Approval of final recommendations and classification

- Defra seeks Ministerial approval for the classification of the SPA.

- If approval is given, the European Commission will be informed of the classification.
- Natural England notifies landowners, occupiers and stakeholders.

See a summary of the process in Appendix 1 on page 11.

Species requiring protection in SPAs

SPAs are identified in the most suitable places for rare and vulnerable species listed in Annex I of the Birds Directive, and for regularly occurring migratory bird species.

In the UK SPAs are identified if areas under consideration meet a set of selection guidelines developed by JNCC on behalf of government and the SNCBs.

The UK is internationally important for breeding, migrating and wintering seabirds and waterbirds, holding significant proportions of the biogeographic populations of several Annex I and migratory species.

Several species travel hundreds or even thousands of miles to use UK waters. Natural England is preparing a series of species factsheets about the key seabirds and waterbirds to be protected. For details on those already published see *Further information* below.

What is the difference between seabirds and waterbirds?

Seabirds are strongly dependent on the marine environment for most of their lifecycle. For example:

- northern gannet;
- northern fulmar;
- auks (for example, common guillemot, Atlantic puffin); and
- terns.

Waterbirds breed in freshwater environments, but tend to use marine waters outside the breeding season. For example:

- divers;

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- grebes; and
- seaduck (for example, common scoter, greater scaup).

Types of marine SPAs

Four main types of SPA are being considered in English waters. These complementary strands capture the key ways that Annex I and migratory bird species use the marine environment.

JNCC have developed a programme of surveys and analyses of existing data in consultation with Natural England and the other SNCBs to assess these uses and identify areas that may warrant identification as SPA.

More information on the four strands is set out below. A map showing sites of potential interest and 'areas of search' is shown at Appendix 2 on page 12.

Extensions to existing breeding colony SPA into adjacent marine areas

The waters adjacent to seabird colonies are heavily used by high densities of some seabird species for a range of activities, but currently lack protection. These activities include displaying, preening, bathing and feeding: behaviours that cannot effectively take place on the cliffs.

Inshore areas used by aggregations of non-breeding waterbirds

The UK's coastal environment provides significant foraging areas, moulting sites and migration staging posts for a range of waterbirds outside of the breeding season. These birds may travel long distances from their breeding grounds elsewhere in Europe and further north to exploit these areas.

Offshore areas used mainly by feeding seabirds

Some seabird species in the UK are reliant on offshore waters throughout the year, but particularly for foraging during the breeding season. Offshore SPAs will provide protection for the most important seabird concentrations in the open sea. Data for all seabird species are currently being assessed.

Other areas for additional species

Some important areas for marine birds may not fall within the above three categories due to the particular ecology of certain species, so it has been necessary to identify and consider these on a species-by-species basis. These species include Sandwich, roseate, arctic, common and little tern; European shag; and Balearic shearwater.

What evidence has been used in identifying potential new marine SPAs?

Over the last decade, JNCC has carried out and commissioned a range of surveys and analyses to provide a robust scientific evidence base for the identification and classification of SPAs.

Natural England has established a set of operational standards to ensure the way the organisation gathers, uses and communicates evidence is of a high standard.

The evidence base underpinning each potential SPA undergoes considerable scrutiny by JNCC and SNCBs ornithologists and is subject to an appropriate level of external peer review.

Evidence for SPA colony extensions into the marine environment

JNCC surveyed the waters around several UK seabird colonies during the breeding season between 2001 and 2003.

Following an analysis of seabird distribution and density in these waters, JNCC has recommended species-specific marine extensions to the boundaries of existing seabird colony SPAs.

The relevant generic extensions for species breeding in England are:

- 2 km extension for northern gannet and northern fulmar.
- 1 km extension for common guillemot, razorbill and Atlantic puffin.

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Evidence for inshore aggregations of non-breeding waterbirds

JNCC, in conjunction with Natural England and the other three country nature conservation agencies compiled a list of fifty inshore *areas of search* which were considered to hold important waterbird populations in winter.

From 2000 onwards, this list formed the basis of a survey programme, largely aerial, that collected detailed data on the distribution and abundance of inshore waterbirds.

Three entirely marine SPAs have already been classified using this data:

- Bae Caerfyrddin/Carmarthen Bay (Wales);
- Liverpool Bay / Bae Lerpwl (England/Wales); and
- Outer Thames Estuary (England).

Data from three of the remaining *areas of search* are currently being considered for potential classification:

- South Cornwall Coast;
- Outer Solway; and
- Greater Wash.

Other *areas of search* in English inshore waters do not appear to warrant further consideration for potential SPAs.

Please note that *Areas of Search* are large areas of water within which potential SPAs may be recommended, they do not represent the boundaries of potential SPAs.

Evidence for offshore areas used by feeding seabirds

Since 1979, JNCC has conducted numerous surveys of seabird and cetaceans at sea from ships using standard methods.

These data, along with many others from a range of accredited sources, are held in the European Seabirds At Sea (ESAS) database, maintained by JNCC on behalf of the ESAS partners, see the link in *Further information* below. The ESAS database is the most

comprehensive seabird database for European waters, holding over thirty years of data.

JNCC have carried out a series of analyses of the ESAS database, to identify *areas of search* for potential SPAs in the offshore zone.

These analyses have identified a limited number of offshore hotspots in English waters that may hold regularly occurring numbers of sufficient importance to be classified as SPAs.

Further information, for example from colony-based tracking studies, may be used to corroborate the ESAS data and help ensure that any potential SPAs identified have a robust evidence base.

Other SPAs for additional species

JNCC has carried out survey work in an area of search within Lyme Bay, South-west England, to identify regularly occurring aggregations of Balearic shearwater. A decision on whether to proceed with a site for this species will be made during 2014.

A combination of shore- and boat-based surveys of waters around a number of UK SPA tern colonies have been carried out during 2009-2012, and decisions on how to proceed with extensions to these sites will be made during 2014.

A range of datasets, primarily the ESAS database, are being assessed to determine whether they support SPA identification for breeding or wintering European shag.

Does Natural England engage with stakeholders about potential SPAs?

Natural England consults both national and local stakeholders in a timely and transparent manner, as set out in its Evidence and International Site Designation Processes standards.

For a particular site, Natural England staff will speak to a range of local stakeholders who may have an interest in a potential SPA

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Stakeholders discuss the scientific case for classifying an SPA, including providing their own data.

Stakeholders can also provide information on the potential impacts of classifying an SPA on their interests.

Stage 1: Informal dialogue

Once the evidence base has been assessed and initial site recommendations developed, Natural England makes every effort to carry out informal dialogue with stakeholders likely to be interested in the proposed classification.

Each informal consultation tailors to the site in question, but this phase is likely to include meetings, presentations, drop-in sessions and correspondence.

Natural England produces proposal maps, descriptions of potential interest features, and details of the evidence base that will be used to support the classification, including the findings of any peer reviews.

During informal dialogue, stakeholders are able to:

- Express their initial views on the site's boundaries and interest features.
- Pass on any data they hold relating to potential interest features of the SPA.
- Provide information regarding the potential impacts of site classification on their interests.

Stage 2: Formal consultation

At the formal consultation stage Natural England produces the following documents to help interested parties respond to the proposed SPAs:

Core consultation documents:

- Consultation context document – provides an overview of the classification process, consultation period and the site being proposed.
- Site map – this is at an appropriate scale and will clearly show the site's boundaries.
- Departmental Brief – sets out the features of the site, their current status and the

underpinning scientific justification for their classification.

- Consultation IA (if required) – provides detailed information to the government on potential impacts the classification could have on the economy, communities and the environment.

Background documents

Natural England produces additional documents to provide further information for consultees where needed. These could include the following:

- Rationale for Natural England's recommendation – where sites have been altered following formal consultation, this document summarises the process of identifying and refining the site.
- Frequently Asked Questions – including broader information about SPAs in the marine environment.

During the formal consultation phase, stakeholders are able to:

- Respond to the scientific case for classifying a SPA, including providing their own data if they have not already done so.
- Comment on the accuracy of the Consultation IA, if government requested an IA to be produced.

Stage 3: Post-consultation

Natural England publishes a report on its website summarising:

- how the consultation was carried out;
- how responses were assessed; and
- how it came to its final conclusions on the site recommendations and IA (if one was produced).

If Ministerial approval is given to classify a particular SPA, Natural England notifies any landowners, occupiers and stakeholders.

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How will new marine SPAs be managed, and who will manage them?

Overview

The legal requirements relating to the classification and management of SPAs in England are set out in ***The Conservation of Habitats and Species Regulations 2010***, known as the **Habitats Regulations**. After an SPA is classified, Natural England provides advice to a range of regulatory authorities who are responsible for securing its conservation status, including those set out overleaf.

Natural England's role

- Once SPAs are classified, Natural England has a duty to provide advice to regulatory authorities to help ensure that sites are managed favourably for conservation in line with the Birds and Habitats Directives.
- Under Regulation 35 of the Habitat Regulations, Natural England has a responsibility to provide advice to the various statutory authorities who are responsible for managing marine SPAs. Regulation 35 advice sets out the conservation objectives for the interest features of the site, and provides information on the activities or 'operations' that have the potential to cause damage or disturbance to those interest features.
- Natural England works in close partnership with the regulatory authorities and a range of sea users to help them identify and secure any necessary changes in the way in which the site is managed.
- Natural England is not responsible for regulating activities within or affecting marine SPAs.

The main authorities with management roles regarding SPAs are as follows:

Marine Management Organisation (MMO)

- MMO is responsible for ensuring that the conservation status of SPAs (and SACs) is secured through the marine licensing process and marine plans.

- It is a competent authority under the Habitats Regulations, which is the UK legislation that protects SPAs and SACs. See below.
- It is responsible for implementation of nature conservation byelaws, which can be put in place to protect SPAs and SACs from activities that are potentially damaging. These can either be on an emergency or permanent basis.
- It is also responsible for byelaw enforcement in SACs and SPAs between 6 and 12 nm.

Inshore Fisheries and Conservation Authorities (IFCAs)

- The Marine and Coastal Access Act 2009 replaced Sea Fisheries Committees with IFCAs from April 2011.
- The ten IFCAs in English waters have been tasked with the sustainable management of inshore sea fisheries resources in their district.
- IFCA jurisdiction extends out to 6nm and includes fisheries within estuarine waters.
- Each IFCA is a competent authority regarding fisheries activities under the Habitats Regulations, which is the UK legislation that protects SPAs and SACs. See below.
- They are responsible for the implementation and enforcement of appropriate fisheries management measures to ensure the Marine Protected Area's (including SSSIs, SPAs and SACs and MCZs) meet their conservation objectives.
- They have a duty to develop broader management measures to support and further the conservation objectives of SPAs and SACs.
- IFCAs also have powers to enforce the MMO's nature conservation byelaws out to 6nm.

Environment Agency (EA)

- EA is responsible for ensuring that the activities it regulates in the marine environment and the consents it grants do not affect the favourable conservation status of SPAs and SACs.
- EA regulate a wide range of activities including migratory and freshwater fisheries out to 6 nm for species listed in the salmon and freshwater fisheries Act 1975 (as amended) and discharge and flood defence consents.

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- EA is a competent authority under the Habitats Regulations (2010). See below.

The Planning Inspectorate

- Under the Localism Act 2011, the Planning Inspectorate became the Agency responsible for operating the planning process for nationally significant infrastructure projects (NSIPs), including those in the marine environment.
- NSIPs are usually large scale developments such as new harbours, power generating stations (including wind farms), and electricity transmission lines, which require a type of consent known as 'development consent' under procedures governed by the Planning Act 2008 (and amended by the Localism Act 2011).
- In England, the Planning Inspectorate examines applications for development consent from the energy, transport, waste, waste water and water sectors. In Wales, it examines applications for energy and harbour development, subject to detailed provisions in the Act; other matters are for Welsh Ministers.
- The Planning Inspectorate examines NSIP applications and makes a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent.
- For NSIPs, the competent authority under the Habitats Regulations is the relevant Secretary of State.
- Natural England provides advice regarding environmental impacts to NSIP developers during the pre-application phase, and advises the Planning Inspectorate during examination of the application.

The Department for Energy and Climate Change (DECC)

- DECC is the regulating authority for all oil and gas activities in the marine environment, and is the competent authority under the Offshore Petroleum (Conservation of Habitats) Regulations 2001 (as amended) for such activities.
- As such, DECC are responsible for ensuring that the activities they regulate in the marine

environment do not have an adverse impact on the integrity of SPAs and SACs.

- The Secretary of State for DECC is also the competent authority under the Habitats Regulations for marine renewable energy NSIPs such as offshore windfarms.

Local authorities

- Local authorities (local councils) are responsible for ensuring that the favourable conservation status of SPAs and SACs is secured through the terrestrial planning system.
- A competent authority under the Habitats Regulations. See below.

Habitats Regulations Assessment

- The MMO, EA, DECC and local authorities are all 'competent authorities' under the Habitats Regulations.
- A Habitats Regulations Assessment (HRA) must be carried out for all proposals that are likely to have a significant effect on an SPA and/or SAC.
- A likely significant effect on an SPA or SAC can either be from a proposal acting alone or in combination with other plans or projects.
- If a competent authority cannot ascertain that a proposal would not adversely affect the integrity of a SPA or SAC, it cannot consent the proposal unless there are no alternatives and there are imperative reasons of overriding public interest (IROPI).

Further information

EC Directive on the conservation of wild birds (79/409/EEC):

ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

Defra: www.defra.gov.uk/

JNCC: jncc.defra.gov.uk/Default.aspx

JNCC SPA selection guidelines:
jncc.defra.gov.uk/page-1405#s1

Seabirds at sea data: jncc.defra.gov.uk/page-4469

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Natural England Special Areas of Conservation:
www.naturalengland.org.uk/ourwork/conservation/designatedareas/sac/default.aspx

Marine Conservation Zones:
www.naturalengland.org.uk/ourwork/marine/protectandmanage/mpa/mcz/default.aspx

Sites of Special Scientific Interest:
www.sssi.naturalengland.org.uk/Special/sssi/index.cfm

Ramsar sites:
www.naturalengland.org/ourwork/conservation/designatedareas/ramsars/default.aspx

Marine Protected Areas:
www.naturalengland.org.uk/Images/MPAs-in-UK_tcm6-28087.pdf

Marine Management Organisation:
www.marinemanagement.org.uk/

Good environmental status of the marine environment:
ec.europa.eu/environment/water/marine/ges.htm

Inshore Fisheries and Conservation Authorities:
www.defra.gov.uk/environment/marine/wwofca/

Scottish Natural Heritage: www.snh.gov.uk/

Natural Resources Wales:
<http://naturalresourceswales.gov.uk/splash?orig=>

The Conservation of Habitats and Species Regulations 2010
www.legislation.gov.uk/ukxi/2010/490/contents/made

Environment Agency: www.environment-agency.gov.uk/default.aspx

The Planning Inspectorate:
www.planningportal.gov.uk/planning/planninginspectorate

The Department for Energy and Climate Change: www.decc.gov.uk/

Natural England Evidence Standard:
www.naturalengland.org.uk/Images/strategic-evidence_tcm6-28590.pdf

Natural England Technical Information Notes are available to download from the Natural England website: www.naturalengland.org.uk. In particular see:

- TIN121: *A review of the Flamborough Head and Bempton Cliffs Special Protection Area*
- TIN122: *Northern gannet species information for marine Special Protection Area consultations*
- TIN123: *Common guillemot species information for marine Special Protection Area consultations*
- TIN124: *Razorbill species information for marine Special Protection Area consultations*
- TIN125: *Atlantic puffin species information for marine Special Protection Area consultations*
- TIN126: *Northern fulmar species information for marine Special Protection Area consultations*

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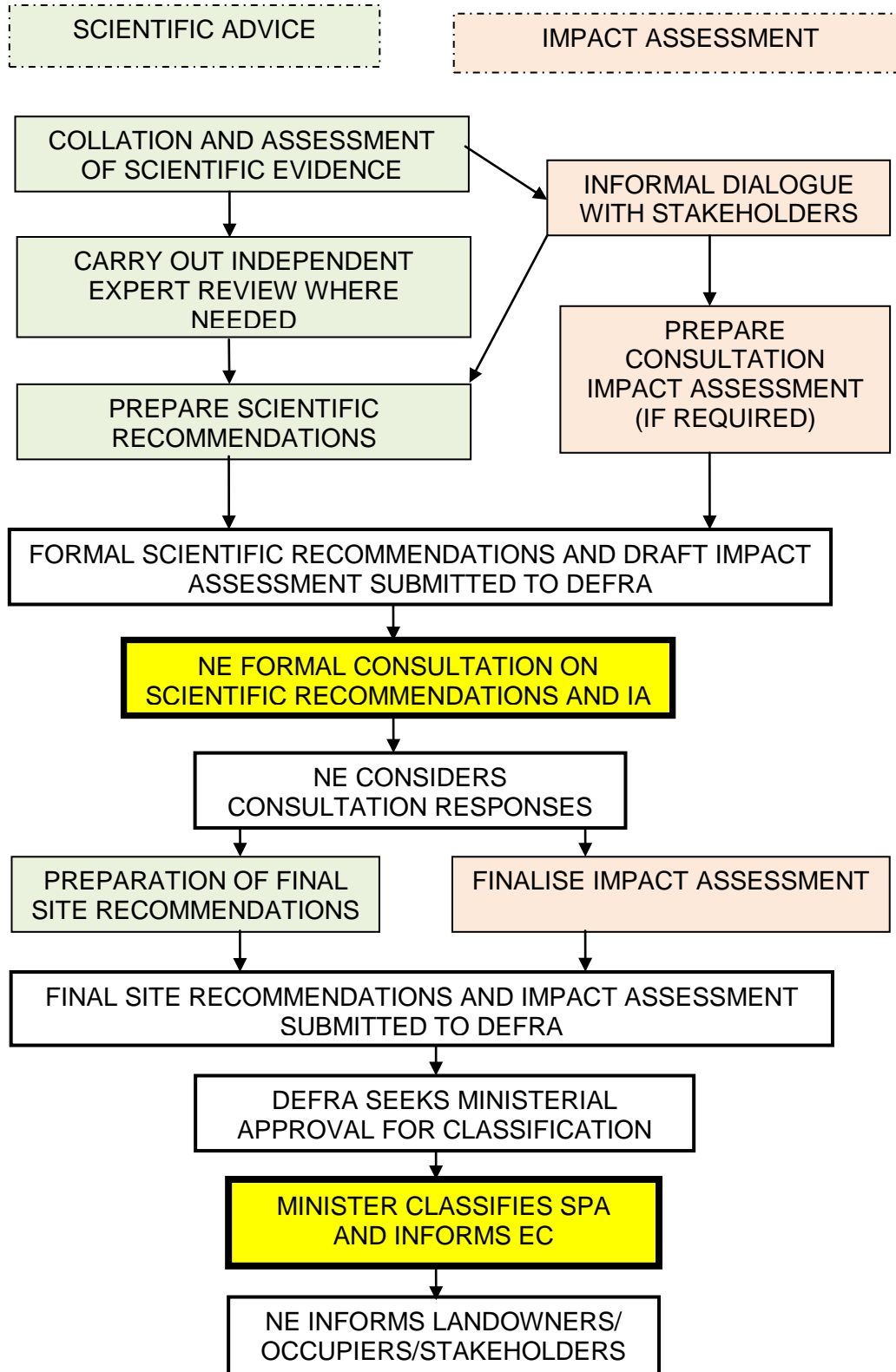
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Appendix 1



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Appendix 2

