

Email to: offshorewind@Defra.gov.uk

22 March 2024

Offshore Wind Team
Department for Environment, Food and Rural Affairs
Seacole Building
2 Marsham Street
London, SW1P 4DF

To whom it may concern,

**Response to: Department for Environment, Food & Rural Affairs (DEFRA) –
Consultation on policies to inform updated guidance for Marine Protected Area (MPA)
assessments (February 09, 2024)**

Scottish Renewables (SR) is the voice of Scotland's renewable energy industry. Our vision is for Scotland to lead the world in renewable energy. We work to grow Scotland's renewable energy sector and sustain its position at the forefront of the global clean energy industry. We represent over 360 organisations that deliver investment, jobs, social benefit and reduce the carbon emissions which cause climate change.

Our members work across all renewable technologies, in Scotland, the UK, Europe and around the world, ranging from energy suppliers, operators and manufacturers to small developers, installers, and community groups, as well as companies throughout the supply chain. In representing them, we aim to lead and inform the debate on how the growth of renewable energy can provide solutions to help sustainability heat and power Scotland's homes and businesses.

SR welcomes the opportunity to provide the views of our members to Defra's consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments. We have opted to provide our response within this letter.

SR strongly support the UK Government's ambition to speed up and de-risk the deployment of offshore wind farms in line with energy security and net-zero goals. However, SR members are concerned about the slow progress in providing guidance on compensation solutions where an adverse effect to a designated site has been concluded.

A pragmatic approach must be taken which supports both net-zero and marine recovery targets. In Scotland, the risk of delays to wind farm consents has already materialised, and multiple developers are designing compensation packages in the absence of robust guidance. We support the intention to produce updated guidance to clarify the requirements of assessment under the Habitat Regulations and the Marine and Coastal Access Act 2009 (MCAA) in respect of securing compensation measures.

In response to this consultation, our members have highlighted the following key points which are covered in further detail in our response to the consultation questions:

- We strongly disagree that the approach to ‘coherence of the network’ set out within this consultation will speed up and de-risk offshore wind consents. The definition of ‘coherence of the network’ needs to be clear and easily understood by a range of stakeholders, and further work for the definition to underpin the rest of the guidance. The checklist is also overly complicated and risks introducing delay to the consenting process by creating additional work for developers and adding confusion to contentious areas, such as scientific uncertainty. It will be important to work with the wider industry to agree on a workable checklist that supports high-quality applications and does not introduce consenting delays.
- The consultation is trying to pull together several different site designations without a clear justification or definition. This will very likely lead to misunderstandings and confusion between developers and the Statutory Nature Conservation Bodies (SNCBs) providing advice, and across UK Devolved Governments.
- The associated compensation hierarchy represents a step back from the hierarchy presented in the 2021 draft guidance. The exclusion of “non-like-for-like” measures for Habitats Regulations Assessment (HRA) compensation will lead to an increased risk of consent delays and refusals for all marine industries subject to HRA. It is unhelpful that the guidance refers to MPAs as a network but supports different approaches to the same features when they are part of different designations. Further clarification on the interaction of feature status with the wider MPA network is requested.
- Where there are concepts which may be interpreted in different ways, such as with the compensation hierarchy, there should be clear threshold examples for how a developer might move through the process. There is no concept within the guidance for how to move between the levels which will lead to resource-intensive discussions with SNCBs and we are disappointed that there is no reference to cost-effectiveness in light of the urgent need for low-cost and secure energy for the UK.
- SR members would welcome a more pragmatic approach to additionality which increases options available as compensation measures, however, we request further clarity on the interpretation of ‘normal management’ and clear examples for what kinds of measure may be supported through the new approach.
- Provision of additional guidance on baselines and how to establish them is required to ensure that developers are not asked to over-compensate or make up for deficiencies in ‘normal’ designated site management.
- Further clarification of the application of adaptive management for reducing compensatory measures should be included within the adaptive management guidance.
- SR members request a further consultation is carried out once the initial guidance is completed in full to be able to provide further detailed comments.

It is trusted that the concerns of our members regarding the UK-wide and therefore Scottish implications of Defra's approach within our response will be fully considered. Scottish Renewables would be keen to engage further with this agenda and would be happy to discuss our response in more detail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark Richardson', with a stylized flourish at the end.

Mark Richardson
Senior Policy Manager | Offshore Wind Enabling
mrichardson@scottishrenewables.com
Scottish Renewables

RESPONSE TO CONSULTATION QUESTIONS

About You Section

1. **Would you like your response to be confidential?**
 - No
 - a. **If answered yes to this question, please can you give your reason.**
 - N/A
2. **What is your name?**
 - Mark Richardson
3. **What is your email address?**
 - mrichardson@scottishrenewables.com
4. **Are you responding to this consultation on behalf of an organisation or as an individual?**
 - On behalf of an organisation
5. **If responding on behalf of an organisation:**
 - a. **Which organisation or organisations are you responding on behalf of?**
 - Scottish Renewables
 - b. **What is the position you hold at the organisation or organisations?**
 - Senior Policy Manager – Offshore Wind Enabling
6. **If employed or retired, briefly describe the main business activity of your company or organisation. If you are self-employed, or looking forward, please indicate what type of work you do.**
 - Trade Association
7. **Which part of the UK do you live in?**
 - Scotland
8. **Which of the following best describes where you live?**
 - All listed: Urban – coastal, Urban – non-coastal, Rural – coastal, Rural – non-coastal.

RESPONSE TO CONSULTATION QUESTIONS

Protecting the coherence of the MPA site network

Question 9

a. To what extent do you agree that the guidance on protecting the coherence of the MPA network and the checklist provides clarity to stakeholders?

Strongly disagree and do not support.

b. Please provide further evidence or comments to support your answer.

We appreciate that Defra aims to clarify the definition of 'protecting the coherence' and expectations for developers and decision-makers who are required to go through the derogation process, however, we do not believe that this aim has been achieved for the reasons set out below:

Overarching comments

1. The positions presented within this section do not provide any clarity on what is expected and how compensation might practically be achieved.
2. The guidance and checklist are more likely to complicate matters than streamline them.
3. As currently drafted, the definition of 'coherence of the network' does not provide sufficient detail for developers to work through the checklist. The guidance does not explain what coherence is or what a coherent network looks like, or how compensation measures are intended to protect coherence.
4. As written, it would result in developers and their consultants effectively inventing a definition of their own to assess their work against, which is not practical.

Detailed comments:

1. The first paragraph states "*when considering compensatory measures, the MPA network (as it exists at the time of the assessment) is assumed to be coherent*". This could be interpreted in numerous ways, and it is unclear why coherence is automatically assumed, and what assessment this is based on. Defra's definition of coherence implies that marine industries which are subject to HRA are the only potential causes for the network to not be coherent. This does not reflect ecological fact that the marine environment is facing a range of threats and pressures, including the very significant stress of climate change.

2. Defra's provided definition of coherence appears to be scaled to the entire MPA network. Our members question how this translates into site-specific determinations of a compensation measure for a specific species or designated feature.

Defra's interpretation of coherence, while not clearly articulated, seems to be what is causing Defra to not support non-like-for-like options, which are critical for timely and ecologically sustainable offshore wind deployment.

Checklist item 4 introduces terms like 'original site' and 'adequate geographical distribution of the feature'. Our members agree that Defra should be more specific about what this means.

Overall, the guidance and checklist are more likely to complicate matters rather than streamline the development, review and determination of derogation cases under the Habitats Regulations. We do not think it is necessary or desirable to attempt to provide overarching guidance for a range of different designations that are covered by different legislation. The legislation and guidance for MCZs and SAC are fundamentally different, and SR disagrees that MCZs should be treated in the same way as SACs as suggested in the recent Defra workshop (March 07, 2024).

10. Is there anything the definition for protecting the coherence of the MPA network and checklist misses or should not include?

De-minimis impacts

The guidance does not set out any principles for when negative impacts to a designated feature or site are too small to be classed as an adverse effect. As the guidance discusses avoidance and mitigation, it is an oversight to not include this and set out clear thresholds for when an impact would be de-minimis. We have noted with concern the trend in England for impacts of less than one seabird mortality per year to be concluded an adverse effect. This is not pragmatic and does not support developers who make every effort to minimise their impacts.

Definition

The definition for protecting the coherence of the MPA network is unclear and is likely to cause confusion between developers, advisors and decision-makers. As mentioned in our response to Question 9b, while the updated guidance reiterates that coherence is "*important for all MPA types*", it still does not explain what coherence is or what a coherent network looks like. It also does not set out why different MPAs types can have different types of measures if the overall goal to protect the coherence of the network of MPAs is the same.

It will be critical for Defra to develop a clear and robust definition of the 'coherence of the network' and for this definition to pragmatically set out the role of any compensation measures in

protecting the coherence. We consider that this definition should be recast to focus on safeguarding the purpose and ecological functioning of the network in a *holistic manner*, rather than as offsetting impacts on individual sites and features. The definition should therefore consider:

- Safeguarding the achievement of (or the ability to achieve) conservation objectives of relevant features; and
- Maintaining or restoring Favourable Conservation Status (FCS) for protected habitats and species.

Detailed feedback on the checklist

We recognise that the checklist was meant to provide an approach to designing compensation measures; however, it is unclear how this checklist was developed and who was consulted, as it differs from the requirements in the HRA derogation notice template. In some instances, the checklist goes above and beyond what is asked by regulation and, therefore, may risk delaying offshore wind deployment.

- In some instances, the checklist is not a checklist, as individual points cannot be answered by confirming whether this task has been completed.
- The current checklist risks adding an additional test to the application process.
- While considered at a later point in this guidance, the current checklist does not consider strategic delivery.

As highlighted in our response to question 9, it will be critical to develop a clear definition of the coherence of the network. In addition, it will be important to work with industry on a workable revised checklist.

We have provided detailed feedback on each checklist point below, including a suggested solution.

Checklist

Checklist point	Challenge	Consequence	Suggested Solution
1	<p>This checkpoint does not refer to compensation measures but assessment of adverse effects which is covered in the legally distinct Appropriate Assessment test. Furthermore, the text incorrectly refers to all "potential residual adverse effects", which is misaligned with and much broader in scope than the specific test within the Habitats Regulations on identifying Adverse effects on Site Integrity (AEoSI).</p>	<p>In several scenarios, the applicant may not have been able to quantify the scale of the adverse effect precisely during the pre-application or determination stage.</p>	<p>Suggested rewording of checklist to the following:</p> <ul style="list-style-type: none"> • <i>Has the residual adverse effect been quantified?</i> • <i>Is there agreement on that figure with the relevant SNCB?</i> • <i>If not, have both the Applicant's and SNCB's positions been quantified?</i> <p>This section needs suggested approaches for plan-level and strategic assessments – not just project-levels.</p>
2	<p>It is unclear whether this question is referring to the first checkpoint.</p> <p>The question on 'how will these be managed' does not clarify how developers and SNCBs should work where there are residual scientific uncertainties exist.</p>	<p>This checkpoint leaves an open door to costly, time-consuming and resource-intensive requests for further evidence when currently available scientific evidence has been exhausted.</p>	<p>Rephrase to act as a checklist and ensure to follow up on the first point.</p> <ul style="list-style-type: none"> • <i>Has the applicant clearly set out where they have considered published scientific literature in their assessment (for example, included references)?</i> • <i>Has the applicant clearly set out where they have used expert opinion and/or unpublished or grey literature in their assessment?</i>

3	<p>Usefully raises the need to consider what the <i>"implications for overall MPA Network coherence"</i> are, rather than directly equating a finding of AEOSI through an Appropriate Assessment with any need to compensate in a subsequent derogation case. It must be stressed that the identification of an AEOSI does not itself mean that, or confirm to what extent, network coherence will be compromised and thus any compensation may be required.</p> <p>This is not a question about compensation measures.</p> <p>Confirming this without a clear definition of network coherence is almost impossible.</p> <p>This point is unclear about whether a site is in maintenance or recovery condition would impact the coherence of the network.</p>	<p>Success criteria cannot be set with clear definitions.</p>	<p>In addition to the checklist, the guidance should provide full and clear definitions of the following:</p> <ul style="list-style-type: none"> • Coherence of the network. • The UK Government's goals for the MPA network • The UK Government's goals for features of MPAs. • Up-to-date conservation objectives informed by physical surveys for each site – this would require Government investment.
4	<p>1) Confirming this without a clear definition of network coherence is impossible.</p> <p>2) Confirming this is difficult without clarity on how Defra defines</p>	<p>Success criteria cannot be set with clear definitions – including network coherence.</p>	<p>The checkpoint should provide clarity on the following: What an 'adequate geographical distribution' of features at risk of requiring compensation</p>

	<p>adequate geographical distribution of different features.</p> <p>3) The intention behind the phrase “<i>ecological value, which had justified the selection for the original site</i>” is unclear and should be clarified.</p> <p>4) The guidance must acknowledge that climate change impacts the marine environment. It is illogical to assume that offshore wind developments are impacting a static environment.</p> <p>5) The third part of this text refers to adequate geographical distribution, which is distinct from the first part regarding aims and objectives.</p>		<p>looks like – while also recognising the impact of wider pressures including climate change.</p> <p>We recommend the following question: <i>Is the compensation measure contributing to marine recovery?</i></p> <p>The point on “<i>adequate geographical distribution</i>” is distinct from the first part covering aims and objectives and should be decoupled from this question.</p>
5	<p>1) Confirming this without a clear definition of network coherence is impossible.</p> <p>2) This checkpoint assumes that a ‘suite’ of measures is being proposed. Only three measures have been approved for the Library of Strategic Compensation Measures.</p> <p>3) While we agree that success criteria should be set, these should be</p>	<p>Success criteria cannot be set with a clear definition of network coherence. It will be critical for Defra to approve more measures to compensation library (including multiple options for each feature at risk of adverse effect).</p> <p>Our members recommend Defra urgently reconsider its position on non-like-for-like measures being unacceptable. This position could risk</p>	<p>Uncertainty should not be a barrier to implementation.</p> <p>We suggest the following revised checkpoints:</p> <ul style="list-style-type: none"> • <i>Have success criteria been set?</i> • <i>Are the success criteria focussed on demonstrating ecological value?</i> • <i>Are the success criteria technically</i>

	flexible and pragmatic, considering the complexity of the marine environment.	significantly stalling offshore wind development in the UK and Government net-zero and renewable deployment aspirations not being achieved.	feasible and cost-effective to monitor?
6	Lack of clear definition for 'technically feasible' and 'secure'. No mention of financial or legal feasibility.	We are disappointed that the guideline currently does not consider the cost-effectiveness or proportionality of measures (e.g. cost of offshore nesting structures).	The checklist should clarify whether 1) measures are cost-effective (e.g. by using the costs of normal Government-led MPA management as a comparison). 2) whether measures will be sustainable (will they have a positive effect on marine ecosystems for the lifetime of the plan or project).
7		More support is needed to ensure strategic delivery.	The guidance should provide solutions for strategic and/or collaborative delivery.

Marine Conservation Zones, including HPMAs

Question 11

- a. To what extent do you agree that the information above provides clarity to stakeholders about the use of compensatory measures in MCZs?**

Disagree which is explained further below.

- b. Please provide evidence or comments to support your answer**

It would be beneficial to see the full guidance document to see how the individual sections fit together with each other.

Although SR is responding from a Scottish perspective, our members highlight that there is concern that the criteria for the protection of Highly Protected Marine Areas (HPMAs) and Marine Conservation Zones (MCZs) in English and Welsh waters do not apply to the wider UK MPA network, specifically Scotland, through devolved powers. Therefore, it is essential that any updated guidance resulting from this consultation by the UK Government clearly acknowledges that Devolved Governments may produce their own guidance or legal interpretations. The Environmental Targets (Marine Protected Areas) Regulations 2023 do not apply to designated sites in Scotland. We, therefore, consider there to be unclear geographical scope of and potential UK-wide implications of interpretations provided by the UK Government in updated guidance.

It is unlikely that offshore wind developers will be building in HPMAs, although there may be instances, for example with cable routes, that overlaps may be unavoidable. Good spatial planning including arrays and cable corridors is required to avoid future issues.

One key concern with the wording within this section is in relation to the statement *“The public authority should follow the advice provided by the relevant SNCB when deciding which compensatory measures are appropriate and of equivalent environmental benefit”*. The MMCA 2009 states that *“In carrying out its duties under this section a public authority must have regard to any advice or guidance given by the appropriate statutory conservation body under section 127”*. Stating that the public authority should follow the advice provided by the relevant SNCB implies the SNCB should be the decision maker, not the public authority in this matter. This is not something SR supports.

This guidance provides some clarity on the use of compensatory measures for MCZs in the form of MEEB. Clarity is required on the expected proximity of MEEB to the original site. Section 4.2 of the consultation and wording of *“equivalent environmental benefit to the MPA network”* imply that the MEEB compensatory measures can be applied anywhere within the “MPA network”. Can Defra clarify that this is the correct interpretation? It should be possible for measures acting as compensation or MEEB to be sited beyond the MPA network and UK waters where there is a functional link.

The guidance states *“Plan and project proposers should engage public authorities and SNCBs early in the process”*. From our member's perspective, this is not always possible at the plan level, as this is the responsibility of the relevant plan maker (Scottish Government or The Crown Estate). This wording should be considered alongside feedback on the Plan level compensation at project level section (section 4.8).

Further, good marine spatial planning and prioritisation helps with site management and enables sustainable development of marine industries, including offshore wind. We would strongly welcome an update on timescales and progress on Defra’s Marine Spatial Prioritisation (MSPri) programme and how the sector can support and feed into this workstream.

12. Is there anything in relation to MCZs or in Section 126 of the MCAA that the guidance misses or should not include?

There is a risk this updated guidance will lead to misinterpretation if not produced in conjunction with Devolved Governments. We would therefore expect guidance to be robust and produced in conjunction with Devolved Governments. We note several references to the ‘UK’ within the guidance and that the consultation paper indicates that compensation measures “*anywhere in UK waters*” can be used – although we would wish the guidance to enable compensation beyond UK waters where ecologically appropriate.

Compensation hierarchy

Question 13

a. To what extent do you agree that our proposed compensatory hierarchy provides clarity on compensatory measures to stakeholders?

Strongly disagree.

b. Please provide further evidence or comments to support your answer.

We welcome Defra’s aims to provide improved guidance and define a compensatory hierarchy, however, the guidance presented in this consultation is not currently fit for purpose. It is also a step back from the 2021 guidance. The hierarchy should develop and improve current understanding of how compensation measures should be designed. The proposed hierarchy currently moves away from established terminology such as “like for like” and “non-like for like” instead of incorporating and defining them to improve clarity and useability.

Defra clearly sets out that the use of “non-like for like” measures for compensation is unsuitable, which SR members fundamentally do not agree with. Further, our members do not agree with the conflation of functional equivalence measures which may not always align with the “non-like for like” measures category, depending upon the circumstances. This interpretation is highly restrictive and has concerning implications for the design of compensation measures within the HRA and derogation process context. The 2021 guidance stated that “*on rare occasions it may*

be that other measures delivering wider ecological systems benefits will be the only option for compensation”, whilst this guidance implies that this option is no longer suitable for SACs/SPAs despite Defra’s guidance with regards to MCZs seemingly focused on enabling the use of more “non-like for like” measures.

With regards to the statement that *“Ecological effectiveness for the MPA network is the primary consideration when identifying compensatory measures”* this seems to contradict the implications set out earlier of moving away from “non-like for like” measures, as a focus on the MPA network instead of site and feature specific measures would likely fall into the “non-like-for-like” category.

Please provide further clarity on the terms of Ecological Effectiveness, Local Circumstances and Proximity.

The guidance should clearly set out how non-UK measures might be considered and secured (in line with precedence established through Hornsea Four’s consent decision).

Question 14

a. To what extent do you agree that the proposed hierarchy will assist in identifying suitable compensation measures, and if not, why not?

Strongly disagree.

b. Please provide further evidence or comments to support your answer.

As stated above, the guidance provided does not aid in identifying suitable compensation measures.

We cannot currently support the proposed hierarchy with consideration of the concerns raised in question 13.

We are concerned that the hierarchy is currently too complicated. The hierarchy should be recast and simplified to focus on two aspects:

- the implications of baseline environmental characteristics (i.e., considering the need and opportunities for compensation measures); and
- location (i.e., identified measures to be delivered within, adjacent to or at a distance from an impacted feature).

The proposed terminology implies further restrictions on what would constitute suitable compensation measures. It does not assist in identifying suitable compensation measures and only introduces ambiguity as to what is suitable.

15. Is there anything in relation to compensatory measures that the hierarchy misses or should not include?

It is important that the guidance is written in the context of the limited measures currently available to marine industries. There are limits to the number and extent of compensation measures available at both a project-level and plan-level (bearing in mind Defra's position on MPA extension being undertaken once, and offshore Artificial Nest Structures as an interim measure for England only). More clarity is needed on how this guidance would achieve Defra's ambition of reducing delays caused by difficulties in finding compensatory measures and increasing the number of compensatory measures available at the plan and project levels.

Full consideration of all the concerns raised above, and clarity provided on definitions and what Defra intends to achieve with these changes.

Additionality

Question 16

a. To what extent do you agree our guidance on additionality provides clarity to stakeholders?

Disagree.

b. Please provide further evidence or comments to support your answer.

We recognise that additionality aims to clearly separate government responsibility from industry. Further, we recognise that activities necessary for site management by offshore wind developers should not be carried out under the banner of compensation. Therefore, we agree that compensation should be in addition to site management.

However, it should also be recognised that SNCBs cannot always resource, afford, and deliver site management measures. The industry's experience to date is that some site management plans are comprehensive in their coverage of what could be delivered (although there is significant variation between sites and availability/access to site management plans) but that these measures are rarely rolled out in full to help achieve favourable conservation status.

Any consideration of potential additionality restrictions should, therefore, acknowledge the limitations and whether the measure would realistically otherwise be deployed in the same timeframe and with the same ecological effectiveness without the additional support that would be provided if securing the measure through a derogation under the Habitats Regulations.

“Compensatory measures for relevant sites that comprise the National Site Network must be additional to measures normally taken to manage or conserve such sites.”

SR does not believe that this statement is supported in legislation and guidance for the designations referenced as part of the MPA network.

“The provisions of Section 126 of MCAA also means that MEEB should be additional to measures taken to fulfil duties to designate and adopt conservation objectives for an MCZ”.

SR believe that this statement is incorrect, and we can see can no provision in Section 126 of MCCA that suggests that public authorities have a duty to designate and adopt conservation measures. Section 125 of the MCCA sets out General Duties of Public Authorities, but we do not view these general duties as presenting a barrier to the delivery of compensatory measures due to additionality.

Whilst guidance on the Habitats Regulations does reference additionality this is specific to the particular circumstances of the Habitats Regulations and should not be transferred to other designations in the MPA network. Our main concern is on how ‘Normal’ is defined in the guidance and we would like to note that in the HRA regulations, normal has a much broader scope and hence this guidance is not aligned with the HRA regulations.

We have specific concerns around the following statement in the guidance, which could be interpreted to cover any possible measure and would therefore render all compensatory measures as normal.

“A measure or step, at a defined spatial scale, frequency, or magnitude, which can reasonably be expected to be taken in the absence of a plan or project”.

The further qualification of *“current and past management and restoration practices relating to the site concerned (or equivalent sites),”* is required. The inclusion of restoration practices and equivalent sites in the definition of “normal” could in turn imply that methods typically used as compensation measures are “normal”. An example of such would be the creation of new nesting habitat for ornithological features to improve feature conditions if they had been found to be unfavourable and action taken by the relevant SNCB. This would make finding suitable “additional” measures challenging for the industry. SR members would welcome clarity on what

“normal” management looks like for designated sites, and what “additional” measures enables through this guidance may look like.

The aim of Offshore Wind Environmental Improvement Package (OWEIP) is twofold; to speed up delivery of offshore wind whilst protecting and enhancing the marine environment. Ultimately it does not matter who delivers the conservation measures to protect and enhance the Marine Environment, what matters is that someone does it and soon. The question of additionality must not become a barrier to the rapid deployment of Offshore Wind in a way that improves the Marine Environment.

17. Is there anything the definition of additionality misses or should not include?

The above further clarity as highlighted.

Baselines

Question 18

a. Should we provide additional guidance on baselines and how to establish them?

Yes.

b. Please provide further evidence or comments to support your answer. If answered yes, what would be included in future guidance on baselines?

We would welcome further guidance with regard to expectations around the assessment of the baseline conditions of MPA features. This should include the minimum effort expected/required to establish the baseline conditions of a type of feature. As an example, the creation of Best Practice Guidelines for the level of survey effort and types of surveys required to be undertaken to establish the baseline conditions for a benthic feature. We would like to see the surveys being carried out to establish the baseline conditions be viewed as being undertaken to enable the conservation of the site and thus not require a further HRA and further approval to be able to be carried out, (outside of normal licensing requirements). Other surveys unrelated to establishing the baselines would still however need to be assessed.

We disagree with the concept that the developer is responsible for collecting baseline data in relation to the conditions of the MPAs. The developer should only be responsible for collecting the baseline conditions of the areas and features in relation to their project. This approach links to our response in question 9b, and there appear to be misaligned expectations for what Government is responsible for and what developers should deliver for compensation.

Timing of Compensation Delivery

Question 19

- a. To what extent do you agree that the guidance on timing of compensation delivery provides sufficient clarity?**

Strongly disagree.

- b. Please provide further evidence or comments to support your answer.**

Compensation in practice takes time to secure, implement, and become fully functioning. The guidance should reflect the potential that project-level compensation may not be able to secure and ensure measures are effective before predicted damage may occur. We support delivery of strategic compensation which may not be directly linked to timings for specific projects.

- 20. Is there anything the guidance misses or should not include?**

One improvement is that it would be helpful for the guidance to set out an objective test to assess whether a proposed time lag is acceptable.

Plan level compensation at project level

Question 21

- a. To what extent do you agree that the guidance on plan level compensation at project level provides clarity to stakeholders?**

Disagree.

- b. Please provide further evidence or comments to support your answer.**

We welcome the consideration of a more strategic approach to HRA and Imperative Reasons of Overriding Public Interest (IROPI) however, practical implementation is not clearly presented within this guidance. Our members suggest compensation would be best addressed at strategic scale in response to offshore wind deployment targets. In the context of Scotland, the initial Sectoral Marine Plan HRA was based on deployment of up to 10GW in ScotWind. The allocated

capacity is over 27GW. The forthcoming Iterative Plan Review (IPR) will inevitably need to provide information on how ScotWind and Innovation and Targeted Oil & Gas (INTOG) projects should address the project alternatives test within their derogation (without prejudice) cases. It will also need to provide a framework for strategic scale compensation options and the associated delivery mechanisms.

The start of the sub-section *titled “What is the difference between plan-level and project level HRA?”* starts by focusing on that a plan-level assessment is not required for MCZs, which is not a statement tied to the differences between plan and project level HRA, particularly as MCZs are not part of the HRA process.

It is unclear as to how the plan-level HRA will work in practice. Some of the implication is that this will be something carried out by an SNCB or suitable authority, outside of any specific projects. An outworking of this could be potentially when sites are being considered at the Leasing Rounds stage of development, considering a strategic “plan-level” HRA for all of the projects to have an early gauge on potential impacts, and strategic ways of addressing them before they start to be considered within a project-specific context. This would ultimately be a positive change with the potential for significant improvements in the cost to stakeholders and applicants having to provide RIAA’s, etc. and consider compensatory measures, whilst improving the outcome on the features potentially being impacted, ensuring they are conserved and maintained in a suitable condition. However, it is not clear at what stage a plan-level HRA will be carried out, and what stakeholder’s responsibilities of inputting into it are. If this is the intended outworking of plan-level HRA we would assume that the project-level HRA would still be required at submission of the project to the relevant planning authority, and we welcome and recognise the potential benefit of a plan-level HRA being a framework to build off of to build the project-level HRA, and the increased confidence it would provide in an application smoothly passing through the consenting process.

We welcome the consideration of strategic compensation and recognise the significant benefits and time-saving potential of its development though recognise the continued requirement for proceeding through the IROPI / derogation process. However, allowance should be given within guidance and plan level HRA/ IROPI to establish that projects are not obligated to incorporate specific compensation measures provided alternatives proposed are suitable.

22. Is there anything the guidance misses, or should not include?

Yes, as above, it is unclear in several areas, and needs significant further clarification. It should not include reference to MCZs as they do not form part of the HRA process (though it is recognised they are part of the MPA network).

Adaptive management

Question 23

- a. To what extent do you agree that the guidance on adaptive management provides clarity to stakeholders?

Disagree.

- b. Please provide further evidence or comments to support your answer.

SR agrees with the definition of adaptive management given in the updated guidance - “A structured learning process which provides a framework for flexible and optimal decision-making in the face of ecological complexity. Adaptive management involves the implementation of evidence-based management decisions, the monitoring of the impact and evaluating of the outcome of those decisions, and the appropriate adjustment of management actions.”

However, we do not agree with the statement that “adaptive management should only become necessary when the original measure is found to be ineffective, will not be sufficient to fully offset the impact or is delivering lesser benefits than anticipated.” Our members agree that adaptive management should be part of all projects and should be adopted as a proactive measure rather than as a contingency plan. **Adaptive Management** and **Contingency Measures** are often conflated in practice, these terms require clarification either by definition or examples through the guidance.

Adaptive management is a structured process intended to ensure success following unanticipated challenges to an original deployment plan. It will be possible to set out principles for adaptive management in a project application, but it would not be possible or reasonable to set out detailed plans, as adaptive management is inherently responding to unknown factors. It is important to set out the difference between good design and adaptive management. It would be beneficial to include clarification of expected timescales for adaptive management, as species and habitat responses to active interventions are often long term, so it would be counter-productive to expect short term significant adaptive management interventions.

Further, adaptive management is a post-consent process and an essential component of the compensation measure. Attempting to cost adaptive management measures at the point of application is impractical and not in line with the purpose of adaptive management measures. This guidance provides additional creep in the level of detail required at the point of application,

which is likely to increase consenting timelines rather than offer reductions and is particularly problematic in the case of without-prejudice applications.

It should be noted that the current approach set out by Defra will increase the level of detail required at the application stage which would elongate the consenting process, counter to the aims of this guidance, though the benefits of incorporating this are recognised.

Question 24

- a. If monitoring shows that impact is less than expected, should adaptive management be used to reduce project-specific compensatory efforts?**

Yes.

- b. Please provide further evidence or comments to support your answer.**

This would understandably have a positive impact on cost efficiency of projects and provide potential savings, however, this application of adaptive management would need clear guidance as to its applicability and what expectations surrounding it may be, such as thresholds and levels of evidence required for this to be applied, and consideration of if despite there being no impact on the feature clearly linked to the project, the feature diminishing due to external changes (an example of which being the 2022/23 Bird Flu outbreak impacting various populations of protected birds).

Clarification would also need to be provided on whether there is a baseline minimum level of compensation a project would be expected to provide irrelevant of the level of impact concluded in the end. There are many circumstances where compensation measures may need to be in place before the impacts occur, clarification on how and if adaptive management may be applied to these forms of compensatory measure would be beneficial.

In terms of potential overcompensation, the current guidance states that “*adaptive management could also enable compensatory action or effort to be reduced if monitoring shows that the impact of the plan or project is less than anticipated.*” We propose a mechanism for “banking overcompensation” in the eventuality that monitoring suggests that impacts are less than predicted when compensation has either already been committed to or delivered.

- 25. Is there anything the guidance on adaptive management misses, or should not include?**

Adaptive management would benefit from being framed against defined aims and objectives that are set out in a Compensation Plan (in relation to the requirement to maintain the coherence of the network) rather than against predicted impacts.

Updated guidance should therefore set out clear and objective tests to judge the adequacy, appropriateness, and acceptability of proposed compensation measures on a consistent and robust basis. Such tests should include allowing adaptive management provisions within compensation plans, especially where a derogation is required on account of it not being possible to rule potential in-combination AEOsI beyond reasonable scientific doubt, but where an AEOsI has not been definitively identified.

Energy Policy Statements

Question 28

- a. Do you agree that the guidance on the application of the National Policy Statement EN-1 provides clarity to stakeholders?**

Agree.

- b. Please provide further evidence or comments to support your answer.**

The guidance on applying the National Policy Statement (EN-1) is clear and provides a sufficient overview of the impact of the Critical National Priority (CNP) – as set out in the EN-1 – concerning the Habitats Regulations Assessment. It usefully confirms that, in relation to the application of the UK Habitats Regulations, the identification of potential alternative locations or capacity reductions do not constitute Alternative Solutions

We are concerned, however, that this section of the guidance will not help accelerate the consenting process in case of challenges within the HRA compensation or derogation process. This ultimately risks significant delays in the deployment of offshore wind generation critical to building the UK's future energy system and protecting the UK's biodiversity and wildlife.

END