

**SR/SOWEC Barriers to Deployment**  
**Risk 1: Strategic Compensation & Habitats Regulations**

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August 29, 2025

Strategic Compensation Policy Team  
Scottish Government  
Area 3G South, Victoria Quay  
Edinburgh, EH6 6QQ

Dear Lucy Law,

**Response to: Scottish Government consultation on Strategic Compensation Policy for Offshore Wind (July 22, 2025)**

Scottish Renewables 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 380 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 worldwide, 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.

Scottish Renewables (SR) welcomes the opportunity to provide our view on the Scottish Government's Strategic Compensation Policy for Offshore Wind consultation.

In addition to our responses to the consultation questions below, our members have identified several key points, which are detailed below and in **Annex 1: A summary of the proposed changes and their implications**, attached at the end of our response. While some key points are directly relevant to the current Department for Environment, Food and Rural Affairs (Defra) consultation, SR has included them below to ensure the Scottish Government is also informed.

- The current interpretation of the Habitats Regulations is currently causing significant delays, confusion and challenges, especially in relation to the identification and approval of suitable environmental compensation measures where a derogation is required. We agree with both the UK and Scottish Governments that there is an urgent need to increase efficiency, certainty and proportionality in this crucial area of the consenting process.

- The collaborative approach adopted between the Scottish and UK Governments to agree a package of reforms to environmental compensation requirements for offshore wind projects under the Habitats Regulations is welcomed. To avoid delaying the adoption of relevant sectoral plans and project development, including consent decisions, it is vital that secondary legislation to enact these reforms is introduced at the earliest possible opportunity. Identified issues and opportunities to improve the proposed package of reforms should therefore not unnecessarily delay the enactment of the secondary legislation.
- We strongly welcome the agreement reached between the UK and Scottish Governments to remove the current 'coherence of the network' requirement for environmental compensation, which limits compensation options to 'like for like' measures and adds significant complexity to consenting. The proposed reforms still require the environmental benefit of a measure to the UK Marine Protected Area network to be demonstrated. Instead, we would prefer to see the requirement to demonstrate compensatory measure benefits to the MPA network removed and recommend, instead, that the ecosystem benefits to the wider marine environment could be used to evaluate the potential effectiveness of a measure. We support the proposal to introduce a compensation hierarchy with appropriate environmental safeguards and flexibilities. Our members broadly agree with the terms of the proposed compensation hierarchy.
- SR members are, however, concerned that the UK and Scottish Government strategic compensation consultations do not include any substantive proposals to tackle disproportionate requirements in respect of compensation for small ('de minimis') impacts, adaptive management and monitoring.
- Our members do not agree with the proposal to require the Defra Secretary of State to pre-approve any 'wider measures' before the measures are available to projects in England and Wales. This could unnecessarily preclude or delay the use of additional strategic compensation measures (e.g. measures developed by developers on a regional or thematic basis), even where robust ecological evidence can be presented to support such measures.

### **Scope of Reforms**

- SR recognises that this proposed package of reforms is limited in scope to the delivery of offshore wind compensation, rather than any wider reform of the Habitats Regulations, as it aims to tackle an immediate barrier to the achievement of the Government's Clean Power 2030 ambitions and since the provisions of the Energy Act 2023 restrict these reforms to the application of the Habitats Regulations for offshore wind, rather than across all sectors.
- However, this overlooks the reality that current compensation challenges are largely a symptom, rather than the root cause, of issues in the application of the Habitats Regulations. Increasing demands for seabird compensation are not simply an inevitable consequence of large-scale offshore wind development, rather this is driven by a highly precautionary approach

to ornithology impact assessments. The accumulation of precaution, which is applied at multiple points in impact assessments, results in very high and potentially implausible predicted impacts. As a consequence, large amounts of compensation is needed by projects and plans to address these predicted adverse impacts. A more transparent approach to ornithology impact assessment is needed that ensures that predicted impacts are plausible and evidence-based. This would reduce the demand for compensation.

- There is an unmet need for urgent wider reform of the Habitats Regulations, which should apply across all sectors rather than only to offshore wind. SR members highlight the timely opportunity to address this through making relevant amendments to the Planning and Infrastructure Bill presently before the House of Lords (committee stage).
- SR members commend to Defra the amendments (349 and 350) recently tabled by Lord Hunt of Kings Heath, which directly seek to address long-standing weaknesses and ambiguities within the Habitats Regulations regarding the role of science, treatment of uncertainty, consideration of small impacts and the application of precaution in decision making.
- The pragmatic solutions detailed within these amendments respond to and have been informed by extensive legal, policy and scientific analysis initiated by the renewables sector to improve the functioning of the Habitats Regulations. The amendments would help to improve the effectiveness of the Regulations and remove blockages which presently delay the consenting of major infrastructure, but do not consistently deliver clear environmental protections for relevant species and habitats. Importantly, the amendments provide universal solutions for all consenting and licensing to which the Habitats Regulations apply, rather than only being applicable to offshore wind projects.

### **Statutory Purpose and Scope of Compensation**

- SR strongly welcomes the agreement reached between the UK and Scottish Governments to amend the UK Habitats Regulations to remove the current 'coherence of the network' requirement for environmental compensation, which limits compensation options to 'like for like' measures and adds significant complexity to consenting with appropriate environmental safeguards and flexibilities. We are also supportive of the proposed compensation hierarchy. However, we would prefer to see changes to the proposals which require compensation measures to demonstrate benefit to the UK Marine Protected Area network as outlined above. This appropriately focuses on safeguarding the purpose and ecological functioning of the network in a holistic manner, rather than as offsetting impacts on individual features or locations.
- We welcome the proportionate and enabling approach proposed of requiring compensation measures to deliver positive benefits "reasonably proportionate to the level of damage" to the UK MPA network. However, it will be important for these tests to be applied objectively and

consistently by defining clear criteria through which to judge the sufficiency of ecological evidence and adequacy of benefits from proposed measures.

- These ecological sufficiency and benefits criteria should recognise that the tests within an HRA Appropriate Assessment and in a derogation case are legally distinct, so should not be tied together. The derogation stage of the HRA process does not require the same level of scientific certainty (i.e. evidence beyond any reasonable scientific doubt) as the previous Appropriate Assessment stage, where the potential for Adverse Effects on Site Integrity (AEoSI) will have been identified or otherwise, where this cannot be ruled out beyond scientific doubt.
- The application of these tests should recognise that, even with the welcomed changes to broaden their scope, compensation measures remain a finite resource. Guidance should consider whether, and if so to what extent, an earlier site-specific finding of AEoSI through an Appropriate Assessment has implications for the conservation objectives and Favourable Conservation Status (FCS) of the affected habitat type or species. It is possible that individual or in-combination AEoSI could be triggered, or simply not ruled out, on grounds of scientific uncertainty or due to predicted impacts calculated through highly precautionary methodologies breaching a quantitative threshold, but this may not always materially undermine the protection of the relevant habitat or species across the UK National Site Network at population level.

### **Compensation Hierarchy**

- We are supportive of the proposed Compensation Hierarchy in principle, but flag that very clear guidance would need to be provided on how to use the Compensation Hierarchy. The hierarchy provides structure, but flexibility should be maintained to allow practical application. A rigid requirement to exhaust each tier before moving to the next would simply replicate current inefficiencies.

### **Timing**

- The proposed approach of allowing projects to become operational prior to compensation being fully implemented is essential. This proposed reform provides an opportunity for more beneficial measures to be used, even if they will not be fully compensating predicted impacts at the time the project becomes operational. This is fundamental to bringing projects forward efficiently in line with Government policy objectives to shorten consent and delivery timescales whilst also enabling ambitious wider compensation measures that may, by design, require a longer lead in period to establish.

### **Additionality**

- SR broadly supports the proposed approach and guidance regarding additionality, which sets out an appropriately pragmatic and realistic position.

- Any consideration of potential additionality restrictions should acknowledge the limitations of available scientific evidence and whether a 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.

### **Compensation Delivery**

- The UK Government and Devolved Governments must work collaboratively at pace to establish delivery mechanisms, including Marine Recovery Funds, for projects to secure timely access to strategic compensation, including measures which either cannot be delivered unilaterally or which they retain control over. Where a strategic compensation measure is either delivered upfront and deployed or partially banked (e.g. to help facilitate earlier projects), the relevant Appropriate Authority should provide clear mechanisms to establish its remaining capacity and allocate this compensation to further projects as required.

### **Adaptive Management**

- SR members are concerned that both the UK Government and Scottish Government strategic compensation consultations appear to reinforce current disproportionate expectations that adaptive management and monitoring of compensation measures should be undertaken as standard, irrespective of the level of ecological impact and associated scientific uncertainty, which triggers the need for a derogation or the scale and type of compensation which is proposed.
- New guidance regarding adaptive management should focus primarily on whether compensation plans and measures, once approved, are delivered as expected, rather than attempting to guarantee the achievement of specific ecological outcomes in the face of significant uncertainties (both in respect of predicted impacts from an offshore wind project and future events including the influence of climate change, other large-scale pressures and natural variability on populations). The guidance should recognise that the derogation stage of the HRA process does not require the same level of scientific certainty (i.e. evidence beyond any reasonable scientific doubt) as the Appropriate Assessment stage.
- SR considers that new guidance regarding adaptive management should also consider situations where new evidence demonstrates either that actual impacts are lower than originally predicted or where a compensation measure performs better than expected. This would effectively generate 'spare' compensation. New guidance should consider how this additional strategic compensation, above that needed for a project, is used and accounted for and made available to other projects.

### **Small / De minimis Impacts**

- SR members are concerned that the sections of both the Defra and Scottish Government consultations regarding the treatment of small impacts would simply codify current disproportionate practices rather than deliver meaningful change.
- Our members highlight the need for both legislative change through statutory instruments and further clarity through guidance to resolve significant proportionality concerns. These have arisen following the Sweetman (No 1) judgement and through the routine application by statutory nature conservation bodies (SNCBs) of over-precaution, such that clearly de minimis impacts, including modelled site-apportioned annual mortalities of less than one bird, may still generate an Appropriate Assessment conclusion that AEOI cannot be ruled out, thereby triggering derogation requirements. The proposal to continue to defer to SNCB advice regarding small impacts on a case-by-case basis is therefore very unlikely to improve the proportionality of compensation requirements.
- We appreciate that it may not be possible to set fixed quantitative de minimis impact thresholds in guidance below which compensation should not be required, as this may vary between species and locations. However, given the highly precautionary methodology applied in the HRA Appropriate Assessment stage, as a minimum, we consider that new guidance should clarify that any predicted site-apportioned annual mortalities of less than one bird concluded at that stage should generally be discounted in the subsequent derogation stage when compensation may need to be identified.

It is understood that the concerns and matters raised by our members, as outlined below, will be fully considered. Scottish Renewables welcome the upcoming SG-led strategic compensation workshop to discuss our response in more detail and would be keen to engage further with this agenda.

Yours sincerely,



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**Head of Offshore Wind**

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Scottish Renewables

## RESPONSE TO CONSULTATION QUESTIONS:

### Question 1

Do you agree with the proposed approach to reforming the Habitats Regulations as they apply to offshore wind activities as defined in the Energy Act 2023, in order to make wider compensatory measures available for offshore wind development?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

Reforms to the Habitats Regulations under the Energy Act 2023 are urgently needed to unlock the significant offshore wind pipeline. Constraints to securing and delivering appropriate compensation present a substantial risk to Scottish offshore wind projects at present. The proposed reforms would broaden the range of compensatory measures that would be available to projects, which is helpful. These reforms and associated guidance need to be implemented as soon as possible to enable consented Scottish projects to discharge their compensation obligations, facilitate consenting of other Scottish projects in the planning process and provide a clear path to project delivery, enabling early pre-emptive investment and commitments in local supply chains and ports.

However, whilst these proposed changes would be beneficial, there are other barriers to the development of Scottish projects which also need addressing. With respect to ornithology, current recommended approaches to impact assessment lack transparency and are likely to lead to a substantial overestimate of predicted impacts. This results in projects requiring large amounts of seabird compensation to compensate for these high predicted adverse impacts. Alongside these proposed reforms, we recommended that the Scottish Government also undertake a review of current recommended approaches to impact assessment. A more transparent approach to impact assessment may reduce predicted impacts of projects, leading to a more proportionate compensation requirement for Scottish projects. Therefore, this would also help with addressing the challenges that securing compensation currently presents for Scottish projects.

The proposed reforms would enable a broader range of compensatory measures to be deployed, which would deliver biodiversity and ecosystem benefits that are not currently available through the available measures. We are supportive of the potential of the reforms to deliver wider environmental benefits.

Care is needed in the SSI drafting to amend the Habitats Regulations to ensure that wider compensatory measures are appropriately enabled whilst also retaining a clear legal test at the appropriate threshold for project specific, like for like measures. It is not clear how a standard to benefit the UK MPA network "overall" will be applied to tier 1 and 2 compensation.

## Question 2

Do you agree with the proposed Compensation Hierarchy approach, for inclusion in subsequent guidance, including the type of compensation within each tier and when to move down the hierarchy?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

We are supportive of the proposed Compensation Hierarchy in principle, but flag that very clear guidance would need to be provided on how to use the Compensation Hierarchy. The hierarchy provides structure, but flexibility should be maintained to allow practical application. A rigid requirement to exhaust each tier before moving to the next would simply replicate current inefficiencies. It needs to be applied operationally with a degree of scientific pragmatism and flexibility, recognising evidentiary limitations, otherwise projects will continue to be delayed. We agree that information on the type of compensatory measures under each tier and the process by which it is possible to move down the hierarchy would be helpful in the guidance. We recommend that the guidance includes:

- Detailed information on the evidence that would need to be presented, in order to be able to move down the hierarchy. In particular, the evidence that would be needed on 'environmental benefit' needs clarifying, when it is not possible to quantify the number of additional individual birds that a proposed measure could produce;
- Clarity on what evidence needs to be presented to allow measures under Tier 2 or Tier 3 to be used, even when there are measures further up the hierarchy that could be used, including how the feasibility of securing and delivering possible compensation is accounted for;
- Under Tier 2, where compensation could be delivered for ecologically similar features to the impact feature, it would be helpful to have a list of species which are considered to be ecologically similar. For example, for kittiwake, would compensation for all other 'surface feeding' seabirds, as defined in the GES Marine Bird Assessments ([Marine Birds - Marine online assessment tool](#)), be acceptable?
- Under Tier 1, the guidance should provide clarity that compensation for the same feature, but not at an SPA, will be considered Tier 1.
- Clarity on how benefits to non-similar bird species will be considered in the tiering system, i.e a predator eradication programme is likely to benefit many non-target species that do not seem to fall under tier 2 or 3;
- Clear guidelines for regulators, their advisors, SNCBs and industry to apply in terms of the evidentiary standards required, to ensure clarity for industry and consistent application of the compensation hierarchy principles across projects and compensation tiers.



### Question 3

Do you agree with the proposed approach to how to demonstrate evidence that a wider measure has an ecological benefit to the protected site network?

- ☐ Yes
- ☒ No
- ☐ I don't know

Please explain your answer.

p15-16 of the consultation document:

*For wider measures, we propose clarifying that the protected site network can be benefited via action that:*

- enables the network, or a feature or features within it, to recover more quickly from damage and/or improve its current condition; or*
- alleviates key pressures impacting the network; or*
- improves the networks resilience to climate change and other stressors; and*
- can be monitored for effectiveness (monitoring could be action-based or outcomes-based).*

These are good aims to aspire to and will help ensure the right wider measures are used, but actually demonstrating that a proposed wider measure that a project would like to use fulfils these criteria would be very challenging. Evidence thresholds must be realistic. Requiring absolute proof of benefit in advance risks creating a perpetual cycle of precautionary doubt. Wider measures often operate at landscape or ecosystem scale, where benefits are harder to isolate but nevertheless substantial. Guidance must guard against an evidential burden so high that it becomes another barrier to deployment. Our members question whether a project would need to fund monitoring and research to demonstrate that these criteria have been met? Evidence of this type takes many years to get and would require large-scale research projects.

*Proposals to use wider measures should be informed by best available scientific evidence, which could be in the form of showing consideration of a logical case based on well understood ecological principles and their applicability to the Scottish environment, by hypotheses based on expert advice and/or existing monitoring information. We would expect to see evidence that demonstrates measurable benefit, along with an assessment of uncertainty, and that the expected outcome relates to the feature the measure is targeted at, or if a measure under Tier 3 of the compensation hierarchy, to the protected site network.*

For some measures, it will be challenging to demonstrate 'measurable benefit' and to quantify uncertainty. For example, with seagrass restoration, monitoring could demonstrate the area over which seagrass has been restored and the fish species using the restored seagrass. However, demonstrating how seagrass restoration has benefited the protected site network will be challenging unless, for example, working in an SAC to improve the quality or extent of a habitat feature but then this raises additional issues. Clarity in the guidance, with worked examples, on the type of evidence needed under each tier, particularly Tier 3, will be important.

*Whether a wider measure has a greater ecological benefit than measures available for the impacted feature is likely to be assessed on a case-by-case basis. This would include consideration of the ecological benefit to the protected site network and factors such as whether the wider measure can:*

- Provide a direct or indirect benefit, via the improvement of conservation objectives, to a larger proportion of the network. This may be by number of protected sites, area of benthic habitat, number, or proportion of species population, than would benefit from available compensatory measures that would be targeted at the impacted feature.*
- Alleviate pressure on more than one site within the network, or on a number or population of species than would benefit from available compensatory measures for the impacted feature.*

Broadly, we are supportive of these approaches as they will enable the use of compensatory measures that deliver wider environmental benefits than is currently possible. However, it is not clear how 'ecological benefit' can be quantified and compared for wider measures versus measures for the impacted feature.

It would be helpful if the Scottish Government could propose a series of wider measures that projects could deliver, which the government believes have high ecological benefit. At the very least, the guidance will need to clearly explain how ecological benefit should be quantified for like for like, non like for like and wider measures in a way that allows a comparison of benefits across the tiers.

#### **Question 4**

How do you think the effectiveness of wider measures could be monitored?  
Please explain your answer.

Monitoring of the effectiveness of wider measures will need to be determined on a case-by-case basis, depending on the nature of the particular measure. As explained above, it would be possible to monitor the extent to which a proposed wider measure has been implemented (e.g. area of restored seagrass) but not the extent to which this has benefited the protected site network.

Retaining this requirement that compensation has to demonstrably benefit the protected site network in the reforms to the Habitats Regulation is limiting. Measures that are known to be beneficial to marine ecosystems as a whole and to build resilience to climate change impacts would be very useful compensatory measures, but these might not be feasible to use under the proposed reforms due to it not being possible to present quantifiable evidence of the benefits these measures could bring to the protected site network.

We suggest that the reforms do not require that measures provide a demonstrable benefit to the protected site network. Instead, we suggest that evidence should be presented on the ecosystem benefits that a measure could deliver. Monitoring could be focused on delivery of the measure, on the understanding that the wider ecosystem benefits cannot be measured and quantified.

Monitoring should be coordinated strategically across projects. At present, project-by-project requirements will lead to fragmented data collection, high cost, and little added value. A central framework, led by statutory bodies, would reduce duplication and prevent precautionary monitoring demands from overwhelming developers.

#### **Question 5**

We are aware that UK Government are consulting in its concurrent consultation on reforms to environmental compensation for offshore wind on a proposal to clarify in guidance circumstances where wider measures would not be suitable for impacts to locations with Marine Irreplaceable Habitats or features. Do you agree with our proposal not to include a similar approach within our guidance?

☒ Yes

☐ No

☐ I don't know

Please explain your answer. Please refer to the key points outlined at the beginning of our response.

Our members highlight concerns that Marine Irreplaceable Habitats may, by their nature, be 'irreplaceable' and therefore that like for like compensation may be effectively impossible.

#### **Question 6**

Do you agree with our interpretation of the application of the additionality principle to offshore wind, and our proposal to provide further clarity as part of guidance?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

Clarity around the additionality principle would be strongly welcomed as it would make it more feasible for projects to deliver compensation within protected sites, thereby directly benefiting impacted features and the wider protected site network. It also enables projects to build on existing or previous work done, potentially enabling greater ecological benefits in shorter timeframes. Alongside this, it would be helpful to have a published and maintained, up to date list of all planned and active management actions already being delivered for European sites or for which funding is allocated, so there is clarity for applicants on what other activities would be additional and so suitable as a compensation measure. If additionality is defined too rigidly, measures that clearly accelerate environmental gain could be excluded on technical grounds. Again, this would turn a useful principle into another barrier to deployment.

### Question 7

Do you agree with our proposed approach, for inclusion in subsequent guidance, that in certain circumstances, compensation can be functioning after the impact of the offshore wind development occurs?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

Insisting that compensation be fully functional before impacts occur is unworkable and has already stalled projects. Ecosystems do not respond on neat timelines, and over-precaution simply translates into delay without clear benefit. Allowing measures to come online after impact, subject to adaptive management, is both pragmatic and necessary.

The proposed approach is essential as it provides an opportunity for more beneficial measures to be used, even if they will not be fully compensating predicted impacts at the time the project becomes operational. This is fundamental to bringing projects forward efficiently in line with Government policy objectives to shorten consent and delivery timescales whilst also enabling ambitious wider compensation measures that may, by design, require a longer lead in period to establish.

In particular, this proposed approach will be particularly helpful for floating offshore wind projects, which can take several years to construct, e.g. 5 years for a 2GW project. This means that impacts will slowly ramp up as the project is built, and offsetting of those impacts, through compensation, will not all be needed upfront. For projects with longer construction timelines, provision should be made to allow compensation to be functioning after the initial impact of the offshore wind development occurs and indeed should allow for the scaling up or establishment of compensation in line with a project's construction programme.

More clarity on exactly what this means in practice will be helpful. The underlying assumption here ought to be that the overall long term benefits to the protected site network will outweigh any short term 'loss' due to impacts arising prior to compensation benefits being fully evident.

This will be important for seabird compensation measures, where increased productivity is being targeted in terms of compensation, this can take a number of years to correspond to adults in the population. Also, for measures such as predator eradication it could take several years for a colony to become re-established and the full benefits in terms of increases in adult seabirds may not be realised until a few years into the operational life of the windfarm.

The criteria proposed for when impacts occurring before compensation would be acceptable appear generally reasonable; however, the challenge will be how these criteria are applied in practice and evidenced in discussion with SNCBs.

Given these criteria, the principle of enabling wider compensation measures, and the likelihood that wider compensation measures will take longer to implement (compared to like-for-like measures), we question the presumption that measures should usually be in place before impacts occur, which does not seem an appropriate starting point for tier 3 measures. Clarity could also be provided as to what is meant by 'in place' – to confirm this does not envisage measures being functional in this window (which would, in the vast majority of cases, be unfeasible).

### Question 8

Do you agree with our proposed approach, for inclusion in subsequent guidance, to clarify circumstances where compensation is required for projects or plans with small levels of impact to a protected site?

☐ Yes

☒ No

☐ I don't know

Please explain your answer.

SR members agree that compensation for small impacts must be proportionate. Small predicted impacts need to be considered in light of the extent of precaution in impact assessments and the likelihood of the small impact actually occurring. Also, uncertainty in the evidence underpinning impact assessments means that a small impact may actually be a zero impact. Compensation requirements need to be proportionate for predicted impacts. Where impacts are very small, compensation should not be required, even if multiple projects are having a small impact on a site. Small impacts often arise due to protected sites being far from a project. Current approaches to assessing impacts mean that many projects are predicted to have small impacts on distant sites. Due to precautionary approaches in assessments, these impacts, cumulatively, can lead SNCBs to make a precautionary conclusion of AEoSI. The reality of a particular project damaging the site when predicted impacts are small is so negligible that compensation should not be a requirement.

If that is not acceptable, could there be a simplified way of securing compensation without needing to go through the tiering system and providing lots of evidence, and simply paying a small amount to a Marine Recovery Fund (MRF) for the delivery of strategic compensation for very small impacts.

These Habitats Regulations reforms present an opportunity to take a more proportionate approach to the treatment of small immaterial impact contributions.

Developers need greater clarity and certainty on the levels of impact they will be required to compensate for. For instance, where the conclusion for AEoSI is reached on an in-combination basis, will the compensation provided by other projects be a factor? The guidance also does not confirm how to determine whether an impact has a material contribution to a cumulatively significant effect. Clear guidelines are needed for SNCBs which set out the approach for determining what constitutes an impact which may 'appreciably' or 'materially' contribute to an in-combination AEoSI, with quantitative guidance provided so far as possible.

### Question 9

Do you agree with our proposal to clarify through guidance when overcompensation may be appropriate, and do you have a view on the instances in which it should be required?

☐ Yes

☒ No

☐ I don't know

Please explain your answer.

Overcompensation can be appropriate, but only where it is clearly justified. Too often, precautionary uncertainty results in a default expectation of “more” rather than “sufficient”. That approach drains resources and slows project delivery. Guidance should emphasise proportionality and discourage blanket requirements for overcompensation.

Overcompensation can provide an important mechanism to deal with scientific uncertainty as to the degree of effect of the compensation measure, or compensation having an effect after the impact is felt. However, it is also worth posing the question: Is overcompensation really needed, given the current levels of precaution in impact assessments and the fact that compensation ratios are rarely on a 1:1 basis? Would it not be better to look to deliver the compensation required to compensate for predicted impacts and then secure additional compensation if monitoring shows that the proposed measure is not delivering sufficient compensation? This would be required anyway under adaptive management.

If there is uncertainty around the binary question of the efficacy of a measure (rather than the quantum of its effects), 'overcompensating' won't help. If a measure doesn't work, then doing more of it may still not work - it only costs more and becomes more challenging to deliver.

If a compensatory measure is clearly not going to deliver sufficient compensation to compensate predicted impacts in the short term, but will longer term, then some measure of overcompensation might be needed to 'balance out' the impacts vs compensation over the long term. But this needs to recognise the long term nature of compensation, i.e. it needs to continue to provide benefits for the life time of the project, typically 30 years at present. So any overcompensation required may only be minimal. e.g. if a measure takes 5 years after a project becomes operational to deliver full compensation benefit, after which it delivers full benefit for the subsequent 25 years, the overcompensation needed will be small to allow for the shortfall in the first five years only.

In the case of overcompensating via multiple measures, it is not clear why a project would wish to deliver multiple measures simultaneously rather than implementing one and then subsequently implementing others, if needed under adaptive management. The benefits of overcompensating for a project in these circumstances are not clear.

In addition, it should work both ways, where monitoring shows that either impacts are less than

predicted or compensation is working better than predicted, the compensation should be reduced, e.g., by lower payments into a Marine Recovery Fund.

#### **Question 10**

Do you agree with our proposed approach to maintain the current approach to adaptive management but to include in subsequent guidance?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

Guidance on adaptive management, particularly with respect to the implementation of wider measures, would be welcome but would need to be consulted on. The point at which wider measures are deemed to not be delivering as expected and therefore another measure needs to be implemented, under adaptive management, would need careful consideration. This is because it would be necessary to be very clear on what the expected benefits of a wider measure are and exactly how those will be monitored and demonstrated. This, therefore, ties in with the need for clarity around what the expectations are for wider measures delivering measurable benefit to the protected site network.

#### **Question 11**

Do you agree with our proposed approach, for inclusion in subsequent guidance, for monitoring and governance of the proposed policy?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

We are supportive of the proposal to establish a technical advisory group, particularly that it includes industry representation. It will be important that the group only advises on strategic measures implemented by the Scottish Government and not on any individual project-led compensation, as this relates to an individual project discharging its own consent conditions.

#### **Question 12**

We are aware that the UK Government is consulting on a proposal to introduce a public register of compensatory measures across the UK. The Scottish Government supports collaboration on a UK-wide register rather than the establishment of a Scottish-specific register. Do you agree?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

We agree that a Public Compensation Register would be beneficial and that this should be a UK-wide register rather than Scottish-specific. This is because English projects are delivering compensation in Scotland and so awareness of cross-border compensation is important, particularly for English projects seeking compensation in Scotland. Also, Scottish projects may choose to compensate for their adverse impacts to English protected sites through compensation implemented in England or Wales. For that reason, it should also follow that compensation measures in each MRF should be available to the projects in the other jurisdiction, where they have impacts on protected areas within the jurisdiction of the first-stated MRF.

### Question 13

Scottish Government are assessing the option of applying a common framework for compensation of offshore wind by extending the proposed amendments set out in this policy to the Marine (Scotland) Act 2010. Do you think the reformed approach should be extended to the Marine (Scotland) Act 2010?

☒ Yes

☐ No

☐ I don't know

Please explain your answer.

SR members agree that it would be beneficial if this policy did extend to the 2010 Act to allow for greater overall benefit to be realised by allowing wider measures.

To provide greater flexibility to projects and enable greater ecological benefits to MPAs, we recommend the Scottish Government explore the application of the proposed reforms to MPAs and the assessment of measures of equivalent environmental benefit under the Marine (Scotland) Act 2010 via guidance. It is also important that the Scottish Government and UK Government align on this point. As we understand it, the UK Government is not contemplating making amendments to the Marine and Coastal Access Act 2009, but will address the application of the reforms to Marine Conservation Zones (MCZs) in guidance. Any draft guidance should be consulted on with industry and SNCBs.

### Question 14

Do you think that this policy will have an effect on an island community which is different from its effect on other communities (including other island communities)?

☐ Yes

☐ No



☐ I don't know

Please explain your answer and if the answer is yes, please detail:

- What this effect may be?
- Do you think this effect would be likely?
- Do you think this effect would be significant?
- Do you think this effect could amount to a disadvantage for an island community compared to the mainland or between island groups?
- Any other comments you may have related to this.

No comments.

#### **Question 15**

Do you have any comments on the partial Business and Regulatory Impact Assessment?

Please provide any comments.

No comments.

#### **Question 16**

Do you have any comments on the Strategic Environmental Assessment?

Please provide any comments.

No comments.

#### **Question 17**

Do you have any other comments on the proposals described in the consultation paper?

#### General points on the proposals described in the consultation paper

The coordinated approach of Scottish Government and UK Government to consulting concurrently on these proposed environmental reforms is very helpful and the work of officials to ensure this has happened is appreciated. The coordinated approach of the two governments will also be needed to ensure consistency in the final legislation and guidance. Projects are often predicted to have transboundary impacts, meaning that consistency across the UK in legislation and guidance is essential.

Overall, this change in policy is very helpful and is urgently needed to help projects and plans. There is a clear commitment and intention from the Scottish Government to move to a more flexible approach to compensating OW project impacts. There is interest from the Scottish Government in promoting measures that deliver substantial benefit to wider ecosystems in the long term over less beneficial measures that can be delivered quickly. It is clear that the Scottish Government wants to use this change in legislation, policy and guidance to improve the health and resilience of the wider

marine environment, enabling the offshore wind industry to deliver this. The Scottish offshore wind industry is supportive of all these intentions.

The proposed reforms do not address the fundamental issues of excessive precaution in assessments and unrealistic estimates of predicted project impacts. These reforms are a sticking plaster over a symptom of a more substantial underlying problem that is still not being addressed. Government ought to take the opportunity in these legislative amendments and guidance to set out a more pragmatic approach to the application of the precautionary principle and the evidentiary standard of reasonable scientific doubt, being clear that the urgency of delivering these projects and the public goods that they deliver may require them to go ahead in the face of some doubt about their environmental impacts, without compensation for an unrealistically precautionary assessment of possible impacts.

One of the biggest challenges to securing and delivering successful compensation for seabirds is that declining populations are very frequently limited by a decrease in prey availability due primarily to climate change. The consultation document does not explicitly acknowledge this. Whilst the role of the consultation document is not to review all pressures and threats acting on seabird populations, climate change should still be acknowledged in the guidance to follow, as the primary driver of seabird populations declines, for which there are no direct compensatory measures available. (We do acknowledge there are measures that help build resilience to climate change.) Importantly, planned compensatory measures may fail to benefit impacted features due to climate change reducing prey availability.

Current impact assessment approaches and compensation requirements have large amounts of precaution embedded in them, under the precautionary principle. Consequently, actual impacts are likely to be substantially lower than those predicted and for which are being compensated. If monitoring demonstrates that impacts are substantially lower than those predicted, so less compensation would be needed. It is essential, if full efficient use is to be made of environmental capacity for renewable generation, that there is a mechanism by which this 'surplus' compensation could be 'recycled' and made available to other projects, e.g. one project selling their surplus compensation to another project or simply reassessment of compensation requirements by regulators and freeing up of compensation measures for other projects. This also applies to projects applying for variations to their consents, leading to projects with smaller impacts being built. The Project Registry could be used to keep account of compensation that is made available by projects' adverse impacts being smaller than predicted at the time of consent.

These proposed reforms would theoretically enable projects to work collaboratively to jointly deliver a compensatory measure (this could be under Tier 1, Tier 2 or Tier 3). There appears to be no explicit mechanism by which projects could deliver 'collaborative compensation'. The North East and East Ornithology Group (NEEOG; representing 12 ScotWind developers) has developed a long list of potential compensatory measures. SR members highlight the need to consider that there is currently no proposed mechanism for developer collaboration, banking and allocation across multiple projects from a single measure. How would this be feasible under these proposed reforms?

Regarding the proposals on page 18, where a plan-led approach to projects' compensation is suggested, we have the following points:

- Having a plan-led approach to securing and delivering compensation for projects in the plan is a very welcome step. However, the details of how this works in practice need to be very carefully considered.
- It is essential that the Scottish Government consult on their proposed approach to this plan-led approach to project compensation, or at the very least, ensure that industry is given the opportunity to feed into the development of guidance on this.
- This approach requires the Scottish Government to adopt efficient cross-directorate working between the Offshore Wind Directorate (OWD) and Marine Directorate (MD), particularly Marine Directorate – Licensing Operations Team (MD-LOT). Current approaches to assessing impacts for projects and the plan are insufficiently similar to ensure fair calculation of a project's proportion of plan impacts.
- We recognise that approaches to impact assessment change through time, which means that projects submitting applications later in the process may be predicted to have different impacts than if they had been assessed earlier. This is true, irrespective of whether compensation is delivered through a plan-led approach or by individual projects. However, as each project's compensation requirement is a proportion of the total plan compensation requirement, a change in one project's compensation needs influences other projects.
- We would very much welcome the opportunity to engage at an early stage with OWD on their development of this plan-led approach to compensation delivery, to ensure the approach is fair and feasible.

How does this policy and future guidance relate to English projects with transboundary impacts? How will the Scottish Government manage the Scottish Marine Recovery Fund and the suggested plan-led approach, with English projects also seeking compensation in Scotland? The consultation document does not mention transboundary impacts at all, nor does it address these. For example, if a Scottish project impacts English European sites, for which AEoSI had already been concluded, could the project provide compensation for those English sites via a contribution to the Scottish Marine Recovery Fund? In addition, clarity on whether project alone wider measures would be considered appropriate to compensate for impacts to English SPAs for ScotWind projects outwith 12 nautical miles is needed. We understand from the consultation webinars that Scottish projects will only be able to use the Scottish MRF and its measures. This seems short-sighted and non-reflective of the ecological realities.

The same questions apply to projects with proposed infrastructure across both English and Scottish waters which may have multi-jurisdictional impacts. The application of the reforms to these projects needs to be further considered, with consideration to providing flexibility for projects to use measures across both the Scottish and UK MRFs / library of measures where appropriate. This not only supports project delivery but also the delivery of ecological benefit at the UK level.

Once a project is operational and is offsetting its adverse impacts through active compensation measures, the project's contribution to cumulative/in-combination effects is effectively zero. This is because all impacts are offset by compensation benefits. Therefore, impacts from these projects

should not be included in calculation of a new project's cumulative/in-combination total impacts. Clarity on this point is urgently needed from UK and Scottish Governments.

SNCBs need additional resourcing to cope with the potential increase in workload that these proposed reforms would create. Given the heavy reliance proposed on them by the consultation, there is a high risk of project delays due to SNCBs being unable to provide advice, not only on compensation but on applications as a whole. The Scottish Government must provide additional funding to enable NatureScot to have sufficient resource to provide high quality and rapid advice in relation to offshore wind projects. The government should provide clear statutory guidance to SNCBs (as envisaged in England pursuant to the Corry Review) on the need to balance the need for growth and decarbonisation against nature conservation.

SR members highlight that some decisions, e.g. on later delivery of compensation, post-impact, will only occur with the *approval* of SNCBs. The decision on the compensation necessary to see these important projects delivered must ultimately remain a political, democratic one by Scottish Ministers. Guidance must be clear that SNCBs provide advice only.

SR strongly endorses the robust application and demonstration of the mitigation hierarchy throughout the design and consenting of all projects. It is therefore appropriate that evidence of following the mitigation hierarchy should be provided as part of any consent application, as is currently the case. However, the onus should be on the applicant to demonstrate the mitigation hierarchy in accordance with existing policy requirements, including provisions within the National Policy Statements, rather than requiring additional evidence from SNCBs or other stakeholders who may or may not agree with aspects of the siting and design of a project. Furthermore, mitigation hierarchy guidance must emphasise flexibility and pragmatic judgement, not strict box-ticking, to ensure it supports rather than hinders offshore wind delivery.

SR welcomes the recognition of the need for any compensation measures to be secured within the context of achieving the imperative reasons of overriding public interest (IROPI), which justify making a derogation under the Habitats Regulations, notwithstanding predicted Adverse Effects on Site Integrity. New guidance should clarify that, in the event of any conflict between the timely delivery of compensation measures and the achievement of identified IROPI, the latter will prevail and have primacy in decision-making.

The application of the reforms to live projects is welcome in principle, as it will give projects unable to secure or deliver compensation the option to use wider compensation measures as an alternative, or potentially as adaptive management where appropriate. However, it is important that the application of the reforms to live projects is on an 'opt in' basis, rather than becoming an expectation for projects with alternative compensation measures already in mind or secured. The reforms should not create greater uncertainty for developers or a shifting of the goal posts for projects already in the consenting process with a preference to deliver developer-led tier 1 or 2 compensation.

While the proposals are supported in theory, the details to support the practical application of the

proposals will come in the guidance. The guidance should provide clear direction to SNCBs and industry, setting out the evidentiary standards to be met for moving through the compensation hierarchy, and providing quantitative standards and examples where possible.

## Annex 1: A summary of the proposed changes and their implications

Topic	Existing Position	Proposal	View
<b>Statutory purpose of compensation</b>	<ul style="list-style-type: none"> <li>Compensatory measures must “protect the overall coherence of the network”</li> </ul>	<ul style="list-style-type: none"> <li>Requirement for compensation to “benefit the UK Marine Protected Areas (MPA) network”</li> </ul>	<ul style="list-style-type: none"> <li><b>Positive</b> – current ‘coherence of the network’ test acts as a straitjacket which restricts compensation measures &amp; complicates consenting</li> <li>Unclear how wider ‘must benefit’ test will be applied objectively.</li> <li>Suggestion to remove requirement to demonstrate that compensation benefits the UK MPA network</li> </ul>
<b>Scope of eligible compensation</b>	<ul style="list-style-type: none"> <li>Measures must directly target the impacted feature (‘like for like; compensation)</li> </ul>	<ul style="list-style-type: none"> <li>Broaden scope to allow measures which target “ecologically similar features” (Tier 2) or large-scale pressures that impact multiple protected features or sites (Tier 3)</li> <li>Mandate use of a compensation hierarchy: consider like for like measures in Tier 1 prior to tiers 2 &amp; 3</li> <li>Flexibility to move down the hierarchy if greater ecological benefit can be demonstrated OR if measures are unavailable or insufficient</li> </ul>	<ul style="list-style-type: none"> <li><b>Positive</b> - major shift away from Defra &amp; SNCB insistence on ‘like for like’ measures</li> <li>More flexible and enabling approach that allows a greater range of measures</li> <li>Provides greater flexibility for Scottish projects</li> <li>Ability for projects to deliver measures via project-alone or Scottish Marine Recovery Fund also increases flexibility</li> <li>Enables delivery of measures that</li> </ul>

Topic	Existing Position	Proposal	View
		<ul style="list-style-type: none"> <li>UK / Scot Gov differences: <ul style="list-style-type: none"> <li>Tier 2 &amp; 3 measures require ministerial pre-approval in England &amp; Wales. No such requirement in Scotland</li> <li>Tier 3 measures can be delivered by individual projects or Scottish Marine Recovery Fund in Scotland but only through MRF in England and Wales</li> </ul> </li> </ul>	<p>deliver greater benefit to marine environment</p>
<b>Compensation delivery</b>	<ul style="list-style-type: none"> <li>Only project-level compensation is possible - no mechanism in place to deliver strategic compensation</li> <li>Marine Recovery Funds (for England – Wales and Scotland separately) in development</li> </ul>	<ul style="list-style-type: none"> <li>UK Gov for England &amp; Wales: <ul style="list-style-type: none"> <li>Tier 3 measures should be delivered through Defra's MRF</li> </ul> </li> <li>Scot Gov: <ul style="list-style-type: none"> <li>Greater flexibility for delivery of all measures by various mechanisms</li> <li>Confirms plan-level compensation package is required to support a derogation for the new SMP</li> <li>Emphasise that strategic</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><b>Positive</b> – enabling approach provided by the Scottish Government for Scottish projects</li> <li>Strategic compensation is more dependent on arrangements (TBC) for: <ul style="list-style-type: none"> <li>Defra's MRF (recently consulted on draft design)</li> <li>Scottish MRF (consultation underway in August 2025)</li> <li>New SMP (Scot Gov targeting adoption in Spring 2026 prior to</li> </ul> </li> </ul>

Topic	Existing Position	Proposal	View
		compensation can be enabled through new SMP	<p>Scottish election)</p> <ul style="list-style-type: none"> <li>Enactment of reforms is required before new SMP can be adopted</li> </ul>
<b>Timing of compensation</b>	<ul style="list-style-type: none"> <li>Compensation generally expected to be in place before impact occurs – SNCB position &amp; RSPB 'red line'</li> </ul>	<ul style="list-style-type: none"> <li>Provide certainty that, in some cases, compensation can become operational after a predicted impact, with over-compensation to offset delays</li> <li>Considered on a case-by-case basis</li> </ul>	<ul style="list-style-type: none"> <li><b>Positive</b> – provides greater flexibility &amp; reduces lead-in time (upfront effort &amp; cost)</li> <li>Case-by-case consideration likely to generate uncertainty &amp; renewed debate with SNCBs &amp; NGOs</li> </ul>
<b>Additionality</b>	<ul style="list-style-type: none"> <li>Compensation must be additional to 'normal' MPA site management, including actions which public bodies should be undertaking (even if they are not doing this)</li> </ul>	<ul style="list-style-type: none"> <li>Allow measures which go beyond either current site management or those with funding and a reasonable expectation of delivery to be treated as compensation</li> </ul>	<ul style="list-style-type: none"> <li><b>Positive</b> – unlocks 'lower hanging fruit' MPA improvement initiatives</li> <li>Greater clarity provided on what measures are additional and hence available as compensation</li> </ul>
<b>Small impacts / de minimis</b>	<ul style="list-style-type: none"> <li>No de minimis thresholds</li> <li>Compensation required for Adverse Effects on Site Integrity (AEoSI), irrespective of impact scale</li> </ul>	<ul style="list-style-type: none"> <li>Clarify that small impacts which do not make a "material contribution" to in-combination AEoSI "may" not require compensation</li> <li>Clarify that the scale of mitigation or compensation required should reflect the scale of impact</li> </ul>	<ul style="list-style-type: none"> <li><b>Concerning</b> – minor change, no definition or clear exemption for de minimis impacts</li> <li>Lack of willingness to legislate to address EU caselaw on de minimis impacts</li> <li>Deferral to SNCB advice on case-by-case basis – unlikely to result in</li> </ul>



Topic	Existing Position	Proposal	View
			change of approach
<b>Environmental safeguards</b>	<ul style="list-style-type: none"> <li>• SNCBs advisory role in consenting process</li> <li>• Expectation to follow the mitigation hierarchy to minimise impacts: avoid, reduce, mitigate, offset</li> </ul>	<ul style="list-style-type: none"> <li>• Mandate &amp; scrutinise robust application of the mitigation hierarchy (supported by evidence) prior to applying compensation hierarchy</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Challenging</b> – whilst mitigation hierarchy is already applied, greater scrutiny &amp; challenge can be expected</li> </ul>
<b>Adaptive management (monitoring &amp; adjustment of agreed compensation measures)</b>	<ul style="list-style-type: none"> <li>• Multi-stage process which has evolved through DCO practice</li> </ul>	<ul style="list-style-type: none"> <li>• Codify current expectations</li> <li>• Mandate monitoring and adaptive management</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Concerning</b> – reinforces current disproportionate approach</li> <li>• Adaptive management likely to become unwieldy &amp; contested</li> </ul>

END