

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

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August 29, 2025

Department for Environment, Food and Rural Affairs (Defra)
Seacole Building 2
Marsham Street
SW1P 4DF

Dear Will Francis,

Response to: Defra Consultation on Offshore Wind Environmental Compensatory Measures Reforms Consultation (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 Defra Offshore Wind Environmental Compensatory Measures Reforms consultation. Our members are broadly supportive of the proposed changes, which seek to provide a more flexible and pragmatic approach to securing environmental compensation, whilst maintaining high environmental standards.

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.

- 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, disappointed 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.
- The Scottish Government's consultation on Strategic Compensation Policy for Offshore Wind proposes to enable projects to use wider measures under Tier 3, as a project-alone measure, if they wish to, rather than being required to use wider measures through the Scottish Marine Recovery Fund. We recommend that this additional flexibility is also provided in the UK SI and associated guidance, thereby providing developers with greater flexibility in the process by which their compensation is secured. Furthermore, a consistent approach across regimes is essential for projects which have transboundary impacts.

Timing

- The proposed approach to 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 Administrations 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 and partially banked (e.g. to help facilitate earlier projects), the relevant Appropriate Authority should provide clear mechanisms to establish its remaining capacity (i.e. headroom) and allocate this compensation to further projects as required.

Adaptive Management

- SR members are concerned that both the UK Government and Scottish Government 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 1 bird, may still generate an Appropriate Assessment conclusion that AEoSI 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 would be keen to engage further with this agenda and would be happy to discuss our response in more detail.

Yours sincerely,



Mark Richardson
Head of Offshore Wind
mrichardson@scottishrenewables.com
Scottish Renewables

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Department
for Environment,
Food & Rural Affairs

Consultation: offshore wind environmental compensatory measures reforms

July 2025

We are responsible for improving and protecting the environment. We aim to grow a green economy and sustain thriving rural communities. We also support our world-leading food, farming and fishing industries.

Defra is a ministerial department, supported by 34 agencies and public bodies.



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Any enquiries regarding this publication should be sent to us at to offshorewindreform@defra.gov.uk.

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Acronym list

The following are common terms that are abbreviated in this paper.

ALB – Arm's Length Body

COWSC – Collaboration on Offshore Wind Strategic Compensation

DAERA – Department for Agriculture, Environment and Rural Affairs (Northern Ireland)

DCO – Development Consent Order

Defra – UK Government Department for Environment, Food, and Rural Affairs

DESNZ – UK Government Department for Energy Security and Net Zero

DG – devolved government

ECMR – Environmental Compensatory Measures Reforms

eNGO – environmental Non-Governmental Organisation

EoI – Expression of Interest

GW – Gigawatt

HPMA – Highly Protected Marine Area

HRA – Habitats Regulations Assessment (Habitats Regulations Appraisal in Scotland)

IMP - implementation and monitoring plan

IROPI - Imperative Reasons of Overriding Public Interest

JNCC – Joint Nature Conservation Committee

LoSCM – Library of Strategic Compensatory Measures

LPA - Local Planning Authority

MCAA – Marine and Coastal Access Act 2009

MCZ – Marine Conservation Zone

MEEB – measures of equivalent environmental benefit

MIH – Marine Irreplaceable Habitats **MMO**

– Marine Management Organisation **MPA**

– Marine Protected Area

MRF – Marine Recovery Fund

MRFO – Marine Recovery Fund Operator

MW – megawatt

NIE – Northern Ireland Executive

NM – nautical miles

NRW – Natural Resources Wales

NSIP – Nationally Significant Infrastructure Project

OFW – offshore wind

OWIC – Offshore Wind Industry Council

OWEIP – Offshore Wind Environmental Improvement Package

SAC – Special Area of Conservation **SCM**

– strategic compensatory measure **SI** –
statutory instrument

SG – Scottish Government

SNCB – Statutory Nature Conservation Body

SoS – Secretary of State

SPA – Special Protection Area

TCE – The Crown Estate

UKG – UK Government

WG – Welsh Government

Executive summary

1. Making Britain a clean energy superpower is one of this government's 5 missions. This is critical to our country – to cut bills, create jobs, deliver energy security with cheaper, zero-carbon electricity by 2030 and to meet our net zero target.
2. Offshore wind (OFW) will play a central role in achieving Clean Power by 2030 mission and accelerating to net zero by 2050 – our recently published [Clean Power 2030 Action Plan](#) sets a capacity range of between 43 to 50GW by 2030.
3. The Offshore Wind Environmental Improvement Package (OWEIP) plays a key role in supporting the growth of OFW by helping to de-risk and accelerate planning decisions for OFW while protecting and enhancing the marine environment. Of particular relevance to this consultation is the workstream setting up the Marine Recovery Fund (MRF), a new mechanism to allow OFW farm developers to discharge their compensation requirements by paying into a voluntary fund to support large scale strategic measures.
4. The proposed reforms to environmental compensation, as set out in this consultation, aim to provide a more flexible and pragmatic approach to securing environmental compensation, unlocking new opportunities for nature enhancement through compensation.

Proposed Reforms to Environmental Compensatory Measures

5. The proposed Environmental Compensatory Measures Reforms (ECMR) set out in this consultation will be delivered using powers granted under The Energy Act (2023), through a Statutory Instrument (SI) and associated guidance. The proposed reforms are relevant OFW activities only. By activities we mean the OFW plans and OFW infrastructure¹.
6. The reforms are intended to provide more clarity on requirements for environmental compensation for OFW. This term, “environmental compensation” is used to describe the requirement to ensure that compensatory measures, or measures of equivalent environmental benefit (MEEB), are taken, as appropriate, when a marine protected area is unavoidably damaged by the development of a plan or project and compensation is required. This follows consideration of all possible options to avoid, reduce and mitigate for adverse impacts. The reforms will create a more flexible and pragmatic approach which includes increasing access to a broader range of measures for environmental compensation.

¹ (including cables and transmission infrastructure including bootstraps, as defined in the Act and associated explanatory notes)

7. The protection of the marine environment within and beyond the UK Marine Protected Area (MPA) network is vitally important. As the Clean Power 2030 Action acknowledges, the world is facing twin climate and nature crises. The government recognises that the clean energy transition presents an opportunity to address both and is committed to accelerating to net zero, to delivering Clean Power by 2030, and to restoring nature.
8. The proposed reforms present a valuable opportunity to strengthen nature recovery efforts by ensuring that compensatory funding from OFW projects delivers the most ecologically effective and beneficial outcomes. The increased flexibility in the approach to environmental compensation requirements will therefore support the timely deployment of OFW infrastructure as well as enhance government's ability to take a more pragmatic and innovative approach to how the UK MPA network is supported and safeguarded for the future.
9. The need for greater flexibility has arisen due to difficulties for OFW projects in identifying appropriate environmental compensation. To facilitate the delivery of the pipeline of OFW developments, there is a need to improve access to environmental compensation beyond those which directly offset the impact to the feature affected by the development. This approach aims to address issues around projects getting held up by the current complexity of delivering environmental compensation requirements during the consenting process.

About this consultation

10. This consultation sets out the government's proposals for reforms to approaches to environmental compensation which we anticipate implementing through regulations made under The Energy Act (2023) together with supporting guidance.
11. The SI will apply to the offshore waters (beyond 12 nautical miles (NM) from the UK coastline) for the whole of the UK. It will also apply to qualifying Secretary of State (SoS) functions in relation to OFW activity in the Northern Irish inshore area, the Welsh inshore areas in relation to SoS qualifying functions and in relation to projects with a generating capacity over 350MW. Otherwise, the devolved governments (DGs) of Scotland, Wales and Northern Ireland are responsible for regulations for their inshore areas. The Scottish Government (SG) is consulting on a Scottish statutory instrument (SSI) for its inshore waters in parallel with this consultation. The Welsh Government (WG) is considering whether to develop an SI in relation to projects it consents in their inshore waters. Northern Ireland Executive (NIE) is considering developing legislation in relation to projects it consents in their inshore waters.
12. This consultation also describes the approach to guidance that will apply for offshore waters in England, Wales and Northern Ireland, and those inshore areas the SI applies to. The SG is developing guidance for the Scottish inshore region and the Scottish offshore region. SG is running a [consultation](#) on the policy underpinning the proposed SSI and guidance in parallel with Defra's consultation. The geographic scope of the SI and guidance is described in the section entitled "Geographical scope" (see paragraphs 72-73).

13. This consultation provides an opportunity for stakeholders to provide views on these proposed reforms. Defra will use the responses to understand whether the proposed reforms will achieve the intended objectives and to inform the final design of the SI and associated guidance. We do not intend to consult on the specific drafting of the SI.
14. The introduction of this document outlines the consultation process. Questions 1-9 of the consultation are demographic questions and are included in the survey for responses on the Defra consultation portal.
15. The introductory section outlines the background to our reforms and explains why legislative change is required to achieve our proposed objectives.
16. The policy proposals and associated questions are set out in 4 parts:
- Parts 1 and 2 outline the details of the proposed reforms, including the legislative changes required to deliver wider compensatory measures, and relevant safeguards (Questions 10 – 22)
 - Part 3 clarifies other aspects of environmental compensatory measures for OFW, including additionality, timing of compensation, small impacts and the SI's application to live projects. (Questions 23-25)
 - Part 4 includes questions seeking views on any final comments (Questions 26-27)
17. This consultation applies to relevant OFW activities only and does not seek views on environmental compensation arrangements for other marine industries.
18. In 2024, Defra consulted on policies to inform updated guidance for MPA assessments. Feedback from that consultation has been considered and reflected in the policies and guidance outlined in this consultation.
19. Defra intends to lay the SI and publish final guidance as soon as possible after this consultation closes and responses are analysed. Our ambition is to do this in 2025, but this will depend on the scale and complexity of the responses.

Consultation process

Audience and application - who will be affected by the proposals?

20. We would like to hear from stakeholders who have an interest in OFW development and the delivery of environmental compensatory measures for OFW in the UK.

Purpose of the consultation

21. We want to:
- gather evidence from key stakeholders on the proposed reforms
 - provide clarity on proposed reforms
 - ensure the reforms meet their intended policy objectives.

Consultation timelines

22. The consultation will run from Tuesday 22 July 2025 to Tuesday 2 September 2025. Once we have analysed responses from the consultation, we will publish a summary of responses and an outline of next steps on gov.uk.
23. We have selected this consultation period because of the urgent need to accelerate OFW developments to meet government ambitions set out in the Clean Power 2030 Action Plan.
24. Defra has previously held workshops and provided opportunities for stakeholders to comment on related consultations. Although the consultation runs over a traditional holiday period, given the separate engagement that has gone into many of the policies within this consultation, we consider the timeframe to be proportionate and appropriate.

Engagements to date

25. In developing ECMR, Defra has engaged with:

- the Department for Energy Security and Net Zero (DESNZ)
- the Ministry for Housing, Communities and Local Government (MHCLG)
- the DGs
- Statutory Nature Conservation Bodies (SNCBs) including Natural England, the Joint Nature Conservation Committee (JNCC), Natural Resource Wales (NRW) and NatureScot
- the Marine Management Organisation (MMO)
- environmental Non-governmental Organisations (eNGOs)
- OFW developers and marine industry representatives, including Renewables UK and the Offshore Wind Industry Council (OWIC)

Interactions with DGs and how the reforms have been developed

26. In developing the ECMR package, we have engaged actively with DGs. It has been agreed that whilst the SI will apply to all DGs as set out above, each DG may publish its own associated guidance. For instance, guidance for England will specify how wider compensatory measures will be delivered using the MRF. The DG may alternatively choose to rely on UK government guidance ('final guidance') for matters relating to the SI. Main principles of the final guidance, including those set out in, and informed by, the consultation will be agreed across governments so there is a common understanding across the UK.

How you can respond

27. Responses should be submitted online where possible via Citizen Space. If you have additional information that you would like to submit as a part of your consultation response, email it to offshorewindreform@defra.gov.uk. Responses can also be sent by post, specifying which questions you are responding to:

Consultation on Environmental Compensation Reforms for Offshore Wind
Consultation Co-ordinator,
Defra
2 Marsham Street
London
SW1P 4DF

28. Where instructed to provide explanation of your answer, fully explain your thinking with evidence so we can understand any comments or concerns.

Use of data

29. Information and comments submitted through the consultation will be used to inform and further develop the secondary legislation and guidance to ensure its feasibility for delivery and that it takes into account stakeholders' views.

Complaints procedure

30. All complaints about the consultation process should be submitted to the Consultation Coordinator via email: consultation.coordinator@defra.gov.uk. To meet with Defra's service standard, all complaints will be responded to within 15 days of receipt.

Using and sharing your information

31. How we use your personal data is set out in the consultation and [call for evidence exercise privacy notice](#)

Other Information

32. This consultation is being conducted in line with the Cabinet Office [Consultation Principles](#)

Questions 1-9: About you

Question 1a. Would you like your response to be confidential?

No

Question 1b. If you answered yes to this question, please give your reason.

n/a

Question 2. What is your name?

Mark Richardson

Question 3. What is your email address?

mrichardson@scottishrenewables.com

Question 4. Are you responding to this consultation on behalf of an individual?

No

If yes, please answer questions 6, 7, and 9 only.

If no, please answer questions 5 and 8 only.

Question 5a. Which organisation or organisations are you responding on behalf of?

Scottish Renewables

Question 5b. What is the position you hold at the organisation or organisations?

Head of Offshore Wind

Question 6. If employed, briefly describe the type of organisation or industry you work for (e.g. eNGO, developer, OFW industry, marine industry). If you are self-employed, or looking for work, please indicate what type of work you do. If retired, please indicate the type of work you undertook in your career.

Trade Association

Question 7. If responding as an individual, where do you live? [Please tick one of the following bullets]

Scotland

Question 8a. If responding on behalf of an organisation headquartered in the UK, where is your organisation based or where are you operating? [Please tick one of the following bullets]

Scotland / The Organisation operates throughout the UK

Question 8b. If responding on behalf of a multinational organisation headquartered outside the UK, where are you operating? [Please tick one of the following bullets]

n/a

Question 9. Which of the following best describes where you live? [Please tick one of the following bullets]

- Urban – coastal ✓
- Urban – non-coastal ✓
- Rural – coastal ✓
- Rural – non-coastal ✓

Background

Policy

Clean Power 2030 Action Plan:

33. Making Britain a clean energy superpower is one of the government's 5 missions. The main aims of this mission include cutting energy bills, creating jobs and delivering energy security with cheaper, zero-carbon electricity by 2030 and accelerating to net zero. Central to delivering this mission is a significant expansion in OFW. This ambition for OFW is an important component in delivering the government's manifesto commitment to increase the proportion of the UK's energy generated from renewables to decarbonise the UK's electricity system. The action plan will ensure that the protection of nature is embedded into the delivery of Clean Power 2030.

Boosting nature recovery:

34. This government has a strong commitment to boosting nature recovery. This commitment will be achieved through taking action to meet the UK's Environment Act (2021) targets, as well as through the Kunming-Montreal Global Biodiversity Framework commitment to effectively conserve and manage 30% of UK land, inland waters and sea 'for nature' by 2030, also known as the 30 by 30 commitment.

Kickstarting economic growth:

35. The UK government's ambitious plans for growth were outlined in the Chancellor's speech in January 2025, highlighting the need for reforms which make it easier for businesses to build. This requires reforming our approach to environmental regulation. In the marine environment and for deployment of the OFW pipeline of projects, this requires the removal of barriers to building new OFW farms by ensuring that appropriate compensatory measures are accessible for the pipeline of upcoming development.

The need for reforms:

36. With the rapid expansion and scale of deployment of OFW, there have been real-world difficulties identifying suitable compensatory measures that directly benefit the feature impacted by an OFW development. Whilst there is already some flexibility in how to meet the requirements of environmental compensation, in practice it has proved difficult to reliably access such wider compensatory measures in the marine environment. To meet the pipeline of upcoming developments, clearer flexibility in our approach to compensation is required.
37. We know that new infrastructure developments have the potential to harm the environment, particularly through habitat loss. We face a dual and interlinked nature and climate crisis. The clean energy transition represents an opportunity to reform aspects of the planning system to restore nature and make changes that can bring benefits for both climate and nature. We must design any reforms to the way we

manage environmental compensation to ensure they integrate our climate and nature targets where possible so that we can continue to protect and restore our marine environment whilst accelerating to net zero.

The Offshore Wind Environmental Improvement Package:

38. OFW will play an important role in delivering the Clean Power by 2030 mission. Previously, the challenges of managing the balance between the government's ambitions for OFW and the need to appropriately compensate for these adverse environmental impacts created difficulties with the consenting of OFW projects. The Clean Power 2030 Action Plan makes clear that integrating action to address both climate change and nature restoration wherever possible is vital to success. The government is therefore implementing the OWEIP to help join up the significant expansion in OFW capacity, with protecting the marine environment.

39. The OWEIP has the following aims:

- broaden the available compensatory measures for the unavoidable adverse impacts of OFW activities in MPAs through ECMR
- enable measures to compensate for the adverse environmental effects of OFW to be taken at a strategic level across multiple projects (rather than individual project by individual project)
- set up one or more MRFs to deliver these strategic measures on behalf of developers
- develop Offshore Wind Environmental Standards (OWES) to set a minimum common requirement for designing OFW projects to reduce discussion time between applicants SNCBs in agreeing suitable mitigation
- take steps to better manage marine noise from OFW developments
- develop a strategic approach to environmental monitoring

40. This consultation focuses on the design of reforms for environmental compensation for OFW.

Duties to protect and manage Marine Protected Areas

MPA duties:

41. The main underpinning legislation in relation to protected sites in England and Wales is the Conservation of Habitats and Species Regulations 2017, the Conservation of Offshore Marine Habitats and Species Regulations 2017 (collectively the "Habitats Regulations") and the Marine and Coastal Access Act 2009 (MCAA).

42. The Habitats Regulations also apply to Scotland and Northern Ireland in respect of certain reserved and executively devolved matters. In Northern Ireland inshore, the European Union Habitats Directive and aspects of the Wild Birds Directive are transposed into law through the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995. Special Areas of Conservation (SACs) and Special Protection

Areas (SPAs) are designated and managed under these regulations for the Northern Ireland inshore. MCAA also applies to the offshore for Scotland and NI, including Marine Conservation Zones (MCZs, MPAs in Scotland). Scotland and Northern Ireland have their own devolved legislation in relation to the inshore which are the Marine (Scotland) Act 2010, the Marine Act (Northern Ireland) 2013, and the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

43. The Habitats Regulations transposed the European Union Habitats' Directive and parts of the Wild Birds' Directives and contains requirements for UK ministers and other bodies to exercise their functions in compliance with both the Directives (for example, Regulation 9 of the inshore regulations and Regulation 6 of the offshore regulations).
44. The Habitats Directive is also underpinned by guidance issued by the European Commission (Natura 2000 guidance). This guidance is no longer directly applicable in the UK but as Ministers and other authorities remain under a duty to comply with the Directives, it remains influential on interpretation of the obligations in the Habitats Regulations domestically.
45. Under the Habitats Regulations and MCAA there are powers and duties to designate sites in order to protect and recover rare, threatened and important marine ecosystems, habitats and species from damage caused by human activities. There are also obligations in relation to networks of such sites. The purpose of such networks is to make a significant contribution to conserving the designated habitats and species. The National Site Network consists of sites designated under the Habitats Regulations.
46. The UK Government has duties under The Environment Targets (Marine Protected Areas) Regulations 2023 to ensure that at least 70% of designated features in MPAs are in a 'favourable condition' by the end of 2042, with the remainder in recovering condition. This target applies to England only.
47. The UK Government is a party to several international agreements relevant to marine habitats and species:
 - the [OSPAR Convention](#), focused on protecting the marine environment of the North-East Atlantic
 - the [Bern Convention](#), focused on protecting wild plant and animal species and their natural habitats in Europe and some African countries; including maintaining the “emerald network” of protected sites
 - the [Bonn Convention](#), focused on conserving migratory species and their habitats
 - the [Kunming-Montreal](#) Global Biodiversity Framework commitment to protect 30% of all land (including inland waters) and sea by 2030 (30by30) (See paragraph 34).
48. In bringing forward OFW projects, developers must assess the environmental impacts of developments on MPAs under the following regulatory regimes:
 - Habitats Regulations in the form of Habitats Regulations Assessments (HRAs) for SACs and SPAs (and as a matter of policy Ramsar sites)
 - MCAA in the form of MCZ assessments (including Highly Protected Marine Areas (HPMAs))
49. In this consultation, the term ‘environmental assessments’ is taken to mean either HRA or MCZ assessments or both unless otherwise specified.

50. When developing and considering plans for development projects, competent authorities, developers, and leaseholders are also required to consider how to avoid, reduce, and mitigate impacts affecting the marine environment particularly within MPAs known as the mitigation hierarchy.
51. Developers must work through the 'avoid, reduce, mitigate' hierarchy in a sequential manner, exhausting the possibilities of one level before proceeding to consider the next.

HRAs for SACs and SPAs and Ramsar sites:

52. If a plan or project is likely to significantly affect an SAC or SPA, either alone or in combination with other plans or projects and is not directly connected with or necessary for the site's management, it requires an "appropriate assessment" to be carried out under the Habitats Regulations.
53. Having considered the environmental impacts predicted by specific assessments, the competent authority cannot consent any plan or project unless satisfied there would be no adverse effect on the integrity of an SAC or SPA.
54. However, under the Habitats Regulations, a 'derogation' can allow a development to proceed despite a risk of adverse effect on the integrity of the protected site. This is permissible if the competent authority determines that there are no alternative solutions and the development is necessary for imperative reasons of overriding public interest (IROPI). In such cases, the appropriate authority must ensure that compensatory measures are secured to protect the overall coherence of the National Site Network of SACs and SPAs.

MCZ assessments for MCZ (including HPMAs):

55. Under the MCAA, a similar process applies to marine conservation zones (MCZs), including HPMAs). The applicant or plan promoter must demonstrate that:
- There are no alternative ways to proceed with the development that would create a substantially lower risk of hindering the achievement of the MCZ's conservation objectives
 - The public benefit of proceeding with the development clearly outweighs the risk of damage to the environment it will cause
 - The person seeking authorisation will undertake, or arrange for, MEEB to the damage which the development will or is likely to have in or on the MCZ

DGs and consenting processes for OFW

England

56. In England, OFW projects generating less than 100 MW require the following key consents:

- a marine licence: required under MCAA. This is granted by the MMO on behalf of the Secretary of State

- a consent for the construction: required under section 36 of the Electricity Act 1989 if the generating station will be above 1 MW capacity
- planning permission for onshore infrastructure, granted by the Local Planning Authority (LPA) under the Town and Country Planning Act 1990

57. Projects generating over 100MW (Nationally Significant Infrastructure Projects - NSIPs) require the following:

- a Development Consent Order (DCO): this can cover both the offshore and onshore elements and is granted by the DESNZ SoS
- a marine licence: either deemed as part of the DCO process (through DESNZ) or issued separately by the MMO

Wales

58. In Welsh waters, OFW projects generating between 1MW and 350MW require the following key consents:

- a marine licence: issued by NRW under the MCAA as amended by the Wales Act 2017
- a consent for the generation of electricity: required under the Electricity Act 1989, granted by Welsh Ministers
- planning permission for onshore facilities, granted by the LPA under the Town and Country Planning Act 1990 and Planning (Wales) Act 2015

59. For OFW projects generating more than 350 MW in Welsh inshore and offshore waters:

- a DCO: provided under the Planning Act 2008, can cover offshore, inshore and onshore elements of the project, granted by the DESNZ Secretary of State
- a marine licence: in Welsh offshore waters, this can be deemed within the DCO process (where the project is wholly within Welsh offshore waters) or granted separately by NRW (where a deemed marine licence is not possible or agreed by NRW). For inshore waters (up to 12 nm) it is granted by NRW

60. For projects above >350 MW spanning both Welsh and English waters:

- consents are coordinated, with the DCO granted by the DESNZ Secretary of State covering both Welsh and England waters: NRW issues the marine license for Welsh elements unless deemed as part of the DCO, while the marine consent for English waters is issued separately by the MMO unless deemed as part of the DCO

Scotland

61. Consenting processes in Scottish inshore waters (0 to 12 NM) require the following key consents:

- a marine licence: required under the Marine (Scotland) Act 2010 and granted by the Scottish Government Marine Directorate (on behalf of Scottish Ministers)
- a consent for the generation of electricity, granted by Scottish Ministers: required under Section 36 of the Electricity Act 1989 for generating stations generating more than 1 MW

- planning permission for onshore elements, deemed under the Section 36 consent granted by Scottish Ministers or through a separate application under the Town and Country Planning (Scotland) Act 1997

62. In Scottish offshore waters (12 to 200 NM):

- a marine licence: required under the MCAA and administered by the Scottish Government Marine Directorate (on behalf of Scottish Ministers)
- a consent for the generation of electricity: the threshold increases, requiring consent for generating stations above 50MW by Scottish Ministers
- planning permission: remains the same as for inshore works

Northern Ireland

63. In Northern Ireland's inshore waters (0 to 12 NM), OFW projects require:

- a marine licence: issued by DAERA under the MCAA
- generating consent from the Department for the Economy (DfE) for OFW farms above 1MW, under Article 39 of the Electricity (Northern Ireland) Order 1992
- planning permission for onshore activities (landward of mean low water springs), granted under the Planning Act (Northern Ireland) 2011

64. In Northern Ireland offshore waters (12NM territorial limit to the outer boundary of the Northern Ireland marine area (31NM at the farthest point)) OFW projects generating equal to or less than 100 MW require the following key consents:

- a marine licence: required under the MCAA. This is granted by the Marine Management Organisation (MMO) on behalf of the SoS
- a consent for the generation of electricity: required under section 36 of the Electricity Act 1989 if the generating station will be above 1 MW capacity

65. OFW projects generating over 100MW (NSIPs) require the following:

- A DCO: this covers both the offshore and onshore elements and is granted by the DESNZ SoS
- A marine licence: either deemed as part of the DCO process (through DESNZ) or issued separately by the MMO.

66. Planning permission remains the same as for inshore works.

Enabling Powers through The Energy Act (2023)

67. The Energy Act (2023) was designed to address energy production and security and the regulation of the energy market. It includes provisions for offshore energy production and environmental protection. Section 293 gives the SoS powers to make provisions in relation to environmental assessments and compensation measures for relevant OFW activities. These provisions allow:

- regulations to be made relating to the assessment of the environmental effects of relevant OFW activities in relation to protected sites and about compensatory measures for adverse environmental effects on those sites
 - strategic compensatory measures (SCM) to be taken or secured
 - regulations to be made to establish one or more MRFs
68. ECMR would use these powers, bringing forward secondary legislation and associated guidance which amend the Habitats Regulations to make it easier and quicker for OFW developers to access a wider range of compensatory measures.
69. The DGs have specific powers in The Energy Act (2023) to establish their own legislation for their respective consenting responsibilities in their inshore waters.
70. Scotland will be preparing an SSI for the Scottish inshore region (0-12NM). Scottish guidance will cover both the inshore region (in relation to the SSI) and the offshore region (beyond 12nm) (in relation to the SI).
71. In Wales, the majority of developments in Welsh waters will be covered by the SI. The WG will consider the need for similar legislation for projects consented by Welsh Ministers.

Geographical scope

72. The SI referred to in this consultation will be applicable to relevant OFW activity (as defined in the Energy Act) as follows:
- all OFW plans and projects in inshore and offshore (beyond 12 nm) English waters (where projects are generating over 100MW)
 - all OFW plans and projects in Welsh offshore waters and, in Welsh inshore waters, projects generating over 350MW and plans or projects where the SoS exercises qualifying functions
 - all Scottish offshore waters
 - all OFW plans and projects in Northern Irish offshore waters and, in Northern Irish inshore waters, where SoS has qualifying functions in relation to OFW activity.
73. The associated guidance for OFW may be published by the DGs in respect of their waters.

Details of the proposed reforms for OFW

The problem we are addressing

74. As set out above, compensatory measures are required under the Habitats Regulations for OFW developments to offset unavoidable adverse environmental effects to SACs and SPAs. Current practice, in accordance with the [Natura 2000 guidance](#), is generally to require environmental compensation to address damage from development to the

same habitat or species either at the same location or elsewhere in the feature's natural range, in order to protect the overall coherence of the national site network.

75. To deliver the government's Clean Power by 2030 mission and net-zero targets, it is anticipated that OFW plans and projects will increasingly impact MPAs and therefore increasingly rely on derogations under the Habitats Regulations and similar processes under the MCAA. A key concern is the availability of measures that precisely compensate for damage to specific protected features affected by an OFW development.
76. The OFW sector has identified challenges with the availability of compensatory measures as one of the key barriers to OFW deployment. OFW developers and regulators have also told government that it often takes a long time to agree compensatory measures and that these are often difficult to deliver on a project-by-project basis. These issues are largely due to the unique nature of the marine environment and delay how long it takes for OFW projects to enter and progress through the planning and consenting process.
77. As well as creating more flexibility for securing environmental compensation, our proposals aim to address some other aspects of how unavoidable damage to the UK MPA network from OFW projects is considered and compensated for, including:
- **Mitigation hierarchy:** this requirement to consider if damage should be avoided or reduced and then mitigated remains an important priority before derogation. Clarity is needed to ensure it is applied consistently and to reduce the need for compensation
 - **Additionality:** current practice (associated with the [Natura 2000 guidance](#)) is that compensation in the marine environment for damage to MPAs should not replace or duplicate site conservation measures that the UK and devolved governments have obligations to undertake, so-called 'normal practice'. We propose that developers and plan promoters should be able to propose compensatory measures that include conservation measures, where this will accelerate progress towards achieving conservation objectives or where the measure goes beyond what government is doing. This will increase the number of compensatory measures available, taking into account some of the unique challenges of delivering compensation in the marine environment
 - **Timing of compensation:** currently, environmental compensation for damage to protected sites is generally expected to be delivered before the adverse effect on a site is allowed to occur. However, it is also accepted that there are some circumstances where the type of measure means it is impractical to do so. Stakeholders have said that they would like more clarity and certainty on when it is appropriate for compensation to be in place and operational after the impact to a protected site
 - **Public compensation register:** there is currently no single place where marine users and statutory decision makers can find out where environmental compensation has been delivered and its outcomes. There is a need to ensure that regulators and marine users are aware of compensation measures and whether

information can help inform future decision making and a better understanding of effective measures

- **Adaptive management:** under current requirements, a plan for adaptive management needs to be agreed to ensure that environmental compensation can be appropriately amended if it proves to be ecologically ineffective or is not meeting its intended outcomes. This requirement applies to all relevant parties that provide a compensation plan as part of their HRA documents, including developers and The Crown Estate for plan-level HRAs. Adaptive management is already a condition of the DCO; however, stakeholders have asked for further clarity on how it works for any future measures, including wider compensatory measures and measures delivered through the MRF
- **Small impacts:** stakeholders report a lack of clarity around how small impacts on protected sites are assessed and why environmental compensation may be necessary under certain circumstances
- **Live applications:** there may be projects or plans that have already entered the application stage that are struggling to find and agree adequate environmental compensation or are unable to discharge their consent conditions, through project-led compensatory measures. We want the reforms to be available to them if they need to make use of measures enabled under them
- **Marine irreplaceable habitats (MIH):** with the increase in development pressure on the marine environment, there is an increased risk of impacts on marine irreplaceable habitats in MPAs. Our reforms therefore propose implementing a safeguard to avoid the loss of the irreplaceable habitats within our UK MPA network when considering wider compensatory measures

The changes we are proposing

78. To achieve our intended objectives, the proposed reforms comprise of both legislative change and associated guidance which will include clarification of some existing principles and requirements. At this point, our proposals do not include making changes to the MCAA and we anticipate that how the concepts set out in this consultation are applied to MCZs will be set out in guidance. However, the possibility remains that small changes to MCAA may be needed once the final position has been determined.

Proposed changes (parts 1-3)

Part 1: Enabling wider compensatory measures

79. We propose the following changes:

- enable environmental compensation to be delivered through wider compensatory measures which provide benefits to the UK MPA network. These may be to features that are different from, or cannot easily demonstrate benefits to, the specific protected features impacted by the development, for example, by targeting a similar feature to the feature impacted or large-scale pressure that impact (a number of) protected features or sites
- create a set of safeguards which include a hierarchy requiring that compensatory measures that directly target the impacted feature are considered ahead of wider compensatory measures

80. In this context, for illustrative purposes, 'similar features' may be an MPA feature that is of a comparable type to the feature impacted. For example (for habitats) an alternative sediment habitat which has a similar function or service to the one impacted by development. Or for seabirds – for example, if a surface feeding seabird was impacted, then measures to benefit an alternative surface feeding seabird species might be deemed similar. The appropriateness of a particular wider compensatory measure for a given impact on an MPA feature will always be considered on a case-by-case basis.

81. In this context, for illustrative purposes 'large scale pressures' impacting the network may be an activity, or the indirect effects from those activities, impacting the UK MPA network at scale or across multiple sites. For example, physical impacts on habitats, input of materials or activities impacting water quality, or climate change-related impacts.

Proposed changes in the SI

82. Defra proposes to amend the provisions in the Habitats Regulations (Regulations 8 and 36 of the inshore and offshore regulations respectively) that require that any necessary

compensatory measures to protect the overall coherence of the network are secured. The SI will also amend certain requirements under the Habitats Regulations to exercise functions so as to secure compliance with the Habitats Directive and Wild Birds Directive whilst ensuring robust safeguards are in place. These changes will support other aspects of this package of reforms by increasing flexibility for developers under current practice and Guidance.

83. Defra proposes that the SI should require any wider compensatory measures to benefit the UK MPA network. Measures that ecologically benefit the impacted feature must be considered first. The level of action taken is expected to deliver positive benefits reasonably proportionate to the level of damage to the UK MPA network, meaning that it should be corresponding in size, amount or function.
84. We would like the SI to mandate the use of a compensation hierarchy (further detail can be found in the compensation hierarchy section), including a requirement that the compensatory measure that will be most ecologically effective for the impacted feature is always considered first by the applicant or plan promoter. The SI would set out that there may be circumstances in which it may be appropriate to move down the compensation hierarchy to wider compensatory measures when measures targeted at the impacted feature are available. For example, this could be where there is justification that moving down the hierarchy to a wider measure will have a greater ecological benefit on the overall UK MPA network.
85. We would like the SI to require wider compensatory measures to be approved by the relevant Minister, including Defra SoS via approval of wider compensatory measures into the Library of Strategic Compensation (LoSCM) in England. Defra SoS will also approve wider compensatory measures into the LoSCM for projects in Wales that are consented by DESNZ SoS.

Proposed policy detail in guidance

86. We propose including the policy detail on wider compensatory measures in guidance that will be applicable to England inshore and offshore, Wales offshore and for projects over 350MW inshore, and Northern Ireland offshore (as referenced in paragraphs 72-73).
87. WG may produce guidance specific to plans and projects which Welsh Ministers consent in their jurisdictions in due course for further clarification.
88. SG intends to publish its own guidance that will be applicable to both the Scottish inshore region and Scottish offshore region – please refer to the [Scottish Government Strategic Compensation Policy for offshore wind consultation](#) for further information.

Hierarchy of compensatory measures for the marine environment

89. We propose to introduce a compensation hierarchy that developers and plan promoters must adhere to when proposing compensatory measures. Our proposals seek to ensure that developers or plan promoters only propose wider compensatory measures after they have considered more directly beneficial compensatory options. This is to

help ensure that the specific type of feature impacted is generally the one that benefits from the environmental compensation where possible.

90. The table below outlines the proposed three-tiered compensation hierarchy that describes the types of compensatory measures to be considered at each tier and includes high level examples. We intend to include this in our guidance. SG intends to consult on the same approach – please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

Tier	Type of measure	Description
1	Compensatory measures that directly target the impacted features	<p>Measures that will provide the best ecological benefit(s) for the impacted feature in a measurable way, meaning that where there is clear evidence, the intervention will be effective in benefiting the targeted feature.</p> <p>The following points in relation to location should be considered in sequence:</p> <ul style="list-style-type: none"> • does the measure benefit the impacted feature at the impacted site? • does the measure benefit the impacted feature at a different site inside the UK MPA network? • does the measure benefit the impacted feature outside the UK MPA network? (to note, such a measure would need to afford some sort of formal protection in order that the feature contributes to the UK MPA network) <p>When considering measures that target the impacted feature there may be circumstances where interventions at a different site are more effective than at the impacted one. Ecological effectiveness of the measure needs to be considered alongside a preference for measures that take into account local conditions.</p> <p>Example</p> <p>If Common Tern was the impacted feature, compensation could be predator reduction for Common Tern.</p> <p>If the reef feature impacted was <i>Sabellaria spinulosa</i> reef then the compensation could be designation of an MPA that includes an alternative <i>Sabellaria spinulosa</i> reef.</p>

Tier	Type of measure	Description
2	Wider compensatory measures that benefit a similar feature of the UK MPA network to that which is impacted	<p>Measures that provide sufficient evidence of ecological benefit(s) to features, or groups of features which are ecologically similar to the impacted feature. For example, if a surface feeding seabird is impacted, then a similar feature would be a similar surface feeding seabird species. Likewise for habitats, a similar feature would be a similar large-scale habitat which has similar functions or services.</p> <p>Consideration should be given to the functions and location of the feature that is being impacted and how well this is matched by a proposed measure (for example, an ecologically similar but different habitat feature that also provides suitable function to that of the impacted feature including in terms of fish spawning).</p> <p>These types of measures could be delivered alongside measures directly targeted at the impacted feature, or they could be delivered individually due to a lack of measures targeted directly at the impacted feature or if it can be justified that the measure will deliver greater ecological benefits to the UK MPA network.</p> <p><u>Example</u></p> <p>If Common Tern was the impacted feature, compensation could be predator reduction for other tern species which are features at a different site. This could be delivered as part of a package alongside a predator reduction measure for Common Tern or other measures where the measure will not provide sufficient benefit alone, or as a freestanding measure.</p> <p>If <i>Sabellaria spinulosa</i> reef was the impacted feature, compensation could be a measure to protect or restore other reef habitat such as blue mussel biogenic reef.</p>
3	Wider compensatory measures that are targeted at pressures or other features in the UK MPA network, rather than the	<p>Measures that provide sufficient evidence of ecological benefit(s) to the UK MPA network more widely.</p> <p>For example, by targeting large scale pressures that impact a number of protected features or sites,</p>

Tier	Type of measure	Description
	impacted feature directly, or a similar feature.	<p>or conservation objectives of another protected feature of the UK MPA network which may have no link to the impacted feature. For example, measurable wider improvements in water quality, restoration of habitats in other sites.</p> <p>These types of measures could be delivered alongside measures targeted directly at the impacted feature or measures that benefit a similar feature. They could also be delivered individually if there is a lack of measures targeted directly at the impacted feature or similar feature, or if it can be justified that the measure will deliver greater ecological benefits to the UK MPA network.</p> <p>Example</p> <p>If <i>Sabellaria spinulosa</i> reef was the impacted feature, compensation could be funding a water quality improvement programme or delivering a habitat restoration programme, both of which are designed to address specific identified pressures on other protected features in the network.</p>

Moving through the hierarchy and its practical application and consideration

91. When a relevant party is identifying compensatory measures, we propose that compensatory measures that are targeted towards the impacted feature (tier 1) must always be considered first. In the consenting process, preference will usually be given to those compensatory measures that deliver the most ecologically effective measure for the specific habitat or species impacted by development, unless in circumstances where these are not available or it can be demonstrated that a wider compensatory measure will have a greater ecological benefit to the UK MPA network. In practice this may mean that a compensation plan package includes measures from all tiers of the hierarchy. Circumstances in which it may be appropriate to move down the compensation hierarchy could include:

- where there is a lack of available compensatory measures targeted directly at the impacted feature
- where there is a lack of available compensatory measures available for features that are ecologically similar to the impacted feature
- where there is justification that moving down the hierarchy to a wider compensatory measure will have a greater ecological benefit to the UK MPA network

92. Guidance will set out the circumstances in which it may be appropriate to move down the compensation hierarchy. This includes consideration of whether any measures targeted at the impacted feature are available. Measures are considered available if they are considered feasible and likely to be effective. This includes consideration of project level measures or appropriate strategic measures, for example they are already within the LoSCM and there is a sufficient amount of that measure capable of being allocated for some or all of the environmental compensation need of the project.
93. We propose that when identifying appropriate compensatory measures, tier 1 measures must be preferred when available, even when wider compensatory measures (tier 2 and three measures) may also be available, except in circumstances when it can be demonstrated that wider compensatory measures will have a greater ecological benefit.
94. Developers or plan promoters will be expected to demonstrate as part of their assessment and DCO or marine licence application that they have explored and considered measures directly targeted at the impacted feature first. Where they consider it appropriate to move through the hierarchy and to use wider compensatory measures as environmental compensation, reasoning should be included on why this is the case. We strongly recommend that developers engage with SNCBs as early as possible (at the pre-application stage) so they can consider SNCB advice before submitting their application. Choosing to not do this or disregarding SNCB advice could risk delays.
95. In England and Wales, we propose that wider compensatory measures that will be enabled by the SI must be approved by the relevant Minister and entered into the LoSCM. It is expected that wider compensatory measures should then be delivered through the MRF.
96. SNCBs will advise the relevant decision maker on the developer or plan promoter's consideration of the hierarchy, the suitability of moving through it and on the ecological effectiveness of the proposed compensatory measures. Ultimately the decision maker will be responsible for deciding if it is appropriate for a wider measure to be used as environmental compensation giving appropriate weight to the SNCB's advice when considering a plan, consent or licence application.
97. We intend to include this section in our guidance. SG intends to consider this in its separate consultation.

How would you demonstrate a wider measure has an ecological benefit to the UK MPA network?

98. Ecological benefit to the UK MPA network can be achieved via action that:
- enables the UK MPA network, or a feature or features within it to recover more quickly from damage or improve its current condition
 - alleviates key pressures impacting the UK MPA network
 - improves the network's resilience to climate change and other stressors
 - can be monitored for effectiveness

99. Whether a wider compensatory measure is likely to have 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 UK MPA network and factors such as whether the wider measure can:

- provide a direct or indirect benefit, via the improvement of condition, to a larger proportion of the UK MPA network. This may be by number of MPA sites, area of benthic habitat, number or proportion of species population, than would benefit from available compensatory measures for the impacted feature
- alleviate pressure on more than one site within the UK MPA network, or on more than the area of benthic habitat or number or population of species than would benefit from available compensatory measures for the impacted feature

100. This will be set out in our guidance. SG intends to align with this approach in its guidance – please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

The identification of wider compensatory measures

101. Wider compensatory measures will be developed in collaboration with SNCBs and other interested stakeholders.

102. In England and Wales, wider compensatory measures will be added to the [Library of Strategic Compensatory Measures](#) once they have been approved by the relevant Minister. In England, this will be the Defra SoS. Welsh Ministers will be involved in the approval of wider compensatory measures for use in Welsh waters. In approving SCMs, Ministers will consider advice from SNCBs and others that they deem necessary. Developers and other interested stakeholders will be able to make suggestions on wider compensatory measures to be considered for the inclusion to the LoSCM. Wider compensatory measures in the LoSCM will be available to projects being developed in waters subject to the UKG SI. This mechanism is explored in the case study below.

103. There may be different processes for approving wider compensatory measures for each DG. Wales and Northern Ireland may choose to apply a similar process. SG intends to address this in its separate consultation – please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

When is it suitable to use wider compensatory measures?

104. Currently, environmental compensation measures can only be used after ways of avoiding, reducing and then mitigating the impacts have been exhausted (see the section entitled “mitigation hierarchy”). The full legal process for a derogation must also be followed. This means that the tests under either Regulation 64 of the Conservation of Habitats and Species Regulations 2017 (for inshore sites) or Regulation 29 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 (for offshore

sites) are met for SACs and SPAs, and equivalent tests under Section 126(7) of the MCAA are met for MCZs.

105. We propose that the consenting authority must ensure the mitigation and then the compensation hierarchy have been correctly followed, before deciding on whether or not a wider compensatory measure is appropriate when considering a plan-level assessment, DCO or marine licence application. The plan or consent application should include sufficient evidence to demonstrate that the mitigation hierarchy has been adequately followed and that the plan promoter or applicant has fully explored and considered Tier 1 of the compensation hierarchy for compensatory measures targeted at the impacted feature first.
106. At plan-level, if the plan promoter determines that MPA compensation is required and proposes moving down the hierarchy to a wider compensatory measure, the justification for this must be clearly set out to the relevant appropriate authority. Where a project intends to make use of plan-level wider compensatory measures they should include a justification in their application for consent. This should include an assessment of what Tier 1 measures could be included in the compensation plan to address project-level impacts. The summary should also include any feedback from SNCBs and how this has been addressed.
107. At project level if it is proposed to move down the compensation hierarchy to a wider compensatory measure on the basis that this will have a greater ecological benefit on the UK MPA network, or that Tier 1 and 2 measures are not possible or unlikely to provide adequate environmental compensation, then the applicant should clearly set out their justification in their application including any feedback from SNCBs and how this has been addressed. All evidence relating to wider compensatory measures should be provided within the developments without prejudice compensation plan.
108. There may be certain circumstances where it may be appropriate to move to wider compensatory measures (either Tier 2 or Tier 3 measures) even when measures targeted directly at the impacted feature (Tier 1) are available. This would require that the developer or plan promoter makes a reasoned case to justify that a wider compensatory measure will have a greater ecological benefit to the UK MPA network, rather than available compensatory measures targeted at the impacted features. SNCBs will advise on the “reasoned case” put forward and the relevant consenting authority will decide if it has been suitably justified.
109. The ecological benefit to the UK MPA network will be considered when designing suitable wider compensatory measures for the LoSCM and where such measures can be considered either in isolation or in combination with other measures in the library as ‘wider compensatory measures’.
110. Wider compensatory measures may be delivered alongside compensatory measures targeted at the impacted feature. For example, where there isn’t enough environmental compensation available targeted at the impacted feature (Tier 1), wider compensatory measures (Tier 2 or 3) may be delivered to make up for the remaining impacts or as part of a package.

111. In exceptional circumstances, developers would not be able to rely on wider compensatory measures. For example, wider compensatory measures are not suitable for use to compensate for damage to certain MIH (see the MIH safeguard section, paragraphs 149-154).
112. We intend to include this section in our guidance. SG intends to consider this in its separate consultation – please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

Supporting evidence for wider compensatory measures and demonstrating ecological benefit

113. The proposal to use a wider compensatory measure must 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 UK environment, by hypotheses based on expert advice or monitoring. We would expect to see evidence that demonstrates positive measurable effectiveness as regards the outcome the measure is targeted at, such as described within a strategic compensation Implementation and Monitoring Plan (IMP) that sets out the steps and requirements for effective delivery.
114. We propose that extra contingency must be built in for more uncertain measures where there is limited scientific evidence or doubt about the feasibility. This could include a higher compensation ratio or proportion and, specific conditions requiring adaptive management which will always be used for wider compensatory measures (see adaptive management section), enhanced monitoring and building in additional time to the timetable to allow for measures to show effectiveness. Ultimately, it is for the decision maker to be satisfied having considered proposals and advice from SNCBs.
115. We intend to include this section in our guidance. SG intends to consider this in its separate consultation – please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

Wider compensatory measures illustrative case study

116. This section contains an illustrative project-level case study that outlines how we envisage environmental compensation could be delivered at each tier of the proposed compensation hierarchy (as outlined in the compensation hierarchy section above). In the case study we describe how environmental compensation could be secured and delivered under the proposed legislative changes and how relevant safeguards have been applied.
117. In England and Wales, wider compensatory measures will be identified and developed through a governance process in collaboration with SNCBs and approved to the LoSCM by the relevant Minister (Defra SoS for England). Therefore, those detailed in this case study are for illustrative purposes only. They do not reflect final measures that might be added to the LoSCM, or equivalent DG libraries, and they should not be

relied upon by stakeholders, statutory bodies or decision makers during the planning process.

Illustrative Scenario

118. A new OFW farm has been proposed. After avoiding damage as much as possible and then deploying all relevant mitigation measures, it has been concluded that the construction and operation of the wind farm will cause unavoidable damage to a nearby MPA, as the development will have an impact on a breeding colony of guillemot, as well as on subtidal sand. The competent authority accepts that there are no alternative solutions and an IROPI case is accepted. The developer must therefore identify and secure environmental compensation.

Following the Compensation Hierarchy:

Tier 1 of the Compensation Hierarchy (approach benefiting impacted feature(s)):

119. Compensatory measures targeted at benefitting the impacted feature must always be fully considered first. Under current regulations and moving forward under new policy proposals, the first approach for securing environmental compensation in this case would be as follows:

- I. The developer first looks for compensatory measures that target guillemot and subtidal sand, preferably at the impacted site or secondly, at a different site.
- II. SNCBs advise that while compensatory measures cannot be delivered at the impacted site, an alternative measure at a different site to where the guillemot and subtidal sand are being impacted could be delivered. Examples include delivering management of recreational disturbance at a nesting site for the impacted guillemot population to generate additional birds to the colony or securing through a contract with the Marine Recovery Fund Operator (MRFO), the designation of a new MPA to address benthic impacts.
- III. The OFW farm is consented and built and environmental compensation targeting the impacted guillemot population and subtidal sand is secured and delivered, whilst allowing for monitoring results and adaptive management approaches as required.

Approach under proposed reforms

120. The following examples illustrate how developers or plan promoters could progress through tiers 2 and 3 of the compensation hierarchy. It is important to emphasise that **these examples are for illustrative purposes only**. If appropriate environmental compensation is available at tier 1, as outlined above, developers should not advance to tiers 2 and 3, unless in circumstances where it can be demonstrated that a wider measure will have a greater ecological benefit to the UK MPA network.

Tier 2 of the Compensation Hierarchy:

121. If the development described above was unable to agree or secure any or enough environmental compensation targeted at the impacted feature, or if it can be

demonstrated that a wider measure will have a greater ecological benefit to the UK MPA network, than under the proposed reforms developers could move onto tier 2 of the compensation hierarchy.

122. Tier 2 would allow developers to work with SNCBs to identify wider compensatory measures in the LoSCM that will benefit features similar to the impacted feature. A similar MPA feature will be one that is of a comparable type to the feature impacted, with the appropriateness of a particular wider measure being considered on a case-by-case basis.
123. For the purpose of this example, where guillemot is the impacted feature, a wider measure could be predator reduction for puffins at the same or a different site or management of recreational disturbance in the same or a different site, both of which are known pressures impacting the relevant sites conservation objectives. While predator reduction is already in the LoSCM, it would be considered a wider compensatory measure in this case as it is being used for species different to that impacted by the OFW. SNCB advice will be essential in determining what qualifies as a similar species. For example, experts may assess a species' foraging ecology or nesting behaviour to confirm a suitable comparable feature and wider compensatory measure.
124. For the impacts to subtidal sand, wider compensatory measures could include the restoration of a different benthic habitat, through pressure removal, that provides similar functions to the habitat impacted. This may include subtidal mixed sediment, which has been demonstrated to perform the most similar ecological function in the impacted area.
125. Delivering wider compensatory measures at both the impacted site and at a different site may help to target the impacted feature and deliver the greatest ecological outcomes.
126. Wider compensatory measures could be delivered alongside compensatory measures which are targeted at the impacted feature to deliver greater ecological outcomes. Alternatively, wider compensatory measures from the LoSCM could be delivered individually if there is a lack of measures targeted at the impacted feature.

Tier 3 of the Compensation Hierarchy:

127. In rarer cases, developers may show that they have fully considered all available options targeted at the impacted feature or a similar feature (tier 1 and 2), or they may be able to demonstrate that a wider measure in the LoSCM will have a greater ecological benefit to the UK MPA network. In these instances, wider compensatory measures that provide benefit(s) to features other than the impacted features or a similar feature, or that provide benefit(s) the UK MPA network can be considered and added to the project's compensation package.
128. An example of a wider compensatory measure could involve funding a native oyster restoration programme at a location identified as having high restoration potential and targeted in response to pressures on the UK MPA network such as climate vulnerable features or prey availability. Although native oyster is different from the impacted feature, the benefit of the measure in this scenario includes supporting additional features in the UK MPA network, serving as a nursery habitat that supports juvenile fish

or providing food sources for various marine species, including seabirds, while also contributing to wider improvements within the UK MPA network such as enhanced water quality.

129. Where wider compensatory measures involve habitat restoration, identifying suitable restoration sites for measures will also require drawing on expert advice from SNCBs through design of the delivery plan, who may advise on suitable sites based on, for example, Natural England's Marine Restoration Potential (MaRePo) report. It is expected that habitat restoration measures may need to be supported by pressure reduction measures to ensure their efficacy and permanence. In England, the Collaboration on Offshore Wind Strategic Compensation (COWSC) is continuing to explore and develop potential pressure removal measures which could be added to the LoSCM in due course.
130. These illustrative examples show how we anticipate the wider compensatory measures framework operating. However, it is important to caveat it is expected that, wider compensatory measures, in England, will be added to the LoSCM once approved.

Questions 10-17: wider compensatory measures

Question 10. Do you agree with our proposal to enable wider compensatory measures which aim to benefit the UK MPA Network?

[Yes/No/I don't know]

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 offshore wind projects at present. There is not always sufficient availability of like-for-like compensatory measures to offset a particular predicted adverse impact on a particular species or habitats. There is a pipeline of offshore wind of approximately three times the existing offshore wind capacity. This will further increase demand for compensatory measures and further limits the availability of like-for-like compensatory measures. These proposals provide more optionality to address the current constraints. 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 projects to discharge their compensation obligations, facilitate consenting of other projects in the planning process, and, by providing a clear path to project delivery, enable early pre-emptive investment and commitments in local supply chains and ports. However, whilst these proposed changes to compensation 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. 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. However, we note that one difference between the Scottish and UK Government proposed reforms is the option for projects to deliver Tier 3 wider measures themselves, as well as through a Marine Recovery Fund. We strongly recommend that UK Government amend the proposed reforms to provide the greater flexibility that the Scottish proposed reforms offer to projects, by allowing projects to deliver wider measures without being obliged to use the Marine Recovery Fund.

Care is needed in the SI 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 11. We propose that wider compensatory measures should deliver positive benefits reasonably proportionate to the level of damage to the UK MPA network. Do you have any views on how "reasonably proportionate" should be defined and how it could be demonstrated?

[Yes/No/I don't know]

We agree with the principle that benefits arising from wider compensatory measures should be reasonably proportionate to the level of damage to the UK MPA network. Relating the level of benefit from a wider measure to the level of damage to an impacted feature such that a corresponding size, amount or function of environmental benefit is secured, is challenging. Establishing the amount of 'like for like' compensation that is needed to fully compensate for damage to an impacted feature is already very challenging. For wider measures, a qualitative judgement of the wider benefits to the network that a measure can deliver would need to be made, against the potential damage that a development could cause.

Clear guidance will be needed on this, with guidelines for SNCBs and industry to apply to qualitative assessment, in particular ensuring that the evidentiary standards remain consistent across projects, and that compensation requirements (in terms of scale of compensation to be provided) remain consistent across project and compensation tiers. Developers need clear, quantitative guidance that avoids over-precautionary multipliers. Demonstration of environmental benefits of a measure should be through a combination of scientific evidence and agreed metrics, but proportionate to the risk and scale of the impact. Flexibility is essential so that this does not become a new barrier to consent.

Question 12. Do you agree with our proposed approach of how to demonstrate a wider compensatory measure has an ecological benefit to the UK MPA network? If not, how could it be amended?

[Yes/No/I don't know]

The requirement in the proposed reforms, that benefit to the UK MPA network must be

demonstrated, constrains the full range of measures that could be used for compensation. We recommend that the SI enables wider measures to be used without having to demonstrate benefits to the UK MPA network and instead that benefits to ecosystems are demonstrated.

Retaining this requirement that compensation has to demonstrably benefit the UK MPA network in the reforms to the Habitats Regulations 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 UK MPA network.

We recommend that the reforms do not require that measures provide a demonstrable benefit to the UK MPA network. The current proposal risks lengthy debates on evidentiary standards. Instead, we recommend 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. Demonstration of benefit should be based on best available science and expert advice, but with acceptance of uncertainty where outcomes may take time to materialise. Adaptive management should be central, allowing measures to evolve without delaying project consents.

Irrespective, care is needed in the SI 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.

Additionally, at each stage of the process to enable wider compensatory measures evidential standards must be met which rely heavily on advice from the relevant SNCBs. The detail on this will come in the guidance, but the evidence required to demonstrate the environmental benefits from a wider measure, requiring a qualitative assessment on a case-by-case basis, requires very clear guidance. Therefore, while these reforms will remove barriers to offshore windfarm (OWF) development they do not guarantee a more efficient and timely process. Clear guidelines need to be provided to regulators, their advisors, SNCBs and industry regarding evidentiary standards generally, and for moving through the compensation hierarchy and approving tier 3 compensation. It is important that SNCBs’ role remains one of advice only, with the ultimate decision resting with the regulator.

Question 13. Do you agree with the proposal to have a legislative requirement that compensatory measures that ecologically benefit the impacted feature must be considered first, as part of a hierarchy of compensatory measures which must be followed sequentially?

[Yes/No/I don't know]

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. In particular, very clear guidance on the evidence that would need to be presented to enable a developer to move down the hierarchy is needed. 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 advise against rigid sequencing. A strict legal requirement to exhaust one tier before considering another risks delaying projects unnecessarily. Developers should be able to justify moving to wider measures where these are clearly more deliverable and beneficial overall.

It is important that the guidance on evidencing 'greater ecological benefit' addresses how to quantify this assessment across the different tiers of compensation and accounts for the feasibility of securing and delivering possible compensation.

Question 14. Is the hierarchy of compensatory measures, including the type of environmental compensation to be considered at each stage, clear?

[Yes/No/I don't know]

The types of compensation that could be used under each of the three stages, or tiers, are clear. For tier 2, where ecologically similar species or habitats to the impacted feature would benefit from compensation, detailed guidance will be necessary. Would it be possible to provide a list of species that are considered sufficiently ecologically similar to impacted seabirds, for each of the seabird species that frequently require compensation? This would avoid each project needing to present the same information, justifying the ecological similarity of a species, to the impacted feature. Additionally, the guidance will need to explain how to demonstrate a sufficient quantity of compensation for an ecologically similar species has been secured, to offset predicted adverse impacts on the impacted species.

Question 15. Do you support the proposal that, where a reasoned case can be made that there will be a greater ecological benefit to the UK MPA network, it is possible to move wider compensatory measures (tier 2 or 3), where there may be measures available that directly benefit the impacted feature (tier 1)?

[Yes/No/I don't know]

This is a helpful proposal, enabling flexibility in the range of measures that are available to a project. This proposal also provides the opportunity for projects to use measures that deliver greater ecological benefit than might be possible without this flexible approach.

Clear guidance on exactly how to demonstrate greater ecological benefit from a wider measure, when compared with benefits arising from a Tier 1 measure, will be needed. A pragmatic approach to comparing different types of ecological benefit will be needed, given that it will not be possible to present a quantitative comparison.

At present, it is not clear who would need to present the evidence on the ecological benefit that a wider measure could provide. Under the proposed UK Government reforms, wider measures will only be available to projects through the Marine Recovery Fund's (MRF) LoSCM. (Note, we recommend that the Scottish Government proposed reforms, of allowing projects to deliver wider measures without using the Marine Recovery Fund, are adopted.) If a project elects to deliver their compensation via the MRF, they would not need to present ecological evidence to support that choice, i.e. even if a project had Tier 1 measures available to them, they may still choose to use the MRF to discharge their compensation obligations. Would the requirement to demonstrate the greater benefits of using a Tier 3 wider measure then fall to the MRF Operator?

The Scottish Government's consultation on Strategic Compensation Policy for Offshore Wind proposes to enable projects to use wider measures under Tier 3, as a project-alone measure, if they wish to, rather than being required to use wider measures through the Scottish Marine Recovery Fund. We recommend that this additional flexibility is also provided in the UK SI and associated guidance, thereby providing developers with greater flexibility in the process by which their compensation is secured. This will enable developers to implement a broader range of measures, potentially more easily quantifiable in respect of the impacts of their individual projects, as well as delivering

compensation more quickly. The LoSCM currently includes a limited number of measures and it will take time for new measures to be added. Where developers can evidence and deliver alternative, wider compensation measures, the regime should support this. Safeguarding will be retained as the same hierarchy will be followed and measures will be advised on by the SNCB and approved by the competent authority. Furthermore, a consistent approach across regimes is essential for projects which have transboundary impacts.

Question 16. Do you agree that wider compensatory measures must be approved by the relevant lead Departmental Ministers, noting that Ministers will need to show they have considered the advice of SNCBs prior to their approval?

[Yes/No/I don't know]

We do not agree that Departmental Ministers should approve wider measures. This appears to only slow progress with obtaining agreement that measures can be made available and used by projects. Given the urgent need that projects have to be able to access wider measures, the process for making measures available should be as rapid and streamlined as possible.

SNCB advice will be required at multiple stages under the proposed reforms. Therefore, SNCBs must be adequately resourced to meet this increased demand for their advice, alongside the work they are doing to identify and incorporate new measures in the LoSCM, to avoid delays with project development.

Question 17. Do you agree with our proposed approach for selecting and assessing wider compensatory measures based on the best available scientific evidence?

[Yes/No/I don't know]

We agree that the best available scientific evidence should be used to inform compensatory measures, based on ecological principles. Where evidence is incomplete, decisions should be based on reasonable likelihood of benefit, with adaptive management to refine measures over time. Detailed guidance will be needed on how to demonstrate 'positive measurable effectiveness' of wider measures as benefits of these will not necessarily be easy to demonstrate. For example, if a wider measure of seagrass restoration was used, the area of restoration could be demonstrated through monitoring, plus the benefits of the restoration, such as the diversity and abundance of juvenile fish using the restored area. However, demonstrating wider benefits, particularly to the UK MPA network, would be challenging.

Use of a higher compensation ratio, or '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.

A higher compensation ratio would mean a developer would need to deliver a larger amount of compensation. If the measure is successful and delivers the intended benefits, the project's predicted adverse impacts would be fully compensated without use of a higher compensation ratio. If the measure is not successful, delivering more of it will not increase the success of the measure – it would only cost a project more and potentially cause delays to securing a larger amount of compensation. Therefore, we strongly disagree with the proposal to use a higher compensation ratio when there is uncertainty on the potential success of a measure.

We do agree that uncertainty in the success of a measure should be addressed by adaptive management and enhanced monitoring (where this can provide more evidence on the success or failure of a measure).

Part 2: Environmental safeguards

131. The government is committed to protecting and restoring the marine environment, whilst accelerating the deployment of OFW. Environmental safeguards have been designed to ensure that in providing flexibility for developers to use measures that are broader than compensatory measures that directly target the impacted features, we continue to protect the UK MPA network through a more pragmatic approach that unlocks new opportunities for nature enhancement.

Continued compliance with international law

132. Environmental safeguards will ensure that appropriate compensatory measures are selected, and that the compensation hierarchy is adhered to in order to benefit the marine environment and UK MPA network. This means we will ensure we uphold our domestic and international environmental commitments set out in earlier sections of this consultation.
133. Developers are still required to follow the environmental assessment processes including applying the mitigation hierarchy. However, the requirement to ensure that compensatory measures protect the overall coherence of network would be removed in order to provide more overall flexibility for OFW consenting decisions. The new proposals will still require the compensatory measures to benefit the UK MPA network. This will ensure that the UK government is continuing to implement obligations relating to the maintenance and support of the domestic and wider networks under international treaties (for example, Bern and OSPAR) that the UK's sites contribute to.
134. Most of the international treaties which we are a party to require states to ensure that relevant decisions are made in accordance with a number of environmental principles (for example, the precautionary principle). We will ensure that these obligations remain incorporated into decision making for OFW environmental compensation.
135. These reforms only apply to OFW decisions. Whilst OFW will form a significant part of the overall development in UK seas the reforms do not affect obligations in the Habitats Regulations in relation to other decision making. They sit alongside other duties in relation to achieving Good Environmental Status under the Marine Strategy Regulations 2010 and for England the achievement of any marine target set under the Environment Act 2021.

The Mitigation Hierarchy

136. Applicants and plan promoter must apply the mitigation hierarchy in a sequential manner to avoid impacts to MPAs and to minimise time spent on finding environmental compensation. This should occur before getting to the derogation stage. We want to clarify this through guidance.
137. The guidance will lay out that when designing a plan or project, as a priority, you must apply the mitigation hierarchy to all stages of a plan or project's life-cycle. This requires working through the 'avoid, reduce, mitigate' hierarchy in a sequential manner,

exhausting the possibilities of one level before proceeding to consideration of the next, as follows:

- **avoid:** prevent an impact from occurring
- **reduce:** minimise an impact to a level where it is no longer considered significant
- **mitigate:** lessen the consequences of an impact where it cannot be avoided or reduced

138. Developers or plan promoters must provide evidence that they have fully considered the mitigation hierarchy in relation to potential MPA related impacts in their plan or project. This can be done in the Report to Inform Appropriate Assessment and 'without prejudice compensation plan' as set out in the [DESNZ Overarching National Policy Statement](#).
139. Developers or plan promoters should also seek advice of the appropriate SNCB when undertaking this process.
140. The requirement to apply the mitigation hierarchy in a sequential manner continues to be applicable across the UK and DGs.

Involvement of Statutory Nature Conservation Bodies

141. SNCBs will continue their existing role in providing advice to identify, design and secure compensatory measures. The proposed reform will not change existing SNCB roles in the OFW planning and consenting process. We want to clarify this role in guidance.
142. All applicants and plan promoters should demonstrate how their proposed measures compensate for the damage to the impacted feature or, in the case of wider compensatory measures, provide benefit to similar features or the overall UK MPA network.
143. As part of the established SNCB advisory role for OFW plans and projects, and their role as an interested party in the examination of DCO applications, SNCBs will provide statutory advice on the extent to which efforts have been made to avoid, reduce and mitigate impacts and the need for environmental compensation in their representations to the Relevant Authority.
144. Applicants and plan promoters will be expected to demonstrate, as part of their consent or licence application, that they have explored and considered compensatory measures targeted at the feature impacted first. Should this not be possible, they should provide their reasoning on why they consider it appropriate to move through the compensation hierarchy and to use wider compensatory measures as environmental compensation in their consent or licence application. The applicant or plan promoter should consult the relevant SNCBs on how it has considered the compensation hierarchy and the suitability of using of a wider compensatory measure. SNCBs will include this advice in their representations to the Relevant Authority. Again, we recommend that developers engage with SNCBs as early as possible (at the pre-application stage) so they can consider the SNCB advice before submitting their application.

145. SNCBs also have a specific role in the design and identification of compensatory measures entered into the LoSCM after approval by the relevant Minister. Wider compensatory measures drawn from the LoSCM will therefore have been developed in collaboration with SNCBs, who will provide advice on ecological effectiveness of compensatory measures. The decision maker responsible for determining whether it is appropriate to use a wider compensatory measure should note that the wider compensatory measure has been developed and approved with advice from SNCBs.
146. For the SNCB role in Scotland, SG intends to include this in its separate consultation. Please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.
147. In Wales, the SNCB role applies in the same way as outlined above.
148. For plans or projects with cross-boundary adverse effects, SNCBs will continue to be consulted and come to agreement together on suitable environmental compensation in the same way.

Application to marine irreplaceable habitats

149. Given the increasing number of OFW farms being developed, and our proposed reforms to environmental assessments compensation, we need to implement safeguards to avoid the loss of the certain habitats within our UK MPA network, which could be described as MIH.
150. We consider that there may be circumstances when the use of wider compensatory measures for environmental compensation is not appropriate. Certain MPA features may be considered particularly rare and difficult to restore, and therefore further loss due to development should be avoided. Where this is not possible and subject to derogation processes (and equivalents under MCAA) then only compensatory measures that address the impact should be considered. The relevant SNCB will provide advice on this on a case-by-case basis.
151. Under our proposed reforms alternative approaches for environmental compensation for OFW, wider compensatory measures can secure benefits for different features of the UK MPA network in certain circumstances. However, in the case of certain features, such as MIH this is not an acceptable outcome. For these features only a bespoke environmental compensation strategy consisting of directly beneficial measures may be considered.
152. Further work is required to clarify what particular habitats will be considered irreplaceable in this scenario. However, in essence MIH are considered to be habitats which are very difficult (or it takes a very long time) to restore, create or replace once they have been destroyed. This may be due to their age; uniqueness; species diversity or rarity. We are seeking views on whether it would be suitable to use criteria such as those defined by Natural England in the Defining Marine Irreplaceable Habitats report ([NECR474 Edition 1 Defining Marine Irreplaceable Habitats](#)). We also propose publishing a list of MIH that is appropriate for this purpose, in guidance for England in due course.

153. Checks with the relevant SNCB should be made at the earliest possible opportunity whether your proposal will affect any MIH. This should be documented in the consent application.
154. This proposed solution applies to OFW developments in MPAs in England only and does not constitute a wider policy position on how MIH should be treated for alternative planning and development decisions. None of the DGs intend to introduce MIH in their jurisdictions although they may consider doing so in future. In this case, they may choose to produce guidance specific to plans and projects in their jurisdiction.

Adaptive Management Requirements

155. We will clarify, in guidance, that the current process for adaptive management will continue to apply. We will clarify that monitoring (and where necessary) adaptive management is required in relation to the application of the proposed SI. The guidance will outline the process currently and how it is proposed to work with the MRF. For more information on adaptive management through the MRF, refer to the [MRF consultation document](#).

Current process

156. Adaptive management, in the context of environmental compensation, is the adjustment or replacement of a compensatory measure if the monitoring of such a measure reveals that it is not functioning as expected. Adaptive management is applicable to all compensatory measures. The same process for adaptive management will continue to apply, including for wider compensatory measures.
157. The following flowchart is a visual depiction of the adaptive management process and shows the steps involved in applying the adaptive management process for project-led compensatory measures.

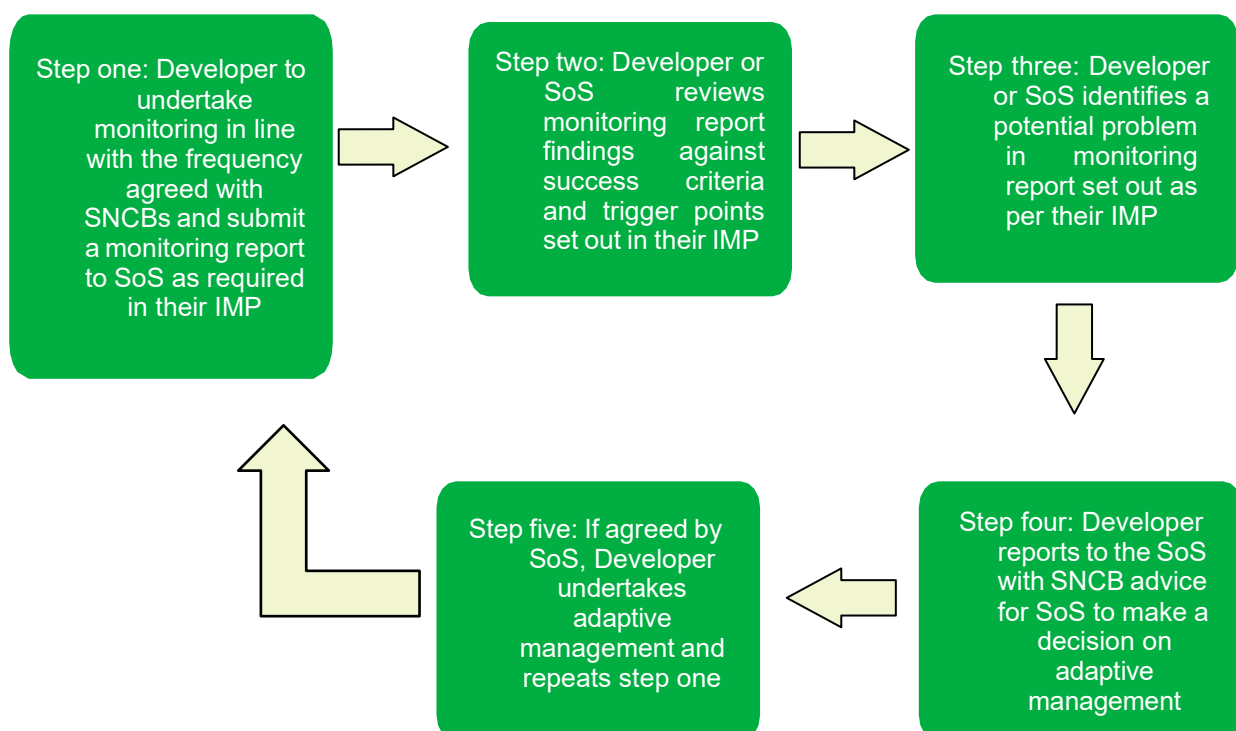


Image 1: Adaptive management process diagram for DCO project-led measures

Text description for process diagram:

- step one: developer to undertake monitoring in line with the frequency agreed with SNCBs and submit a monitoring report to SoS as required in their IMP
- step two: developer or SoS reviews monitoring report findings against success criteria and trigger points set out in their IMP
- step three: developer or SoS identifies a potential problem in monitoring report set out as per their IMP
- step four: developer reports to the SoS with SNCB advice for SoS to make a decision on adaptive management
- step five: if agreed by SoS, Developer undertakes adaptive management and repeats step one

158. Current DCO conditions usually require that the developer must provide a compensation IMP that has been consulted on with relevant SNCB(s) at the outset when determining the proposed compensatory measures. Compensatory measures must be monitored by the body delivering the project, or by a coordinated group if delivered at a strategic scale, to demonstrate that they have delivered effective environmental compensation for the impact of the project throughout its lifetime. If monitoring reveals compensatory measures are not as effective as expected, adaptive management will be needed.

159. These details should be included in the IMP for the compensatory measure. Example requirements set out in a DCO are provided below:

If the applicant, or on receipt of the monitoring report the DESNZ SoS, ascertains that the measures have been ineffective, the applicant must provide proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the applicant as approved in writing by the DESNZ SoS in consultation with the relevant statutory nature conservation body.

160. Adaptive management can include:

- modifying existing compensatory measures to perform better. This can start with practical modifications before making more substantial changes
- should modifications be unsuccessful, agreeing a new compensatory measure where there is a reasonable guarantee of success that the new proposed measure will meet the required objectives

161. Developers and plan promoters should always submit an IMP as part of their overall compensation plan, which should stipulate the following:

- clear and specific ecological objectives, including timescales and success criteria, for the proposed measures. These should be associated with the original need for environmental compensation, the feature or features to be impacted and in the case of wider compensatory measures, the benefit provided to the UK MPA network
- hypotheses around the existing uncertainties related to the effectiveness of the measure, which can be tested through monitoring

- details of the monitoring programme and frequency of monitoring reports, with monitoring aimed at understanding impacts and reducing uncertainty around the effectiveness of the measures
- established trigger points, which relate to the defined success criteria (defined on a case-by-case basis) and timescales, and account for potential lag between impact and monitoring – these should trigger:
 - further monitoring and evaluation of the effectiveness of the measures
 - adaptive management actions if monitoring identifies that the compensatory measure is insufficient – this should occur before the impact is allowed to become too severe
- consideration of, and planning for, the potential implications for the applicant should alternative measures be needed

162. As IMPs will be a part of compensation plans, applicants should also ensure they seek views from SNCBs as to the suitability of the adaptive management plans as early as possible in the pre-application process, as well as through implementation.

163. For individual measures delivered by developers, the DCO will usually require the monitoring reports to be reported to the DESNZ SoS, to directly inform decision-making on the need for further adaptive management.

164. Consenting conditions in respect of construction, operation and maintenance, including adaptive management, will be outlined in any marine licence(s) that are granted, with requirements regarding the discharge of each condition clearly articulated in the licence document.

Proposed Process for MRF Measures:

165. We propose that the adaptive management process will apply in largely the same way for measures delivered through the MRF, except where responsibility for certain steps in the process would shift from the developer to the MRFO (with the relevant technical advice). Adaptive management will still be applicable to all compensatory measures, including wider compensatory measures

166. There will be adaptive management arrangements in place for measures delivered through the MRF. Where applicants deliver their own project-level compensatory measures without using the MRF and subsequently require an alternative measure as part of their adaptive management process, they could apply to the MRF if a suitable measure is available. Please see the [MRF consultation document](#) for more information.

167. The following flowchart is a visual depiction of the adaptive management process and shows the steps involved in applying the adaptive management process for compensatory measures delivered via the MRF.

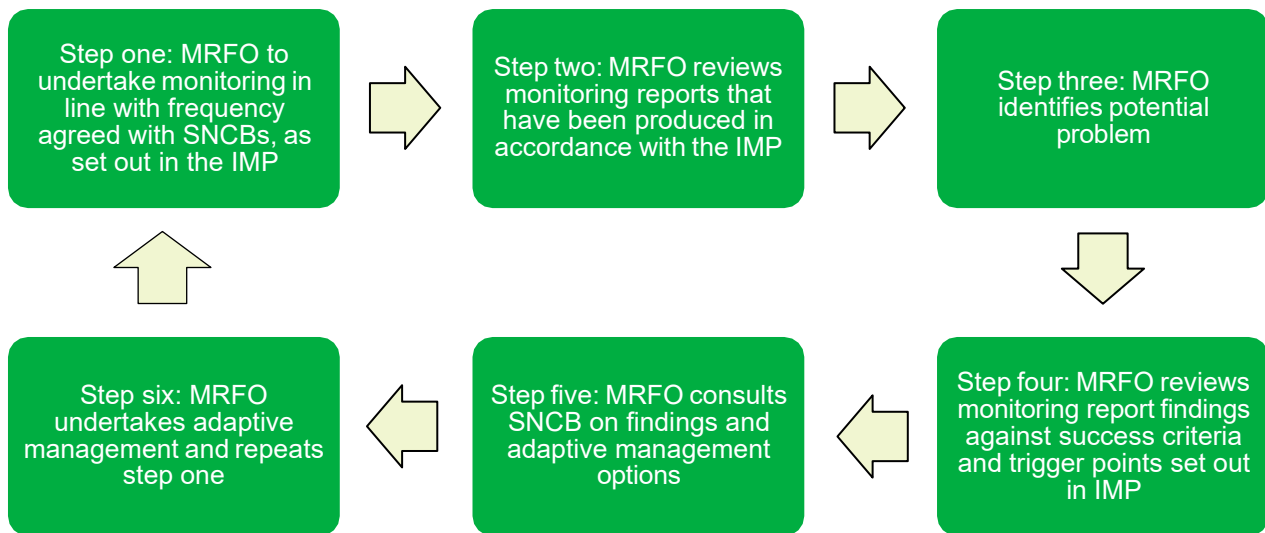


Image two: Process diagram for adaptive management for MRF measures Text description for process diagram:

- step one: MRFO to undertake monitoring in line with frequency agreed with SNCBs, as set out in the IMP
- step two: MRFO reviews monitoring reports that have been produced in accordance with the IMP
- step three: MRFO identifies potential problem
- step four: MRFO reviews monitoring report findings against success criteria and trigger points set out in IMP
- step five: MRFO consults SNCB on findings and adaptive management options
- step six: MRFO undertakes adaptive management and repeats step one

168. The adaptive management recommendations will have three phases, referred to as the adaptive management hierarchy. This approach aligns with current practice and provides a structure for the MRFO when implementing adaptive management.

- “adaptive management actions” for example, actions taken to improve the efficacy of the existing measure – such as an enhanced levels of predator reduction
- “adaptive management substitute measures” for example, entirely new measures that need to be delivered because amending the delivery of the original measure to improve its efficacy has not proved successful or is not feasible
- “adaptive management second substitute measures” for example a new measure targeted at other benefits to the UK MPA network. These measures or package of measures will still be selected from the LoSCM

169. This adaptive management hierarchy will ensure that adjustments are ecologically effective and cost efficient. Any measures used for adaptive management by the MRF, at any stage of the hierarchy, will also have to be drawn from the LoSCM.

170. The adaptive management measure delivered should be in response to the above and any other relevant factors relating to the success criteria, recognising that this will need to take expert advice into account, for example advice from SNCBs.

Adaptive management - devolved governments:

171. For plans and projects in Scotland, SG intends to include this in its separate consultation. Please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.
172. In Wales, the current process of adaptive management will continue to apply in the same way. The process outlined above for adaptive management through the MRF will apply to plans and projects in Wales using the MRF.

Reviewing the legislation and guidance

173. We want to ensure that the proposed legislation and guidance to reform environmental compensation be adequately and regularly reviewed.
174. The SI will include a review provision for the SoS to publish a report that assesses the impacts of the proposed reforms through both the SI and guidance. This report will set out the objectives of the SI and associated guidance and assess the extent to which the objectives have been achieved and whether they remain appropriate.
175. The review will take place before 1 January 2032. This will allow enough time for sufficient information to be available to inform the review and allow the SI to be assessed for its contribution to the Clean Power by 2030 mission, alongside environmental objectives and other relevant outcomes. Any further reviews will take place at intervals not exceeding five years.
176. The review of the UK-wide SI will include an assessment of the impacts across the UK, including in England, Wales, Northern Ireland and Scotland.

Public compensation register

177. We propose to create a register that tracks the impacts of the proposed reforms on the UK-wide site network, by collating information of environmental compensation delivered to date. This could be published as a register which can be regularly updated.
178. We think this would provide transparency by opening up more information on what measures currently exist and what can be done to provide a greater environmental benefit. It will also help in tracking the wider compensatory measures capacity if projects choose to implement outside of the MRF. Establishing a register would also help to inform the review of the SI and guidance which will assess the impact of the reforms. It could support our duties to report on the UK MPA network and MPA target (England only). This has also been proposed by the Benthic Strategic Action Group, an expert group within the COWSC governance, which is interested in creating a record of existing environmental compensation.
179. We are exploring ways in which to do this and the type of information that it could contain. Whilst we recognise the additional benefits of applying this register to wider

regulations, for example, all projects or plans delivering environmental compensation, this is outside the scope of this consultation which is restricted to OFW. There would be cost implications arising from creating and hosting the register.

180. Subject to the outcome of this consultation, UK government and DGs will decide at a later date whether guidance may be produced alongside the proposed register. However, at this stage we are consulting on the public compensation register as a concept and SG intends to do the same in its consultation.

Questions 18-22: environmental safeguards

Question 18. Do you agree that our proposed environmental safeguards for wider compensatory measures are suitable?

[Yes/No/I don't know]

Our members agree that they must be proportionate. Safeguards should not introduce additional procedural hurdles that slow down deployment. They should focus on ensuring ecological benefit without creating duplicative reporting or approval loops.

Question 19. Do you agree with the proposal that, in England, wider compensatory measures would not be suitable for impacts to locations with Marine Irreplaceable Habitats or features?

[Yes/No/I don't know]

SR members are concerned that Marine Irreplaceable Habitats may, by their nature, be 'irreplaceable' and therefore that like for like compensation may be effectively impossible.

Question 20. Do you agree that our proposal for guidance adequately clarifies adaptive management requirements, including for measures delivered through the MRF?

[Yes/No/I don't know]

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 not to 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. We also support the proposal that wider compensation measures can be used where/when adaptive management is required.

Question 21. Do you agree with our proposal that there should be a public register that documents OFW environmental compensation?

[Yes/No/I don't know]

We agree that a Public Compensation Register would be beneficial and that this should be a UK-wide register. As well as presenting information on measures that are available, the register could indicate which measures (once secured) are being delivered by

developers or a marine recovery fund, as well as information on monitoring being undertaken. This would help with developing a more strategic approach to monitoring and avoiding duplication of effort.

Question 22. Where could this register be hosted and who could be responsible for the register, including on-going updating and management?

There are various organisations that would have the ability to host and be responsible for the register. JNCC has been delivering the the Offshore Wind Environmental Evidence Register (OWEER), and The Crown Estate is delivering the Offshore Wind Evidence & Knowledge Hub (OWEKH), so either of these organisations could host the register. However, it would be essential that the host organisation had a good UK-wide understanding of compensation opportunities and constraints.

Part 3: Clarifying other aspects of environmental compensation for offshore wind policy

181. This section sets out other policy proposals intended to create a more pragmatic and flexible approach to environmental compensation for relevant OFW activities. We also want to provide clarity to certain areas where we think it is helpful in respect of such activities. The proposals will largely be delivered through guidance, supported, in some cases by other changes being made through the SI.

Additionality

182. Existing guidance and practice generally specifies that compensatory measures should be additional to normal practice. This means they should go beyond the normal or standard measures required for the designation, protection and management of protected sites. This principle is referred to as ‘additionality’.

183. We want to create more clarity about what can be considered additional to normal practice. We believe this will create more opportunities for protected features and sites to achieve their conservation objectives more quickly. We propose specifying, in guidance, three criteria that will help identify site management measures in order to help assess whether environmental compensation can be considered additional. See paragraph 82 for further detail on how we will achieve this.

Background

184. The duties that would constitute ‘normal practice’ that should be established by the site manager include implementation of conservation measures which correspond to the ecological requirements of the natural habitat types present on the site.

185. We want to allow certain conservation measures, to count as compensatory measures for OFW impacts on the UK MPA network where they might reasonably be expected to accelerate sites achieving their conservation objectives or where the measures go beyond what can be delivered by government.

Approach to guidance and SI

186. This proposal aims to provide clarity on what is additional by outlining how normal practice for site management measures should be identified.

187. Normal practice can be identified by considering all three of the following criteria:

- checking if there are management and restoration practices that have been or are being delivered within the site
- checking if there is an identified delivery mechanism (including any necessary regulatory and enforcement action by a public body) for any planned measures
- for future planned measures, confirming whether adequate funding for delivery is in place or if there is a reasonable expectation (the measure can and will be sufficiently funded when or before the developer or plan promoter submits an application for its

consent

188. If such criteria are not met, then the measure could be considered additional. This policy will not allow measures which are already required for existing pressures as environmental compensation to offset the new (additional) pressures created by OFW developments (also known as double counting). This should not preclude the existing process for government funding of conservation measures.

189. Applicants should check with the relevant SNCB on the above criteria before making such a proposal. If these measures are strategic, they could be delivered through the MRF.

190. Examples of measures that could be delivered by developers could include:

- where there has been some previous eradication of predators and aspirations for expansion, but no plans or funding are in place, and it is clear such a programme would have a directly measurable response, likely to deliver benefits for the target species but also to a wide range of other seabirds
- delivering additional enclosures or areas within an SPA which SNCBs are content could deliver compensatory benefits which could also be 'rolled out' to other SPAs where ground-nesting birds are struggling

191. In Scotland, the approach will be clarified through Scottish Government guidance. Scottish Government intends to consult separately please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

192. For plans and projects consented in Wales, a similar approach to that outlined in paragraphs 186-190 will apply. Wales may produce guidance specific to plans and projects in their jurisdiction in due course for further clarification.

193. NIE may produce guidance specific to plans and projects in their jurisdiction in due course.

Timing of compensation

194. Guidance already specifies that in certain circumstances, where delays between an impact to a protected site and compensatory measures being in place and operational may be unavoidable, it may be acceptable for compensatory measures to be in place and operational after the impact to a protected site begins. Developments using derogations can currently only be granted consent providing compensatory measures are "secured". Current practice to manage the risks around this delay is that there must be a plan to undertake such measures.

195. SCM could take several years to be established such that they can be considered secured under the Regulations. This was confirmed for England in a [Written Ministerial Statement](#) earlier this year that considered MPA designations and predator reduction schemes.

196. We want to use guidance to increase certainty and confidence that in limited circumstances plans and projects may be permitted to begin operation before environmental compensation is in place. For example, as mentioned above where there is a significant lead in time for measures to be delivered and achieve full ecological effectiveness. This would be at the discretion of the decision maker and

take into consideration advice from the relevant SNCB. This could mean that highly effective strategic measures which could be delivered via the MRF over a longer timescale, may be selected over a less impactful project-specific measure that could be delivered more quickly. We propose specifying in the SI that, in addition to existing requirements set out in any DCO, consenting authority may set a limit on any time lag between impact and environmental compensation on a case-by-case basis. This will apply across the UK, but the relevant government will determine this time limit.

197. Guidance on timing would also be valuable for applicants, for example those with projects which already have consent but have been unable to secure their consent conditions relating to the delivery of environmental compensation as they move closer to construction phase, for example due to delays in gaining local authority planning consents.
198. We propose that the guidance would set out that it is usually expected that compensatory measures are in place and operational at the time at which damage to a protected site or feature begins. The guidance would then specify that in certain circumstances it may be acceptable to allow environmental compensation that will not be in place and operational until after the impact begins. This must be considered on a case-by-case basis, taking into account advice from SNCBs and the necessary safeguards through the consenting process. For example, whether the consenting authority is sufficiently confident that the compensatory measures have a reasonable guarantee of success that ensures that there is minimal risk of unacceptable interim loss or damage to a habitat or species, or that the measure will not be implemented.
199. Overcompensation (that is a higher than usual benefits-to-impacts ratio) will usually be required to account for interim environmental losses between the impact occurring and the environmental compensation being in place and operational. At pre-application stage the relevant nature conservation body will advise on the ratio to the consenting authority.
200. If developers or plan promoters believe there is a justification for using a compensatory measure that is not in place and operational until after impacts have occurred, the timings and rationale should be established during the pre-application process and set out in the without prejudice compensation plan. The plan should specify how this will be secured. Scottish Government will consult on its process separately.
201. If developers or plan promoters are relying on environmental compensation being in place and operational after the impact to the site has occurred, they may, subject to the views of the consenting authority, be able to proceed in certain circumstances. For example:
- there is a significant lead in time for measures to be delivered to be ecologically beneficial with a reasonable guarantee of success in addressing the impact
 - the ecological implications of the compensation that will become operational post-impact will be incorporated into the nature and scale of the measures, for example, a higher than usual benefits-to-impact ratio to offset risks of impact to resilience of the network
 - the measure is more likely to deliver greater, more sustainable benefits for the feature, compared to other measures which may take less time the consenting

authority, having considered advice from the relevant SNCB, is satisfied that the measures are likely to meet the compensatory measure principles, which can be considered to benefit the UK MPA network

202. The principles are that such measures:

- look to address the feature that is impacted in the first instance (moving down the compensation hierarchy accordingly)
- demonstrate ecological benefit to the UK MPA network by addressing its contribution to network connectivity, representativity, geographical range, adequacy or recovery from damage, and achievement of site or feature conservation objectives relative to the impact caused
- do not negatively impact on any other sites or designated features
- can be monitored to assess effectiveness (completion of direct action or outcome). The monitoring and management strategy must require further action to be taken if the environmental compensation is not successful
- the measure is being delivered by government or via the MRF if the developer has entered into a contract with the MRFO and paid into the MRF before construction starts and so has a high likelihood of delivery

203. The consenting authority will also expect the applicant to have taken into account advice from the relevant SNCB on the following (but not limited to) conditions:

- that ecological implications of the delay are incorporated into the nature and scale of the measures to account for possible interim losses that would occur in the meantime
- that adaptive management responses are clearly planned and prepared for with a framework in place to adapt as needed

204. In Scotland, the approach will be laid out in Scottish Government guidance. Scottish Government intends to consult separately. Please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.

205. For plans and projects consented in Wales, a similar approach to paragraphs 194-203 will apply. Wales may produce guidance specific to plans and projects in their jurisdiction in due course for further clarification.

206. For plans and projects in Northern Ireland, a similar approach to paragraphs 194-203 will apply. NIE may produce guidance specific to plans and projects in their jurisdiction in due course for further clarification.

Small impacts

207. We want to clarify circumstances where mitigation or environmental compensation is required for small levels of impact at a site, and that SNCBs can already advise that a small impact can be excluded from further consideration and not require environmental compensation. We do not believe a legislative change in the SI is necessary to address this. An appropriate assessment is only required when a plan or project is likely to give rise to a *significant* effect on a site, either alone or in combination with other plans or projects.

208. Where predicted levels of impact are small enough to be considered insignificant on

their own, consideration will still be needed of the cumulative significance of the impact in-combination with similarly insignificant effects of other developments will still be needed. SNCBs are already able to advise that the impact from a project would not make an appreciable contribution to any risk of an in-combination effect and can be excluded from further consideration. Ultimately, the consenting authority is responsible for deciding the likely significance of a predicted impact, both alone and in-combination with other plans and projects.

209. Depending on the circumstances, developers or plan promoters may be required to provide mitigation, or possibly, environmental compensation for small, predicted levels of impact- either alone or in combination. The scale of any mitigation or compensation would, however, reflect the scale of the impact.
210. Circumstances could include, but are not limited to:
- the site or feature is already in poor condition and failing to meet conservation objectives for the impacted feature
 - the site or feature is highly sensitive
 - there are high levels of uncertainty over predicted impacts due to poor data availability in relation to the proposed plan or project and others impacting the site
 - there are unavoidable contributions to a significant in-combination impact from multiple projects on the same site (and uncertainty about the impact of projects in application stage at the site that are yet to be consented). Many seemingly small contributions at a site can result in a significant in-combination effect
211. There is scope for projects with only a very small level of predicted impact to make no material contribution to an assessment of the in-combination risks. SNCBs will provide advice on this on a case-by-case basis. In these instances, neither mitigation nor compensation may be required. The requirement for mitigation or compensation is determined on a case-by-case basis by the consenting authority's appropriate assessment for the given case and, if adverse effects are identified or cannot be excluded, consideration of the derogations tests.
212. We recommend early engagement (at pre-application stage) with SNCBs to assess options for mitigation and potential environmental compensation needs, including scoping compensatory measures without prejudice. This will reduce the chance of delays where mitigation or compensation is required.
213. Strategic compensation, delivered through the MRF in England and Wales may also be able to assist with individual projects that are required to compensate for small impacts. Developers will have the option of paying into the MRF to discharge their compensation conditions.

214. For projects and plans in Scotland, Scottish Government intends to consult separately. Please refer to the [Scottish Government Strategic Compensation Policy for Offshore Wind consultation](#) for further information.
215. In Wales, applicants and plan promoters should continue to work with the relevant SNCBs for advice on small impacts on a case-by-case basis.

Application to live projects

216. Some developers or plan promoters will already have submitted plan and project applications that are important to progression towards the Clean Power by 2030 mission. They may need to make use of measures enabled by the proposed reforms and we want to allow for this. We will lay out, in guidance, clarification on the application of the reforms.
217. The reforms will be available to OFW and associated electricity infrastructure as defined in The Energy Act (2023), including those that have already entered the relevant planning process in England, Wales, Scotland or Northern Ireland (and subject to the geographical scope outlined in paragraphs 72-73).
218. This includes applicants and plan promoters who are already in the planning process but are struggling to find and agree adequate environmental compensation. It also includes applicants that have a consent but are unable to discharge their relevant consent conditions, through project-led compensatory measures. In these cases, the measures enabled through the SI or published guidance will be able to be used once they are in force. Any consideration of alternative measures should be determined with the use of the compensation hierarchy, in the same way as described in part 1 on “Enabling wider compensatory measures”.
219. In all the above cases, applicants and plan promoters wishing to use compensatory measures under the SI or published guidance may need to apply to use existing change processes in each administration to amend relevant consents, if necessary. The SI will not alter these consenting change processes. This will be laid out in guidance.
220. The reforms will be available to all live projects that fall within the scope of the proposed SI and associated guidance as outlined in paragraphs 72 – 73, including in Scotland, Wales and Northern Ireland.

Questions 23-25: other aspects of proposals

Question 23. Do you agree that our proposals for guidance provide clarity in how to assess whether environmental compensation can be considered additional?

[Yes/No/I don't know]

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 24. Do you agree with our proposals for guidance to provide clarity that, in certain circumstances, environmental compensation can be in place and operational after the impact to the site has occurred?

[Yes/No/I don't know]

This proposal is essential as it provides an opportunity for more beneficial measures to be used, even if they won't fully compensate for 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.

More clarity on exactly what this means in practice will be helpful. 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).

However, we recommend a reasonably proportionate approach (as outlined above) to overcompensation, particularly in the selection of multipliers used to adjust the compensation requirement. We also note that the current levels of precaution in impact assessments mean that overcompensation already occurs, as the likely impact of a project will be substantially less than the precautionary predicted adverse impacts defined in a project's Appropriate Assessment.

We are also concerned with the suggestion that the SI will specify that the consenting authority can set a limit in a Development Consent Order (DCO) on any time lag between impact and environmental compensation. We understand the intention behind this, but we query what the implications would be if a wider compensation measure relied on by a project was not implemented within the required timeframe. Presumably, the undertaker would be in breach of the DCO requirements despite implementation of the compensation measure being within the control of the Marine Recovery Fund Operator (MRFO), not the developer.

Question 25. Do you agree that our proposals for guidance provide clarity on when mitigation or compensation might be required for small levels of impact to a protected site?

[Yes/No/I don't know]

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 small, compensation should not be required, even if multiple projects have 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 reach 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.

This consultation acknowledges that project-alone impacts that would not make an 'appreciable' or 'material' contribution to cumulative/in-combination impacts would not need to be further assessed. The proposal is that this would be determined on advice from the SNCB on a case-by-case basis. Developers need greater clarity and certainty on the levels of impact they will be required to compensate for. For instance, where the conclusion for AOESI 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.

Part 4: Final comments

Questions 26-27: final comments

Question 26. Do you agree that the approach described in this consultation will help to provide greater environmental compensation opportunities for OFW whilst protecting the marine environment?

[Yes/No/I don't know]

SR members agree that the proposed reforms strike a better balance than the current system, provided they are implemented with flexibility and proportionality. To truly accelerate offshore wind delivery, it will be important that the system does not revert to over-precaution in practice.

Overall, this change in policy is very helpful and is urgently needed to help projects progress through the planning system. There is a clear commitment and intention from the UK Government to move to a more flexible approach to compensating Offshore Wind (OW) project impacts. There is interest from the UK 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 UK 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 application of the reforms to multi-jurisdictional projects and projects with multi-jurisdictional impacts needs to be further considered. For example, projects with components in both Scottish and English waters, or projects located in one jurisdiction with impacts on sites in both jurisdictions. The proposal to restrict a project to one library of strategic compensation measures limits the flexibility the reforms are trying to achieve and does not align with the fact that projects currently deliver compensation across UK jurisdictions. If the intention is to deliver compensation for the benefit of the “overall” network at a UK level there should be flexibility in the design of the regime that allows for a project to access measures across multiple libraries where there are cross-jurisdictional impacts on protected areas.

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 the calculation of a new project's cumulative/in-combination total impacts. Clarity on this point is urgently needed from UK and Scottish Governments.

Question 27. Do you have any other comments on our proposals described above?

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 UK Government to move to a more flexible approach to compensating OW project impacts. There is interest from the UK 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 UK 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 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.

The proposed reforms do not address the fundamental issues of excessive precaution in assessments and unrealistic estimates of 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 or the PIB's 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. 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. As monitoring demonstrates that impacts are substantially lower than those predicted, so less compensation will 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.

The proposals described do not consider how projects with transboundary impacts will compensate for their impacts. Whilst this is to some extent an issue for management of the marine recovery funds, projects also need to understand how project-specific compensation should be delivered to ensure all their compensation requirements are met. We understand from the consultation webinars that the Government intends for English projects to be restricted to the UK MRF and its measures and for Scottish projects to be restricted to the Scottish MRF and its measures. This seems short-sighted and non-reflective of the ecological realities.

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.

While we are supportive of the proposals, the detail 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. Government ought to give 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.

It also seems 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 the Secretary of State. Guidance must be clear that SNCBs provide advice only.

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.

It is essential that the UK Government undertake targeted consultation with industry and SNCBs on the draft guidance to sense check how the proposals will be applied in practice and rule out any unintended consequences.

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

Topic	Existing Position	Proposal	View
Statutory purpose of compensation	<ul style="list-style-type: none"> Compensatory measures must “protect the overall coherence of the network” 	<ul style="list-style-type: none"> Requirement for compensation to “benefit the UK Marine Protected Areas (MPA) network” 	<ul style="list-style-type: none"> Positive – current ‘coherence of the network’ test acts as a straitjacket which restricts compensation measures & complicates consenting Unclear how wider ‘must benefit’ test will be applied objectively Suggestion to remove requirement to demonstrate that compensation benefits the UK MPA network
Scope of eligible compensation	<ul style="list-style-type: none"> Measures must directly target the impacted feature (‘like for like; compensation) 	<ul style="list-style-type: none"> Broaden scope to allow measures which target “ecologically similar features” (Tier 2) or large-scale pressure that impact multiple protected features or sites (Tier 3) Mandate use of a compensation hierarchy: consider like for like measures in Tier 1 prior to tiers 2 & 3 Flexibility to move down the hierarchy if greater ecological benefit can be demonstrated OR if measures are unavailable or insufficient Prioritise measures most ecologically effective for the impacted feature UK / Scot Gov differences: <ul style="list-style-type: none"> Tier 2 & 3 measures require ministerial pre-approval in England & Wales. No such requirement in Scotland. 	<ul style="list-style-type: none"> Positive - major shift away from Defra & SNCB insistence on ‘like for like’ measures More flexible and enabling approach that allows a greater range of measures Provides greater flexibility for OW projects • Ability for projects to deliver measures via project-alone or Scottish Marine Recovery Fund also increases flexibility Enables delivery of measures that deliver greater benefit to marine environment

Topic	Existing Position	Proposal	View
		<ul style="list-style-type: none"> - Tier 3 measures can be delivered by individual projects or Scottish Marine Recovery Fund in Scotland but only through MRF in England and Wales 	
Compensation delivery	<ul style="list-style-type: none"> • Only project-level compensation is possible - no mechanism in place to deliver strategic compensation • Marine Recovery Funds (for England – Wales and Scotland separately) in development 	<ul style="list-style-type: none"> • UK Gov for England & Wales: <ul style="list-style-type: none"> - 3 measures should be delivered through Defra's MRF • Scot Gov: <ul style="list-style-type: none"> - Greater flexibility for delivery of all measures by various mechanisms - Confirms plan-level compensation package is required to support a derogation for the new SMP - Emphasise that strategic compensation can be enabled through new SMP 	<ul style="list-style-type: none"> • Positive – enabling approach provided by the UK Government for offshore wind projects • Strategic compensation is more dependent on arrangements (TBC) for: <ul style="list-style-type: none"> - Defra's MRF (recently consulted on draft design) - Scottish MRF (consultation underway August 2025) - New SMP (Scot Gov targeting adoption in Spring 2026 prior to Scottish election) • Enactment of reforms is required before new SMP can be adopted
Timing of compensation	<ul style="list-style-type: none"> • Compensation generally expected to be in place before impact occurs – SNCB position & RSPB 'red line' 	<ul style="list-style-type: none"> • Provide certainty that, in some cases, compensation can become operational after a predicted impact, with over-compensation to offset delays • Considered on a case-by-case basis 	<ul style="list-style-type: none"> • Positive – provides greater flexibility & reduces lead-in time (upfront effort & cost) • Case-by-case consideration likely to generate uncertainty & renewed debate with SNCBs & NGOs
Additionality	<ul style="list-style-type: none"> • Compensation must be additional to 'normal' MPA site management, including actions which public bodies should be undertaking (even if 	<ul style="list-style-type: none"> • Allow measures which go beyond either current site management or those with funding and a reasonable expectation of delivery to be treated as compensation 	<ul style="list-style-type: none"> • Positive – unlocks 'lower hanging fruit' MPA improvement initiatives • Greater clarity provided on what measures are additional and hence

Topic	Existing Position	Proposal	View
	they are not doing this)		available as compensation
Small impacts / de minimis	<ul style="list-style-type: none"> No de minimis thresholds Compensation required for Adverse Effects on Site Integrity (AEoSI), irrespective of impact scale & including from cumulative effects 	<ul style="list-style-type: none"> Clarify that small impacts which do not make a “material contribution” to in-combination AEoSI “may” not require compensation Clarify that the scale of mitigation or compensation required should reflect the scale of impact 	<ul style="list-style-type: none"> Concerning – minor change, no definition or clear exemption for de minimis impacts Lack of willingness to legislate to address EU caselaw on de minimis impacts Deferral to SNCB advice on case-by-case basis – unlikely to result in change of approach
Environmental safeguards	<ul style="list-style-type: none"> SNCBs advisory role in consenting process Expectation to follow the mitigation hierarchy to minimise impacts: avoid, reduce, mitigate, offset 	<ul style="list-style-type: none"> Mandate & scrutinise robust application of the mitigation hierarchy (supported by evidence) prior to applying compensation hierarchy 	<ul style="list-style-type: none"> Challenging – whilst mitigation hierarchy is already applied, greater scrutiny & challenge can be expected
Adaptive management (monitoring & adjustment of agreed compensation measures)	<ul style="list-style-type: none"> Multi-stage process which has evolved through DCO practice 	<ul style="list-style-type: none"> Codify current expectations Mandate monitoring and adaptive management 	<ul style="list-style-type: none"> Concerning – reinforces current disproportionate approach Adaptive management likely to become unwieldy & contested

END