



Department
for Environment
Food & Rural Affairs

Best practice guidance for developing compensatory measures in relation to Marine Protected Areas

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Purpose of the guidance

1. This is not statutory guidance but is intended to assist relevant authorities when considering the specific issue of when and how compensatory measures should be considered for development that may impact on a Marine Protected Area (MPA).

This guidance is addressed to:

- a. regulatory bodies responsible for decision-making in the marine area,
 - b. statutory nature conservation bodies (SNCBs) who provide advice to public authorities and developers, and
 - c. any other public authorities whose functions are capable of affecting an MPA.
 - d. Marine industries and developers.
2. This guidance sets out Defra's interpretation of the current legislative framework for protecting the marine environment. It is not a definitive statement of the law.
 3. This guidance applies to English inshore and offshore waters. Marine conservation is an area of devolved responsibility and the guidance does not apply to waters where the Devolved Administrations have competence for MPAs.

Context

4. Defra is responsible for protecting and enhancing the marine environment in English inshore and offshore waters, with the aim of fulfilling objectives in the government's 25 Year Environment Plan and commitments under the UK Marine Strategy to achieve "Good Environmental Status" in those waters.
5. The UK has a commitment to protect the marine environment with a network of well-managed Marine Protected Areas (MPAs). The Defra Secretary of State designates Marine Conservation Zones (MCZs) under the Marine and Coastal Access Act 2009 (the MCAA) and designates Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)¹ pursuant to the Conservation of Habitats and Species Regulations 2017² and the Conservation of Offshore Marine Habitats and Species Regulations 2017³ (together, the Habitats Regulations); together with relevant parts of Ramsar sites and marine elements of Sites of Special Scientific Interest (SSSIs)

¹ Following the UK's exit from the EU, these sites will continue to be called SACs and SPAs and will form part of the National Site Network as defined in the Habitats Regulations.

² S.I. 2017/1012 (as amended).

³ S.I. 2017/1013 (as amended).

these form an ecologically coherent network of MPAs⁴. The purpose of these designations is to restore, preserve and maintain biodiversity by protecting key habitats and species.

6. Those authorities with decision making powers (referred to in this guidance as **responsible authorities**) must assess the impact, either alone or in combination, on MPAs of any plans or projects before consenting to them. For MCZs, the responsible authority may not give consent⁵ unless it is satisfied either there is no significant risk of the plan or project hindering the achievement of a site's conservation objectives⁶ or, if it is not so satisfied, that other conditions⁷ are met. For SACs or SPAs, the responsible authority may give consent to any plan or project only after having ascertained that it will not adversely affect the integrity of the site⁸.
7. As explained above, MPAs are designated under different legislation. However, as **all sites contribute to the ecologically coherent network of MPAs and therefore to overall network integrity, the impact of a development within an MPA should be considered in a consistent way**, regardless of the legislation used to designate it. It is anticipated that the approach taken by responsible authorities will be as similar as possible between MPAs, subject to the requirements of the relevant legislation and case-law. Defra would therefore urge responsible authorities to consider all relevant legal principles under MCAA or the Habitats Regulations when making decisions for development affecting any MPA.
8. The Habitats Regulations⁹ provide for a “derogation” that allows plans or projects affecting an MPA to be approved, notwithstanding a negative assessment of the implications for an SAC or an SPA, provided there are “imperative reasons of overriding public interest” (IROPI) and any necessary compensatory measures are secured to ensure that overall network coherence is protected, and to achieve Good Environmental Status under the UK Marine Strategy. In considering an application for development affecting an MPA, a responsible authority might therefore decide to consent to a development if it is satisfied that proposed compensatory measures can

⁴ The ecologically coherent network is established at a UK level, and in Scotland MPAs also consist of ‘Nature Conservation MPAs’ and in Northern Ireland includes ‘Areas of Scientific Interest’. The network can be viewed at: <https://jncc.gov.uk/our-work/marine-protected-area-mapper/>.

⁵ Marine and Coastal Access Act 2009, section 126(5).

⁶ Marine and Coastal Access Act 2009, section 126(6).

⁷ Marine and Coastal Access Act 2009, section 126(7).

⁸ S.I. 2017/1012, regulation 24(2); S.I. 2017/1013, regulation 28(5).

⁹ S.I. 2017/1012 regulation 64(1); S.I. 2017/1013 regulation 29(2).

be secured and delivered, are sufficient. A similar process, which requires the applicant to undertake, or make arrangements for the undertaking of, Measures of Equivalent Environmental Benefit (MEEB), applies to MCZs¹⁰.

9. Throughout this guidance 'compensatory measures', except where the context otherwise indicates, is used to refer to both compensatory measures in cases of IROPI under the Habitats Regulations, and Measures of Equivalent Environmental Benefit (MEEB) under MCAA.

The role of responsible authorities

10. Responsible authorities must exercise their functions in the manner which the authority considers best furthers the conservation objectives and protects the integrity of an MPA.
11. Certain activities which are capable of affecting the protected features of an MCZ¹¹, or having a significant effect on an SAC or SPA¹², must be authorised (whether by marine licence, planning permission or other authorisation) before an activity can commence. Before it gives authorisation for such activity, a responsible authority must therefore be satisfied either there is no significant risk of the plan or project hindering the achievement of an MCZ's conservation objectives¹³ or, if it is not so satisfied, that other conditions¹⁴ are met; or in the case of an SAC or SPA ascertain that the activity will not adversely affect the integrity of the site¹⁵.
12. Responsible authorities must consider the cumulative, combined and synergistic effects that different activities may have on the wider MPA network as well as site specific impacts.

¹⁰ Marine and Coastal Access Act 2009, section 126(7).

¹¹ Marine and Coastal Access Act 2009, section 126:
<https://www.legislation.gov.uk/ukpga/2009/23/section/125>

¹² S.I. 2017/1012 regulation 24(1); S.I. 2017/1013 regulation 28(2).

¹³ Marine and Coastal Access Act 2009, section 126(6).

¹⁴ Marine and Coastal Access Act 2009, section 126(7).

¹⁵ Habitats regulations assessments: protecting a European site (2021)
<https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#appropriate-assessment>

13. Conservation Advice Packages (including Advice on Operations) may be available from SNCBs. These will assist in determining the potential interactions between protected features and a proposed activity.

The role of an applicant in minimising impact on an MPA

14. In seeking to satisfy the responsible authority that there is no significant risk of a project or a plan to an MCZ's conservation objectives, or that it will not adversely affect the integrity of an SAC or SPA site, an applicant should be required to demonstrate how it would prevent or minimise any other adverse impact on integrity or hindrance of a site's conservation objectives, (as referred to above)¹⁶. Defra's policy guidance is that the use of compensatory measures should only be considered by a responsible authority when the applicant has demonstrated that it has exhausted all other possible options and methods to prevent or minimise the adverse impact on integrity or hindrance of a site's conservation objectives¹⁷ ('risk of impact'). Applicants are expected to apply and work through the 'avoid, reduce, mitigate' hierarchy in a sequential manner, exhausting the possibilities of one level before proceeding to consideration of the next¹⁸, as follows:

- **Avoid:** to take an action which prevents an impact from occurring.
- **Reduce:** to take an action during design which minimises an impact to a level where it is no longer considered significant.
- **Mitigate:** to take an action during construction, operation or decommissioning to lessen the consequences of an impact where it cannot be avoided or reduced.

15. When applicants make a proposal for development which may affect an MPA, Defra's policy guidance is that the proposal should be as specific as possible (including, but not limited to, timings, materials, construction methods and scale of works) in showing how it will minimise impact on the MPA. As part of the proposal, applicants should be asked to provide details of the options and methods considered or applied, and to explain if and why these are not feasible or adequate to fully address the impact(s). Applicants should also address any areas of uncertainty, whether scientific (i.e.

¹⁶ For MCZs see sections 125 and 126 of the Marine and Coastal Access Act 2009; for SACs and SPAs see regulation 63 of SI 2017/1012 and regulation 28 of SI 2017/1013.

¹⁷ This is Defra's policy position regarding how to approach minimising the risk of impact on an MPA.

¹⁸ Defra recommend that the applicant has exhausted all possible methods of mitigation through the avoid, reduce mitigation hierarchy in a sequential manner.

addressing the accuracy of predictions) or managerial (the likelihood of success of any measures proposed to avoid, reduce or mitigate an effect) and explain any assumptions. The proposal should demonstrate impacts at the construction, operation and decommissioning stages of the proposal¹⁹.

Consideration of alternatives

16. As mentioned above, for MCZs the responsible authority must be satisfied either there is no significant risk of the plan or project hindering the achievement of a site's conservation objectives or, if it is not so satisfied, that other conditions are met. For SACs or SPAs, the responsible authority may give consent to any plan or project only after having ascertained that it will not adversely affect the integrity of the site.
17. If the applicant cannot satisfy the responsible authority, after exhausting all options in the 'avoid, reduce and mitigate' hierarchy, it may decide not to proceed with the proposal or to seek to satisfy the responsible authority that it meets other conditions: that for MCZs there is no alternative means of proceeding with the activity which would create a substantially lower risk of impact, that the benefit to the public of proceeding clearly outweighs the risk of damage to the environment, and that the applicant will undertake or make arrangements for the undertaking of MEEB to the damage or likely damage²⁰. For SACs and SPAs, the responsible authority must be satisfied that there are no alternative solutions and that the plan or project must be carried out for IROPI²¹.
18. When considering alternative means or alternative solutions, responsible authorities must demonstrate they have looked at all feasible, less harmful and reasonable options and, the applicant should be asked to justify its reasoning for discounting alternatives. This could include looking at whether the proposal could happen at a different location, using different routes across a site or making changes to scale, method, size or timing. These are not exhaustive, and the responsible authority should consider what is appropriate for the application on a case-by-case basis, including both operational and decommissioning aspects.

¹⁹ Applicants must conduct appropriate assessments if there is a likely risk of impact on an MPA. For MCZs see section 125 and the general duties of public authorities in relation to MCZs. For SACs and SPAs, the assessment should allow applicants to carry out the integrity test (regulation 63 of SI 2017/1012; regulation 28 of SI 2017/1013). For all MPAs, the assessment should weigh the risk of impact against the conservation objectives of the MPA.

²⁰ Marine and Coastal Access Act 2009, section 126(7).

²¹ S.I. 2017/1012, regulation 64(1); S.I. 2017/1013, regulation 29(1).

19. Defra's policy position is that ecological criteria, conservation objectives and network status should outweigh economic considerations over the lifetime of the activity. While alternative solutions should be legally and technically feasible, options should not usually be discounted for purely financial reasons.
20. Alternative solutions or other means of proceeding should be limited to those which would deliver the same overall outcome for the activity whilst creating a substantially lower risk of impact to the MPA.
21. It is unlikely in most cases that the 'do nothing' option (i.e. no proposed activity) would be an acceptable alternative as it would not deliver the same overall objective as 'the activity'. However, it is useful to provide a comparison for other alternatives and to act as a baseline against which public benefits can be assessed. Where it is most likely to be an option is where no or limited tangible public benefit can be demonstrated.
22. In considering alternative means of proceeding, the responsible authority will do so on a case by case basis in a manner proportionate to the scale of the activity and any impacts being considered.

Balancing the public benefit or IROPI with the impact on a Marine Protected Area

23. For MCZs, the responsible authority must be satisfied that (among other criteria)²² the benefit to the public of proceeding clearly outweighs the risk of damage to the environment that will be created by proceeding with it.
24. For SACs and SPAs, the responsible authority must be satisfied there are no alternative solutions and that the plan or project must be carried out for IROPI.
25. In deciding whether IROPI applies, the responsible authority may for example look at whether the project or plan would provide a service or wider benefit to the local and/or wider community/population. IROPI may be of a social or economic nature except where the site in question hosts a priority species or habitat²³ in which case the IROPI must be reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or any other IROPI. The responsible

²² Marine and Coastal Access Act 2009, section 126(7).

²³ S.I. 2017/1012, regulation 64(2); S.I. 2017/1013, regulation 29(2).

authority may only consider such other IROPI if it has obtained and had due regard to an opinion of the Secretary of State, who in turn must have regard to the national interest, having consulted statutory consultees²⁴.

26. Subject to the above and the legislative requirements applicable to the MPA under consideration, an activity might be considered to provide IROPI/public benefit if it is indispensable:

- **within the framework of national policies:** Benefit to the public can be measured at a national or regional level and must be clearly identified. Frameworks of policies at these different levels may need to be considered on a case-by-case basis.
- **within a framework of actions or policies to protect public health and safety:** An activity might be considered to provide a 'benefit to the public' if it is indispensable or desirable within a framework of actions or policies to protect public health and safety. OR
- **in carrying out activities of an economic, environmental or social nature to fulfil specific public service or statutory obligations:** Examples could include (but are not limited to) job creation, benefits to society from the provision of new resources or facilities, or improved infrastructure for the supply of goods and services. An estimate of public benefit should not include gross value added, or other measures of economic activity (for example profit, turnover, revenue, sales) that are more about private benefit to individuals or financial benefit to businesses or organisations.

27. In determining IROPI or whether the benefit to the public to be realised from a proposed activity outweighs any damage to the environment the responsible authority should consider the following:

- a. the potential impact on the integrity of or conservation objectives for the MPA(s) affected; any potential impact on the objectives and coherence for the MPA network at the regional and national level,
- b. the potential impact of any activity on the delivery of sustainable development of the marine environment,
- c. the potential impact on the achievement of government environmental targets,

²⁴ S.I. 2017/1012, regulation 64(3), (4) & (4A); S.I. 2017/1013, regulation 29(3), (5) and (6).

- d. the potential impact of any activity on the delivery of measures aimed at achieving good ecological status as provided in the Water Environment Regulations²⁵,
- e. the potential impact of an activity on the delivery of measures aimed at achieving good environmental status as provided in the Marine Strategy Regulations²⁶,
- f. the cumulative, combined and synergistic potential impacts of the proposed activity, taken with other activities in the relevant area and the potential of these on hindering the achievement of government environmental targets, good ecological status and good environmental status,
- g. the overall impact on ecosystem services that the features of the MPA in question provide.

28. In respect of SACs/SPAs hosting priority habitat or species, where the responsible authority wishes to consider other IROPI it may (for inshore waters) or must (for offshore waters) seek an opinion of the Secretary of State. Before giving an opinion on whether the reasons are IROPI, the Secretary of State must consult with, and have regard to the opinion of, the Joint Nature Conservation Committee, the devolved administrations and any other person the Secretary of State considers appropriate.

29. If following consideration of all possible options in the avoid, reduce and mitigate hierarchy, the authority is satisfied that the relevant test for that MPA has been met, it may agree to the plan or project. For MCZs, there is a general duty²⁷ on the Secretary of State to secure compliance with the relevant legislation, which implies they have a duty to secure that any necessary compensatory measures are taken. For SACs and SPAs, the responsible authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of the MPA network is protected²⁸.

²⁵ The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407).

²⁶ The Marine Strategy Regulations 2010 (S.I. 2010/1627)
<https://www.legislation.gov.uk/ukSI/2010/1627/contents/made>

²⁷ Marine and Coastal Access Act 2009, section 123(5).

²⁸ S.I. 2017/1012, regulation 68; S.I. 2017/1013, regulation 36(2).

Securing compensatory measures in MPAs

30. Through previous stages of an application, the responsible authority and the applicant will have worked together to establish that the plan or project will have a significant risk to or adverse effect on the MPA, but that there is no alternative means of proceeding with the plan or project, and that it is either for the public benefit (MCZs) or IROPI (SACs and SPAs).
31. The next step is to consider what compensatory measures may be relevant and necessary.
32. To ensure that network coherence is maintained, any compensatory measure for an MPA must aim to deliver the same ecological value or compensate for the loss of the same feature, habitat or species.
33. In considering the nature, scale and scope of the potential negative impact on an MPA which will or may arise from a proposed activity and the designated feature(s) affected, the responsible authority may consider, for example:
 - a. which MPA feature(s) are impacted and to what degree;
 - b. whether the affected features are rare and whether they are replaceable;
 - c. over what timescale they will be affected (for example, whether it's a permanent loss, or if there is potential for recovery);
 - d. and how certain they are in the potentially significant effects.

This information will be a yardstick by which the responsible authority can measure suitable compensatory measures. This assessment should be based on advice provided by the SNCB, where sought.

34. By clearly establishing what the impacts are, the responsible authority can start to consider what might be considered 'equivalent' to any projected damage in the MPA.
35. Applicants should recognise the possible need for compensation early on in the process and should discuss all potential compensatory measures with the responsible authority at an early stage of development. These discussions will be exploratory in nature to assist the Applicant in demonstrating the potential efficacy and feasibility of compensatory measures to regulators. It is not the responsibility of the responsible authority to provide options for potential compensatory measures, but it can provide guidance on which activities may be considered to be sufficient in terms of compensation.

36. If deemed potentially necessary, compensation proposals should be included on a 'without prejudice' basis in the submission for the responsible authority to consider. In a case for compensatory measures, the Applicant should set out clearly how they have considered and applied the avoid/reduce/mitigate hierarchy fully and sequentially. Applicants should provide details of the options and methods considered or applied as well as if and why these are not feasible or adequate to fully address the impact(s).
37. Applicants should be as specific as possible when outlining proposals for compensatory measures (including, but not limited to, timings, materials, construction methods, scales and monitoring). Narrow project proposals allow for a more accurate assessment and quantification of the impact(s) and will inform the decision by the responsible authority whether to agree to the project on the grounds that it satisfies the test for being IROPI under the Habitats Regulations (for SACs/SPAs) or the public benefit test under section 126(7) of MCAA.
38. The Applicant must demonstrate that it has a clear delivery plan in place and has had discussions with regulators to seek in-principle decisions to licences or permissions. When considering potential measures, the Applicant should work with the responsible authority and use the principles outlined below to guide proposals. Before proposing compensatory measures, the Applicant should consider any necessary agreements from other parties. For example, an Applicant should not propose predator control measures to compensate for ornithological impacts without previously seeking any relevant landowner agreements.
39. If the delivery of the identified compensation requires actions of a government department, it is important that the relevant government department is consulted on proposals prior to examination and notification to the Secretary of State for that department. This will help identify additionality conflicts and may enable join up between initiatives to deliver greater benefits to the marine environment overall.
40. If the responsible authority is satisfied that the project meets the relevant test, and agrees that the project may proceed, compensatory measures must first have been agreed on the basis of the information provided by an Applicant. In the case of projects affecting MCZs, the Applicant must have given an undertaking to take (or have taken) MEEBs; in the case of SACs or SPAs, the responsible authority must secure any necessary compensatory measures.

Principles of Compensatory Measures

41. With increasing pressures on the marine environment there is a growing risk of significant impacts to protected sites; however, the principles of IROPI and the benefit to the public exist to help manage these impacts effectively in appropriate cases. Compensatory measures should:

- a. Link to the conservation objectives for the site or feature and address the specific damage caused by the permitted activity;
- b. Focus on providing the same ecological function for the species or habitat that the activity is damaging OR, where this is not technically possible, provide functions and properties that are comparable to those that originally justified designation;
- c. Not negatively impact on any other sites or features;
- d. Ensure the overall coherence of designated sites and the integrity of the MPA network; and
- e. Be able to be monitored to demonstrate that they have delivered effective and sustainable compensation for the impact of the project. The monitoring and management strategy must require further action to be taken if the compensation is not successful.

42. The site selection process for MPAs is based on a number of principles, including (but not limited to) connectivity, representativity, geographical range, adequacy and protection. There is site selection guidance for SACs²⁹, SPAs³⁰ and MCZs³¹, which outline the principles of site selection to ensure ecological network coherence. It is essential that compensatory measures first look to address the specific damage the activity will cause before considering broader equivalent measures to ensure these principles remain intact and sites maintain integrity as required by law.

43. There is Defra guidance available on IROPI derogations, and subsequent compensatory measures, in the Conservation of Species and Habitats 2017 Regulations³². Current guidance is terrestrially focused and several of the principles it contains do not apply easily to the marine environment (see Table 1 below). Hence

²⁹ JNCC (2009), Background to site selection (The Habitats Directive: selection of Special Areas of Conservation in the UK):

<https://webarchive.nationalarchives.gov.uk/20190405134003/http://jncc.defra.gov.uk/pdf/SAC-selection-background-T37.pdf>

³⁰ JNCC (2001), The UK SPA network: its scope and content (Volume 1: Rationale for the selection of sites):

<http://data.jncc.gov.uk/data/3634580a-cabc-4218-872f-8660a1760ad8/uk-spa-vol1-web.pdf>

³¹ JNCC (2010), Marine Conservation Zone Project (Ecological Network Guidance):

<http://data.jncc.gov.uk/data/94f961af-0bfc-4787-92d7-0c3bcf0fd083/MCZ-Ecological-Network-Guidance-2010.pdf>

³² Defra (2021), Habitats regulation assessments: protecting a European site:

<https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#take-a-precautionary-approach-to-decisions>

the purpose of this guidance is to establish comparable principles that work and provide the best outcomes for the marine environment.

44. For example, Section 30 of the guidance states that:

“Competent authorities and Statutory Nature Conservation Bodies (SNCBs) should help applicants to identify suitable compensatory measures. Such measures must be decided on a case-by-case basis and aim to offset the negative effects caused by the plan or project. They can include, among other things:

The creation or re-creation of a comparable habitat which can in time be designated as a European site and in the meantime is protected as a matter of government policy as if it were a fully designated European site

The creation or re-creation of a comparable habitat as an extension to an existing European site.”

45. Compensation that involves creating ‘like-for-like’ habitat may not be deliverable in all marine environments; so in the marine context the equivalent principle is that the Applicant should secure compensation measures which **benefit the same feature affected by the development**, so there is no net damage to that feature.

Table 1: Comparison between terrestrial and marine compensatory measures

Compensatory Measure	Terrestrial example	Marine
New / extended designation of protected area	Developer buys land adjacent to development for habitat recreation	Although technically possible, no process currently exists for designating MPAs as a compensatory measure. Although technically possible, due to the lengthy timescales and the requirement to secure designations through management measures for a new site, in practice this is unlikely to be feasible at project level.
Removal of other industries	Developer buys land to be restored and designated as a protected area	Without the same land ownership rights developers will have no powers to remove other industries. In certain cases, it may be appropriate for developers to work with other regulatory bodies to secure environmental headroom for their activities.
Creation of habitat	Conversion of arable and grazing lands to wetlands, marshes, saltmarsh and lagoons	Less ecologically feasible for most offshore habitats
Restoration of habitat	Active restoration of impacted habitat	Less ecologically feasible for most offshore habitats
Relocation of habitat	Replacement of impacted feature with feature moved from another location	Less ecologically feasible for most if not all offshore habitats

Hierarchy Approach

46. As it will not always be possible to deliver compensatory measures in a like-for-like capacity as is accepted terrestrially, Defra has created a framework to help advisors' regulators and developers to explore and develop compensatory measures. The underlying principle is that **compensatory measures that benefit the same feature which is impacted by the development will be the most preferable** as they balance the damage caused by the development.

47. Each step down the hierarchy **moves away from like for like measures and therefore may decrease the certainty of success, and therefore increase the extent of compensation required**. The key is to ensure the biological structure and function of the network is maintained. The more significant the impact to the protected feature or species, the more important it is that compensatory measures are developed within steps 1 and 2 of the Hierarchy of Compensatory Measures.

Table 2: Hierarchy of Compensatory Measures for the Marine environment

Hierarchy of Measures	Description	Marine examples	Terrestrial examples
1. Address same impact at same location	Address the specific impact caused by the permitted activity in the same location (within the site boundary)	On-site creation, restoration or relocation of feature that will be harmed/lost. e.g. replace seabirds lost to 'birdstrike' by controlling predators at nesting sites in SPA.	Conversion of onsite arable or grazing lands to create wetlands, marshes, saltmarsh or lagoons.
2. Same ecological function different location	Provide the same ecological function as the impacted feature; if necessary, in a different location (outside of the site boundary)	Off-site creation or restoration of feature that will be harmed/lost Measures taken to enhance a seabird population delivered in a different location to the impacted	Managed realignment to create a manmade wetland further along the coastal region to replace the loss of wetland at impacted site.

		population of same species, eg Artificial nesting platforms	
3. Comparable ecological function same location	Provide ecological functions and properties that are comparable to those that originally justified the designation in the same location as the impact	On- site creation or restoration of a similar feature to the one that will be damaged / lost Broader measures taken to benefit a feature of the site that provides a similar environmental benefit to the one that is lost or damaged, e.g. measures to enhance population of the protected seabird species	On-site creation or restoration of a similar feature or species that will be harmed or lost. e.g. planting different species of tree to the individual species that has been affected.
4. Comparable ecological function different location	Provide ecological functions and properties that are comparable to those that originally justified designation; if necessary, in a different location (outside of the site boundary)	Off-site creation or restoration of a similar feature to the one that will be damaged or lost Broader measures taken to benefit a feature of the site that provides a similar environmental benefit to the one that is lost or damaged, e.g. measures to enhance population of a different protected seabird species in a different location to where the impact has occurred	Off-site creation or restoration of a similar feature or species that will be harmed or lost. e.g. the creation of a wetland reserve that cannot reproduce the same features but mitigates for some loss in biodiversity.

48. “Same ecological function” refers to a feature, habitat, or species that provides the same environmental benefit to the environment as the one that is impacted as a result of a marine activity. This is usually the same species, feature or habitat.
49. “Comparable ecological function” refers to a feature, habitat, or species that provides similar but not exactly the same, environmental benefit.
50. On rare occasions it may be that other measures delivering wider ecological systems benefits will be the only option for compensation. These opportunities should be identified through developer discussions with SNCBs during the pre-application discussions. Delivery of these measures is likely to be through collaborative action between several developers in an area and with the agreement of the SNCBs. This could include developers working with other industries and regulatory bodies to secure environmental headroom for their activities.

Location of Compensation

51. To increase confidence in the ability of a site to continue to meet its conservation objectives and the overall coherence of the MPA network, the responsible authority should consider compensatory measures based on the following sequential preferences (as outlined in the hierarchy above):
 - a. Measures that replicate or benefit the same feature **within the affected site**.
 - b. Measures that replicate or benefit the same feature **outside the affected site**.

The responsible authority should bear in mind that creating replacement habitat within a site may cause conflicts through, for example, sediment features being lost under reef creation. As a principle, it will be important to avoid impacting one designated habitat to compensate for damage to another.

52. When considering measures outside of the affected site, there should be strong evidence to demonstrate that these measures are more effective or will provide greater benefit than measures within the site.
53. In the case of more mobile species, connectivity between populations should be considered. Depending on how mobile a species is, this may need to be considered in discussions with the Devolved Administrations.

Substance of proposed Compensation

54. Compensatory measures must address the impact of the activity in comparable proportions depending on issues such as certainty of success, time for recovery or distance from the area of loss. Ratios can be determined on a case-by-case basis but, given the lack of evidence surrounding marine compensatory measures, ratios of 1:1 are only likely to be acceptable in exceptional circumstances in agreement with

the SNCBs. As a general rule, compensation should be delivered at a ratio higher than 1:1. The application of higher ratios will increase confidence in site conservation objectives being achieved and the coherence of the MPA network maintained.

55. All projects must be considered on a case-by-case basis in close liaison with the SNCBs. As a minimum, and depending on the project under consideration, the following factors should be considered:
- a. The extent of the impact – the number and status of the features affected;
 - b. The environmental value and function of the affected feature;
 - c. The environmental value and function of the proposed compensatory measure;
 - d. The location of the proposed compensatory measure;
 - e. How quickly compensatory measures are expected to be functioning and contributing to the network; and
 - f. The confidence in the measure being entirely effective and the ability for its success to be monitored and managed accordingly.

Additionality

56. In some cases, it could be appropriate, as a package of compensation, to improve the quality of the remaining feature such that it provides an enhanced contribution to the network of MPAs and delivers more for biodiversity. However, compensation must be additional to the normal practices required for the protection and management of the MP so that measures should provide additional benefit. Therefore, any measure that is being or will be undertaken by government bodies to ensure that the site is in favourable conservation status or that protected features are in favourable condition, should not be considered as compensation. SNCBs will provide information on planned future management activity to enable developers to avoid additionality conflicts.
57. Monitoring the success of compensatory measures against project objectives and conservation objectives will be critical in demonstrating achievement of the required benefits. The applicant should pay the full cost incurred for provision of compensatory measures and monitoring the measures to demonstrate achievement of the objectives, which must have a legal commitment for delivery, for example licensed conditions. In exceptional circumstance, an applicant may contribute funding to measures already identified, but to be taken forward at a later date as part of a larger project funded by a number of contributions. However, applicants should be asked to provide appropriate assurance that the third-party project will take place and deliver the required benefits, as well as security for the necessary funds into the future.

Timing

58. A protected feature should not be impacted before compensation is secured. Ideally, measures should be in place, functioning and contributing to the network before development begins. Defra recognises that in some cases and for certain habitats and species this could take several years and therefore it may not be feasible for the compensatory measures to be complete before the impact takes place. Where this is not possible, it is important that necessary licences are in place, finances are secured, and realistic implementation plans have been agreed with the appropriate bodies to demonstrate that the compensatory measure is secured. It is the applicant's responsibility to set out clear timings, deliverables and rationale for meeting this requirement.
59. In cases where the impact accrues over a longer period it may be appropriate to consider compensation that is phased over the lifetime of the project. This would need to be considered on a case-by-case basis and the compensatory measures must be secured at the outset, even if the subsequent delivery is phased.
60. The Applicant should consider the derogations route or the requirement to satisfy the authority that there is no adverse effect (SAC/SPA)/ no significant risk of the activity hindering the achievement of the conservation objectives (MCZs) early in the consenting or authorising process to ensure that they can deliver compensatory measures within reasonable timeframes.

Designation of new MPAs as compensatory measures

The designation of an MPA is the result of a highly considered process that involves substantial data collection and analysis and local engagement which can take place over several years. New designations place constraints on other sea users and so proposed marine designations must be consulted on, with no guarantee of the outcome, as barriers to designation can arise at any time throughout this process. Furthermore, compensation cannot be considered secured until a designation is complete and management measures for a new site are in place.

Glossary

Compensatory measures: used within this guidance to refer to measures designed to compensate for the risk of adverse impact on features, habitats or species within all MPAs, both in cases of IROPI under the Habitats Regulations, and MEEBs under MCAA, unless otherwise specified.

IROPI derogation: used in the context of SACs and SPAs, to refer to an agreement by a competent authority to a plan or project, notwithstanding a negative assessment of the implications for a site, where it is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI).

MEEB: used in the context of MCZs to refer to measures of equivalent environmental benefit to the damage which an act will or is likely to have in or on an MCZ.

Responsible authority: a term used within this guidance to cover ‘competent authorities’, as defined in the Habitats Regulations³³ and ‘public authorities’ as defined in MCAA³⁴ with decision making powers affecting SACs, SPAs and MCZs.

Public interest or benefit test: used to refer to the public interest or public benefit test that responsible authorities must apply in determining whether to authorise an act or a plan or project where there is a risk of impact on an MPA. In respect of SACs and SPAs (under the Habitats Regulations) the test is IROPI and in respect of MCZs (under MCAA) the test is that the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it.

Habitats Regulations: refers to the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017, dealing with inshore and offshore MPAs respectively.

Risk of impact: used to cover the risk of an adverse impact on the integrity of a site or the hindrance of a site’s conservation objectives.

³³ see regulation 7 of SI 2017/1012 and regulation 5 of SI 2017/1013

³⁴ see section 322 (read subject to section 126(11))

Annex A: Legislative background

Marine Conservation Zones are designated under the MCAA, whereas SPAs and SACs are designated under the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. Despite being designated and maintained under different pieces of legislation, the purpose of designating all MCZs, SPAs and SACs is to preserve or restore protected features and species; whilst maintaining the integrity of the wider MPA network.

MCCA and Marine Conservation Zones

Part 5, Nature Conservation, Chapter 1, Marine Conservation Zones, of MCAA provides among other things for the protection and conservation of MCZs through placing a series of duties on public authorities. The application of these duties is informed by the conservation objectives set out in the designation order for each MCZ.

The requirements under the MCAA can be summarised as follows:

- **Section 125** – requires public authorities to exercise their functions in a manner to best further (or, if not possible, least hinder) the conservation objectives of MCZs.
- **Section 126** – requires public authorities to consider the effect of proposed activities on MCZs before authorising them and imposes restrictions on the authorisation of activities that may have a significant risk of hindering the conservation objectives of an MCZ. Public authorities may also not grant an authorisation if certain conditions are not met.
- **Section 127** – states that the statutory nature conservation bodies (SNCBs) may provide conservation advice in relation to MCZs to public authorities; and are required to give advice should a public authority ask for it.

The duties are designed to provide MCZs with clear, flexible, proportionate and effective protection.

General duties of public authorities in relation to Marine Conservation Zones (section 125 of MCAA)

The general duties are intended to make conservation of MCZs an important consideration for all relevant public authorities and require them to exercise their functions in a way to further (or least hinder) the conservation objectives for MCZs. The duty applies to a wide range of functions which include:

- developing and implementing strategies, plans and policies;
- the development of new infrastructure;

- ownership and management of coastal land (for example coastal defence);
- management of shipping channels;
- provision of public information; and
- administration of consent, regulatory and enforcement regimes.

The scope of this duty will depend on the functions of the authority and the conservation objectives set for the MCZ.

The MCAA does not define a process which a public authority must follow to demonstrate that they have applied section 125. The aim is not to prevent necessary development, which is in the public interest from taking place, as long as the public benefit clearly outweighs the risk of damage and MEEB can be provided as necessary.

The public authority should encourage applicants to maintain a dialogue with them throughout the application process. Assessment of the risk to the conservation objectives is achieved via the screening and scoping phases of the application process and the assessment of environmental effects that is undertaken in support of the application. It is important that applicants engage public authorities and SNCBs early in the process, and where appropriate at a pre-application stage to ensure early sight of potential issues and identification of solutions.

Habitats Regulations, SACs and SPAs

The Habitats Regulations³⁵ aim to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora³⁶. Under the Habitats Regulations³⁷ the duties on public authorities regarding the assessment and authorisation of plans and projects and compensatory measures are summarised as follows:

- Where it appears to the responsible authority that an application for consent, permission or other authorisation relates to an operation which is or forms part of a plan or project which, (a) is likely to have a significant effect on a SAC/SPA (either alone or in combination with other plans or projects), and (b) is not directly connected

³⁵ The Conservation of Habitats and Species Regulations 2017 (SI 2017/1012); the Conservation of Offshore Marine Habitats and Species Regulations 2017 (SI 2017/1013).

³⁶ https://www.legislation.gov.uk/uksi/2017/1012/pdfs/uksem_20171012_en.pdf

[The Conservation of Offshore Marine Habitats and Species Regulations 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2017/1012/pdfs/uksem_20171012_en.pdf)

³⁷ See regulations 61-69 of SI 2017/1012 and regulations 27-37 of SI 2017/1013.

with or necessary to the management of that site, it must make an appropriate assessment of the implication for that site in view of that site's conservation objectives.

- In carrying out the assessment, the authority must consult the appropriate SNCB and have regard to any representations it makes, and, if appropriate, take the opinion of the general public.
- Following the conclusions of the assessment, and subject to the regulatory provisions governing considerations of overriding public interest and compensatory measures, it may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site³⁸.
- If the authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI), it may agree to the plan or project notwithstanding a negative assessment of the implications for the SAC/SPA (referred to in this guidance as an IROPI derogation). IROPI may be of a social or economic nature, subject to the proviso that, where the site hosts priority habitats or species, the authority can normally only consider reasons relating to human health, public safety or beneficial consequences of primary importance to the environment. The authority can only consider other IROPI if it has obtained and had due regard to the opinion of the Secretary of State,
- When considering making a derogation case under the provisions in the Habitats Regulations, the person seeking authorisation must satisfy the authority that:
 - There are no feasible alternative solutions to the plan or project;
 - There are IROPI for the plan or project to proceed; and
 - Any compensatory measures will be secured to ensure that the overall coherence of the network of SACs and SPAs is protected.

³⁸ <https://www.legislation.gov.uk/ukxi/2017/1012/regulation/29/made>
<https://www.legislation.gov.uk/ukxi/2017/1013/regulation/63>