



Department
for Environment
Food & Rural Affairs

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

Date: 22 July 2021

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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offshorewind@defra.gov.uk

www.gov.uk/defra

Executive summary

1. This consultation seeks views on the Best Practice Guidance for developing Compensatory Measures in relation to Marine Protected Areas, a future approach to strategic compensation, and how net gain and compensation can work together to deliver the best outcomes for the marine environment.
2. The government is responsible for protecting and enhancing the marine environment in English inshore and offshore waters, fulfilling objectives in government's 25 Year Environment Plan and commitments under the UK Marine Strategy to achieve "Good Environmental Status" in our waters.
3. The UK's MPA network is one of our primary tools for protecting our marine environment including seabed habitats and species. Marine Conservation Zones (MCZs) together with Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) (under the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (together, the Habitats Regulations)), relevant parts of Ramsar sites and marine elements of Sites of Special Scientific Interest (SSSIs) form this ecologically coherent network of 371 MPAs. Together, they protect 38 percent of UK waters.
4. Our marine environment faces increasing pressure from human activities and climate change. The government wants to ensure that a consistent level of protection is afforded to the unique habitats, species and features that form our MPA network.
5. The government is also committed to helping the UK achieve net-zero by 2050 and a healthy marine environment has an important role to play in delivering this. For example, the marine environment acts as a carbon store, helps to regulate physical marine processes and provides us with a diverse range of marine industries and recreational activities important for the well-being of the nation.
6. The government has developed this guidance as a framework to enable developers to consider how to reduce and mitigate impacts on the marine environment within MPAs and, where this isn't possible how to deliver compensatory measures; and also to provide clarity on Defra's expectations to marine industries, advisors and regulators.
7. This is your opportunity to feed into the development of guidance and provide any additional evidence that might help improve the overall effectiveness and operability of the guidance.

Audience and application

8. The territorial application of this guidance is those waters in which the Secretary of State and/or the Marine Management Organisation has powers in relation to site

management; those being English Inshore and Offshore waters and with regards to devolved waters subject to devolution agreements. Marine conservation is an area of devolved responsibility and the guidance does not extend to waters where the Devolved Administrations have competence for MPAs.

9. The MPA compensatory measures guidance is intended to assist:
 - regulatory bodies responsible for decision-making in the marine area,
 - statutory nature conservation bodies (SNCBs) who provide advice to public authorities and developers, and
 - any other public authorities whose functions are capable of affecting MCZs, SACs or SPAs.
 - Marine industries and developers.

Throughout this document 'compensatory measure' is used to refer to both compensatory measures under the Habitats Regulations and Measures of Equivalent Environmental Benefit (MEEB) under The Marine and Coastal Access Act 2009 (MCAA).

Part 1. Purpose and process

1.1 Purpose of the consultation

10. This consultation seeks views from all interested parties on the proposed guidance. We are particularly keen to hear from marine industries that are subject to the consenting and / or licensing process on how applicable and feasible the guidance is. At present there are developments in the consenting process which require clarity and we are keen to understand to what extent this guidance will add value to those by providing a framework for compensatory measures to be considered within.
11. In addition to understanding whether the guidance adds value we would also like to capture views on how we might consider compensatory measures at a more strategic level, for example through marine planning to consider the cumulative impacts of activities rather than at an individual site basis.

1.2 Consultation process

12. At the end of the consultation period we will summarise the responses and place this on GOV.uk.
13. Information and comments submitted through the consultation will be used to inform and further develop the guidance to ensure it is feasibility for delivery in the marine environment and that it takes account of all industry needs.

How to respond?

14. Responses should be submitted online where possible via the survey [Consultation guidance compensatory measures in MPAs](#). If you have additional information that you would like to submit as a part of your consultation response, please email this to offshorewind@defra.gov.uk or write to:

Consultation Coordinator
Second floor
Foss House
Kings Pool
1 to 2 Peasholme Green
York
YO1 7PX.

Complaints procedure

15. 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 dealt with within 15 days of receipt.

Part 2. Background

16. The Defra Secretary of State designates Marine Conservation Zones (MCZs) under MCAA and designates Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) pursuant to the Habitats Regulations. The purpose of these designations is to restore, preserve and maintain biodiversity by protecting key habitats and species.
17. A range of industries operate in the marine area, including fisheries, oil and gas and offshore wind energy generation. The government supports our thriving marine industries, appreciating the importance they play in not only supporting coastal communities but in the contribution the renewables sector make to delivering on our Net Zero commitment, with an anticipated 40GW of offshore wind developments operational by 2030.
18. In bringing forward developments in the marine area, developers must consider the environmental impacts of the development on these MPAs under either MCAA or the Habitats Regulations. We propose that when developers are considering an activity / development they should make every effort to work through the '**avoid, reduce, mitigate**' hierarchy in a sequential manner, exhausting the possibilities of one level before proceeding to consider the next.

19. The responsible authority cannot consent to any plan or project that cannot rule out an adverse effect on site integrity (SACs/SPAs) or to any act that has a significant risk of hindering the achievement of a site's conservation objectives (MCZs).
20. However, a "derogation" may be used to consent to a development if the decision-making authority is satisfied that it is necessary due to Imperative Reasons of Overriding Public Interest, despite the likely adverse effect on the integrity of a SAC or SPA; in which case the Applicant will be required to secure and deliver compensatory measures. A similar process, which requires the person seeking the authorisation to undertake, or make arrangements for the undertaking of, Measures of Equivalent Environmental Benefit (MEEB), applies to MCZs. In this "derogation" process the developer must demonstrate that there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of an MCZ's conservation objectives; 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; and that the person seeking the authorisation will undertake, or make arrangements for the undertaking of, MEEB to the damage which the act will or is likely to have in or on the MCZ.

This consultation addresses the need for guidance for developers and other interested parties in the context of compensatory measures.

Why do we need guidance on compensatory measures?

21. To date compensatory measures have been used rarely in the marine environment to consent a development or activity. However, given the increased pressures on the marine environment from various activities, including the government's ambition to secure 40GW of offshore wind power by 2030, it is likely that the process of securing compensatory measures will be invoked by developers more frequently in the future.
22. Uncertainty about how compensatory measures should be developed is one of the barriers causing delays in the consenting process for offshore wind developments, and there is a clear demand for guidance from stakeholders. A report published in June 2020 following a workshop facilitated by Renewables UK and The Crown Estate provided several recommendations for Defra in relation to the need for clear guidance surrounding compensatory measures within MPAs. This guidance addresses these concerns and also helps deliver against wider government objectives to provide further clarity and guidance to streamline the planning process whilst improving the implementation of environmental regulations.
23. The guidance will apply to all marine developments and aims to provide further clarity and guidance to streamline the planning process whilst improving the implementation of environmental regulations. This should provide greater certainty to developers, SNCBs, environmental groups and others with a key interest in how the marine environment is managed. This will also contribute to more rapid deployment and a green recovery from Covid-19.

Why are we providing the same guidance for different types of MPAs?

24. This new guidance will bring together guidance related to compensatory measures in MPAs for both SPAs and SACs and domestic MCZs in England (under section 126 of MCAA). For MCZs, the draft guidance supplements previous guidance published in 2010¹. This proposed guidance aims to provide clarity for advisors, regulators and developers on how compensatory measures should be considered and delivered in the marine environment.
25. National and international commitments highlight the importance that the marine environment has both nationally and globally, as well as contributing to the economy and providing social and recreational activities, including the potential for future expansion of these. In recognition of this, different types of MPAs have been designated to protect elements of the marine environment from degradation. These have either been designated under domestic legislation which implemented European directives to protect habitats and species of international importance (SACs and SPAs), or under domestic legislation, generally for features of national importance (MCZs). When combined these different types of MPAs help to protect a broad range of habitats and species. Whether the site is an MCZ, SPA or SAC, they all contribute to the ecological coherence of the MPA network.
26. Therefore, the guidance will propose that equal consideration of the effect of proposals should be given to all MPAs, regardless of the legislation they were designated under. This is because all sites contribute to the network of MPAs and therefore to overall network integrity. For this reason, we propose that responsible authorities should assess the impact, either alone or in combination, on designated sites of any activity requiring authorisation before consenting to them.

How did Defra develop the guidance?

27. In developing the guidance, Defra has worked closely with:
- the Department for Business Energy and Industrial Strategy

¹ Guidance on the duties on public authorities in relation to Marine Conservation Zones (Note 2)
[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-001544-Orsted%20Hornsea%20Project%20Three%20\(UK\)%20Ltd%20-%20Appendix%2051%20-%20Defra%20MCZ%20Guidance%202010.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-001544-Orsted%20Hornsea%20Project%20Three%20(UK)%20Ltd%20-%20Appendix%2051%20-%20Defra%20MCZ%20Guidance%202010.pdf)

- the Devolved Administrations
- The Crown Estate
- Natural England
- the Joint Nature and Conservation Committee
- the Marine Management Organisation
- marine industries
- and Non-Governmental Organisations.

We have worked in collaboration with these stakeholders to ensure that all stakeholder interests are accounted for and are accurately and equally represented throughout the guidance.

Key features of the guidance

28. Currently the government's policy position on compensatory measures has been influenced by terrestrial planning assumptions as terrestrial planning processes have applied the concept of derogations over many years under a well-established process for developments. For example, the requirement to reduce the need for compensatory measures by fully incorporating alternative ways of working and mitigation measures. However, there are principles that are accepted in the terrestrial environment that will be less certain or even undeliverable in the marine environment. For example, habitat recreation is not possible for many MPAs either because the techniques do not yet exist or because of the inability to purchase additional land for habitat creation.

Preference hierarchy

29. This MPA compensatory measures guidance recognises these differences by setting out a preference hierarchy which considers compensatory measures on a spectrum from 'like for like' measures through to population and regional-based measures that focus on wider environmental benefits. Moving along this spectrum will be dependent on the impact of the development and the achievement of the best outcomes for the marine environment. However, the underlying principle is that compensatory measures need to benefit the same feature which is impacted by the development to recompense the damage, where it is feasible. Where possible this could include developers working with other industries and regulatory bodies to secure environmental headroom for their activities.

Location and types of compensation

30. 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 public authority should consider compensatory measures based on the following sequential preferences:

- I. Measures that replicate or benefit the same feature **within the affected site**.
- II. Measures that replicate or benefit the same feature **outside the affected site**.

Substance of proposed compensation

31. 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. Given the lack of evidence to date surrounding success of marine compensation, measures should be delivered at a ratio higher than 1:1.

Additionality

32. 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 MPA. Measures should provide additional benefit. Therefore, any measure that 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.

Timing

33. A protected feature should not be impacted before compensatory measures is secured. Ideally, measures should be in place, functioning and contributing to the network before any development or activity begins.

New designations

34. 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 in place.

What is Net Gain?

35. Net Gain is an approach to development which ensures that the environment is left in a measurably better state than before. Marine Net Gain policy is being developed and the government aims consult on the principles for a marine approach later in the year. The government would like to understand your views about the relationship with compensatory measures that developers are required to deliver under legislation and the opportunities that net gain could contribute, for example, with a strategic approach to compensation.

Part 3. Consultation questions

36. This consultation is seeking to engage with stakeholders interested in the marine environment and its conservation. This will be the primary opportunity for stakeholders to influence the framework in which compensatory measures will be considered for future marine developments and activities that are pronounced to have an adverse impact on the marine environment.

Questions 1 – 9 seek demographic information.

Questions 10 – 24 seek feedback on specific aspects of the Best practice guidance for developing compensatory measures in relation to Marine Protected Areas; please note that we are only considering changes to the framework provided in the guidance and not the legislative mechanisms that underpin the guidance.

Questions 25 - 26 seeks views on how the government might want to deliberate on a more strategic approach to considering the cumulative impacts and pressures on the marine environment in the future, and specifically how government could better manage the delivery of marine compensatory measures at a strategic scale.

Questions 27 - 30 seeks views on Marine Net Gain. Here we would like to understand your views about Marine Net Gain and the relationship with compensatory measures that developers are required to deliver under legislation, for example, with a strategic approach to compensation.

As part of the consultation process please consider your responses to the questions below:

About you

Confidentiality and data protection information

1. A summary of responses to this consultation will be published on the government website at: www.gov.uk/defra. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

1.1 Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (e.g. home address, email address, etc).

1.2 If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have

obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

1.3 If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

1.4 There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.

1.5 This consultation is being conducted in line with the Cabinet Office "Consultation Principles" and be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>.

1.6 Please find our latest privacy notice uploaded as a related document alongside our consultation document.

1.7 If you have any comments or complaints about the consultation process, please address them to:

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

Consultation Coordinator, Defra

2nd Floor, Foss House, Kings Pool,

1-2 Peasholme Green, York, YO1 7PX

Or email: consultation.coordinator@defra.gov.uk

Q1. What is your name?

Q2. What is your email address?

Q3. What is your organisation?

Q4. Would you like your response to be confidential? Y/N

- If you answered yes to this question please give your reason

Q5. Are you responding to this call for evidence on behalf of an organisation or as an individual?

- on behalf of an organisation
- as an individual
- don't know
- prefer not to say

Q6. If responding on behalf of an organisation:

- Which organisation(s) are you responding on behalf of?
- What is the position you hold at the organisation(s)?

Q7. If employed or retired, briefly describe the main business activity of your company / organisation? If you are self-employed, or looking for work, please indicate what type of work you do?

Q8. Which region of the UK do you live in? Please tick one of the below.

- East Midlands
- East of England
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire & the Humber
- Scotland
- Wales
- Northern Ireland
- Don't know/ prefer not to say

Q9. Which of the following best describes where you live? Please tick one of the below.

- Urban – coastal
- Urban – non coastal
- Rural – coastal
- Rural – non coastal
- Don't know / prefer not to say

About the guidance

The following questions relate to different components of the proposed best practice guidance for considering compensatory measures in relation to developments affecting Marine Protected Areas.

Q10. To what extent do you agree with our proposed hierarchy approach for how compensatory measures should be delivered (page 17-19 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q11. Please provide further evidence or comments to support your answer.

Q12. To what extent do you agree with our proposed approach to location of compensatory measures (page 19 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q13. Please provide further evidence or comments to support your answer.

Q14. To what extent do you agree with the substance of proposed compensatory measures including ratios (page 19-20 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q15. Please provide further evidence or comments to support your answer.

Q16. To what extent do you agree with our approach to additionality (page 20 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q17. Please provide further evidence or comments to support your answer.

Q18. To what extent do you agree with the timing requirements set out in the guidance for the delivery of compensatory measures (page 21 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q19. Please provide further evidence or comments to support your answer.

Q20. Recognising the challenges outlined in the consultation document, to what extent do you think it is appropriate to designate new Marine Protected Areas or extend existing sites as a form of compensation at a strategic or project level (page 21 guidance document)?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q21. Please provide further evidence or comments to support your answer.

Q22. To what extent do you agree that the guidance provides sufficient clarity for marine industries to operate effectively whilst demonstrating due regard for the marine environment?

Strongly disagree, disagree, neither agree nor disagree, agree, strongly agree, I don't know

Q.23 Please provide further evidence or comments to support your answer.

Q24. Is there anything else that we should consider as a part of the compensatory measures guidance that is not already mentioned? Please provide evidence to support your comments as necessary.

Cumulative Impacts and strategic compensation

Q25. To ensure the best possible outcomes for the marine environment, Defra is considering how to address the cumulative impacts of marine activities on the environment and how compensatory measures might be delivered at a greater scale than for individual projects.

We are interested to hear your views on how to consider cumulative impacts of marine activities at a scale greater than individual developments, please consider the following points in your response.

- a) At what scale should this be considered (e.g. regionally, nationally) and why?
- b) What solutions are available to enable government to balance the needs of all industries whilst protecting the marine environment?
- c) What additional steps should government take to manage the cumulative impacts of human activities on the marine environment?

Q26. To what extent should government consider facilitating partnerships between marine industries to address cumulative impacts on the marine environment?

Marine Net Gain

Q27. We are interested to understand views that stakeholders have on how a requirement for Marine Net Gain might accompany requirements for strategic compensatory measures.

What benefits are there to combining Marine Net Gain with prospective strategic compensatory measures? Please provide evidence to support your comments as necessary.

Q28. What challenges are there to combining Marine Net-Gain with prospective strategic compensatory measures? Please provide evidence to support your comments as necessary.

Q29. Would these challenges make combining Marine Net Gain and strategic compensation unacceptable? Please provide evidence to support your comments as necessary.

Q30. Considering the exploration of the relationship between Marine Net-Gain and strategic compensation measures are there any other considerations you feel we should address? Please provide evidence to support your comments as necessary.

Where possible please submit your consultation responses via the online questionnaire portal. If you wish to provide any further supporting information or evidence for your response, please email this to us at: offshorewind@defra.gov.uk

Glossary

Compensatory measures: used within this guidance to refer to measures used to compensate for the risk of impact on features, habitats or species within all MPAs. This term encompasses compensatory measures in respect of 'IROPI derogations' for SACs and SPAs and 'MEEB' for MCZs, 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 Regulations² and public authorities as defined in MCAA³ 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.

² see regulation 7 of the Conservation of Habitats and Species Regulations 2017 and regulation 5 of the Conservation of Offshore Marine Habitats and Species Regulations 2017

³ see section 322 (read subject to section 126(11)) in MCAA