



Department
for Environment
Food & Rural Affairs

Consultation on policies to inform updated guidance for Marine Protected Area (MPA) assessments

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offshorewind@defra.gov.uk

www.gov.uk/defra

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1 Executive summary

This consultation is a key part of Defra's Offshore Wind Environmental Improvement Package (OWEIP) which aims to help accelerate offshore wind deployment whilst ensuring the marine environment is protected. We are seeking views on:

- policies that support updated guidance for currently carrying out environmental assessments in relation to Marine Protected Areas (MPAs)
- next steps in reforming legislation that underpins MPA assessments to help streamline decision-making for offshore wind applications

We consulted on [best practice guidance for developing compensatory measures in relation to MPAs](#) in 2021 (hereafter 'the 2021 draft guidance'). We aim to update this for publication in Spring 2024, so we are consulting on specific definitions and principles that may be revised. These are set out in Part 4 Consultation on guidance: definitions and principles.

The government intends for the updated guidance to provide a framework that enables developers and decision makers to consider how to avoid, reduce, mitigate and, when necessary, compensate for the impacts of their projects on MPAs under current legislation. It will also broaden the scope of the current guidance beyond compensatory measures to include other parts of the following MPA assessments:

- Habitats Regulations Assessments (HRA) under the Habitats Regulations 2017
- assessments for Marine Conservation Zones (MCZs) under the Marine and Coastal Access Act 2009 (MCAA)

The updated guidance will provide guidance on how to ensure the above assessments are proportionate, compliant and robust. It will clarify and simplify current approaches to protected site assessment, define key terms and principles, and clarify how to consider measures in light of the MPA targets in order to deliver on the commitments set out in the OWEIP.

The guidance will apply to all industries proposing a development that may negatively impact MPAs or their features. We would like your views on the draft definitions and principles in this consultation to help improve the effectiveness of the final guidance.

The updated guidance will support the delivery of compensatory measures at a strategic scale for marine industries planning to apply for consent within the next 18 months. The guidance will provide advice on how measures agreed at a plan level should be secured at a project level. Legislative reform using the Energy Act 2023 powers could be used to propose further enabling actions for offshore wind at a later date.

2 Background

2.1 The British Energy Security Strategy

In July 2021, Defra published a consultation on the 2021 draft guidance. The purpose of the draft guidance was to help developers and decision makers consider how to avoid reduce and mitigate impacts on MPAs and, where this is not possible, deliver compensatory measures. It was also intended to provide clarity on Defra's expectations to marine industries, advisors, and regulators.

Many respondents indicated that they wanted clearer, more detailed guidance. Respondents also requested enhanced definitions on key terms and principles referred to in the document. Further responses can be found in our [summary of responses](#).

Uncertainty about what compensatory measures will be appropriate is one of the barriers causing delays in the consenting process for offshore wind developments. To date, identifying effective and deliverable compensatory measures has been difficult and time-consuming. The UK's former offshore wind champion, Tim Pick, produced an [independent report on accelerating deployment of offshore wind farms by the UK](#). This report notes that the novelty and untested nature of some compensatory measures that has introduced additional uncertainties into the consenting process. It also found that it has become increasingly difficult to structure acceptable compensation on a project-by-project basis and recommended the delivery of updated guidance to accelerate offshore wind deployment.

In April 2022 the government announced its [British Energy Security Strategy](#) (BESS) which included an ambition to deliver up to 50GW of offshore wind by 2030. To support this strategy, Defra committed to implementing an Offshore Wind Environment Improvement Package (OWEIP) to speed up development whilst protecting the marine environment. This includes measures to:

- review and streamline MPA assessments for offshore wind developments
- enable measures to compensate for the adverse environmental effects of offshore wind to be undertaken at a strategic level across multiple projects
- introduce a Marine Recovery Fund (MRF) to help deliver those strategic measures
- deliver Offshore Wind Environmental Standards (OWES) to set a minimum common requirement for designing offshore wind projects
- develop a strategic approach to environmental monitoring

Defra ran an 'Opportunity to Comment' on the OWEIP in June – July 2022. With regards to changes to MPA assessments, most respondents agreed that streamlining the process would help to support the government's ambition. Stakeholders suggested that further guidance would be useful to avoid any confusion on how changes will apply to the most recent offshore wind leasing round (Round 4) and future offshore wind developments.

Stakeholders asked that any new guidance should ensure new processes do not weaken environmental protections or slow down consenting.

We are therefore launching this policy consultation in response to feedback on the [2021 draft guidance](#), the Opportunity to Comment and other industry engagement and to progress reforms to review and streamline MPA assessments as set out in the OWEIP. The guidance will include recommendations on how to ensure MPA assessments provide a proportionate understanding of ecological impact. This consultation is part of a series of consultations on the OWEIP; further consultations are planned on OWES and in relation to draft regulations for MPA assessments and the MRF.

The [Energy Act 2023](#) includes provisions to deliver measures on MPA assessments, strategic compensation and the Marine Recovery Fund. The powers apply specifically for the development of offshore wind and associated infrastructure in the marine environment. These powers allow:

- regulations to be made relating to the assessment of the environmental effects of relevant offshore wind activities in relation to protected sites and about compensatory measures
- strategic compensatory measures to be taken or secured
- regulations to be made to establish one or more MRFs

We are developing policies to use these powers to unlock further acceleration of both offshore wind consenting and marine recovery and intend to consult on any statutory instrument in due course.

There is a package of wider reforms on environmental assessment being undertaken across government. The Department for Levelling Up, Housing and Communities [recently consulted on Environmental Outcomes Reports](#). These are provided for in the [Levelling Up and Regeneration Act 2023](#) and replace Environmental Impact Assessments in England. In addition, the [Retained EU Law \(Revocation and Reform\) Act 2023](#) has implications for UK legislation derived from EU regulations and the interpretive effects of EU case law on UK law. We do not intend to consult or collect evidence on any of these wider reforms in this exercise, but we recognise the importance of ensuring a consistent approach is taken as far as possible across all types of development. We will make any revisions necessary to the guidance as the context of MPA assessments changes.

2.2 Current MPA assessments processes

The government is responsible for protecting and enhancing the marine environment in English inshore and offshore waters. Our objectives and commitments are outlined in the [25 Year Environment Plan](#), and the subsequent [Environmental Improvement Plan 2023](#), as well as the UK Marine Strategy which includes achieving “Good Environmental Status” in our waters. The UK’s MPA network is one of the primary tools for protecting our marine environment, including seabed habitats and species.

We have established a comprehensive network of MPAs that collectively cover 40 percent of English waters. England's contribution to the UK's MPA network is made up of

- Marine Conservation Zones (MCZs) under the [Marine and Coastal Access Act 2009](#) (MCAA), including Highly Protected Marine Areas (HPMAs)
- Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) (together the National Site Network previously referred to as the Natura 2000 network) 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)

Together these sites help form an ecologically coherent network of 374 MPAs across the UK (178 MPAs within English waters). In January 2023, we set a legally binding target for 31 December 2042 that requires:

- at least 70% of protected features in English MPAs to be in a favourable condition by 31 December 2042 with the rest in recovering condition - this was part of [the Environmental Target \(Marine Protected Areas\) Regulations 2023](#)
- all other protected features in English MPAs will be in recovering condition

The government is also committed to helping the UK achieve net zero by 2050 and meet energy security targets. This includes an ambition to deliver up to 50GW offshore wind capacity by 2030. A healthy marine environment and other marine industries can also help meet these targets. For example, the UK Blue Carbon Evidence Partnership is working to fill evidence gaps preventing the inclusion of coastal wetlands contributing to Net Zero. The organisations involved in the partnership are Defra the Department for Energy Security and Net Zero (DESNZ) and the devolved administrations.

In bringing forward developments in the marine environment, developers must consider the environmental impacts of the developments on MPAs under the following MPA assessments:

- HRAs for SACs, SPAs and the marine elements of Ramsar sites
- MCZ assessments for MCZs (which includes HPMAs)

In this document, the term 'MPA assessments' is taken to mean either HRA or MCZ assessments (or both HRA and MCZ assessments) unless otherwise specified. These regimes require competent authorities, developers, and leaseholders to consider how to avoid, reduce, and mitigate impacts affecting the marine environment particularly within MPAs. 'Competent authority' is defined in [regulation 7 of the Conservation of Habitats and Species Regulation 2017](#). It is our position that developers should work through the 'avoid,

reduce, mitigate' hierarchy in a sequential manner, exhausting the possibilities of one level before proceeding to consider the next.

2.3 What are compensatory measures?

The competent authority deciding whether to permit a marine development cannot consent to any plan or project that cannot demonstrate no adverse effect on site integrity (SACs or SPAs) or to any act that has a significant risk of hindering the achievement of a site's conservation objectives (MCZs, including HPMAAs).

However, under the Habitats Regulations, a 'derogation' may be used to consent a development despite a risk of adverse effect to the integrity of a National Site Network site. If the competent authority is satisfied that the development is necessary due to Imperative Reasons of Overriding Public Interest (IROPI), and that there are no alternative solutions, then the appropriate authority must ensure that compensatory measures have been secured to offset the impact and maintain the coherence of the National Site Network. The 'appropriate authority' is defined in [regulation 3 of the Conservation of Habitats and Species Regulation 2017](#). The competent authority, in some circumstances, must formally notify the appropriate authority of its intent to consent to a plan or project on the grounds of IROPI.

There is a similar process for MCZs under MCAA. The developer must demonstrate there are 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, Measures of Equivalent Environmental Benefit (MEEB) to the damage which the act will or is likely to have in or on the MCZ.

HPMAAs are designated as MCZs under MCAA and therefore the process outlined for MCZs above also applies to them. HPMAAs have the highest level of protection in English waters. Given the very high levels of protection, development in HPMAAs should be avoided. For consent to be given it is very likely that the only acceptable compensatory measure would be to designate an equivalent HPMA, which is a highly technical process and carries significant risk of escalated costs and delays to construction.

Throughout this document, 'compensatory measure' is used to refer to both compensatory measures under the Habitats Regulations and MEEB under MCAA. Although different types of MPAs have been designated under different legislation, they are all integral to the ecological coherence of the MPA network. Therefore, the revised guidance will propose that in all MPAs, including HPMAAs, equivalent effort is given to understand the effect of the proposed development on the protected site. Competent authorities must also assess the impact, alone and in combination with impacts on designated sites, from other plans or projects, before consenting to them.

In practice finding suitable and effective compensatory measures for marine features can often be difficult, time-consuming, and costly. In nearly all cases, it is preferable to avoid damage to the MPA network or to change development design and construction methods early on to mitigate any impact.

3 Consultation process

3.1 Audience and application

We would like to hear from all stakeholders who have an interest in marine industries and the assessment of industrial development on the UK marine environment.

Guidance

Marine conservation is an area of devolved responsibility, and the guidance does not currently extend to waters where the devolved administrations (DAs) have competence for managing MPAs.

The revised guidance will only apply to those waters in which the Defra Secretary of State or the Marine Management Organisation (MMO) or both has powers in relation to MPA management. This includes the English inshore and offshore waters. It also includes Nationally Significant Infrastructure Projects (NSIPs) over 350MW in Welsh inshore and offshore waters that are consented by the DESNZ Secretary of State in the Development Consent Order.

The MPAs in scope of the guidance include:

- National Site Network sites comprising Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) (together the National Site Network) designated under Habitats Regulations.
- Marine Conservation Zones (MCZs) including Highly Protected Marine Areas (HPMAs) designated under the Marine and Coastal Access Act 2009 (MCAA).

The 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
- any other public authorities whose functions are capable of affecting MCZs, SACs or SPAs
- marine industries and developers - all marine industries can make use of the guidance, not just offshore wind

In developing the key terms and principles, Defra has engaged with:

- the Department for Energy Security and Net Zero
- the Devolved Administrations
- Natural England
- the Joint Nature Conservation Committee
- the Marine Management Organisation
- DTA Ecology

The draft guidance set out below for consultation should not be relied upon by stakeholders, statutory bodies or decision-makers during the planning process. The key terms and principles listed in part 4 of this document will be revised after the consultation is closed. They will be added to a full, finalised guidance document which will be published later this year. The guidance will remain in periodic review and will be updated in response to any legislative changes made with the powers in the Energy Act 2023.

3.2 Purpose of the consultation

We want to understand how the new definitions and principles will be used by stakeholders to increase clarity and certainty on the current legislative framework, particularly in relation to developing compensatory measures. We are keen to understand whether the proposed definitions and principles will add value to developments currently in the consenting process and future developments. It would also be helpful to know what additional changes and clarifications could be made to streamline the process within the current regulations.

3.3 Consultation process

The consultation will run from 09/02/24 to 22/03/24. At the end of the consultation period, we will summarise the responses and publish this on gov.uk.

Information and comments submitted through the consultation will be used to inform and further develop the guidance to ensure its feasibility for delivery in the marine environment and that it takes account of all industry needs.

How to respond?

Responses should be submitted online where possible via the survey. 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.

Complaints procedure

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.

4 Consultation on guidance: definitions and principles

This section provides an opportunity for stakeholders to influence the updated guidance that will apply to MPA assessments. We are not consulting on the entire guidance document, just selected definitions and principles as set out in this section. The text before the questions summarises our proposed approach for each policy area. Within the consultation:

- questions 1 to 8 seek demographic information
- questions 9 to 29 seek feedback on proposals for the key terms and principles that will be included in the guidance, and on options for legislative reform

Whilst the following terms, principles and examples are intended to be helpful tools, following the guidance does not mean approval to proceed with a development will always, or automatically, be granted. The ultimate decision rests with the Competent Authority.

Confidentiality and data protection information

A summary of responses to this consultation will be published on GOV.UK. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

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 (for example, home address, email address).

If you select '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.

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.

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

This consultation is being conducted in line with the [Cabinet Office consultation principles guidance](#).

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

If you have any comments or complaints about the consultation process, please email them to consultation.coordinator@defra.gov.uk with the following subject:

"Offshore Wind Environmental Improvement Package: Consultation relating to draft guidance for Marine Protected Area (MPA) assessments".

4.1 About you

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

- yes
- no

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

Question 2. What is your name?

Question 3. What is your email address?

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

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

Question 5. If responding on behalf of an organisation:

- Which organisation or organisations are you responding on behalf of?
- What is the position you hold at the organisation or organisations?

Question 6. If employed or retired, briefly describe the main business activity of your company or organisation. If you are self-employed, or looking for work, please indicate what type of work you do.

Question 7. Which part of the UK do you live in? Please tick one of the following bullets:

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

Question 8. 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
- Don't know or prefer not to say

4.2 Protecting the coherence of the MPA site network

Our [2021 draft guidance](#) made reference to protecting the coherence of the MPA network without clarification of what this means. Coherence is important for all MPA types. When considering compensatory measures, the MPA network (as it exists at the time of the assessment) is assumed to be coherent. Where it is found that there is likely to be adverse effects on the MPA network, the MPA network will no longer be coherent. The design of compensatory measures should therefore seek to successfully re-establish the contribution or contributions made by the adversely affected site or sites to achieving MPA network objectives.

It therefore follows that the overall coherence of the MPA network will be protected where compensatory measures proposed ensure that the ability of that network to maintain or

restore the specific habitats and species identified as being at risk to a favourable conservation status in their natural range is not undermined.

MCZs were established in line with key principles in the [Ecological Network Guidance](#) and the following conditions (as outlined in section 123 MCAA) to ensure the overall MPA network is ecologically coherent:

- contributes to the conservation or improvement of the marine environment in the UK marine area
- is representative of the range of features present in the UK marine area; and
- reflects the fact that the conservation of a feature may require the designation of more than one site
- the overall coherence of the wider MPA network (SACs, SPAs, MCZs, SSSIs and Ramsar Sites) will be protected where compensatory measures proposed for a plan or project do not undermine the ability of the MPA network to meet the principles of an ecologically coherent and well managed MPA network as set out above.

The following checklist can help you evaluate the suitability and contribution of compensatory measures for MPAs as regards the protection of the overall coherence of the MPA network. You should read this checklist alongside the more detailed checklist in section 6 of Defra's [Habitats Regulations Assessment derogation notice template](#).

1. Have the potential residual adverse effects (after effective mitigation measures have been taken into account) been quantified as precisely as possible through an HRA or MCZ assessment?
2. What scientific uncertainties have been identified? How will these be managed?
3. Have the implications for overall MPA network coherence been explained in light of the qualifying feature at risk, their current status in the site (favourable or unfavourable), their conservation objectives, and the contribution the site makes to
 - a. maintaining or restoring the feature at a favourable conservation status (SACs or SPAs)
 - b. maintaining or recovering to favourable condition (MCZs)
4. Have the aims and objectives of compensatory measures been clearly defined in view of the implications for network coherence, and the ecological value which had justified the selection for the original site, particularly regarding the adequate geographical distribution of the feature under consideration.
5. Will the proposed suite of compensatory measures achieve these aims and objectives and are there clear success criteria stipulated?
6. Are the measures technically feasible and can they be secured?
7. What risks to delivery have been identified? How will these be addressed?

Question 9a. To what extent do you agree that the guidance on protecting the coherence of the MPA network and the checklist provides clarity to stakeholders?

- strongly disagree
- disagree
- neither agree nor disagree
- agree
- strongly agree
- I don't know.

Question 9b. Please provide further evidence or comments to support your answer.

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

4.3 Marine conservation zones, including HPMAs

The MCAA places a series of duties on public authorities in relation to MCZs, which include HPMAs. Section 126 sets out the duty on public authorities responsible for authorising activities which are capable of affecting (other than insignificantly) a protected feature of a MCZ or is capable of affecting ecological or geomorphological processes on which the conservation of any protected feature of an MCZ is wholly or partly dependent. There is some guidance already available which we will sign post in our guidance:

- [Defra guidance on the duties on public authorities in relation to MCZs.](#)
- [MMO guidance on Marine Conservation Zones \(MCZs\) and marine licensing.](#)

The duties are not intended to prevent necessary development, which is in the public interest from taking place, as long as:

- there is no other substantially lower risk means of proceeding with the development
- the benefit to the public of proceeding with the development clearly outweighs the risk of damage to the environment
- the project provides and sustains compensation through MEEB

Plan and project proposers should engage public authorities and SNCBs early in the process to identify ways to avoid causing damage to the MCZ in the first instance. If avoidance is not possible, potential risks to MCZs, data needs, and ways to reduce or mitigate potential impacts should then be identified. Effective compensation in the marine environment is difficult - avoiding or mitigating risks is the first step in the mitigation hierarchy and can in some cases avoid the need for, or reduce the scale of, compensation.

MCZs form part of our ecologically coherent network of MPAs and the impact of development on MPAs should be considered in a consistent way across designation types. It is best practice for developers to consider such impacts as early as possible, regardless of site designation type and preferably at a plan-level, to allow time for strategic solutions to be identified. If the impacts to sites are not considered strategically at an early

stage, there could be implications for spatial squeeze in the marine environment and the suitability of project-scale solutions.

Measures of equivalent environmental benefit (MEEB) (section 126 (7)(c))

[Paragraphs 46 and 47 of the 2021 draft guidance](#) treated MEEB as compensatory measures under the Habitats Regulations 2017 in the same way as the hierarchical approach. This section explains where MEEB and the hierarchical approach can differ.

MEEB should be specific to the feature at risk, so as to provide the most equivalent environmental benefit to the MPA network and to align with our [domestic MPA target which is outlined in The Environmental Targets \(Marine Protected Areas\) Regulations 2023](#). When identifying MEEB, applicants should follow the compensation hierarchy (as outlined in section 4.4) and, as they step through it, satisfy the relevant SNCB as to why it's not possible to meet the earlier tests in the hierarchy. Only when consideration of measures specific to the feature or features at risk have been exhausted, can applicants consider broader measures targeted at a different species or habitat within the MPA network, which replicates the ecological structure or function of the feature or features at risk. It is likely that such broader measures will need to be delivered at a greater ratio than measures focused on the impacted feature.

For HPMAAs, it is likely that the only acceptable MEEB would be to designate an equivalent site. This is because HPMAAs have the highest level of protection in English waters and it is our policy that there should be no extractive, destructive or depositional activities in HPMAAs (including offshore wind).

The public authority should follow the advice provided by the relevant SNCB when deciding which compensatory measures are appropriate and of equivalent environmental benefit.

Question 11a. To what extent do you agree that the information above provides clarity to stakeholders about the use of compensatory measures in MCZs?

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

Question 11b. Please provide evidence or comments to support your answer.

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

4.4 Compensation hierarchy

The [Environmental Targets \(Marine Protected Areas\) Regulations 2023](#) set out the sites and features which contribute to the government's target of having 70% of MPA features in

favourable condition by 2042, with the remainder in recovering condition. The conservation objectives and targets for a site should inform compensatory measures.

Ecological effectiveness for the MPA network is the primary consideration when identifying compensatory measures. Effectiveness of compensatory measures should be assessed against the conservation objectives of the affected feature and their contribution to the MPA network targets. The following compensation hierarchy is intended to be used as a guide to how core considerations can be applied to inform decision-making when choosing between identified potential measures.

Compensatory measures to protect the overall coherence of the MPA network should benefit the ecological structure and functions necessary to support the feature or features at risk (species or habitats or both). They may be subject to appropriate adaptive management approaches over the lifetime of the project and potentially beyond in the event that measures have not proven to be as effective as anticipated (for further detail see the adaptive management in section 4.9). For the project to be approved however there must be a sufficient degree of certainty from the outset that measures will be effective. The compensatory measures should be accompanied by clear objectives and targets in accordance with the site's conservation objectives. Measures that benefit the specific feature at risk have previously been referred to as 'like-for-like'.

Compensatory measures which would benefit a different qualifying feature or features at risk to the one which would be affected, but are focused on providing functional equivalence, are highly unlikely to protect the overall coherence of the National Site Network (SACs or SPAs). Functional equivalence can be defined as an instance where multiple features perform identical roles in the ecosystem. Such measures have previously been referred to as 'non-like-for-like' and are potentially more appropriate to MCZs and the delivery of MEEB, as long as the ecological functions undertaken are similar. Where an MCZ overlaps with an SPA or SAC, the Habitats Regulations should be followed.

The terms 'like-for-like' and 'non-like-for-like' are unhelpful because there is no formal definition for 'like-for-like'. It has previously been used in scenarios sometimes underpinned by an arguably flawed and over restrictive understanding of the law and relevant guidance. We therefore propose that compensatory measures are considered in a hierarchy approach that sets out an order of preference for measures to be delivered.

Compensation hierarchy

This hierarchy should be applied in consultation with relevant nature conservation body advisers and is intended as a guide to inform decision-making.

The following factors should be considered in order of priority when selecting measures:

1. **Ecological effectiveness** – ecological effectiveness of measures takes account of the ecological outcomes to be achieved and the confidence that the measures will be effective. This should be the priority consideration when working through the hierarchy.

2. **Local circumstances** – as far as possible, measures should take account of local circumstances where the risk is predicted to occur (see local circumstances header for further information).
3. **Proximity** – measures should be delivered as close as possible to the area affected by the plan or project.

For MCZs only (or as part of a wider suite of measures for other sites), measures that benefit a different qualifying feature or features should consider equivalent environmental benefit – measures should replicate the ecological structure or function of the feature or features at risk. These should only be considered as a last resort unless intended to support a wider package of measures.

The location of measures should not take priority over the ecological outcomes that might be secured. Proximity and local circumstances are considerations which must be balanced against the confidence that measures will be effective and the ecological outcomes which will be secured.

It may be acceptable to move down the hierarchy where there is greater confidence in the ecological effectiveness of measures being compared. It provides greater specificity than the reference to location in of the [Table 2 and paragraph 51 of the 2021 draft guidance](#).

The Compensation Hierarchy:

Relevant to all MPAs:

1. Taking full account of local circumstances where the risk to the feature is predicted to occur, delivered within or adjacent to the area affected by the plan or project.
2. Taking full account of local circumstances where the risk to the feature is predicted to occur, delivered at a distance to the area affected by the plan or project.
3. Taking some account of local circumstances where the risk to the feature is predicted to occur, delivered within or adjacent to the area affected by the plan or project.
4. Taking some account of local circumstances where the risk to the feature is predicted to occur, delivered at a distance to the area affected by the plan or project.
5. Taking no account of local circumstances where the risk to the feature is predicted to occur, delivered within or adjacent to the area affected by the plan or project.
6. Taking no account of local circumstances where the risk to the feature is predicted to occur, delivered at a distance to the area affected by the plan or project.

Marine conservation zones only (or as part of a wider suite of measures for other sites):

7. Compensatory measures targeted at a different qualifying feature that replicate the ecological structure or function of the feature at risk.

This guidance, and section 4.2 on protecting the coherence of the MPA network, provides additional clarifications to [paragraph 47 of the 2021 draft guidance](#): the law in this area is

primarily concerned with maintaining ecosystem and species diversity through protecting the listed features over and above ecological function.

The compensation hierarchy reflects that measures should benefit the feature or features at risk to ensure the preservation of that feature across the MPA network, whilst giving priority to protecting the feature at the original site that justified its designation.

This policy allows measures anywhere in UK waters with a demonstrable ecological link to the protected feature affected. It also emphasises that, where deemed appropriate by SNCBs, a measure targeted at supporting the structure and function of an affected feature may be preferable to enhancing distribution of that feature in a poor condition.

Local circumstances

The local circumstances for sites designated for habitats will include a range of factors which should be considered including water depth, geographical location, hydrodynamic conditions, sediment composition, species composition and any key functions provided by the habitat, for example, upwellings, spawning or nursery areas.

For sites designated for species, important considerations include the function of the site being impacted (for example, breeding, wintering, foraging, moulting), the geographic location (for example, the position of the site for migratory species), the key habitats and ecological conditions required by the species and the different anthropogenic pressures on the population.

1. The advice on the conservation objectives of an MPA provided by the SNCBs should be reviewed to understand the local circumstances of the site.
2. Consideration should also be given as to whether a particular site is at the edge of the range for the protected feature or has a particular significance within the wider UK site MPA network and the biogeographic region.

Considerations when applying the compensation hierarchy

When deciding on compensatory measures, the hierarchy should be applied, and the following considerations should be taken into account:

1. The appropriate authority must be satisfied that measures are secured (with legal, technical, financial and monitoring aspects in place) and that there is reasonable evidenced expectation that measures will be effective before consent may be given to a proposal.
2. In accordance with the 'polluter pays principle' the project proposer should bear the financial burden associated with the delivery of compensatory measures but a coordinated approach to delivery may be necessary where measures involve the exercise of statutory powers, or there is a clear rationale to delivering the measure at a wider scale.

3. Measures targeted at a different qualifying feature can form part of a wider suite of measures targeted to the qualifying feature or features at risk. For example, where the different measures may be considered to provide enhanced environmental resilience to ensure the effectiveness of the primary measures within the package.

The compensation hierarchy still applies when identifying measures for MCZ sites. Therefore, for MCZs, measures focussed on alternative feature or features to those at risk but concerned with replicating ecological function should be considered as a last resort unless intended to support a wider package of measures.

Compensation ratios (the scale over which measures should be delivered relative to the scale of a predicted risk or impact) are influenced by a range of factors including:

- the extent to which measures take account of local circumstances,
- the primary objective of the measure and its relationship to the conservation objectives of the impacted feature,
- the timescales for measures to be ecologically effective and the confidence in success of measures.

The lower a measure is on the hierarchy and the lower the confidence in its efficacy the higher the ratio is likely to be. However, increasing ratios does not necessarily improve the ecological effectiveness of a measure where there is low confidence in its effectiveness.

Wider ecosystem approaches that apply to a number of features or whole sites, where an area is protected to allow it to function naturally, are a highly effective way to ensure resilience in the marine environment. These benefits are suitable measures for MCZs and the delivery of MEEB.

Question 13a. To what extent do you agree that our proposed compensatory hierarchy provides clarity on compensatory measure options to stakeholders?

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

Question 13b. Please provide further evidence or comments to support your answer.

Question 14a. To what extent do you agree that the proposed hierarchy will assist in identifying suitable compensation measures, and if not, why not?

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

Question 14b. Please provide further evidence or comments to support your answer.

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

4.5 Additionality

Compensatory measures for relevant sites that comprise the National Site Network must be additional to measures normally taken to manage or conserve such sites. While this is not explicit in the Habitats Regulations, it is a longstanding principle and is specifically referenced in other guidance related to interpretation of the Habitats Regulations. The provisions of Section 126 of MCAA also means that MEEB should be additional to measures taken to fulfil duties to designate and adopt conservation objectives for an MCZ. The relevant planning bodies will need to assess this on a case-by-case basis.

Marine Net Gain measures may be required in addition to compensation objectives, and this guidance is also consistent with the approach intended for Marine Net Gain measures within statutory MPAs. This is set out in [part 5 of the Government response to the consultations on the principles of Marine Net Gain: Enhancement of designated features within statutory MPAs and the relationship between MNG and compensatory measures](#).

The following definitions provide further context on what 'normal' in the context of additionality means.

'Normal' can be defined as:

A measure or step, at a defined spatial scale, frequency, or magnitude, which can reasonably be expected to be taken in the absence of a plan or project (under the definitions provided in the Habitats Regulations) coming forwards.

'Normal measures' can therefore be identified by:

- referring to current and past management and restoration practices relating to the site concerned (or equivalent sites), provided the past practice is not connected to a past consented activity and that changes to the condition of the site have not rendered the past activity unacceptable
- checking if there is an identified delivery mechanism (including any necessary regulatory and enforcement action by a public body), and
- where necessary, checking whether funding is in place or there is a reasonable expectation the measure will be funded

The following key points can be derived from the definition of 'normal measures'.

Measures cannot be considered to be additional if they are:

- reasonably accepted as part of normal protected site management
- normal steps to avoid deterioration or disturbance (or both) or address threats and pressures to protected sites

Measures can be considered to be additional if they enhance or extend or complement either normal site management measures or the normal steps to avoid deterioration or disturbance (or both). This includes measures which would:

- increase the scale, magnitude, or scope of normal measures
- speed up delivery beyond what would be normally delivered in the absence of the plan or project coming forwards and where the current implementation timescales risk meaningful ecological deterioration in the interim

Question 16a. To what extent do you agree our guidance on additionality provides clarity to stakeholders?

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

Question 16b. Please provide further evidence or comments to support your answer.

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

4.6 Baselines

The [2021 guidance](#) did not provide specific advice on baselines, but in light of increasing pressures on protected features, such as seabirds, we think it is important to establish an approach here. The baseline condition of an MPA and its features will affect the need for mitigation and any required compensatory measures. The baseline will shift as understanding of sites and the pressures on them improves. Responsibility for baseline data collection rests with the plan or project proposer who should satisfy the relevant SNCB that the data is sufficient to be able to assess measures against. This will strengthen the application and reduce delays while agreement is achieved on sufficiency of data.

When considering the sufficiency of proposed compensatory measures, the nature of the adverse effect to site integrity, as understood with reference to the conservation objectives for the site, must be the starting point. There needs to be site specific ecological consideration, as well as the identification of the precise harm to be caused by the proposed plan or project. The design of compensatory measures needs to consider the best available scientific evidence and be targeted, feasible and effective. This is likely to require consideration of the prevailing environmental conditions and pressures at the time the application is determined, as well as best available information on trends and future prospects, including likely impact of MPA protection and cumulative impacts from other activities.

Question 18a. Should we provide additional guidance on baselines and how to establish them?

- yes

- no

Question 18b. Please provide further evidence or comments to support your answer. If answered yes, what should be included in future guidance on baselines?

4.7 Timing of compensation delivery

Once compensatory measures are secured, every effort should be made to ensure that measures are in place and effective before damage to a site occurs. The measures should be implemented “in time” to ensure no harm to the coherence of the protected site network.

On rare occasions, time lags between a negative effect arising and compensatory measures becoming fully functional may be unavoidable. As a clarification to the [paragraph 58 of the 2021 draft guidance](#), a greater ratio of measures may be required under such circumstances where it is not possible for the measure to be fully implemented before harm takes place, and if there is uncertainty about the ultimate success of the measure. Time lags should be considered as a last resort where there is a significant lead in time for measures to achieve full ecological effectiveness or delays in delivery of the plan or project would compromise the imperative reasons of public interest which were considered to override the risk to the integrity of the site concerned. Any decision as to whether a project may commence before compensatory measures are fully functional should also be informed by the ecological assessment of the site.

Question 19a. To what extent do you agree that the guidance on timing of compensation delivery provides sufficient clarity?

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

Question 19b. Please provide further evidence or comments to support your answer.

Question 20. Is there anything the guidance misses, or should not include?

4.8 Plan level compensation at a project level

Since the [2021 draft guidance](#) was published, we have been considering how strategic compensation could work. The following guidance has been drafted to provide advice for NSIPs, but it may be applicable to other plans or projects. It explains how we envisage compensation being considered at a plan and project level.

What is the difference between plan-level and project-level HRA?

A plan level assessment is not required under section 126 of MCAA for MCZs, but Competent Authorities are encouraged to include MCZs in their ecological assessment.

This will enable impacts to be addressed as early as possible and facilitate the use of strategic measures which may be more effective in terms of impact avoidance and reduction, and more cost effective, than project level measures.

A plan-level HRA will assess the potential impacts of the plan and projects on National Site Network sites. If a HRA is progressed to Stage 2 (Appropriate Assessment) and, following application of the mitigation hierarchy, an adverse effect on the integrity of a protected site cannot be ruled out, a competent authority may consider making use of the derogations process if the no alternatives and IROPI tests are considered met. This would require that all measures necessary to compensate for the adverse effect are secured, or the decision maker is satisfied that measures are achievable in practice and secured as part of a later project HRA; identifying and delivering compensation at a plan-level scale facilitates the use of strategic measures which may have a greater efficacy and be more cost effective than delivering compensation at an individual project level.

This assessment process is similar to that required at a project level, recognising however that a plan level assessment is likely to be limited to the identification of strategic, high-level impacts. A project-level HRA is a more specific environmental assessment carried out as part of any application for development and will be required notwithstanding the existence of a plan-level HRA.

IROPI at a plan level

The decision on whether IROPI is established at a plan-level rests with the appropriate authority. The competent authority making the plan may build a case for IROPI and is then required to notify the appropriate authority, of its intention to authorise a derogation on these grounds. In their consideration of such a case, the appropriate authority may disagree and can direct the competent authority not to authorise.

If IROPI is established at a plan level, this may establish IROPI at a project level where that project relates to the plan. Such a project however could not shortcut the requirement for environmental assessment and move direct to IROPI, as it will still be necessary to assess the impact of the individual project and apply the mitigation hierarchy. If having done so, the project is still considered to have an adverse impact on integrity and meets the alternatives test, then it could rely upon the IROPI established at plan level. The final decision on whether IROPI is established will be made by the competent authority for each project.

Considering plan-level compensation at a project level

A plan level assessment does not negate the requirement for assessment at the individual a project level. This further assessment must take place, but it can take account of what is proposed within a plan level assessment with regard to impact and how that impact will be addressed.

A plan-level assessment may require projects to adopt avoidance, reduction, mitigation or compensation (or all three) measures identified in the plan as a condition for obtaining a lease, licence or development consent. Adoption of such measures may, if no additional adverse environmental impacts are identified at a project-level, reduce the information required from applicants as part of their Report to Inform Appropriate Assessment (RIAA), noting that this does not negate the need to assess each individual project.

Applicants could also draw on measures identified and secured through the plan-level HRA in their RIAA to demonstrate compliance with the legislation. If applicants wish to rely upon plan-level compensation at a project level, either wholly or partially, they should link to and incorporate the plan-level information in their project-level RIAA. The applicant must also demonstrate that the necessary legal, technical, financial, and monitoring arrangements are in place, or can be put in place, to implement the compensatory measures, alongside adaptive management. This is necessary to enable the appropriate authority to have confidence that the compensatory measures will proceed as agreed and remain in place over the full timescale needed.

A “without prejudice” compensation plan should be developed by the applicant to avoid delays later in the process should the competent authority approve a derogation after progressing through the steps in the environmental assessment process. The plan should include compensatory measures described in the context of the impacted sites conservation objectives and to the habitats and species which are negatively affected by the development.

The following provides a general summary of what the compensation plan, developed by the applicant, should include – this is not an exhaustive list:

- define nature and extent of the predicted damage to feature in light of the site conservation objectives
- define aims and objectives of compensatory measures with reference to conservation objectives
- identify ecological measures to deliver these aims and objectives
- identify agreements on the spatial extent, location, and timings for delivery
- identify the means (statutory, contractual, or administrative) by which the measures will be secured
- evidence why the measures are sufficient to protect the coherence of the national site network

Whether or not plan-level compensation exists, at a project-level, applicants are expected to consider the need for compensatory measures as early as possible in the assessment process, and to work closely at an early stage in the pre-application process with SNCBs, and Defra and Welsh Government, to develop a compensation plan for all protected sites adversely affected by the development.

Before submitting an application, applicants are strongly advised to seek the views of the SNCB and Defra and Welsh Government as to the suitability, the ability to secure, and the

effectiveness of the compensation plan. This will assist in reducing delays from disagreements later in the process. Where such views are provided, the applicant should include a copy of this information with the compensation plan in their application for further consideration by the relevant authority. This does not negate the need for the competent authority to notify the appropriate authority of a proposal to approve a derogation, and the opportunity for the appropriate authority to provide representations or prohibit the derogation by direction.

Question 21a. To what extent do you agree that the guidance on plan level compensation at a project level provides clarity to stakeholders?

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

Question 21b. Please provide further evidence or comments to support your answer.

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

4.9 Adaptive management

Compensatory measures must be monitored by the person delivering the project, or by a coordinated group if delivered at a strategic scale, to demonstrate that they have delivered effective and sustainable compensation for the impact of the project. A monitoring and management strategy based on adaptive management should be developed by the project proposer at the outset when determining the proposed compensatory measures, enabling appropriate action to be taken if the compensatory measures are not as successful as expected. Adaptive management can also apply to mitigation measures, but in the guidance, we will only refer to adaptive management in the context of compensation measures.

We define adaptive management as a structured learning process which provides a framework for flexible and optimal decision-making in the face of ecological complexity. Adaptive management involves the implementation of evidence-based management decisions, the monitoring of the impact and evaluating of the outcome of those decisions, and the appropriate adjustment of management actions.

The use of adaptive management should only become necessary when monitoring has revealed that the original measure is not effective, will not be sufficient to fully offset the impact or is delivering lesser benefits than anticipated. Adaptive management can include modifying existing compensatory measures or agreeing a new measure where the original measure is not effective, and where there is a reasonable guarantee of success that the new proposed measure will meet the required objectives and compensate for the impact. Adaptive management could also enable compensatory action or effort to be reduced if monitoring shows that the impact of the plan or project is less than anticipated, or that compensatory measures already taken are more effective than anticipated. Adaptive management cannot be used to delay the identification of robust compensatory measures

prior to consent or justify the proposal of compensatory measures which have no reasonable guarantee of success.

Adaptive management should not be considered a method of trial-and-error but rather an iterative process, which should be developed while determining proposed compensatory measures, and come into place if monitoring reveals that the original compensatory measures that have been secured are less effective than expected. The use of adaptive management can ensure that ecological objectives are met by adjusting the original compensatory measure or implementing alternative ones.

Applicants should always submit monitoring and adaptive management plans, as part of their overall compensation plan, which describe 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 compensation, the feature or features to be impacted, and the conservation objectives of the site
- hypotheses around the existing uncertainties related to the effectiveness of the measure, which can be tested through monitoring
- monitoring aimed at understanding impacts and reducing uncertainty around the effectiveness of the measures
- established trigger points, which relate to the defined success criteria 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 compensation measures 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.

As adaptive management plans will be a part of overall compensation plans, applicants should also make sure to seek views from SNCBs as to the suitability of the adaptive management plans as early as possible in the pre-application process.

The results of monitoring should be reported to directly inform decision-making around the need for further additional measures, if it reveals that the existing measures are not as effective as expected. It is expected that the applicant would absorb the costs of further measures under adaptive management, and these should be considered and described in the adaptive management plan. However, should monitoring clearly evidence that the impact of a project on its environment and receptors is less than anticipated, it may also be reasonable to respond through adaptive management by reducing mitigation or project-specific compensation efforts.

Question 23a. To what extent do you agree that the guidance on adaptive management provides clarity to stakeholders?

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

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

Question 24a. If monitoring shows that impact is less than expected, should adaptive management be used to reduce project-specific compensatory efforts?

Yes or no

Question 24b. Please provide further evidence or comments to support your answer.

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

4.10 Energy Policy Statement

[Section 4.2 of the Overarching National Policy Statement EN-1](#) includes the provision that, as a matter of policy to deliver energy security and decarbonise the power sector to combat climate change, nationally significant low carbon infrastructure constitutes a “a critical national priority (CNP)”. This policy covers offshore wind generation and electricity grid infrastructure, including power lines in the scope of EN-5 (NPS for Electricity Networks Infrastructure) and associated infrastructure such as substations.

The CNP infrastructure policy in EN-1 applies to offshore wind NSIPs. It will be considered by the Examining Authority during their examination and in making their recommendation to the Secretary of State. It will then be applied by the Secretary of State in their decision making on the project, when applying where relevant the tests under the Habitats Regulations and the Marine and Coastal Access Act section 126.

Impact of the CNP policy on the Habitats Regulations Assessment process

This section may also be relevant to any consideration in relation to MCZs under s126(7) of MCAA.

The CNP policy is clear that the HRA process will continue to be applied for CNP infrastructure applications. Applicants for CNP infrastructure projects must continue to show how their application follows the HRA framework and requirements under MCAA for MCZs, to ensure the avoidance, reduction, mitigation, and compensation of impacts.

An application, following an Appropriate Assessment and provision of mitigation measures, may be determined as likely to have adverse impacts on the integrity of sites forming part of the UK National Site Network either alone or in combination with other plans or projects. It is at this point in the decision-making process, when considering the

test of no alternative solutions and whether there are IROPI, that the Secretary of State may take into account the CNP policy when considering making a derogation under the Habitats Regulations.

EN-1 notes that meeting net zero and delivering energy security is considered to “require a significant number of deliverable locations for CNP infrastructure and for each location to maximise its capacity”. It states that the Secretary of State will therefore start from the position that the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP infrastructure, or existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity, is unlikely to meet the objectives and therefore be treated as an alternative solution.

If the applicant demonstrates that without alternative locations or reductions in capacity, there are no other alternative solutions, EN-1 states that CNP infrastructure applications will be considered as meeting the next test in the HRA process by being “capable of amounting to imperative reasons of overriding public interest (IROPI)”.

In such a case however, although an application may meet these tests, EN-1 makes clear that the statutory obligation in Regulation 68 of the Habitats Regulations to secure compensatory measures still applies in order for a derogation to be made. Applicants should therefore continue to consider impacts from their projects early in the pre-application process and work closely with SNCBs to identify “without prejudice” avoidance, reduction, mitigation, and compensation measures. These should be included when submitting their formal application.

Question 28a. Do you agree that the guidance on the application of the National Policy Statement EN-1 provides clarity to stakeholders?

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

Question 28b. Please provide further evidence or comments to support your answer.

5 Next Steps

We will review the consultation responses on the key terms and principles for the updated guidance. These will be used to update the guidance document which will be published before the end of the year.

Consultations are planned in 2024 relating to:

- a. Draft regulations for the Statutory Instrument to deliver reforms to the environmental assessment process for offshore wind only.
- b. Draft regulations for the Statutory Instrument to deliver the MRF

c. Offshore Wind Environmental Standards

Glossary

BESS: British Energy Security Strategy

CNP: Critical National Priority

DPA: Data Protection Act 2018

EIR: Environmental Information Regulations 2004

FOIA: Freedom of Information Act 2000

HRA: Habitats Regulations Assessment

HPMA: Highly Protected Marine Areas

IROPI: Imperative Reasons of Overriding Public Interest

MCAA: Marine and Coastal Access Act 2009

MCZ: Marine Conservation Zone

MEEB: Measures of Equivalent Environmental Benefit

MNG: Marine Net Gain

MPA: Marine Protected Area

MRF: Marine Recovery Fund

NPS: National Policy Statement

NSIP: Nationally Significant Infrastructure Projects

OWEIP: Government's Offshore Wind Environmental Improvement Package in the British Energy Security Strategy

RIAA: Report to Inform Appropriate Assessment

SACs: Special Areas of Conservation

SNCBs: Statutory Nature Conservation Bodies

SPAs: Special Protection Areas

SSSI: Sites of Special Scientific Interest