

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

No.

We are concerned that the proposed aims of the policy fail to reflect conservation priorities and align with the Scottish Biodiversity Strategy, and the approach enables unacceptable net impacts on some of Scotland's seabird species, increasing the risk of local extinctions. This is within the context of Scotland being home to globally important seabird populations, and the majority of species are already in decline.

We agree that a more flexible and pragmatic approach to compensation requirements for offshore wind is required, and that such an approach could and should lead to rapid and transformative investment in seabird and marine conservation. However, such an approach is only justifiable if the Scottish Government have already sought to minimise the impact of offshore wind at the plan-level by guiding development towards lower impact sites. This has demonstrably not been the case with the recent decision to consent Berwick Bank Offshore Windfarm. We do not consider applying this approach to a project with such severe impacts to be credible, and indeed we doubt that adequate compensation measures would be available without undermining the progress of other lower impact proposals.

We therefore believe that the overall purpose of the policy should be to deliver a flexible and pragmatic approach to compensation for lower impact projects, and to deliver a net-positive impact on seabirds and the marine protected area network, in line with the nature positive vision for development established in the Scottish Biodiversity Strategy. We also recommend that:

- The overall purpose of the policy is amended to reflect the Scottish Government's commitment to nature positive development.
- Safeguards are introduced to the hierarchy, including preventing or strictly limiting moving up the hierarchy where the impacted species are of conservation concern and/or where a severe impact is projected for a particular species on a particular site.
- The use of Tier 3 measures is capped, so that an individual development cannot over-rely on them.
- Progressively higher levels of over-compensation is required as you move up the hierarchy, to ensure that more direct compensation is incentivised.

Finally, we note that - with the exception of predator eradication - some of the most significant and urgent measures required to reverse seabird declines require policy changes by Scottish Government. These are outlined in the Scottish Government's Seabird Action Plan and include, for example, effective management measures for MPAs and interventions to reduce bycatch risk. It's critical that these actions are delivered with urgency and that compensation measures are additional to them.

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

No. There are insufficient safeguards to avoid unacceptable net impacts on individual species. For example, if a developer offsets a significant impact on a particular seabird species on a particular site by funding projects with more general positive impacts, then this policy would enable the decline and potential extinction of that species at that site. For seabird species where compensation options are more limited and/or challenging this could occur across multiple projects and sites. To prevent this, safeguards to protect vulnerable species should be introduced into the hierarchy. For example, moving down the hierarchy could be prohibited or strictly limited where the impact is on a red-listed species and/or where the projected impact on a species on a particular site is severe (e.g. >20% of the population expected to be displaced and/or killed). In addition, to incentivise the more direct compensation progressively higher levels of over-compensation should be required as you move up the hierarchy.

Failure to introduce safeguards also risks undermining the credibility of the overall approach. We do not, for example, consider that compensating for population significant impacts on a gannet colony by funding beach cleaning elsewhere is legitimate, nor will it be perceived as acceptable by the public.

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

Whether a wider measure has a greater ecological benefit than measures available for the impacted feature should also include consideration of and give weighting to the conservation status of the impacted feature itself. For example, if the impacted feature is Atlantic Puffin, which is red-listed for conservation concern, then compensation should benefit that species.

4. How do you think the effectiveness of wider measures could be monitored?

Monitoring should be robust, long-term and transparent. We suggest that the Technical Advisory Group be empowered to scrutinise and request changes to monitoring plans, and that all monitoring results be made publicly available in a central repository.

Similarly, it's critical that baseline seabird monitoring across key sites is awarded long-term funding. Monitoring of the impacts of windfarms and compensation measures is only meaningful when considered alongside baseline population monitoring.

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

No. We believe that the Scottish Government should also ensure appropriate protection for irreplaceable habitats and features, and that these could be based on Priority Marine Features.

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

No comment

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

Compensation measures should be in place prior to the impact occurring. This is an important principle for the integrity of the scheme.

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

We are unclear from the consultation document as to what the proposed approach is or how "small" would be defined, so not able to comment.

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

No comment

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

No comment

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

No. Robust monitoring and governance arrangements are critical and must be included in the proposed policy, and we welcome the inclusion of SNCBs and NGOs in these arrangements.

We welcome the proposal that a technical advisory group be formed and suggest they also be given a role in advising on and reviewing compensation measures and monitoring arrangements. However, we believe there is also a requirement for independent oversight of the design and delivery of compensation measures, consideration of complaints relating to such measures, the application of the hierarchy, monitoring and publishing results.

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

No comment

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

No comment

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

No comment

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

No comment

16. Do you have any comments on the Strategic Environmental Assessment?

No comment

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

No comment