

By email only: offshorewind@defra.gov.uk

Consultation on the principles of marine net gain

OWIC Developer Derogation Subgroup response

13 September 2022

About OWIC

The Offshore Wind Industry Council (OWIC), a senior Government and industry forum, was established in May 2013 to drive the development of the world-leading offshore wind sector in the UK. It is comprised of members drawn from the leading UK and global firms in the offshore wind industry, including developers and original equipment manufacturers. The Council oversees and drive the implementation of the Sector Deal

About OWIC Developer Derogation Subgroup

The OWIC Developer Derogation Subgroup (OWIC DG DS) is a collaboration of offshore wind developers¹ under the OWIC Developer Group. It was established in July 2021 to prepare a programme of work aimed at putting in place the building blocks necessary to delivering strategic compensatory measures to be delivered with cross-government support.

Dear Defra Offshore Wind Team,

I am writing on behalf of the Offshore Wind Industry Council Developer Derogation Subgroup (OWIC DG DS) in response to the consultation on principles of marine net gain. We welcome the opportunity to provide a response and are broadly supportive of the principles of marine net gain.

The OWIC DG DS primary aim is to support the development of a strategic approach to compensation² and as such this response is focused on the interactions between marine net gain and compensation only.

We would like to highlight the following three areas within our response:

- The relationship between marine net gain and compensation
- Ensuring marine net gain requirements do not inhibit or delay the delivery of compensation measures, both at a project and strategic level
- Further guidance on the mechanisms and contributions to the Marine Recovery Fund and the proposed directory of interventions.

¹ The following offshore wind developers are part of the OWIC DS: ScottishPower Renewables, Ørsted, Vattenfall, Ocean Winds, SSE Renewables, RWE, Equinor, bp, TotalEnergies and Corio Generation.

² Compensation measures under the Habitats Regulations and measures of equivalent environmental benefit (MEEB) under the Marine and Coastal Access Act 2009

Relationship between marine net gain and compensation

We note the consultation paper acknowledges that, after avoidance and mitigation, the next step in the journey to securing net gain from development is to identify and address residual “net losses”, before considering enhancement opportunities. In practice, this means that compensation, applied in the context of the Habitats Regulations or more widely as offsetting residual impacts, and marine net gain cannot be fully separated and should be delivered through integrated policy mechanisms. Both strategic compensation and strategic marine net gain are likely to involve similar or overlapping measures to improve the marine environment and would require similar funding mechanism. The relationship between strategic compensation and marine net gain as well as distinction between the two regimes must be recognised.

Policy and guidance that clearly defines the different legal requirements of marine net gain and compensation is essential to ensure there is no conflation between the two concepts. Guidance should also outline the practical application and implementation of instances where marine net gain and compensation measures are required, particularly where the Marine Recovery Fund is used to secure both. This will help ensure marine net gain needs are proportionate and consider fully any compensation requirements, whilst increasing confidence that compensation requirements, avoiding delaying within the consenting process, and the objectives of the British Energy Security Strategy (BESS) are achieved.

We recognise there will be instances where compensation measures may overcompensate, resulting in a “surplus” of compensation. Where this is the case, we strongly recommend that the surplus compensation is retained as potential compensation that future offshore wind plans and projects can benefit from, as opposed from being considered marine net gain.

Priority delivery of strategic compensation measures

Increasingly new offshore wind plans and projects require a derogation in order to proceed. Derogations under the Habitat Regulations require any necessary ecological compensatory measure to be secured to ensure the coherence of the UK national sites network, including Natura 2000 sites.

Strategic compensation is identified within the BESS as a measure to achieve the ambition of 50 GW of offshore wind by 2050 and reducing consenting timescales. Currently OWIC DS are working alongside Defra as well as the Department for Business, Energy and Industrial Strategy (BEIS), the Devolved Authorities, The Crown Estate, Crown Estate Scotland, environmental non-governmental organisations and other stakeholders to develop a suite of strategic compensation measures.

Although details of marine net gain requirements are yet to be fully determined, it is likely that many potential interventions will be the same or similar to those developed as compensation measures. Locations, space and opportunities to deliver compensation measures are limited. Where marine net gain interventions and compensation measures coincide, there must be guarantees that compensation measures are given priority. This is of particular importance when considering strategic marine net gain interventions and potential overlap with strategic compensation areas of interest.

Marine Recovery Fund and Directory of Interventions

Further information and guidance are required on the Marine Recovery Fund. This must include, but is not limited to, how contributions to the Marine Recovery Fund will be determined, when these should be paid, what the fund will deliver and legal mechanisms to ensure project consent requirements are met.

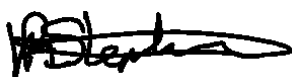
It is understood from the recent consultation by Defra on the Offshore Wind Environmental Improvement Package (OWEIP) that the Marine Recovery Fund will be used to '*collect and deploy financial contributions from developers to meet the costs of compensatory measures identified in the library of measures*³.' Guidance is required which sets out how the Marine Recovery Fund will be used to secure both compensation measures and marine net gain, and how distinction is made, if all strategic gains are coming from the same pot. Contributions to the Marine Recovery Fund must be proportionate and transparent. This process must be clarified in consultation with industry prior to the introduction of the Marine Recovery Fund.

We seek clarity on the proposed directory of interventions and how much these may overlap with Defra's library of compensatory measures as outlined in the OWEIP consultation policy paper. We would welcome the opportunity to work with Defra to understand the directory of marine net gain interventions further.

Finally, whilst we understand this consultation is in relation to English waters only, we would encourage a consistent approach to marine net gain and environmental enhancements and their interactions with compensation requirements across the UK. This is particularly important for cross border offshore wind projects.

We welcome the opportunity to comment and would be happy to discuss any aspects of our response in due course.

Kind regards,

A handwritten signature in black ink, appearing to read "Kat Route-Stephens".

Kat Route-Stephens on behalf of the OWIC DG DS

Offshore Wind Strategic Compensation Programme Manager – OWIC

³ Defra. 2022. The British Energy Security Strategy Offshore Wind Environmental Improvement Package policy paper.