

Energy UK response Defra consultation on the principles of marine net gain

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership. We represent the diverse nature of the UK's energy industry with our members delivering almost all (90%) of both the UK's power generation and energy supply for over 27 million UK homes as well as businesses. The energy industry invests over £13.1bn annually, delivers around £85.6bn in economic activity through its supply chain and interaction with other sectors, and supports over 764,000 jobs in every corner of the country.

Question 1: Do you agree that marine net gain should assess impacts on species as well as habitats?

Yes/ **No**

Question 1a: please explain your answer

We agree that marine net gain (MNG) should assess impacts on habitats since it would be similar to the approach being taken in the terrestrial and intertidal environment though biodiversity net gain (BNG). However, there is still a lack of evidence on how the impacts on individual species can be assessed. Given the gap in evidence, measuring the impacts on individual species could become onerous on developers.

In theory, net gain which is achieved at a habitat level should provide a net gain to the species that it supports. Assessing impacts on species and habitats as separate items and requiring net gain on both could result in double regulation, which is not good regulatory practice. Therefore, the focus should be on the habitats and the species which recover as a result. In other words, the benefit to the whole ecosystem. We believe that MNG should at minimum achieve BNG and the primary goal of intertidal and marine net gain should be to place marine and intertidal ecosystems into recovery. We agree that MNG should be developed in the context of the dynamic nature of the marine and intertidal environments, which can be complex.

In contrast to the terrestrial environment where BNG is focused solely on habitat loss, there is greater opportunity with the marine environment to deliver net gain. This includes opportunities associated with species restoration and reduction of human activity pressures. However, there is a lack of evidence with regards to the temporary and overall impact on species given their mobile nature. There is also need for more clarity on how MNG interacts with compensation for species and how additionality will be factored into this in practice.

We do not agree that the impact on species should be assessed separately in addition to habitats. We are concerned that the lack of proportionality in decision making that exists within SNCBs could also occur with MNG. This makes it important to differentiate between temporary and permanent impacts on species.

If Defra were to take this approach and include the impact on species, it will be important to ensure that this is considered in a proportionate manner and does not result in double regulation due to the overlap between net gain on habitats and species.

We would also like to highlight that the document lacks consistency around uncertainty and how uncertainty is approached throughout the document. We believe that there needs to be a straightforward and streamlined approach to implementing marine net gain, and this should be at the forefront of Defra's consideration when developing marine net gain policy further.

Question 2: Do you agree that marine net gain interventions should be assessed with reference to environmental benefits that biodiversity enhancement can yield?

Answer: yes/**no**

Question 2a: Please explain which extra environmental benefits and services should be included within marine net gain assessment

We agree that the primary goal of marine net gain should be to place the marine ecosystems into recovery. However, the multipurpose nature of the projects provides a number of secondary benefits which should be considered in addition to the goal of ecosystem recovery.

One of the major benefits of marine net gain is that it helps to combat climate change, through mitigation, adaptation or through the additional storage of blue carbon. The mitigation of climate change through the installation of low carbon power generation is one example that would meet a wider Environmental Net Gain(ENG) approach and therefore should be included within the MNG assessment along with any opportunities to enhance environmental resilience. Low carbon power generation should be viewed as part of the solution to improving biodiversity in the marine environment. Dismissing the positive benefits of low carbon generation would be a missed opportunity and we would recommend that DEFRA take a proportionate and holistic approach to MNG, in order to achieve the wider ENG target in practice and benefit biodiversity across the whole of England. Large scale strategic interventions that could be enabled by the contributions made under the MNG regime will be supported by the mitigation of climate change, which can be achieved via the installation of low carbon infrastructure.

Another example of a secondary benefit that Defra should consider is the reduction of disaster risk from the continuing loss of natural coastal defences such as saltmarsh (including flood risk and coastal erosion).

Question 3: Do you agree with our proposal to discount potentially positive incidental effects, whose benefits are subject to significant uncertainty, from marine net gain assessments?

Answer: yes/**no**

Question 3a: please explain your answer

We believe that it would be a missed opportunity to discount potentially positive incidental effects in the consideration of marine net gain. We would welcome clarity on how long MNG will need to be secured for and whether it would depend on the lifetime of the project or for longer.

We disagree with discounting positive incidental effects and are also concerned that discounting positive incidental effects could have an impact on research and funding for developing projects in a nature inclusive manner, such as nature inclusive design options. This approach could stifle innovation and can prevent meaningful environmental improvements being realised from essential climate infrastructure. It would therefore undermine rather than advance efforts to secure positive environmental outcomes from development activities, which would run contrary to the aims of MNG itself. We believe that Including positive incidental effects should be at the discretion of project developers.

The consultation document recognises that there is evidence that artificial reefs can provide positive effects for nature recovery. If MNG is required for longer than the project lifetime, we would suggest that rather than discounting the positive incidental effects because of uncertainty, the precautionary principle could be applied to the effects until more information over time is attained that allows for the proper inclusion of positive incidental effects within MNG assessments. We would encourage DEFRA to carry out further research in this area to improve the understanding of such effects and enable the reduced use of the precautionary principle to be used in MNG assessments of positive incidental effects.

However, if MNG is linked to the lifetime of the project certain incidental effects could be discounted. Any activities and infrastructure which are purposefully designed to achieve incidental environmental benefits (alongside their functional engineering or socio-economic purpose) should be included within the scope of and supported through the MNG approach.

In summary, it is important that the wider opportunities for delivering additional benefits are not entirely dismissed or ignored due to uncertainties – particularly where there is opportunity to build evidence and understand the incidental benefits of the measures.

Question 4: Do you agree that we should prioritise a contributions-style approach, whilst still exploring a metric-style approach?

Yes/No.

Please specify and explain your answer

We recognise that a contributions approach is more likely to align with the timescales for implementing MNG we strongly disagree with the intention to use 1% of CAPEX, or £20k per MW, as the basis of the contribution to MNG because this is not linked to the level of impact. It is important to highlight that contributions calculated in this manner are not linked to the level of impact of a project. In practice, there is no straightforward linear correlation between the generation capacity of a project and the impact it would have on the marine environment. Such an approach could also hamper the development of new technologies such as floating offshore wind which might have a higher CAPEX but much smaller environmental footprint. The consultation paper states that MNG “will be an additional tool to offset any impacts that cannot be avoided, minimised or mitigated”. Therefore, implementing an approach to MNG that is not linked to the impact of projects is contrary to the objective of applying the mitigation hierarchy and minimising impact of the project. It is important to ensure that MNG is not seen as just another levy on development and that it can deliver meaningful gains.

It is also not clear if the contribution would be a one-off payment and we welcome confirmation that it would be a one-off payment.

We support developing a centralised Marine Recovery Fund to deliver a contributions based approach once a more suitable approach has been developed. The MRF should be accompanied with a clear governance and accountability mechanism to manage and process it in the long term. This should include representatives from industries that are contributing to the MRF. The governance mechanism should be established in co-ordination and collaboration with the other devolved administrations as well as Statutory Nature Conservation Bodies(SNCBs) to provide clarity of outcomes and reduce further burden on resources. There should also be engagement between the MRF and developers when deciding how the contributions will be spent. If developers wanted to provide MNG locally or to specific sites, as opposed to strategically, this should be allowed.

We would also appreciate more details on the proof of concept projects outlined in the consultation on the different approaches. Industry should be involved in the proof of concept projects and which can help develop the learnings from them.

We support the proposal to continue to develop a metric based tool for the marine environment. We would however continue to highlight the importance of ensuring that the metric is adapted to the complexities of the marine environment and appreciate that the marine metric would take longer to develop as recognised in the consultation.

The proposals lack details on how a metric would operate in practice. We appreciate that the marine environment is more complex and dynamic as compared to the terrestrial environment and therefore do not support simply replicating the two-dimensional BNG approach. A rigid metric (as per terrestrial BNG) or any attempt to devise an overly complex alternative metric should be resisted for both practical and policy implementation reasons.

We therefore believe that a hybrid approach would be difficult to implement until the contributions and metric approach have not been considered individually successful. Therefore, currently, a hybrid approach should not be considered and this can be revisited in the future.

We also recommend that the targets for MNG should be presented without reference to specific timescales as the requirement for MNG interventions will depend on the nature and pace of relevant development projects and their impacts. Where specific MNG interventions are progressed, there should be clear objectives, linked to measures of success for these interventions supported by effective monitoring.

Question 4a: Are there other approaches to measuring impacts that we should explore? Please specify and explain your answer.

Our members are committed to minimising the impact on the environment as far as possible when it comes to the construction of our low carbon energy projects and ensuring those impacts that cannot be mitigated via the Environmental Impact Assessment process are appropriately compensated for.

We appreciate the complexities of measuring impacts in the marine environment. However, we would like to reiterate that contributions need to be linked to the level of impact of a project and there is no

straightforward linear correlation between the size of a project and the impact it would have on the marine environment. Implementing an approach to MNG that is critical to achieving the objective of applying the mitigation hierarchy and minimising impact of the project. It is important to ensure that MNG is not seen as just another levy on development and that it can deliver meaningful gains. Furthermore, MNG requirements should be implemented proportionately. Therefore, as is seen with the implementation of terrestrial BNG, multiple mechanisms based on the mitigation hierarchy should be made available to reflect different impacts, development footprints and opportunities for enhancement depending on project and locational characteristics.

The industry is supportive to exploring alternative approaches and principles to measure impacts. MNG could be implemented through fair, robust and assessment-led mechanisms, without recourse to arbitrary financial contributions or complex metrics. The Industry should be involved in developing alternative approaches. This should be done in collaboration with Defra and Natural England through workshops and future ongoing engagement to propose alternative options that can help deliver MNG meaningfully. We would welcome the opportunity to begin working through more appropriate approaches to MNG with Defra and Natural England.

Question 5: Do you agree that marine net gain should be a mandatory requirement for new development activities within the marine environment?

Answer: **yes**/no

Yes, we agree but it must be designed and implemented in a way which is well understood, cost-effective and not a barrier to delivering the low-carbon infrastructure required to achieve the government's net zero target and energy security ambitions.

Question 6: If you answered yes to question 6, do you agree with the list of consenting and licensing regimes that marine net gain requirements should be introduced within? Are there any others we should consider?

There should also be consideration of how nascent industries and technologies would fit in to any marine net gain policies, such as carbon capture storage and utilisation and the development and expansion of floating wind.

It is important to highlight that the overarching consenting and licensing regimes mentioned in the consultation document have policies within them and there will also need to be updated to include appropriate references to marine net gain requirements. These include the Water Framework Directive, Eels Regulations and others.

The inclusion of the Harbours Act 1964 should also be considered. Under this Act, Local Harbour Authorities in possession of a Harbour Empowerment Order or a Harbour Revision Order can improve, alter or construct within their port area and are required to consider the environmental impacts of such works (often applications are accompanied with an environmental statement if construction is required). As the majority of most port areas are below the low water mark, there should be inclusion of such activities in the list of consenting regimes.

Furthermore, we would welcome clarity as to why certain sectors such as fishing, ports and shipping are excluded from MNG requirements. MNG should not be used as a vehicle to tax certain projects to fund wider marine recovery measures unrelated to impacts or opportunities arising from new developments. Defra should strongly consider widening the scope of marine industries included such as fishing, aquaculture, aggregate extraction, ports and shipping to ensure that MNG is able to make a meaningful difference across the marine environment.

Question 7: Are there activities and/or sectors that are regulated by these regimes which should not be covered by net gain requirements?

Answer: **yes**/no

Question 7a: If yes, please explain your answer, including any relevant de minimis thresholds for each activity or regime

We support the exclusion of minor developments and those that would result in negligible loss or degradation of habitat. We agree that there should be consideration of de-minimis thresholds for each sector. Some of the activities that are considered as exclusions include maintenance activities, monitoring and sampling activities.

We also wish to highlight the complications of having to apply three different and complex net gain systems across consenting regimes in three different environments (i.e., terrestrial, intertidal, and marine) and the burden this would add to developers. To align with the aims of the British Energy Security Strategy (2022) of accelerating the consenting and deployment of offshore wind and of streamlining regulatory processes, a simplified, integrated and more proportionate process for securing net gain through development should be developed.

Question 8: Which types of pressure reduction measures can be delivered by industry through marine net gain?

Answer: please give examples where possible

MNG could help address activities that create pressure on the environment. While this may create opportunities for MNG, it is important to recognise that the responsibility to assess the removal of many pressures as a means of delivering MNG must be with Government, as this will often also require statutory intervention. An important principle of successful MNG is that external pressures resulting in loss of biodiversity may need to be addressed if the outcomes of net gain activities are to be successful and sustained. Consequently, targets need to acknowledge the complexity of the environment and examine and treat causes of loss as well as direct restoration actions. For example, simply planting seagrass, or laying native oysters or mussels, without considering the underlying reasons for the initial loss, such as nutrient enrichment, may be unsuccessful and may place a liability on the developer to maintain features which the current ecosystem is incapable of sustaining. This emphasises the importance of careful design of any proposed interventions and highlights how strategic delivery of targets could alleviate this issue.

It may be that to safeguard the permanence of MNG interventions, legal protection, or safeguarding through tenure rights, would be required. This raises the question around custodianship and who will be responsible

to maintain the interventions. This is also accompanied around the question of effective monitoring of interventions.

Further examples of pressure reduction opportunities can be found in the final report of the [Offshore Wind Evidence and Change Program task and finish group on Strategic Net Gain Targets for Coastal and Marine Environments](#). One example of pressure reduction measures that the MRF could carry out is the removal of abandoned assets in the marine environment from other industries, such as oil and gas infrastructure.

We would also appreciate clarity on the nature recovery requirements that will be imposed on other marine sectors, such as the fishing sector. Through marine net gain, industries will be making significant contributions to the recovery of the marine environment, and yet certain destructive fishing practices will continue unfettered, counteracting any improvements made by industry through the implementation of net gain.

Question 9: Are there any other types of intervention that should be encouraged, including innovative emerging techniques?

Tell us about any other types of interventions.

Building on the work of the OWEC funded strategic targets for marine net gain project, the strategic targets task and finish group will be considering options over the coming months, with to support the development of future marine net gain policy.

Defra should also research other types of interventions that have been successful in other countries and explore whether they could be effective in the UK.

Question 10: Do you agree with the principle of taking both a site-level and a strategic approach to marine net gain as set out above?

Answer: **yes**/no

Question 10a: please explain your answer

Yes, however, a developer should not be required to take both a site-level and strategic approach to MNG. There also needs to be an additional category added that can recognise project specific interventions that are undertaken off-site. Strategic work in other contexts is used to mean multiple projects/developers working to create an outcome and in this consultation, site-based interventions are described as localised to a single project. There is no category or sub-category that recognises where a single project will undertake MNG offsite.

There also needs to be an additional category added that can recognise project specific interventions that are undertaken off-site. Strategic work in other contexts is used to mean multiple projects/developers working to create an outcome and in this consultation, site-based interventions are described as localised to a single project. There is no category or sub-category that recognises where a single project will undertake MNG offsite.

In addition, as mentioned previously, the MRF should be developed in engagement with the industry and the governing mechanism should include representatives that are contributing to the fund. There needs to be regular engagement between the MRF and developers when deciding how the contributions will be spent.

Question 11: what types of site-based interventions should be incentivised through marine net gain?

Incentivising project and site-based interventions to secure positive environmental outcomes would necessarily require MNG to be assessment-led, focused on maximising available opportunities and reflecting the characteristics of specific projects (locational, physical & operational). Any measures need to be linked to assessed impacts and opportunities arising from developments, as there is no linear correlation between the scale of a development project (e.g. offshore windfarm installed capacity) and either its environmental impacts or potential to deliver MNG. This means it is neither sensible nor possible to pre-determine a list of suitable site-based interventions, as these should be identified through project-specific assessments and engagement with relevant stakeholders. Consideration should also be given to how fishing within the boundaries of offshore wind projects and offshore cabling could be limited to provide a network of protected corridors and areas.

Defra could research what types of site-based intervention are successful in other countries and explore whether they could be effective in the UK.

Question 12: What types of strategic interventions could be incentivised through marine net gain?

Ambitious restoration projects will require greater funding and therefore a strategic approach. The Aggregates Levy provides an example for how a funding mechanism might work. A strategic approach can also be better for smaller developments. They could contribute to large-scale projects through the fund, resulting in larger gains than several small individual projects. This can also include strategic projects that are developed in partnership. The ReMeMaRe project is preparing a series of bids to try and highlight restoration opportunities on a large scale. The strategic fund could also be used to help support these more ambitious projects.

While the current policy focuses on MNG in England, there will be opportunities to use MNG to develop good practice which can be shared with other devolved administrations and vice versa, such as around cross-border estuaries. The Scottish Marine Environmental Engagement Fund may provide such an opportunity to develop applications of funds for delivering net gain strategically.

As mentioned in answer 8, the final report of the [Offshore Wind Evidence and Change Program task and finish group on Strategic Net Gain Targets for Coastal and Marine Environments](#) outlines opportunities for strategic interventions. These include actions to restore offshore habitats (eg. native oyster restoration and sandeel recovery), enhanced removal of development footprints (eg. Supporting decommissioning programs), actions to restore and enhance offshore invertebrates and fish populations (eg. Herring and Sprat) and supporting the recovery of populations of offshore birds and mammals.

There is potential for research and data gathering to be considered as MNG (for example a research project to support better MNG delivery in the future), but only if it is delivered as part of a broader strategic approach as part of a package of measures,

Lastly, we would more clarity on the interaction between the marine recovery fund and marine net gain. It would be useful to understand the distinction between compensation and net gain and how it is determined given that all strategic gains would be coming from the same pot.

Question 13: Should accessing strategic interventions be conditional in some cases?

Answer: yes/**no**

Question 13a: If yes, which site-based features should be considered priorities ('prescribed features') ahead of strategic interventions? Please explain your answer

In theory, contributing to a larger scheme covering a larger habitat would be more beneficial as this would enhance a larger area of habitat and could improve the environment for a larger number of species within that habitat. The consultation document does not set out the assessment process for high or low value associated with strategic and site based interventions. Therefore, we would welcome more information on the assessment and who decides whether interventions are high or low value to be able to provide a more detailed response.

In addition, it is our understanding that the MRF will use adaptive management to ensure MNG is achieved and the MRF will be responsible for delivering MNG, which we support. It would be useful for this to be clearly stated.

This hierarchical approach that has been outlined means that compensation and MNG are linked and should be delivered through integrated policy mechanisms, as both would be needed to secure genuinely "net positive" environmental outcomes. Both strategic compensation and MNG would involve similar or overlapping measures to improve the marine environment and would require similar funding mechanisms, so the relationship between strategic compensation and MNG must be recognised.

On the other hand, accessing strategic interventions should be conditional on the basis that it should not lead to delays of MNG consents for other developers. If there were multiple projects feeding in to a strategic intervention which were on the same planning timelines then this could help to prevent delays. If planning timelines were not aligned between developers, this could result in delays and unfairly penalise some developers in the process.

Question 14: Do you agree that marine net gain interventions should not initially be restricted to the 'locality' of the main development?

Answer: **yes**/no

Question 14a - Please explain your answer

It is important that interventions are not location restricted as this could lead to an imbalance leaving one area deprived whilst others flourish. Allowing MNG within the same habitat type but elsewhere in the

network or within the same Marine Plan Area will help expand the options available for MNG and increase the chances of success. If we are delivering strategic net gains, it may be possible to deliver these in the locality of the development site, but it also may not be, but the fundamental idea is that the gains are contributing to improvements where they are needed.

Delivery of MNG could be assisted by Regional Delivery Groups, distributing pooled funds and operating under a clear set of agreed principles. Delivery groups should be represented by a range of organisations with marine expertise including government, SNCBs, industry and eNGOs.

Question 15: Do you agree that the enhancement of designated features within statutory MPAs should be allowed in the marine environment as defined above?

Answer: **yes**/no

Question 15a: Please provide evidence to support your view

We welcome the proposal to include measures to enhance the condition and designated features of statutory Marine Protected Areas within the scope of MNG. This approach must also address additionality issues and be implemented within the established mitigation and enhancement hierarchy.

We would also appreciate clarity on whether the reinterpretation of the principle of additionality will also be applied under the Habitats Regulations when considering compensation measures.

Under the Habitats Regulations, it is the responsibility of the Competent Authority to maintain or improve the designated features of a protected site. Allowing the enhancement of designated features is within this responsibility, provided it is delivered by DEFRA through the MRF and the interventions themselves do not inadvertently negatively impact another feature or non-MPA habitats or species.