

Consultation for the establishment of the Marine Recovery Fund

Energy UK is the trade association for the energy industry, representing companies investing billions of pounds to secure our country's current and future energy needs.

From growing start-ups to major electricity generators, grid and infrastructure developers and energy suppliers, our members are driving change across power, heat, transport and flexibility.

We provide a collective voice for the sector working with governments, regulators, charities and other organisations to provide crucial insight that shapes policy, offers solutions and promotes best practice.

Our broad view across the whole system supports evidence-based positions which are not tied to particular technologies, and are focused on delivering strategic benefits for people, businesses and the economy.

We champion initiatives such as our Vulnerability Commitment, which pushes suppliers to go beyond regulation to support customers with additional needs, and TIDE, the industry's drive for greater inclusion and diversity. Through our Young Energy Professionals Forum, we support the development of future leaders.

We are equally committed to our team and are proud to be recognised as a 'Gold' Investors in People employer.

Executive Summary

Energy UK is pleased to see progress on the much needed Marine Recovery Fund proposals. However, Energy UK does not endorse certain parts of the proposals, such as the SNCB being put in a gatekeeper position under the proposals, the 30% additional charge on adaptive management payments, and whether Defra is best placed to be the MRFO. Further work is also needed to align the MRF with the proposals in the Planning and Infrastructure Bill for the Natural Restoration Fund.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

Chris Friedler

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Questions 1-12: About you**Question 1: Would you like your response to be confidential?**

No.

Question 2: If you answered yes to this question, please give your reason.

Not applicable.

Question 3: What is your name?

Chris Friedler.

Question 4: What is your email address?

chris.friedler@energy-uk.org.uk

Question 5: Are you responding to this consultation on behalf of an individual?

No.

Question 6: Which organisation or organisations are you responding on behalf of?

Energy UK.

Question 7: What is the position you hold at the organisation or organisations?

Policy Manager, Environment and Planning.

Question 8: If employed, 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. If retired, please indicate the type of work you undertook in your career.

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Question 9: If responding as an individual, where do you live?

Not applicable.

Question 10: If responding on behalf of an organisation headquartered in the UK, where is your organisation based or where are you operating?

London, and across the UK.

Question 11: If responding on behalf of a multinational organisation headquartered outside the UK, where are you operating?

Not applicable.

Question 12: Which of the following best describes where you live?

Not applicable.

Part 1: Policies and Consultation Questions on the MRF application process

Question 13: Do you agree with the proposal to have applicants seek non-statutory or discretionary advice from the relevant SNCB(s) on the suitability of their plan or project to use the MRF and the measures available in the LoSCM?

Potentially. Much of this process is likely to be covered by developers in the pre-application stage regardless, given existing incentives and pressures in that part of the planning system.

The role of SNCBs within the application of MRFs should be clearly defined. It must not override existing responsibilities on competent authorities, or duplicate stages of existing consenting processes. There are concerns that overly cautious advice provided by SNCBs for the purposes of MRF applications may overlap into wider parts of the consenting process, which could lead to the required compensation measures being inflated. More broadly, there is the risk of these complicating the determination of consenting applications. This could also result in developers over-reserving MRF compensation measures, thereby reducing the availability of compensation for other projects.

There is a risk of additional requirements for developers in this stage creating additional barriers, which may require further mitigation. There are widespread concerns that additional requirements placed on the SNCB without further resourcing will create further difficulties in delivery, including by slowing down the consenting process more widely. Statutory timeframes should be set for the provision of SNCB advice.

Question 14: Do you agree that the requirement for a declaration of an agreed and appropriate lease/agreement for lease from The Crown Estate will encourage eligible applications and deter speculative applications?

Agree. This may also be an area where developers are already incentivised in this space from the pre-application process.

Non-DCO projects in England and Wales, such as marine licence applications for associated offshore wind activities, should have the ability to apply to the MRF whilst seabed rights are secured from The Crown Estate.

Question 15: Do you agree that the requirement for evidence of SNCB advice that corroborates (without prejudice) that the applicant has appropriately sought to avoid, reduce, and adequately mitigate for adverse impacts prior to seeking SCMs as a last resort (for example, Discretionary Advice Service correspondence) will encourage eligible applications and deter speculative applications?

Disagree. Energy UK is concerned that this puts the SNCB into the position of a gatekeeper requiring 'agreement' as a pre-requisite to an MRF application, thereby conflating the role of SNCBs within the MRF application with wider responsibilities. This is inconsistent with other assessment processes and regulations, where the competent authority should take advice from the SNCB.

Evidence of following the mitigation hierarchy should be provided as part of an application to the MRF. The applicant should demonstrate compliance with existing policy requirements (such as provisions within the National Policy Statements), rather than evidence from SNCBs or other stakeholders. There is also a risk here of overly cautious advice from SNCBs leading to developers over-reserving measures, reducing the capacity of measures for other projects.

Question 16: Do you agree that the requirement for evidence of SNCB advice that confirms (without prejudice) the suitability of the requested SCM and its quantity for the (expected) adverse impact for which the applicant is seeking compensation (for example, Discretionary Advice Service correspondence) will encourage eligible applications and deter speculative applications?

Disagree. As with the response to Question 15, this places too much control into the SNCB role without sufficient oversight or balance from other decision makers.

There are concerns that evidence of agreement on scale using upper SNCB values will result in large over-allocation of SCM capacity and inflate reservation fees for MRF applicants. Energy UK supports engagement in this area, but not evidence on agreement of the above. The proposals are unnecessary to achieve the aim of deterrence for speculative applications.

The consultation states that applicants must provide sufficient evidence to Defra to secure an SCM. If evidence of advice from SNCBs is required to determine suitability of a requested SCM, it is unclear if the advice from SNCBs on suitability will always be deemed as sufficient evidence or not. If not, the purpose of SNCBs is not clearly defined enough, and may involve duplication of producing evidence in specific projects.

Question 17: Do you agree with the proposal for applicants to provide Defra (as MRFO) with an estimated timeframe in which applicants will aim to submit an application for development consent?

Agreed, although given that the timeframe is likely to be unpredictable and subject to external factors, much of this may be outside an applicant's control.

Reiterating points from previous questions, a key aim at this stage is in avoiding potential 'banking' of measures by very early-stage projects. This would ultimately limit the amount of compensation used, and thus the volume of offshore wind which can access the MRF.

Question 18: Do you agree with the proposal to charge a reservation fee at the point of initial reservation of an SCM, prior to receiving consent? (Further information on costs in Part 1, Section 2)

Agree, but with further concerns. Justification for the costs, and avoidance of the risk of net costs compared to the baseline, need to be spelled out in greater detail. There are also concerns over what happens to this reservation fee if a project is delayed, withdrawn, or not consented. Genuine applicants should not be penalised for unexpected and undesired outcomes.

Because of offshore wind's high upfront costs, there is likely to be far fewer applications that are not serious or likely to be withdrawn. Therefore, while we appreciate ensuring that SCMs are reserved for serious projects, overly precautionary prevention measures should be discouraged, and any reservation fees should be proportionate, reasonable, and transparent.

Question 19: Do you agree with the proposal for the applicant to submit EoI Part B to Defra (as MRFO) within 60 days of receiving consent?

Disagree. This does not account for how these proposals might be affected by Judicial Review challenges to projects. Challenge and appeal periods for all relevant consenting processes need considering.

Question 20: Do you agree with the proposal for applicants to provide Defra (as MRFO) with an estimated date by which they will aim to reach FID and make full payment into the MRF?

Disagree.

There are far too many variables, many of which are based on external factors, for developers to give an accurate estimated date on when they can expect to reach a FID. A full payment of the outstanding balance can only occur after a FID, not beforehand.

While Energy UK might support the concept in principle, this is not likely a practical approach. An alternative could for developers to set out a range of milestones, either related to project progress or the CfD, to illustrate project progress and give an indicator of timings.

Question 21: Do you agree with the proposal of a deposit fee after the applicant has received consent and submitted EoI Form Part B? (Further information on costs in Part 1, Section 2)

Agree, subject to proportional costs incurred on developers. This proposal is acceptable if it contributes to the payment of the overall fund and are not on top of the fund's cost.

Question 22: Do you agree with the proposal that each reservation of compensation should be non-transferable between plans, projects and applicants?

Disagree. A mechanism for transferring with the MRFO as an intermediary should be included. If this is not included, there is potentially for over-allocation of compensation capacity that is not needed, but never able to be utilised. A reasonable time limit of use may be a better way of ensuring that SCMs are not locked away by projects which may never be feasible.

Question 23: Do you agree with the proposal to have applicants enter into a contract with Defra (as MRFO) at the pre-application stage?

Agree. However, this must be on the basis that there is flexibility to allow for changes during the development process.

Question 24: Is the EoI process for projects with an existing DCO appropriate?

It is appropriate. It allows a level of flexibility that may prove useful.

Question 25: Is the process for projects transferring mid-compensation plan appropriate?

As currently proposed, the process does not provide sufficient information for a project to transfer to the MRF midway through delivering their project specific compensation plan. This highlights the urgent need for additional measures to be added to the LoSCM, to maximise the value the MRF can provide to accelerating offshore wind and delivering ecologically effective compensation at scale.

Question 26: Do you have any other comments on the application process as described above?

If recommendations for compensation are greatly disproportional or costly compared to existing mitigating systems, this could undermine confidence in the proposals, so clear safeguards for developers would increase confidence. The lack of focus on Non-DCO and Plan promoter application processes is an area for further consideration. Non-DCO processes may cover maintenance or repair marine licences necessary to keep operational assets working. The Plan promoter process is needed as a key driver for speeding up deployment of offshore wind to facilitate plan-level HRA and compensation.

Question 27: Do you agree with our proposal to set the reservation fee within bands according to the estimated cost of compensation required (as outlined above)?

Disagree. Energy UK is not opposed to the fee levels, but they not been appropriately justified in terms of what the fee will be used for, or why it is set at this level.

Question 28: Do you agree with the proposal that the reservation fee will be non-refundable?

Strongly disagree. This would be impacting developers with an additional risk in their project application, with an additional cost if their project is unsuccessful. This would include for wider reasons, potentially beyond their control, and is greatly disproportionate compared to other costs. There is a need to allow flexibility regarding refunds, especially in circumstances where applicants are fully acting in good faith and have simply experienced an issue beyond their control.

Given costs of cancelling projects are already considerable, this creates an extra risk for, and disincentive to, invest in offshore wind projects, well beyond the intended scope of the MRF. Fees should be refundable in specific situations, rather than applying a blanket ban.

Question 29: Does the proposed breakdown of costs listed above include sufficient information for applicants to decide whether to pay into the MRF?

Tentatively yes. Further information would be useful, including around SCM cost transparency and further detail on where these figures are originating from. These are significant sums proposed, and given the broad remit of the SCMs (such as predator reduction) more information on why these measures are set at this level would be of great value. Additionally, greater information on the SCMs, as well as future SCMs in the Library of Measures, is needed if this is to be an evolving scheme.

Question 30: Do you agree with the proposal that the deposit fee will be non-refundable?

Strongly disagree, on similar grounds to the response to Question 28.

Question 31: If applying to the MRF, which type of payment plan (annualised or instalments, or one-off) would be your preference? Note: the MRFO would ultimately decide which payment plan is appropriate.

Payments plans should be flexible for the developer to meet in whichever way they consider most appropriate for the individual project. Therefore, any of the above options, except one off payments, are appropriate, with options for developers to choose. One off payments are not feasible for the vast majority of developers, so should not be considered.

On Adaptive Management Payments, Energy UK strongly suggests more justification for the 30% top-up charge. Any of the 30% not paid back in SCMs should be paid back to developers, not re-shuffled into other nature projects. This is disproportionate and unjustified. A fixed amount of an unspecified amount of potential future changes is not good practice, and creates uncertainty in the validity of costs in other parts of the MRF, if an additional 30% is required to cover uncertainty.

Question 32: Do you agree with the proposal that full payment (or the first instalment of an agreed payment plan) will be expected from applicants post-FID and prior to the adverse impact occurring?

Agree in principle, although further justification for the overhead charge and details of what it is to deliver would be welcome. Keeping payment options flexible will be welcome to developers, on the same grounds as the answer to Question 31.

Question 33: Do you agree with our proposal that any surplus funds may be used for the development of SCMs?

Agree. Additional SCMs must be developed and added to the LoSCM. Therefore, funds being used to develop further SCMs in order to increase capacity, options, and ways of addressing environmental impacts would be something Energy UK would be prepared to support. However, if a fixed surcharge for adaptive management is implemented, there must be full transparency on the amount of surplus funds generated, and how this money is spent to deliver demonstrable ecological impacts related to the MRF's aims. In the event of a significant surplus arising within the MRF, then fee structures should be revised and reduced accordingly to ensure that the MRF remains a revenue neutral delivery mechanism. It is vital that any surplus funds are not used for wider administrative or other purposes unrelated to the specific purpose and remit of the MRF.

Question 34: Do you have any other comments on the proposed costs and charges as described above?

Energy UK did not respond to this question.

Question 35: Do you agree with our proposal that, when using the MRF, responsibility for an SCM will rest with Defra (as MRFO) at the point that full payment (or the first instalment of a scheduled payment plan) is complete (subject to ongoing payment of instalments)?

Yes. However, other options for MRFO should be considered. Defra may not always be the most appropriate party for implementation of SCMs, and the ability to delegate to another appropriate body may be more appropriate. The Planning and Infrastructure Bill's proposals for Environmental Delivery Plans to be delivered by Natural England establishes a precedent in other areas for this. A third-party delivering measures at arm's length from government goals may ensure greater accountability and specificity in expertise. Given the ability for delegation to such third parties may be a way of addressing these concerns.

Regardless of MRFO, it is imperative that further detail is given on incentives for delivering SCMs within appropriate timescales. Developers need reliable information on timescales for mitigation measures and how these will interact with the construction and operation of the project across its lifetime. Further details should be provided in the response to the consultation.

Question 36: Do you agree with the proposed approach to MRF's ownership of and responsibility for any compensation assets or SCMs?

Please refer to the response to Question 35.

Part 2: Policies and Consultation Questions on Delivery

Question 37: To what extent do you agree that the above processes outlined in paragraphs 154-168 will enable the MRF to deliver ecologically feasible compensation?

There need to be more than three SCMs. More options need to be added into the Library of Measures. The current options do not give enough flexibility for developers and options for nature, nor do they allow for truly collaborative widescale strategic compensation.

There are a variety of potential additional options, which could include artificial reefs, aquaculture co-location, kelp habitat restoration, blue carbon projects and others. Additionally, not enough information is given on the proposed SCMs. Where talking about wider ecosystem resilience measures it is worth pointing to the fact that the upcoming Environmental Assessment Reform is expected to move towards allowing non-like for like compensation.

Predator reduction as a measure, for example, could vary greatly in its effectiveness depending on how it is implemented, detail which is not spelt out in the consultation document or accompanying documents.

There is also not enough information on blending of options. Given particular sites, it may be much more effective, both for nature and in terms of costs, to do a blended approach to SCMs, which is not given sufficient detail in these plans.

It is difficult from the proposals presented to judge the effectiveness of this, as there is insufficient detail on how what the SCMs would cover and what these mitigation efforts would look like 'on the ground'.

Question 38: Is there anything in addition to the above that the MRF should consider to improve the process of delivering compensation?

Please refer to the response to Question 37.

Question 39: Is each stage of the adaptive management hierarchy clearly defined?

Yes. Energy UK supports the definitions proposed here. The hierarchy should consider adaptive management scenarios where a measure is performing better than expected. This should demonstrate what actions to take with surplus funds and how these would be used.

Question 40: To what extent do you agree with our proposals for Adaptive Management, outlined above?

We do not agree with the proposal of a fixed 30% adaptive management surcharge, as it is excessive, disproportionate, not supported by evidence.

Part 3: Policies and Consultation Questions on Cross-Cutting Considerations

Question 41: Do you agree with our proposal that developers should choose which Fund to apply to in the circumstances outlined in paragraph 183b?

Yes. Keeping the choice with the developer is appropriate, as they will be best placed to understand this based on their pre-application work. Whilst eligible compensation measures may differ across consenting jurisdictions, the two MRFs should be aligned as much as possible to ensure equitable outcomes and to avoid discouraging developers from investing in projects in one country over another.

Question 42: To what extent do you agree with our proposal for the way in which the two Funds will interact to address cross boundary impacts?

Agree. There is a need for interlinkage between the two schemes, with resources to deliver the best options for both. A flexible and efficient approach to the management of the two MRFs should be adopted, and there should be no expectation of a project to pay into two funds and obtain advice from multiple SNCBs. The role of SNCBs within the application of the MRFs in addressing cross-boundary impacts and strategic compensation proposals should be clarified.

In respect of Scottish projects, it is fully expected and acknowledged that Natural England would continue to be a key consultee in relation to the acceptability of any impacts on designated sites within their jurisdiction. However, this is materially different from having any ability to advise on the use of specific measures within a Scottish MRF, or the level of contribution to that MRF which may be required. For the purposes of the Scottish MRF these matters should rest with NatureScot as the host country SNCB. Energy UK would not support Natural England having an ability to object to an application to the Scottish MRF or insist on certain compensation through this, or similarly for NatureScot to have this role in cases where an English project applies to Defra's MRF.

Question 43: Will the approach outlined allow SNCBs to carry out their role effectively?

We have multiple concerns about the proposals. In particular, the issues around the SNCB being a gatekeeper in the proposals is of concern to membership, and is Energy UK's strong view that the SNCBs should not hold as part of their remit.

Part 4: Final comments

Question 44: Do you agree that the proposed operation of the MRF provides applicants with sufficient confidence that the consent requirements for environmental compensation will be met when using the MRF?

Agree.

Question 45: To what extent do you agree the MRF will help to speed up the deployment of offshore wind?

Disagree.

In its current form, certain critical details are unclear or need further information and/or justification (see the previous questions in this response). If this persists, there is a risk to developer confidence.

There is also the risk this does not speed up the process for environmental mitigation from its current level due to some of these constraints, undercutting its function.

Currently, DEFRA's Library of Strategic Compensation Measures is limited to just three measures, including only one option available for benthic impacts, placing a serious limit on the extent of its benefits.

Question 46: To what extent do you agree the MRF process is an attractive alternative to delivering compensation independently?

Regarding Question 46, in theory, the potential for this fund is a more streamlined approach to compensation that reduces administration for the developer. However, what has been proposed in the consultation document risks being opaque and risk heavy. Issues around the 30% additional charge for adaptive management, non-refundable fees, unclear mitigation measures and unclear timescales are all creating uncertainty with the current proposals. Energy UK recognises that delivery of this fund is required as part of the drive to the government's goal of Clean Power 2030, but the above issues need addressing.

The MRF should not just simply replace project level compensation, it should go further to add value to the process and speed up offshore wind deployment through large scale coordination. If a MRF is utilised at plan-level and embedded within strategic assessments effectively, this could reduce resource and administrative burdens for all parties during the consenting process for individual projects. Strategic compensation should therefore be understood as a positive enabler of marine recovery which can deliver significant ecological benefits, not as a last resort.

Therefore, it is recommended that addressing the above at pace around plans for implementation of the fund is needed, addressing risks where possible without having to re-approach parts of the scheme.

Question 47: Are there other points you wish to raise in regard to the MRF that you have not already shared?

A critical area of importance will be the interaction between the MRF and the proposed Nature Restoration Levy (NRF) proposed in the Planning and Infrastructure Bill. The NRF's proposals are to apply to offshore infrastructure within 12 nautical miles. Energy UK's strong position is that there is a real risk of doubling up both schemes for the same project. This is also taking into account issues around transmission infrastructure and onshore and nearshore infrastructure for offshore wind, and which schemes these would enter into. Energy UK wishes to strongly emphasise close coordination with the Bill team will be vital to ensure that it remains clear which projects the MRF applies to and which the NRF applies to, with potential to scale back the scope of the NRF if it infringes upon the scope of the MRF. Energy UK has also noted this with the public bill committee for the Planning and Infrastructure Bill at time of writing.

Some offshore wind projects do not proceed through the DCO system, such as demonstration projects (recent examples include those for floating offshore wind).

Further clarity of these types of examples and where they fit within the MRF system would be welcome.