



Llywodraeth Cymru  
Welsh Government

## Mitigation and Compensation Opportunity in Marine Consenting

### Preface

When consenting marine developments there is a statutory requirement, including as part of the Welsh National Marine Plan, to consider and manage potential impacts upon marine biodiversity, particularly within Marine Protected Areas (MPA). Wales has a number of such sites reflecting the high quality natural environment.

In some cases, where adverse impacts upon an MPA cannot be adequately avoided or mitigated, compensation may be required in order for a project to proceed.

This report reviews MPA related compensation requirements and presents current knowledge and approaches to securing marine compensation.

It is intended that it will aid our understanding of opportunities for the practical application of MPA related compensation requirements particularly with regard to marine renewable energy development.

It is a report to Welsh Government, it does not represent the views of Welsh Government, and should be considered accordingly.

### Summary

The main objectives of this study were to:

- Review the range of marine mitigation and compensation measures which are practical and have been secured (or considered), along with any good practice, with a view to delivering effective measures to maintain (or even improve) numbers of birds, fish and mammals and quality of the marine habitats on which they depend within the boundaries of Welsh seas; and
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- Consider, at a high level, any limitations associated with the application of novel mitigation and compensation measures and their associated application in marine consenting.

The project was informed by desk top reviews, stakeholder engagement and wider project team experience.

A wide range of mitigation measures have been employed to date for the four key marine ecology receptor groups (marine habitats, birds, fish and mammals). These have been undertaken (or considered) to ensure compliance with a wide range of policy and legislative drivers, as well as to support sustainable development in Welsh waters. An overview of such measures, along with an understanding of their relative effectiveness is provided as part of the deliverables of this project. This provides a useful resource to inform environmental assessments and ultimately the consenting process.

The mitigation hierarchy defines a sequential process that should be adopted to avoid, mitigate and compensate negative ecological impacts, with compensation very much interpreted as a measure of last resort. In this context, mitigation measures should be considered from the very outset of a potential development and may be employed throughout all stages of the project lifecycle.

The specific understanding of compensatory requirements is very much driven by the underlying legislative or policy driver. The whole process of securing and agreeing compensation measures takes into consideration a large number of factors, and there is considerable guidance, case law and precedents that can be drawn upon to inform these requirements. Specific examples in relation to the provision of compensation in the marine environment have to date been largely limited to intertidal habitats, birds and fish. Greater consideration is, however, being given to more novel compensation measures both for these receptors and marine mammals.

There are a number of complexities in defining and securing mitigation and compensation packages. These include, for example, reaching agreement on compensation packages, delivering like for like, certainty of effectiveness, timing issues and costs. There are also a number of key practical elements which potentially influence the effective delivery of compensatory measures. These include, for example, the requirement to obtain separate consents to implement the measures, overlap with both the terrestrial and marine planning regimes and the alignment of timings of the potential impacts and the ability to deliver the required compensatory measures. It is also not uncommon for such schemes to encounter objections from local stakeholders, and for numerous site specific issues to slow implementation. The delivery of a number of compensatory measures has also been dependent on the availability of suitable land (for which there can be considerable competition).

o The extent to which compensation objectives are being met is generally regularly reviewed through monitoring, with more formally defined review periods typically in the region of 5 to 10 years. For most UK compensatory sites with specific compensation objectives, it is also uncertain how these sites will be 'signed off' and the habitat deemed acceptable compensation for that which was lost. The duration of these types of agreements also introduces uncertainty as a developer may become insolvent over such a time period. A mechanism to ensure delivery is fulfilled into the longer term (as required by a number of legislative drivers) is therefore important.

Overall, it was suggested by stakeholders that there is a requirement for greater guidance and clarity on the whole process of agreeing mitigation and compensation requirements for individual projects. This would ideally capture all stages in the process from understanding the initial adverse impacts, identifying and agreeing the respective measures, setting objectives and ultimately how compliance will be demonstrated. In practice any new guidance would need to build on existing guidance and might prove difficult to achieve given the complexities of site and project specific issues. Such guidance would also need to be designed to meet the needs of developers, regulators and wider stakeholders.

As highlighted above, there are a number of possible mitigation, compensation and enhancement measures that can be applied for marine ecological receptors. It is important that the associated evidence base is maintained and developed to better understand the levels of certainty that can be assumed in terms of the likelihood of successful application. Similarly, it is important to understand the environmental effects of new and emerging technologies as well as increasing project scales.

There is an ongoing requirement to understand the full breadth of mitigation and compensation opportunities that may be relevant to, and can be factored into, the marine consenting process. There is also a requirement for greater research, and ultimately policy decisions, in relation to the overall acceptability, legal compliance and practical application of mitigation/compensation options and any alternative solutions. Consideration should also be given to a more strategic, holistic approach to the provision of mitigation, compensation and environmental enhancements.