

**Written evidence submitted by Orsted**  
**Environmental Audit Committee Call for Evidence:**  
**Governing the marine environment**

## **Executive Summary**

Orsted welcomes the opportunity to respond to the Environmental Audit Committee's Call for Evidence on 'Governing the Marine Environment'. Orsted develops, constructs, and operates offshore and onshore wind farms, solar farms, energy storage facilities, renewable hydrogen and green fuels facilities and bioenergy plants.

Climate change is a major driver of unprecedented biodiversity loss and ecosystem degradation which in turn undermines nature's ability to mitigate climate change. These crises are interconnected, and the solutions must be too. Large-scale deployment of offshore renewables is an essential step on the path to net zero and if done in the right way, also presents an opportunity to support biodiversity goals.

Orsted has reduced its CO<sub>2</sub> emissions faster than any other energy company and has set an ambitious target that exceed what science demands to reach 1.5°C. In June 2021, Orsted announced a bold ambition to deliver a net-positive impact on biodiversity across all new renewable energy projects we commission from 2030. This means that we will not only avoid, minimise, and compensate for any impacts on nature during the lifetime of our projects, we will also actively help restore and enhance ecosystems. We are taking tangible action and working in partnership with others to find the best solutions. For example, we have embarked on a seascape restoration project "Wilder Humber" with the Yorkshire Wildlife Trust and Lincolnshire Wildlife Trust. The project aims to improve the health and resilience of the Estuary's ecosystem by restoring seagrass and salt marsh, as well as introducing half a million native oysters.

We would like to highlight the following key points from our response:

- Orsted would welcome a joined up, future proofed marine spatial plan for UK which would enable effective decision making. In the absence of a marine spatial plan, greater alignment across plans and consistent advice from government's arms-length bodies is needed to deliver a holistic approach to marine development and protection. Any plan must consider the Government's commitments and how it can best support these in balance with nature and other marine users. The speed and quality of decision making could also be improved through a mix of increased resource and a cultural shift in the way decisions are made.
- Orsted welcomed the inclusion of Critical National Infrastructure in the latest update to the National Policy Statements (NPSs). In the next update to the NPSs, it would be helpful if Government could include the prioritisation of technologies beneath this. This would aid the consenting process and reduce risk of planning delays where there are project overlaps.
- The UK Government's commitment to deliver a Marine Recovery Fund (MRF) in the Clean Power Action Plan is welcomed. The MRF is vital for unlocking new marine developments and smoothing the pathway for projects under construction and in operation, in discharging consent conditions or where supplementary consents are needed. We would like to see the MRF delivered as soon as practicable and would value the opportunity to feed into the process. We believe the MRF and HRA reforms

should include non-like-for-like measures that can offer wider ecosystem benefits, with a focus on ecosystem resilience and functionality. A strategic approach would also allow the various regimes and commitments (e.g. compensation under the Habitats Regulations, Marine Net Gain and Measures of Equivalent Environmental Benefit (MEEB) under the Marine and Coastal Access Act) to work together. This would help to minimise consenting risks, ensure most efficient use of resources, and help to achieve the best environmental outcomes.

- To meet the UK's joint objectives to protect and enhance the marine environment while delivering on net zero, we need a pragmatic approach to decision making. Clear guidance from Defra on the 'de-minimus' principle would give Statutory Nature Conservation Bodies (SNCBs) and regulators the confidence to adopt a pragmatic approach to addressing minor impacts and determine decisions 'in the balance'.

## **Governance and Delivery of International Marine Treaties**

**1. Does the Government have an adequate strategy to address the actions required to ensure alignment with its environmental obligations under multiple international marine treaties?**

- How do the UK's environmental obligations under international marine treaties interact, contradict or overlap?
- What non-legally binding instruments, including Memorandums of Understanding, related to the marine environment apply to the UK?
- How should the UK ensure it aligns with advisory opinions that impact the interpretation of international treaty obligations, such as the International Tribunal for the Law of the Sea's ruling that carbon dioxide should be treated as an ocean pollutant?

No specific comments.

**2. How effectively are the UK's obligations in respect of marine protection under environmental treaties being implemented in UK law?**

- Are there obligations from treaties that the UK has signed, but not ratified, that have yet to be implemented in legislation?

No specific comments.

**3. How does the UK's performance compare to other UN ratifiers in delivering its environmental obligations under international marine treaties?**

- What are the economic consequences and trade-offs for the UK in exceeding its legally-binding obligations to protect the marine environment?

No specific comments.

## **Marine Planning and Protection**

**4. What are the existing pressures on the marine environment?**

There are multiple pressures on the marine environment, and it is vital that these are carefully balanced if we want to protect and enhance it. Climate change is a major driver of unprecedented biodiversity loss and ecosystem degradation. Large-scale renewable technologies such as offshore wind are essential to mitigate climate change, supporting the marine environment in the long-term. Delivered in the right way, offshore wind also presents an opportunity to support biodiversity goals.

#### **5. Does the UK have a sufficiently integrated and effective marine spatial planning strategy?**

- **How well does the UK's current approach to marine planning operate across (1) different regions and sectors and (2) areas for which devolved administrations have responsibility?**
- **Are responsibilities for resource allocation, asset designation, and strategic planning clearly defined and well-coordinated across Government?**
- **What arrangements and resources are in place for the implementation, monitoring, reporting and enforcement of the government's marine environment objectives?**

The UK does not currently have a UK-wide marine spatial plan across different sectors. There is also a lack of alignment across marine and terrestrial boundaries. A joined up, future proofed spatial plan is needed to enable effective decision making. This plan must consider the government's commitments and how it can best support these in balance with nature and other marine users.

In the absence of a UK-wide marine spatial plan, it is important that bodies such as the Marine Management Organisation, Natural England, The Crown Estate, the National Electricity System Operation (NESO), devolved authorities, local authorities and other stakeholders align plans and advice to deliver a holistic approach. Strategic direction is needed to ensure all bodies are aligned with broader government objectives.

To fulfil the Government's Clean Power Mission and renewables target for 2030, we need a spatial plan that maps the full amount of renewable energy needed. A prioritisation exercise will need to be undertaken to work out how it fits alongside nature and other marine users. Wherever possible, the plan should seek to minimise overlaps between uses. Coexistence is possible, however, guidance is urgently needed including which use has prioritisation to ensure overlaps between technologies (i.e. offshore wind and CCUS) do not add risk and delays to projects. Spatial plans should also consider decommissioned / 'brownfield' sites and how these can be 'reused' and optimised in the future or if the areas need to be excluded from future development.

While it is positive that the UK has designated parts of the marine environment as protected, there needs to be sufficient resource allocated for their management and monitoring. There also needs to be recognition of a practical approach to manage existing operational infrastructure within and transversing through designated sites while minimising any potential environmental impacts.

#### **6. Are the economic, social, environmental, and scientific demands on the marine environment adequately balanced in the context of marine spatial planning?**

- **Does the UK sufficiently balance the fishing quota with scientific data to ensure sustainability in fishing stocks?**

- **Is the subsidy regime for fisheries management suitable for ensuring long-term sustainable fish stocks?**

There will always be a 'weighing in the balance' of considerations in determining the appropriate use of marine resources which is both applicable to marine spatial planning and in relevant consent decision making. Plans should be made in the context of clarity from Government on its priorities and evidenced-based baseline and demand assessments in order for applications to be determined in accordance with the plan.

## **7. What actions should be taken to ensure the UK's marine spatial planning function is fit for the future?**

- **How can responses to climate change be incorporated into marine spatial planning to ensure adaptive and sustainable management of marine resources?**
- **How can emerging technologies improve the accuracy and efficiency of seabed mapping and monitoring to support marine spatial planning?**

The UK needs a joined-up approach to marine spatial planning. To date, the UK has adopted a piecemeal approach with different bodies conducting their own plans with some duplication of work (e.g. The Crown Estate's Whole of the Seabed approach, MMO's Marine Plans and NESO's SSEP). It is unclear how all the plans are linked and who has overarching responsibility. The UK could benefit from a centralised body for planning or at least ensuring that all government departments and arms-length bodies are aligned and adequately resourced.

When identifying different areas for different uses, it is important to consider how the marine environment will evolve in response to climate change. For example, higher sea temperatures may affect the distribution of protected species and the most suitable locations for nature restoration. We recommend referring to the Marine Spatial Planning Addressing Climate Effect (MSPACE) project, which seeks to develop climate-smart marine spatial plans.

New research and technologies for understanding and monitoring the marine environment are continually emerging and we would like to see swifter adoption of this research by statutory nature conservation bodies (SNCBs) into guidance. The offshore wind industry is currently working with out-of-date guidance which could result in a misalignment between developer and SNCB interpretations and delay planning. Greater resource into the management and monitoring of Marine Protected Areas (MPAs) is also needed. The proposed Marine Recovery Fund could contribute towards this.

## **8. How does the UK Government work with devolved nations to ensure that commitments such as '30 by 30' are met across the four nations in a fair and equitable way?**

The UK could benefit from more joined up thinking on how to best meet commitments such as '30 by 30', recognising that biodiversity does not stop at borders. This includes how contributions from Crown Dependencies are taken into consideration. This is also relevant for the UK's approach to Marine Net Gain and environmental compensation. There are separate plans for a Marine Recovery Fund in England and Scotland but ultimately there is

one marine ecosystem, so deciding the priorities for the marine environment and how such a fund should be spent should be joined up. 30 by 30 targets can be achieved through the designation of protected areas or Other Effective Area-based Conservation Measures (OECMs). UK Government criteria appear not to exclude offshore windfarms as potential areas to contribute to such targets. These areas – even those that do not overlap with designated sites in any proportion – could theoretically still meet the three criteria of Purpose, Protection, and Management used to determine a contribution towards the 30 by 30 commitment as OECMs where, for example, the designated or important features is benthic habitat within the lease area but not impacted by development, subject to measures working alongside the requirements for carrying out operations and maintenance activities. Such thinking could greatly benefit nature by allowing larger, interconnected nature networks contributing to 30 by 30 and determined on an ecological basis in a future UK-wide marine spatial plan.

### **9. How can the consenting process for marine developments be improved to ensure effective collaboration between planning officers and developers, while balancing environmental protection and economic growth?**

There are several ways the consenting process for marine developments can be improved:

- The speed and quality of decision making could be improved through a mix of increased resource and a cultural shift in the way decisions are made. There are several ways to do this, for example, establishing a centralised planning hub, introduced funding tiers for NSIPs (as proposed) offering an enhanced service, cost recovery where it leads to improved service delivery and joined up objectives across government departments and arms-length bodies.
- Prioritisation of Critical National Priority energy infrastructure in the consenting process, both in the determination of DCOs and marine licences, including related consent requirements.
- Guidance is also required from Defra on the ‘de-minimus’ principle to give statutory bodies the confidence to adopt a pragmatic approach to addressing minor impacts and determine decisions ‘in the balance’ to prevent project delays.
- The Habitat Regulations Assessment (“HRA”) needs to be reformed to provide clarity to developers on the types of compensation measures that are acceptable. We believe the reforms should include non-like-for-like measures that can offer wider ecosystem benefits, with a focus on ecosystem resilience and functionality.
- The UK urgently needs to establish a Marine Recovery Fund (MRF) which projects in all phases (operation, construction, and development) can contribute towards to discharge any relevant Development Consent Order (DCO) or Marine Licence conditions. Without such a fund, there is a risk of developments stalling or even loss of capacity where critical maintenance activities cannot be performed in a timely manner. We welcomed government’s commitment to deliver such a fund in the Clean Power Action Plan. Certain measures under consideration by developers are challenging to deliver at an individual project level and require government intervention or a more strategic approach. A strategic approach would also allow the various regimes and commitments (e.g. compensation under the Habitats Regulations, Marine Net Gain and MEEB under the Marine and Coastal Access Act) to work together. This would help to minimise consenting risks, ensure most efficient

use of resources, and help to achieve the best environmental outcomes. The MRF needs to be brought forward as soon as reasonably practicable, and we await the upcoming consultation.

- Marine Net Gain (“MNG”) is achievable alongside offshore wind, but it is challenging to quantify marine ecosystem biodiversity gains (e.g. the 10% terrestrial target). Therefore, we would encourage government to focus on wider strategic targets rather than measurable change to enable strategic investment in marine restoration. MNG requirements could be delivered via contributions to the MRF to ensure a joined-up approach, capable of delivering better ecological outcomes to ensure wider ecosystem functionality.

## **10. Do UK regulations give sufficient protection to the environment covered by Marine Protected Areas in domestic waters?**

- **If not, what can be done to give sufficient protection?**
- **What are the benefits and challenges of designating Highly Protected Marine Areas? Should more areas be covered?**

The UK Government has set out a comprehensive set of Marine Protected Areas (MPAs) and plans for the continued protection of habitats which are regulated. To meet the UK’s dual objectives to reduce carbon emissions and protect the environment; a balanced approach to marine development is needed. Whilst marine protection is a key priority for marine planning, designation of new conservation sites should not be to the detriment of existing and new renewable energy developments, which are critical in meeting the Government’s Clean Power Mission and net zero commitment. A degree of flexibility is vital for existing and proposed assets situated within MPAs (e.g. offshore wind farms) to ensure they can deliver against the UK’s commitments while remaining cognisant of the objectives of the MPAs. There can often be a tendency to focus on individual features within an MPA, but we believe there is greater value in adopting a whole systems approach to build environmental resilience. A pragmatic, evidence-based approach to decision making, will allow the UK to achieve both objectives in a responsible way.

Under the Habitats Regulations, Natural England, and the Joint Nature Conservation Committee (JNCC) have a statutory duty to provide conservation advice on England’s MPAs. This advice is then used by the Regulators when preparing the Appropriate Assessment which they conduct before determining a marine licence application. At present, there is no requirement for a formal consultation on these advice packages or for the evidence supporting the advice to be provided. There is also no requirement for them to be approved by another organisation (e.g. OEP, Defra or MMO). These advice packages can strongly influence consent decisions and potentially delay decisions, where the MMO may believe a deviation from the advice is justified. We believe these advice packages warrant a peer review and need to consider Government’s broader objectives.

**End.**

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