

Secretary of State Decision on Hinkley Point C

Officers' Recommendation

That Members note the report on the Secretary of State's Decision on Hinkley Point C and the outcome of the Public Inquiry

Acoustic Fish Deterrent

Background

The energy company EDF plans to use water from the Severn Estuary to cool the nuclear reactors at Hinkley Point C (HPC). This requires a Water Discharge Activity (WDA) permit from the Environment Agency. The WDA permit was previously granted on the condition that an Acoustic Fish Deterrent is installed at each of the cooling water intake heads, as part of a suite of mitigation measures designed to reduce fish kill by this system. To provide a sense of scale: each cooling water intake head is 44 m long and 8 m high, weighing approximately 5000 tonnes. The cooling water system would take 132 cubic metres (132,000 litres) of water per second from the Severn Estuary.

Proposed Removal of Requirements for Acoustic Fish Deterrent

EDF sought to remove the requirement to install the Acoustic Fish Deterrent by applying for a variation to the WDA permit; this process escalated to an Appeal to the Planning Inspectorate (PINS), which was heard at a full Public Inquiry in June 2021. The main issue for the Inquiry was to ascertain whether the variation to remove the Acoustic Fish Deterrent would not adversely affect the integrity of the Severn Estuary SAC, Severn Estuary Ramsar site, the River Usk SAC and the River Wye SAC. The integrity of a site is a function of its constituent characteristics and the habitats and species for which the sites are designated. EDF argued that their proposal would not adversely affect the integrity of these sites through impacts to the designated habitats and species.

The main parties opposing EDF's proposal at the Inquiry were the Environment Agency and the Severn Estuary Interests group. Other organisations, including D&S IFCA, Natural England and Natural Resources Wales also supported the Environment Agency's position. D&S IFCA was able to make representations to the Inquiry in the form of (a) an oral representation, supported by a full written representation, (b) cross-examination of EDF's witnesses, (c) discussions around the conditions that would be applied to the WDA permit if the Appeal were to be upheld, and (d) a further written representation on EDF's lack of regard for the South West Marine Plan (and its implications for Marine Protected Areas). Video recordings of the Inquiry proceedings, and all supporting documents, are available online. Further details are available on the corresponding D&S IFCA News Item (June 2021), and an update to the Authority Meeting in September 2021.

Recent Progress

The PINS Inspector was directed to submit a report and recommendation to the Secretary of State for Environment, Food and Rural Affairs (SoS), George Eustice. The report and recommendation were completed on 7th December 2021, and the SoS published his decision and the Inspector's report on 2nd September 2022.

The SoS agreed with the conclusions and recommendations of the PINS Inspector, and has dismissed the appeal; consequently, EDF's Water Discharge Activity permit retains the requirement to install a functioning Acoustic Fish Deterrent on the cooling water intake heads at HPC. This decision was reached on the basis that it was not possible to rule out adverse

effects on the integrity of the Severn Estuary SAC, Severn Estuary Ramsar site, the River Usk SAC and the River Wye SAC, should the Acoustic Fish Deterrent not be used.

Implications: HPC

At this stage it is not clear what the next steps are for EDF, though three options appear to be possible: (a) challenge the SOS's decision via a judicial review, (b) install an acoustic fish deterrent as stipulated in the conditions of the WDA permit, (c) seek alternatives to the cooling water system without an Acoustic Fish Deterrent, or derogation from the relevant legislation. Regarding option (a), the SOS's decision can only be challenged in the courts by judicial review, and an application for such a review is only possible within three months of the decision. In a recent press release (5th September 2022), EDF appear to be maintaining their position that option (b) is not technologically feasible, despite evidence to the contrary from Fish Guidance Systems, a world leader in this technology. Option (b) would now require the Acoustic Fish Deterrents to be retrofitted to two of the four cooling water intakes heads, which have already been lowered into place in the Severn Estuary without any form of Acoustic Fish Deterrent.

Regarding option (c); in the absence of the Acoustic Fish Deterrent, the fish protection measures proposed for HPC would no longer constitute "Best Available Technique" (BAT). To continue without achieving BAT would require comprehensive consideration of alternatives. Such alternatives could include relying on water towers for cooling water, instead of abstracting water from the Severn Estuary. However, such an alternative is highly unlikely to be considered at this late stage in the construction of HPC. If no feasible alternatives could be found, EDF may make an argument for "IROPI": Imperative Reasons of Overriding Public Interest. If such reasons could be demonstrated to exist and provided that measures could be secured that would compensate for harm caused to the integrity of protected sites, then EDF could apply for a derogation from the relevant legislation, in effect to allow the operation of cooling water intakes without an Acoustic Fish Deterrent.

Implications: Site Management

The Inspector's Report and SoS's subsequent letter also have important implications for the management of the relevant Marine Protected Areas, and activities within them. Of particular relevance to D&S IFCA is that the Report and letter confirm that the species within the fish assemblage of the Severn Estuary SAC (noted under the overarching 'Estuaries' feature) "*must be part of any assessment of integrity of the Severn Estuary SAC*". This point had been strongly supported by D&S IFCA but challenged extensively by EDF. The outcome of this Inquiry confirms a high level of protection for the marine fish assemblage, in line with the relevant legislation and guidance. It is on this basis, and in line with Natural England's advice, that D&S IFCA has previously completed HRAs for relevant fisheries activities in relation to the fish assemblage sub-feature of the Severn Estuary SAC. This confirmation of a high level of protection for the marine fish assemblage strengthens the legislative "lever" that can be applied by D&S IFCA to champion a sustainable marine environment, for example, in ensuring through consultation that fish are given appropriate consideration during Marine Licence Applications. This is an important element to D&S IFCA's Ecosystem Approach to fisheries management.

EDF had attempted to compare fish kill from HPC relative to the species' population sizes over ICES stock areas – a very large geographical scale; consequently, EDF had concluded that any fish kill would be insignificant compared to overall population size. However, the Inspector and SoS adopted the Environment Agency's Appropriate Assessment, which assessed fish kill relative to more relevant population sizes over a smaller geographic scale, based on recent evidence of population sizes and degree of mixing within and between populations. It is clear from the Inspector's report that the evidence presented by D&S IFCA was helpful to support this case: particularly for herring, supported by D&S IFCA's involvement in the Bristol Channel Herring Project. The decisions made based on this Inquiry should make it clear to developers,

in this case EDF, that the scale of assessment of impacts is an important consideration and make the assessment and decision-making processes more locally and ecologically relevant to the fish species in question. This further strengthens the “levers” that can be applied by D&S IFCA in support of the environment when consulted on large marine developments.

Other Issues Relating to HPC

EDF have proposed to submit an application for a Material Change to their Development Consent Order (DCO; a type of planning permission relevant to Nationally Significant Infrastructure Projects). The proposed application will request changes to the DCO in order to effect changes to the Site Layout Plan, Parameter Plan, Plans for individual buildings, and – importantly – remove the requirement to install an Acoustic Fish Deterrent system. The application for this Material Change was expected to occur in Q1 2023. However, a variation to the Water Discharge Activity permit to remove the requirement for an Acoustic Fish Deterrent was seen as a pre-requisite to progressing a DCO Material Change application relating to the Deterrent; it is not yet clear how the application and timescale will have been impacted by the recent decision by SoS not to vary EDF’s Water Discharge Activity permit, and to retain the requirement for an Acoustic Fish Deterrent.

Recent correspondence between EDF and the Department for Business, Energy and Industrial Strategy (which took place before the SoS published his decision on the Water Discharge Activity Permit) has highlighted that D&S IFCA would be a non-statutory consultee on the Material Change application.

D&S IFCA actively responds to MMO consultations on Marine Licence Applications (and their variations) relating to HPC and remains a non-statutory participant in the HPC Marine Technical Forum, which provides updates on site progress, applications and various site monitoring schemes.

Background Papers

D&S IFCA News Item: Hinkley Point C Environmental Permit – [Public Inquiry \(Pdf\)](#)

D&S IFCA Agenda Item 14 for September 2021 Authority Meeting: [Update on Hinkley Point C \(Pdf\)](#).

EDF & Department for Business, Energy and Industrial Strategy Correspondence on DCO Material Change Consultees ([webpage](#)).

Report to the Secretary of State for Environment, Food and Rural Affairs on the Appeal by NNB Generating Company (HPC) Ltd, regarding the Removal of Acoustic Fish Deterrent Conditions from the Water Discharge Activity (WDA) Permit ([PDF](#)).

Secretary of State Decision Letter on the Appeal by NNB Generating Company (HPC) Ltd, regarding the Removal of Acoustic Fish Deterrent Conditions from the Water Discharge Activity (WDA) Permit ([PDF](#)).