Devon and Severn IFCA Assessment of Fingleton Nuclear Regulatory Review 2025

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Executive Summary

The Fingleton 'Nuclear Regulatory Review 2025' has proposed a range of solutions to what it terms 'systemic failure' in nuclear regulation, including in response to decisions that it deems to be disproportionate, overly conservative and costly.

The Fingleton Review relies heavily on a flawed case study of Hinkley Point C nuclear power station (HPC). It has **failed to engage with the best available evidence**, despite the recent Corry Review highlighting that **better use of transparent data is needed to improve decisions and trust**.

D&S IFCA is concerned that **highly consequential proposals have been recommended based on fundamentally inaccurate evidence** that aligns with a development-positive narrative, rather than reflecting the evidence recognised as being the best available by the Planning Inspectorate, Secretary of State for the Environment, and multiple regulators.

The Fingleton Review's HPC case study states that the developer (EDF) has spent £700 million (unverified) on fish protection measures, which EDF estimates will "*save 0.083 salmon per year, along with 0.028 sea trout, 6 river lamprey, 18 Allis shad, and 528 twaite shad".*

The case study **does not reflect the agreed impacts or recent fish tracking evidence**, and it is deeply concerning that these estimates have been repeated without verification.

The **Fingleton Review has entirely overlooked the substantial marine fish kill** that has been calculated will occur due to HPC. The most appropriate calculations of marine fish kill show that this will include the equivalent of **over 4.6 million adult fish per year**, including the equivalent of a total of **450 tonnes of adult cod, whiting and herring**. These are species which currently have zero catch advice in the area due to the perilous state of their stocks.

The case study, and other examples which criticise regulatory delays, also do not reflect that EDF (through their own admission) have been responsible for a seven-year delay in development and installation of one of their key environmental protections: a protection that has been required since the 2013 granting of their Development Consent. Had EDF engaged earlier with delivering the environmental protections, much of the subsequent process, assessment and permit variation activity may have been avoided.

The flawed HPC case study underpins the Fingleton Review's discussions of the proportionality of environmental assessments, mitigations and compensatory measures, and supports significant recommendations (e.g. recommendations 11–13). These should now be re-evaluated using accurate evidence.

Introduction

Devon and Severn Inshore Fisheries and Conservation Authority (D&S IFCA) has taken the opportunity to review the Fingleton 'Nuclear Regulatory Review 2025'[1]. The Fingleton Review touches on areas of D&S IFCA's remit under section 153 of the Marine and Coastal Access Act 2009, and relies in part on a case study and examples with which D&S IFCA has had significant engagement (Hinkley Point C nuclear power station: HPC)[2].

This document provides D&S IFCA's assessment of the Fingleton Review and underlying evidence, relating specifically to the overlap between civil nuclear power infrastructure and environmental protections for areas within D&S IFCA's District.

D&S IFCA has identified several areas where the Fingleton Review is not supported by best available evidence, and strongly recommends that these areas are revisited urgently.

The Fingleton Review states that it has drawn upon The Corry Review of Defra's regulatory landscape[3]. However, in failing to use the best available evidence to support its recommendations, **the Fingleton Review has failed to embody the principle highlighted in the Corry Review, that opening data to the public is essential to foster transparency and trust**.

The Corry Review states that "*greater data transparency […] reduces uncertainty; promotes consistency; and enables communities to understand their local environment and take appropriate action. This latter point is key – if the public can see for themselves that regulation is delivering the outcomes they value then they have confidence in a system that allows more discretion to regulators*."

The Corry Review also cites Defra's digital and data transformation strategy, the third mission of which is to "*make better use of data to power decision-making*"[4].

Overall, therefore, it is both disappointing and deeply concerning that the best available data have not been used transparently in the Fingleton Review's use of the Hinkley Point C case study. However, the Corry Review itself also uses an incomplete case study of HPC which fails to accurately represent the ecological impacts of HPC's fish kill.

This situation suggests there is much still to be done to ensure that evidence is used appropriately to inform balanced reviews of the UK's regulatory landscape.

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[1] Nuclear Regulatory Review 2025. Available from https://assets.publishing.service.gov.uk/media/692080f75c394e481336ab89/nuclear-regulatory-review-2025.pdf

[2] See here for a brief overview of D&S IFCA's recent involvement with Hinkley Point C processes.

[3] Corry, D. 2025. Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape. Department for Environment, Food & Rural Affairs, GOV.UK, 2 April 2025. Available at https://assets.publishing.service.gov.uk/media/6825d05cb2527e8de9b014cd/dan-corry-review-defra-regulatory-landscape.pdf

[4] Defra Digital and Data Transformation Strategy. Department for Environment, Food & Rural Affairs, GOV.UK, 23 November 2023. Available at https://www.gov.uk/government/publications/defra-digital-and-data-transformation-strategy-2023-to-2030/defra-digital-and-data-transformation-strategy#mission-3-make-better-use-of-data-to-power-decision-making-and-services

“Disproportionate Decisions”

The Fingleton Review diagnoses a ‘*systemic regulatory failure*’, and states that “*Addressing this systemic failure requires a series of radical, root-cause solutions that fundamentally reshape the regulatory landscape*”.

One of the five ‘primary regulatory problems’ identified in the Fingleton Review is “*Disproportionate Decisions”*, whereby “*Regulators frequently make overly conservative and costly decisions that are not proportionate to the actual risk being managed*.”

The Fingleton Review uses a case study of Hinkley Point C (HPC) “*to illustrate how the current system works and the incentives and constraints it imposes*”.

However, D&S IFCA and others have identified **serious flaws in the case study** and related examples. It is important to highlight these, as **the reality of this case study undermines the Fingleton Review’s recommendations**.

The Fingleton Review includes a range of HPC examples, including:

> *Hinkley Point C will have more fish protection measures than any other power station in the world. […] EDF has found that these measures would save 0.083 salmon per year, along with 0.028 sea trout, 6 river lamprey, 18 Allis shad, and 528 twaite shad (or possibly fewer than 100 twaite shad on more recent estimates). The assessment to compile these numbers required EDF to catch fish, anesthetise them, inject them with a chip to follow their movements to avoid double-counting, and put 96 sensors on the intake heads.*

Presumably this is what the Fingleton Review is referring to when it claims that “***Ineffective or duplicative assessments and wasting resources on the mitigation of phantom risks do little to advance environmental objectives***”, “*the application of Habitats Regulations Assessments (HRA) and Environmental Impact Assessments (EIA) is often duplicative and lacks proportionality*”, and “*Strict protection has created onerous mitigation and compensation requirements where the measures sometimes exceed the actual level of risk.*”

There are several issues with this case study, of which D&S IFCA will focus on two:

(1) the fundamental inaccuracy regarding the scale of fish kill, which ignores the deaths of over 4.6 million adult marine fish;

(2) the lack of context for fish protection measures, and EDFs role in their delay.

HPC: The scale of fish kill

The scale of fish kill at HPC has received important scrutiny recently, and it is concerning that the Fingleton Review fails to rely on the ample well-reviewed evidence, which has previously been agreed by regulators, the Planning Inspectorate and the Secretary of State.

Contrary to the small estimates of fish kill provided by the Fingleton Review, data which provide "*a more appropriate and precautionary representation of real world impacts*"[5] show that HPC, operated without an acoustic fish deterrent (see below) would kill the equivalent[6] of **more than 4.6 million adult fish each year**, including:

- 662,984 whiting (**198 tonnes**, or 9% of the relevant population)
- 51,648 cod (**245 tonnes**, or 22% of the relevant population)
- 114,371 herring (**7 tonnes**, or 5% of the relevant population)
- 14,401 bass (**16 tonnes**, or 3% of the relevant population)[7]

These are far from "phantom risks". The International Council for the Exploration of the Sea (ICES) is advising zero catch of some of the affected species due to the perilous state of the stocks. However, once HPC is operational, the associated fish kill cannot be adaptively managed to account for this reality.

The Fingleton Review repeatedly refers to environmental assessment processes as lacking proportionality, with the process remaining "*costly, sometimes implementing mitigation measures that do not improve environmental outcomes".*

This conclusion is difficult to reconcile with the established evidence base on fish kill as presented above. D&S IFCA therefore strongly recommends a reconsideration of the evidence underpinning these aspects of the Fingleton Review.

Greater scrutiny of the fish kill was required after EDF tried to remove the requirement to install the Acoustic Fish Deterrent, which is the keystone part of their three fish protection measures.

This scrutiny included a Public Inquiry held by the Planning Inspectorate, which evaluated assessments of fish kill produced by both EDF and the Environment Agency (EA), and reported to the Secretary of State for the Environment, Food and Rural Affairs.

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[5] From paragraph 11.71 of the Planning Inspector's Report to the Secretary of State for Environment, Food and Rural Affairs regarding Public Inquiry held from 8 June 2021 – 24 June 2021, regarding Appeal By NNB Generating Company (HPC) Ltd Removal of Acoustic Fish Deterrent Conditions from Water Discharge Activity (WDA) Permit. Report available at https://assets.publishing.service.gov.uk/media/6310b3e08fa8f5579e65ef94/environmental-permit-appeal-app-epr-573-hinkley-point-c.pdf

[6] The Environment Agency calculated that HPC, operated without an Acoustic Fish Deterrent, would kill the equivalent of more than 4.6 million adult fish. The Environment Agency's assessment accounted for the fact that most (but not all) of the fish killed due to entrapment in the HPC cooling water intakes would be juvenile fish, and the loss of juveniles does not have the same effect on a population as the loss of adult fish. The Agency accounted for this by calculating the 'equivalent adult value' (EAV) of the fish predicted to be lost. Of the large numbers of larvae and juveniles produced by fish, many would never have survived to contribute to the spawning population even if they were not killed by HPC. A calculation of EAV is an approach that contextualises the number of juveniles into equivalent numbers of adults lost, accounting for things like natural mortality. It was confirmed that this method "*provides a more appropriate and precautionary representation of real world impacts*"[3].

[7] Document EA32 from Public Inquiry for case APP/EPR/573: Summary of HPC cooling water system impact results on fish species without AFD November 2020. Available as document "CD 8.24" in folder "Section 8 - Technical Reports issued by the EA" on the Defra file sharing service here.

Following the Inquiry, the Planning Inspector concluded that the **methods used by the EA "*provides a more appropriate and precautionary representation of real world impacts*"**[8], while the Secretary of State's conclusion was that the EA's method is most appropriate[9].

It should also be noted that **the fish kill numbers presented in the Fingleton Review for species such as salmon, trout, lamprey and shad do not reflect the most appropriate evidence base**, and do not account for recent acoustic tracking of fish which shows **very high exposure of shad to the cooling water intakes**, contrary to EDF's assumptions.

The Fingleton Review also does not include the important detail that three of the UK's four twaite shad spawning catchments are likely to be affected by the Project, which presents a real risk not only to the integrity of individual protected areas, but also to the coherence of the national site network with regards to this priority species[10].

The foreword to the Fingleton Review writes of a "*strong willingness in both regulators and industry to embrace reform, so long as it comes from the most senior level*". D&S IFCA argues that, regardless of the origin of a reform proposal, it must be evidence-based, and the public and decision-makers should be able to rely on the evidence being well-informed and unbiased.

HPC: Context of fish protection measures.

It is vital that all parties understand the context of the fish protection measures required at HPC and the various reasons for the current position, including delay brought about by EDF refusing to actively seek a solution for delivering the Acoustic Fish Deterrent.

The HPC case study in the Fingleton Review states that:

> *"Hinkley Point C will have more fish protection measures than any other power station in the world. It has spent £700 million on their design and implementation, as set out in the HPC's Development Consent Order (DCO). There will be three systems in place: Low Velocity Side Entry water intake heads (£500M), a Fish Recovery and Return System (FRR) (£150m), and an Acoustic Fish Deterrent (AFD) (£50M)."*

The Fingleton Review also states, in relation to environmental protection, that

> "*Strict protection has created onerous mitigation and compensation requirements where the measures sometimes exceed the actual level of risk. In many cases, the process has taken years and been an additional bottleneck for delivery. A vast amount of money has gone on process and gold-plated solutions that have different environmental costs*",

and later claims that

"*Enormous sums of money are spent on site-specific environmental and habitat interventions that are many times less effective than spending it on environmental protection elsewhere*."

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[8] Planning Inspector's Report on Public Inquiry regarding removal of Acoustic Fish Deterrent. Report available at https://assets.publishing.service.gov.uk/media/6310b3e08fa8f5579e65ef94/environmental-permit-appeal-app-epr-573-hinkley-point-c.pdf

[9] Secretary of State's Decision Letter in relation to the Public Inquiry on the Acoustic Fish Deterrent (Permit variation reference EPR/HP3228XT/V004). Available at https://assets.publishing.service.gov.uk/media/6310cbc88fa8f5578c40543f/hpc-decision-letter-220902.pdf

[10] Spawning populations of twaite shad are known to occur in four rivers in the UK, all of which drain into the Severn Estuary; the Tywi, Usk, Wye and Severn (including its tributary the River Teme). Twaite shad is a designated feature of the Severn Estuary SAC, River Wye SAC, River Usk SAC and the River Tywi SAC, and is protected under Section 5 of the Wildlife and Countryside Act 1981.

Although the Fingleton Review provides no evidence for this, the parallels with claims in the HPC case study are suggestive.

In 2013, EDF was granted a Development Consent Order (DCO) authorising the construction and operation of HPC, including the abstraction of water from the Severn Estuary (132,000 litres of water per second) to feed the cooling system at HPC[11].

To reduce harm to fish, three measures were required at HPC: Low-Velocity Side-Entry intake heads, a Fish Recovery and Return (FRR) system to return fish (dead or alive) to the Severn, and an Acoustic Fish Deterrent that uses sound to repel fish from the intake[1111].

Reviews (by all parties including EDF) at the time of the Development Consent Order found that this combination of mitigation was Best Available Technique at HPC[9]. Also, a 2015 review of the design process confirmed that an Acoustic Fish Deterrent is required to meet environmental requirements[11].

This is because the **other mitigation measures are far less effective without an Acoustic Fish Deterrent**. Although the cooling water intakes are designed to be low velocity, this is not likely to stop many fish from being entrapped in the system as they need a behavioural cue (e.g. sound from the Acoustic Fish Deterrent) to be able to avoid being taken in[11].

Also, **many species are predicted to suffer very high mortality (up to 100% death rate) in the 'fish recovery and return system**'[12]. Therefore, **the Acoustic Fish Deterrent is vital to reduce fish kill**, which is why it was integrated into the relevant permissions including an EA permit.

The Environment Agency's assessments concluded that operating HPC without an Acoustic Fish Deterrent would have an adverse effect on the fish assemblage of the Severn Estuary Special Area of Conservation, as well as on migratory fish species. This conclusion was accepted by the Planning Inspectorate and Secretary of State in the Public Inquiry.

It should also be noted that the use of screening and other measures to exclude fish are vital to any direct-cooled nuclear power station[13], to avoid wood, other debris and fish damaging the internal infrastructure and causing serious nuclear safety concerns[14]. Though EDF has claimed the fish protection measures have cost £700 million[15], it has not specified how much of this relates to the need for nuclear safety as opposed to specific mitigations for fish.

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[11] https://assets.publishing.service.gov.uk/media/6310b3e08fa8f5579e65ef94/environmental-permit-appeal-app-epr-573-hinkley-point-c.pdf

[12] TB008 FRR mortality rates: https://ea.sharefile.com/d-s06c506aed4c640ae819304ce2f09807e; also paragraphs 11.109, 11.124 of https://assets.publishing.service.gov.uk/media/6310b3e08fa8f5579e65ef94/environmental-permit-appeal-app-epr-573-hinkley-point-c.pdf

[13] Turnpenny et al. (2010). Cooling Water Options for the New Generation of Nuclear Power Stations in the UK. Environment Agency. Available at: https://assets.publishing.service.gov.uk/media/5a7c7688ed915d6969f450b2/scho0610bsot-e-e.pdf

[14] Lin *et al.* (2024). A review on the risk, prevention and control of cooling water intake blockage in coastal nuclear power plants, Nuclear Engineering and Technology, 56(2): 389-401. Available at: https://doi.org/10.1016/j.net.2023.10.009

[15] https://www.edfenergy.com/media-centre/enabling-clean-energy-through-smarter-proportionate-nuclear-regulation

Bottlenecks in Delivery: Regulation or Developer Delay?

Despite the Acoustic Fish Deterrent having been a requirement ever since the original permissions for HPC were granted in 2013, **in 2024 EDF stated that they had already "*made the decision in November 2017 not to proceed with the Acoustic Fish Deterrent system.*"**[16]

Since this decision in 2017:

(i) EDF have continued to build a system that would require an Acoustic Fish Deterrent, including placing infrastructure on the seabed.

(ii) EDF have not attempted to develop an appropriate Acoustic Fish Deterrent system or the remotely operated vehicles that it claimed would be required for maintenance of such a system.

(iii) EDF have initiated permit variation applications, environmental assessments and a costly Public Inquiry in an attempt to remove the requirement to install the Acoustic Fish Deterrent.

In 2024, EDF was presented with an adaptable Acoustic Fish Deterrent option by a third party, that it is now investigating for potential deployment. This is a promising development.

However**, the public will be left wondering whether EDF could have avoided the additional process, environmental assessments, permit variation applications and Public Inquiry if it had engaged more deeply with its original commitments** rather than unilaterally deciding "*in November 2017 not to proceed with the Acoustic Fish Deterrent*".

While the Fingleton Review critiques regulatory processes that place bottlenecks on delivery, in this case it **appears indisputable that bottlenecks and additional process have been self-imposed by the developer.**

Here EDF (through their own admission) appear to have been responsible for a seven-year delay in development and installation of one of their key environmental protections: a protection that has been required since the 2013 granting of their Development Consent.

Specific Review Recommendations

The Fingleton Review makes a series of recommendations, some of which relate to D&S IFCA's experience of dealing with protected areas assessments and marine developments that may impact upon fish, habitats and fisheries within its District. This section focuses on several specific Recommendations which concern D&S IFCA and which do not appear to be well-supported by unbiased, widely accepted evidence.

Recommendation 12: Alternative pathway to comply with the Habitats Regulations

The Fingleton Review proposes an *"alternative route to compliance with the Habitats Directive whereby a developer can make a substantial up-front payment before a project begins and without any assessment is done."*

It is claimed, without providing evidence, that *"This would reduce costs to developers and increase the environmental benefit, channelling money from surveys, assessments, and disputes directly towards nature preservation and recovery"*

[16] Paragraph 2.2.17 of https://www.edfenergy.com/sites/default/files/2024-01/Preliminary%20Environmental%20Information%20Report%20%28PEIR%29%20Volume%201%20-%20Introduction.pdf

However, this option presents significant challenges, including in terms of legal challenge based on precedence in case law. For example, the judgement in case C-521/12 (and others) outlines that *"in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified"* [17].

To precisely identify damage to a site, it will generally be insufficient to rely on previous experiences from other developments or locations – because specific developments, local natural environments, and the interactions between the two will be unique in many ways to individual sites. This implies that assessments will be required anyway.

Furthermore, when considering the proportionality of compensatory measures, such measures must *"be initially determined in the light of the information from the Article 6(3) appropriate assessment and must ensure ecological functionality. The ratios may then be redefined according to the results observed when monitoring the effectiveness"*[18] (Commission Notice 2021/C 437/01).

This clearly requires site-specific assessment, monitoring and adaptation, which is not compatible with Recommendation 12 in the Fingleton Review.

The Fingleton Review also suggests that *"A fee per acre would be an obvious approach"* to compensatory measures. It must be recognised that this is incompatible with many impacts in the marine environment which will affect mobile species over a far greater area than the footprint of the development – as highlighted by the predicted fish kill at HPC.

Recommendation 11: Amendments to the Habitats Regulations

The Fingleton Review seeks to *"Apply or modify the 2017 Habitats Regulations*" to achieve five goals. Discussion on all five is warranted, but D&S IFCA will presently focus on the following two*:*

a) Remove the need to prove a negative when drawing a conclusion on impacts, so that the wording of the regulation refers to the need for scientific evidence and excludes merely hypothetical or speculative risks.

The Habitats Regulations require a high standard of proof, meaning that purely hypothetical or theoretical impacts that are not based on any plausible scientific pathway do not need to be considered. Therefore, it is not clear why this recommendation is required.

b) Define 'compensatory measures' to expressly exclude the need for like-for-like compensation and instead accept that overall enhancement and measures to support the coherence of protected sites is sufficient.

The Defra guidance sets out a 'Hierarchy Approach' for developing compensatory measures where like-for-like measures are not possible. The underlying principle is that compensatory measures that benefit the same feature which is impacted by the development will be the most preferable as they balance the damage caused by the development.

It is important that future approaches recognise, as outlined in the Defra guidance, that "*Each step down the hierarchy moves away from like for like measures and therefore may decrease the certainty of success, and therefore increase the extent of compensation required. The key*

[17] Paragraph 36 in Judgement of the Court in Case C-521/12, available at https://curia.europa.eu/juris/document/document.jsf?text=&docid=152343&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=948646

[18] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2021:437:FULL

is to ensure the biological structure and function of the network is maintained. The more significant the impact to the protected feature or species, the more important it is that compensatory measures are developed within steps 1 and 2 of the Hierarchy of Compensatory Measures."[19]

There are four steps in the hierarchy, which are:

(1) Address the same impact at the same location,

(2) Address the same ecological function at a different location,

(3) Address a comparable ecological function at the same location, and

(4) Provide a comparable ecological function at a different location.

The main aim of compensatory measures is to maintain overall coherence of the National Sites Network. Consequently, two aspects that determine the design and implementation of compensatory measures must be addressed: proportionality and ecological functionality. These two principles set the scope and level of ambition of the measures required to compensate the plan or project's adverse effects. Compensation measures should also aim to *outweigh* the worst-case scenarios of likely adverse effects.

In order to ensure the overall coherence, the compensatory measures proposed for a project should therefore:

(a) address, in comparable proportions, the habitats and species negatively affected; and

(b) provide functions comparable to those which had justified the selection criteria for the original site.

When there is no guarantee of the effective restoration or reinstatement of damaged habitats and species, compliance with legislation is not ensured; in such cases it is vital that compensatory measures ensure delivery of greater than 1:1 compensation for the relevant feature which has been identified as at risk of harm by the Project. The above is clear from relevant case law.

Recommendation 13: Proportionality in the Environmental Impact Assessment (EIA) regime

This recommendation suggests several amendments to the EIA Regulations; as above, all could be subject to discussion, but D&S IFCA will focus on the following two amendments:

1) *"Include a "principle of proportionality" which requires decision-makers to, consider existing decisions (to discourage a ratcheting effect), and the extent to which outstanding matters will be addressed through other regulatory regimes. Only information necessary to determine the issue before them should be required."*

It will be interesting to see more detail on this proposal as, in relation to Habitats Regulations Assessments, it would be incompatible with precedent (e.g. R (on the Application of Preston) v Cumbria County Council [2019] EWCA 1362[20]); when complying with Habitats Regulations Assessment requirements, a competent authority cannot simply rely on the competence of other regulators to avoid conducting their own appropriate assessments. It should also be considered that regulators will have specific realms of expertise that they are able to bring to

[19] Defra. 2021. Best practice guidance for developing compensatory measures in relation to Marine Protected Areas. Available at https://consult.defra.gov.uk/marine-planning-licensing-team/mpa-compensation-guidance-consultation/supporting_documents/mpacompensatorymeasuresbestpracticeguidance.pdf

[20] Available at https://vlex.co.uk/vid/r-christopher-preston-v-807033597

bear on an issue, and that if a regulator is to lose oversight of an aspect of permitting then resources should be made available to ensure that the remaining regulator making the decision has access to the relevant expertise.

2) *"Affirm the Rochdale Envelope. It should be acceptable to grant consent while some surveys or design details are still outstanding. Worst-case assumptions should be case-specific and evidence-based, not drawn automatically from stricter precedents elsewhere."*

This is at risk of undermining the consenting regime, and a recent example will serve to illustrate the risks of this.

As outlined above, EDF's Development Consent Order included a requirement to install an Acoustic Fish Deterrent, specific design details for which were not available at the time of the DCO. Then, in 2017, EDF "*made the decision in 2017 not to proceed with the Acoustic Fish Deterrent system*" at HPC, and it is well-known that EDF proceeded to install the cooling water intake heads (without an Acoustic Fish Deterrent system installed) in the tidal waters of the Severn Estuary at a time when a functional Acoustic Fish Deterrent was (and remains) a requirement for future HPC operation. This was possible because the Acoustic Fish Deterrent was required only prior to *operation* of HPC and design details were not confirmed in advance.

EDF explained that the decision to install the intake heads *before* resolving the Acoustic Fish Deterrent issue "*was made in order that the commissioning of HPC could remain on schedule so that the operational phase could commence in mid-2027*"[21], while their 2024 consultation documents have outlined the challenges that this has caused and used this as an argument for removing the Acoustic Fish Deterrent requirements from the DCO[22]:

10.3.98	First, the technical challenges associated with the installation of an AFD system (or other fish deterrent system) at this location are made more difficult now that the water intake heads have been installed (installation took place in the summer of 2022). This means that technical solutions must be bespoke to the installed infrastructure, increasing the complexity of the work and limiting options. These complexities will mean that it will take longer to design and install such a bespoke system. Overcoming these challenges would lead to indefinite delays before HPC could become operational.

EDF had therefore created a constraint (intake heads installed on the seabed without Acoustic Fish Deterrent) from which they claim that subsequent installation of an Acoustic Fish Deterrent would cause '*indefinite delays'*, while also claiming that the Public Interest aspect of the IROPI case relies on "*significant public interest reasons for approving the Project and avoiding an indefinite delay to the commissioning and operational phases of Hinkley Point C"*[23].

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[21] Section 10.3.17 of the Shadow HRA Evidence Report outlines that "*The construction already undertaken includes the installation of the water intake heads on the seabed of the Severn Estuary[183]*". Footnote 183 in that document explains that the decision (to install the intake heads *before* receiving relevant permissions to operate the cooling water system in the absence of an AFD) "*was made in order that the commissioning of HPC could remain on schedule so that the operational phase could commence in mid-2027*". Page 513 of Shadow HRA Evidence report available at https://www.edfenergy.com/sites/default/files/2024-01/Shadow%20HRA%20Evidence%20Report%20(pre-application%20consultation%20version).pdf

[22] Paragraph 10.3.98 of Shadow HRA Evidence Report available at https://www.edfenergy.com/sites/default/files/2024-01/Shadow%20HRA%20Evidence%20Report%20(pre-application%20consultation%20version).pdf

[23] Paragraph 6.3.4.3 of the Consultation Overview document available at https://www.edfenergy.com/sites/default/files/2024-01/Consultation%20Overview%20Document_0.pdf

The installation of an Acoustic Fish Deterrent to *in situ* intake heads was clearly a known engineering challenge to EDF (as outlined above), so there does not appear to be a clear, technically-sound reason to explain why EDF installed the intake heads on the seabed prior to either designing a suitable Acoustic Fish Deterrent or receiving permission from the relevant regulators to operate those intakes without a functional Acoustic Fish Deterrent.

EDF appears through its own actions to have manufactured the grounds for an IROPI case under the Habitats Regulations. Therefore, the recommendation to allow granting of consent while some surveys or design details are still outstanding leaves the system open to inappropriate use if a developer reneges on commitments to explore design details.

This also relates to Recommendation 3 in the Corry Review, which encourages use of IROPI to justify projects and transfer the legal risk from developers to the Department. This example of the use of tenuous grounds for an IROPI case should give the Government pause for thought in pursuing such an approach.

Overall, there is clearly much still to be done to ensure that evidence is used appropriately to inform balanced reviews of the UK's regulatory landscape. It is important that the Government takes steps to review the evidence used to inform the Fingleton Review, and to improve on the processes for evidence gathering and use which have failed in this case.