

Response ID ANON-F11A-KC1T-V

Submitted to HRA guidance consultation
Submitted on 2026-05-20 14:55:35

Confidentiality and questions about you

1 Would you like your response to be confidential?

No

Please explain your reasons for requesting confidentiality. :

2 What is your name?

enter name:

James Stewart

3 What is your email address?

enter email address:

j.stewart@devonandsevernifca.gov.uk

4 Please tell us who you are responding as, selecting from the following: (please tick as many as relevant)

Other (Please specify)

Additional information if required :

Devon and Severn Inshore Fisheries and Conservation Authority

5 If responding on behalf of an organisation, please provide the name of the organisation you are responding for. If you are responding for more than one organisation, please say how many organisations you represent and their category (as set out in the previous question).

enter organisation details:

Devon and Severn Inshore Fisheries and Conservation Authority

6 If you are a business, how would you identify based on your number of employees?

Small (10 – 49 employees)

7 If you are a Small and Micro Business (SMB) (qualified as 1-49 employees), are you able to provide any information on impacts, including on additional costs, from the proposed guidance?

Do not know or not applicable

Please provide further information to support your response and attach supplemental evidence if you wish :

8 If you are a Medium-sized business (50-249 employees), are you able to provide any information on impacts, including on additional costs, from the proposed guidance?

Do not know or not applicable

Please provide further information to support your response and attach supplemental evidence if you wish :

9 Do you foresee impacts to business from the proposed guidance being different between regions across the UK?

Do not know

Please provide further information to support your response and attach supplemental evidence if you wish:

10 Please select the geographical coverage of your organisation or the area that your response relates to from the following: (Please tick as many as are relevant)

England

If other please specify:

Section 1 – Principles to follow in the HRA process

11 How helpful are these principles in setting out the overall approach and expectations for how Habitats Regulations Assessments should be undertaken?

2 – somewhat unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The proposed guidance includes an update to the principles text that shifts from saying “you will need to” follow the principles (previous guidance) to the proposed text stating that Competent Authorities

“should” follow the principles. This may weaken the application of these principles. While some principles can feasibly be framed as “should”, the guidance should be updated to reflect that there are some principles that Competent Authorities ‘must’ follow, for example:

- use and understand the conservation objectives, and any relevant supplementary advice, published by the SNCBs for the habitats sites affected, and make an assessment in view of the conservation objectives
- make judgements based on the facts of the individual situation and the ecological condition of the site’s features
- consider talking to relevant experts or specialists as early as possible
- use the best objective and scientific information available to make informed decisions
- make sure the HRA is complete and has precise conclusions
- keep a detailed written record of the HRA and give clear reasons and evidence for decisions

The principles should also be clearer that derogations are intended to be used in exceptional cases; their use should not be normalised, and the compensatory measures which result from a derogation should be used to compensate for residual effects of the plan or project after all attempts have been made to avoid, minimise and mitigate harm.

12 Do these principles strike the right balance between supporting users in complying with legal requirements and encouraging an efficient approach to decision-making?

Somewhat

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The guidance states that competent authorities should “only ask applicants for information that’s relevant to the site’s conservation objectives and proportionate to what is being assessed and needed to carry out the HRA”. It should be clarified that that this does not prejudice the requirement for competent authorities to obtain all information necessary to complete each stage of the HRA process; that the HRA cannot contain lacunae, and that removal of reasonable scientific doubt as to the effects of a proposal may require collection of additional evidence, and that this will ultimately define what is proportionate.

In the section ‘Preparing to carry out an HRA’, the guidance states that “The applicant should provide the information required by the competent authority to make a decision.” “Should” here should be replaced with “must”. This would be consistent with the Habitats Regulations 63(2).

Section 2 – Making use of an existing HRA

13 How helpful is the detail in this section on when an existing HRA can and cannot be used?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

14 Will this section give support to users in avoiding unnecessary repetition of work related to HRAs?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

Section 3 – Checking for likely significant effects on a habitats site

15 How helpful is the detail in this section on determining whether a plan or project could have a significant effect on a protected site?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

16 How helpful is the detail in this section on how a real (as opposed to hypothetical) risk should be identified and evidenced?

2 – somewhat unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

It is not clear what criteria are expected to be used to distinguish real and hypothetical risks. The process should allow for scientific uncertainty, which may require the collection of additional evidence to determine whether an effect is likely. Where uncertainty remains, the potential effect should not be dismissed as merely hypothetical, but should be objectively assessed based on the best available evidence, reasonable assumptions and objective expert judgment, all of which may be needed in order to bring general evidence sources to bear on site-specific issues where site-specific data may not be available. A decision can then be made as to whether the balance of evidence and expert judgment supports a need to collect additional evidence before proceeding.

Habitats Regulations 63(1)(a) subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk of significant effects on the site concerned. Case C-127/02 (Waddenzee) is clear that, in the light of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned, either individually or in combination with other plans or projects. That case is also clear that in case of doubt as to the absence of significant effects such an assessment must be carried out.

Section 4 – Checking for in-combination effects with other plans and projects

17 How helpful is the detail in this section on how in-combination effects should be considered?

3 – neither helpful nor unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The wording regarding in-combination effects on page 22 seems confused. It currently states: "If the result of that appropriate assessment is that there is not an adverse effect on the integrity of a site 'alone', but that there is still some effect once mitigation measures have been taken into account, the competent authority must go on to assess whether there is an adverse effect in combination with other plans and projects."

How can there be an effect after mitigation measures are taken into account, when there hasn't been an adverse effect in the first place? This should be clarified/corrected.

It should also be clearer that in-combination effects are more thoroughly considered at Appropriate Assessment; currently there is a lot of emphasis on in-combination effects at the screening stage but it is not clarified sufficiently how the range of in-combination effects is to then be identified and assessed at Appropriate Assessment. For example, in the screening section it is stated that once one type of in-combination effect has been identified, it is not necessary to identify other in-combination effects, because the pressure is to be taken forward to stage 2 (Appropriate Assessment). It is not then clear that during stage 2, the full range of potential in-combination effects should be explored, beyond the initial one that was identified during screening, and that further plans and projects may need to be considered.

18 Should this section include further detail on what should be considered an in-combination effect?

Yes

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The guidance could also be clearer on how different plans or projects can interact. For example, if Conservation Objective 1 for a feature can be affected by pressures A and B, with the focal project exerting pressure A, and a separate project exerting pressure B, should the assessment consider these to be acting in-combination to potentially affect achievement of Conservation Objective 1, even though they are different pressures acting on the feature. For example, a conservation objective may be that 'the species is a viable component of the site'; the focal project may exert a pressure that results in direct mortality of the species, whereas the other project may exert a pressure that results in disturbance of the species, interrupts its migration or affects its food resources. Though these are different pressures with different direct ecological effects, they could still act in-combination to affect the species' viability as a component of the site.

Section 5 – How to use screening criteria

19 How helpful is this section at setting out the purpose of the screening criteria?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

20 How helpful is the detail in this section on what criteria must be met for a plan or project to be screened out?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

Section 6 – Assessing the potential effect of a plan or project on the integrity of a site

21 How helpful is the detail in this section on the definition of site integrity?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

In the text "An appropriate assessment should consider those aspects of a plan or project that can realistically affect the conservation objectives of the site's relevant features, alone or in combination with other plans or projects. It should assess what might happen to the protected features if that plan or project went ahead, in view of the conservation objectives of the site. [...] To assess if a plan or project could affect the integrity of a habitats site, the competent authority should consider how it could affect relevant protected features.", "should" should be replaced with "must".

22 How helpful is the detail in this section on the role of conservation objectives?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

Section 7 – Checking effects against a site's conservation objectives

23 How helpful is this section on how maintain and restore objectives should be handled when assessing an impact on site integrity?

Not Answered

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

Section 8 – Considering reasonable scientific doubt

24 How helpful is this section in explaining what constitutes reasonable scientific doubt?

2 – somewhat unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

Page 25 of the proposed guidance states: "To be satisfied beyond reasonable scientific doubt, the competent authority does not always have to assess the reasonable worst case scenario, and it is not necessary for there to be no risk."

While this is broadly correct, it should be qualified. The Habitats Regulations do not require assessment of a "reasonable worst case scenario" in every appropriate assessment. The requirement is that the competent authority must be satisfied, on the basis of complete, precise and definitive scientific evidence, that there is no reasonable scientific doubt as to the absence of adverse effects (Waddenzee (C 127/02); Orléans (C 387/15)). Whether a worst-case or precautionary scenario is required is context-dependent and turns on whether such an approach is necessary to eliminate reasonable scientific doubt. A worst-case or highly precautionary scenario may be required where: (i) There is significant scientific uncertainty; (ii) Impacts are sensitive to parameter assumptions; (iii) There is no reliable central estimate. This is because if uncertainty remains, the authority cannot lawfully conclude no adverse effect. In those circumstances, failure to test a robust upper-bound scenario could leave reasonable residual doubt, and therefore be unlawful.

Section 9 – Securing compensatory measures

25 How helpful is the detail in this section on compensatory measures?

2 – somewhat unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The proposed guidance states that: "In circumstances where compensatory measures can't be in place and operational before the adverse effect on a site is allowed to occur, additional compensatory measures may be required to account for these delays."

This is good but could be stronger on the potential scope of the additional measures required, relying on evidence-based best-practice.

Commission Notice 2021/C 437/01 states that "Compensation ratios are best set on a case-by-case basis. They 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. The final decision on the proportion of compensation must be justified" and that

"There is wide acknowledgement that ratios should be generally well above 1:1. Thus, compensation ratios of 1:1 or below should only be considered when it is shown that with such an extent the measures will be fully effective in reinstating structure and functionality within a short period of time (e.g. without compromising the preservation of the habitats or the populations of key species likely to be affected by the plan or project or their conservation objectives)."

The above is supported by Defra guidance (Defra, 2021), which sets out that "Compensatory measures must address the impact of the activity in

comparable proportions depending on issues such as certainty of success, time for recovery or distance from the area of loss. Ratios can be determined on a case-by-case basis but, given the lack of evidence surrounding marine compensatory measures, ratios of 1:1 are only likely to be acceptable in exceptional circumstances in agreement with the SNCBs. As a general rule, compensation should be delivered at a ratio higher than 1:1. The application of higher ratios will increase confidence in site conservation objectives being achieved and the coherence of the MPA network maintained. All projects must be considered on a case-by-case basis in close liaison with the SNCBs. As a minimum, and depending on the project under consideration, the following factors should be considered:

- a. The extent of the impact – the number and status of the features affected;
- b. The environmental value and function of the affected feature;
- c. The environmental value and function of the proposed compensatory measure;
- d. The location of the proposed compensatory measure;
- e. How quickly compensatory measures are expected to be functioning and contributing to the network; and
- f. The confidence in the measure being entirely effective and the ability for its success to be monitored and managed accordingly.”

It is also important to note that the current Defra guidance sets out a ‘Hierarchy Approach’ that should be encouraged further in future, stating that: “As it will not always be possible to deliver compensatory measures in a like-for-like capacity as is accepted terrestrially, Defra has created a framework to help advisors’ regulators and developers to explore and develop compensatory measures. 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”.

However, the guidance continues, stating 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 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.”

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 (where “comparable” means provision of ecological functions and properties that are comparable to those that originally justified the designation, relating to a similar feature to that which will be lost), and
- (4) Provide a comparable ecological function at a different location.

It is clear that a strong preference for compensation at stage 1 of the hierarchy should be encouraged in the guidance, with each step down the hierarchy requiring higher compensation ratios.

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 reasonable, evidence-based worst-case scenarios of likely adverse effects.

In order to ensure the overall coherence of the National Sites Network, 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.

The proposed guidance now specifies that “the compensatory measures should normally benefit the same designated features as those that would be adversely affected or would risk being adversely affected by the plan or project. As far as possible, measures should address local circumstances and should normally be put in place as close as possible to the site. Compensatory measures do not need to exactly replace the damage caused by the plan or project or relate to the affected site”. This should more strongly set out the requirements of the hierarchy set out above.

On pages 13 - 14, the proposed guidance clearly states that “Favourable conservation status means the situation in which a habitat or species is thriving throughout its natural range and is expected to continue to thrive into the future”. However, elsewhere the guidance allows for off-site compensatory measures. If a habitat or species is compensated for elsewhere in its range, other than the focal site, then by definition the habitat or species is not thriving throughout its natural range, as required by the need to attain favourable conservation status. This is an inconsistency that should only be tackled by one mechanism: by only permitting the derogated plan or project if compensatory measures are possible on-site or sufficiently close to the site that the extent and distribution of the feature’s natural range are not negatively affected.

Time is a crucial dimension in the planning of compensatory measures. While the guidance reflects that timing of measures calls for a case-by-case approach, the schedule adopted must provide continuity in the ecological processes essential for maintaining the structure and functions that contribute to the overall coherence of the NSN. This depends on issues such as the time required for habitats to develop and/or for species populations to recover or establish in a given area.

Commission Notice 2021/C 437/01 also sets out that “other factors and processes must also be considered:

- A site must not be irreversibly affected before compensation is in place;
- The result of compensation should be operational at the time the damage occurs on the site concerned. Under certain circumstances where this cannot be fully achieved, overcompensation would be required for the interim losses;
- Time lags might only be admissible when it is ascertained that they would not compromise the objective of ‘no net losses’ to the overall coherence of the Natura 2000 network;
- Time lags must not be permitted, for example, if they lead to population losses for any species protected on the site under Annex II to the Habitats Directive or Annex I to the Birds Directive; priority species listed in Annex II to the Habitats Directive merit special attention.”

This should continue to be reflected for the Habitats Regulations in Defra guidance. The notice also specifies that:

“Specific measures to outweigh interim losses that would occur until the conservation objectives are met may be advisable. All technical, legal or financial

provisions needed to implement the compensatory measures must be completed before the plan or project implementation starts, so as to prevent any unforeseen delays that may hinder the effectiveness of the measures.

The time required for upgrading, restoring or reinstating ecological functionality depends on the biology and ecology of the habitats and species. This needs therefore to be assessed on a case-by-case basis and may require investigation or searching for evidence of restoration from similar situations.

The design and implementation of the compensatory measures must be comprehensive and scientifically sound, i.e.:

- The conservation objectives, key features and ecological functionality to be compensated are targeted in the correct proportion.
- The accompanying measures required, including technical, administrative and financial, have been incorporated.
- The timetable for implementing the individual tasks within each measure, including provision for maintenance works and monitoring, is sufficiently detailed.
- The scientific basis proving the effectiveness of each compensatory measure is explained and evidenced specifically for the impact it aims to offset.
- The time scale for accomplishing the expected results from each of the proposed measures is stated.
- The prioritisation of the measures' implementation is justified based on the Conservation Objectives and scientific evidence."

The above is supported by PINS advice note ten on HRAs, for example paragraph 3.32: "compensatory measures should be in place and effective before the negative effect on a European site(s) could occur" and paragraph 3.33: "The Secretary of State [...] will need to be satisfied that all necessary arrangements for securing the compensatory measures are in place before consent could be given".

It is also supported by the NE and NRW advice on a recent NSIP case, though this advice does recognise that "there may be circumstances where damage may occur before compensatory measures are fully functioning: for example, where measures will take a long time to become fully-functioning (e.g. re-creation of saltmarsh)", provided that "the necessary permissions and legal assurances to secure compensatory measures have been obtained, with the expectation being that measures are in place to ensure coherence will be restored" .

The advice also recognises that "Compensatory measures should be in place 'in time' to provide fully the ecological functions that they are intended to compensate for. Where delivery 'in time' is not fully achievable, compensatory packages should consider additional measures for the interim where this would serve a sound ecological function". This returns to the compensation ratios discussion above.

Furthermore, as a general rule, any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future (see, to that effect, judgment of C-387/15 and C-388/15 and the case-law cited). In this situation, all of the relevant guidance demonstrates that time lags in delivery of operational compensation necessitate provision of additional compensatory measures for affected features.

Section 10 – Habitats regulations assessments: guide for applicants

26 How helpful is this additional guidance at setting out how to engage with the HRA as an applicant?

2 – somewhat unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.:

The guidance should more clearly state that stages 3 and 4 of HRA are for exceptional circumstances, and that their use should not be routine or normalised.

The guide should set out the importance of the Habitats Regulations, the HRA process, and the national site network, the basis for requiring the HRA process to have a high evidential standard, and the principle of 'beyond reasonable scientific doubt'. This may improve applicants' understanding of why they are being asked to provide information, and the standard to be expected.

Efficiency impacts of the updated HRA guidance

27 What impact do you expect the refreshed guidance to have on the overall time taken to complete an HRA?

Not Answered

Please provide any reasoning to support your response.:

Amending the HRA guidance to include the offshore

28 Do you agree with the proposal to draft the HRA guidance so that it applies to Habitats sites in the offshore waters of England, as well as the inshore waters?

Not Answered

Please provide any reasoning or evidence to support your response:

29 Are there any parts of the HRA process in the offshore which you would like us to focus on in the guidance?

Not Answered

Please provide any reasoning or evidence to support your response:

Further comments on the draft Habitats Regulations Assessment Guidance

30 The full updated draft Habitats Regulations Assessment Guidance can be found in the above fact bank. Are there any aspects of the draft guidance not already covered in the previous questions you would like to comment on?

Please provide any reasoning or evidence to support your response:

Mitigation measures

Page 27 of the new guidance states: "Applicants can use untested or new mitigation measures if appropriate monitoring and triggers are in place over the lifetime of the plan or project."

There should be a reasonable evidential basis for expecting these 'untested or new' measures to work, and the evidence for/against the likely effects of the proposed measures should be subject to critique by the competent authority and SNCB. This is supported by case law e.g. Case C 387/15 and C 388/15 which shows that measures cannot be treated as mitigation and relied upon at AA stage if their success is not certain. Where success is not certain, the measures fall into compensatory measures under regulation 64. The guidance should also ensure that later statements about mitigation measures apply clearly to these 'untested or new' mitigation measures, for example: "[The Competent Authority] must be satisfied beyond reasonable scientific doubt that the plan or project will not have an adverse effect on the integrity of the site, once the mitigation measures are taken into account."

Also: "If the competent authority has reasonable doubt as to whether the mitigation measures will work effectively, they will not be able to conclude beyond reasonable doubt that there will be no adverse effect on site integrity".

Adaptive conditions

The new guidance states that conditions attached to a plan or project can allow for flexibility: "For example, the competent authority could include the ability to alter measures if monitoring shows that the risk of adverse effects is lower or different than first thought. They should consult the relevant SNCB before deciding to do this."

It should be clear that the monitoring allowing for such flexibility should be undertaken over a sufficiently long time period relative to the effects of the plan or project, and relative to the recovery period(s) of the affected feature(s) to satisfy the test of adverse effect.

Page 30 specifies some conditions about timing, which should also apply to marine mammals other than seals (seals are already specified here), and to fish.

Priority habitats and species

On page 36, the guidance states that: "If the appropriate assessment has shown that a priority habitat or species could be adversely affected, competent authorities may need to seek the opinion of the appropriate authority before determining whether there are IROPI. This is not necessary for reasons of:

- human health
- public safety
- important environmental benefits"

It would be helpful if the guidance clarified, non-exclusively, what constitutes important in this case, for example relative to the importance of the priority habitats, and how should e.g. benefits to non-priority habitats and species be weighed in the balance against adverse effects to priority habitats or species?

Alternative solutions

In the new guidance, page 33 states that "Competent authorities should Test whether there are feasible alternatives which could meet the project's objective and be less damaging to the network." This sentence should end with "site" rather than "network". Regulation 64 of the Habitats Regulations only refers to sites in the context of alternative solutions and IROPI. This is also the case in the current guidance and should be retained.

Page 33 also states that "Alternative solutions need to be evaluated in light of the original purpose of the plan or project, including any relevant policy context. An alternative solution will:

- achieve the same objective as the original plan or project
- be financially, legally and technically feasible
- not have an adverse effect on the integrity of the habitats site or any other habitats site or be less damaging to the integrity of the habitats site affected and to the site series as a whole"

The second bullet point here refers to financial considerations, which is consistent with the current iteration of the HRA guidance. However, in Case C 411/19 (WWF Italia v Presidenza del Consiglio dei Ministri), the Court clarified that alternative solutions cannot be rejected purely on economic grounds. As summarised in later commentary: "economic impacts of alternatives alone are not sufficient to reject them." This should be reflected in the guidance.

Methods to secure compensatory measures

Guidance on compensatory measures should also include a statement that, once potential compensatory measures have been identified by the Applicant, the methods for securing such measures should first be agreed with the relevant Competent Authorities before attempts are made to progress these measures, and before proposals are made public. This may reduce the likelihood of inappropriate approaches affecting the achievability of such measures, improving outcomes for the proposer of the Plan/Project and for local stakeholders. For example, where compensatory measures require land to be secured for compensatory habitat, early engagement on these proposed measures and the approach to stakeholder engagement for securing them may avoid the situation where inappropriate stakeholder engagement reduces the feasibility of securing the land.

In-combination effects

The wording regarding in-combination effects on page 22 seems confused. It currently states: "If the result of that appropriate assessment is that there is not an adverse effect on the integrity of a site 'alone', but that there is still some effect once mitigation measures have been taken into account, the competent authority must go on to assess whether there is an adverse effect in combination with other plans and projects." How can there be an effect after mitigation measures are taken into account, when there hasn't been an adverse effect in the first place? This should be corrected and clarified. It

should also be clearer that in-combination effects are more thoroughly considered at AA; currently there is a lot of emphasis on in-combination effects at the screening stage but it is not clarified sufficiently how the range of in-combination effects is to then be identified and assessed at Appropriate Assessment. For example, in the screening section it is stated that once one type of in-combination effect has been identified, it is not necessary to identify other in-combination effects, because the pressure is to be taken forward to stage 2 (Appropriate Assessment). It is not then clear that during stage 2, the range of in-combination effects should be explored, beyond the initial one that was identified during screening.

Derogations

The text should be clearer that no IROPI considerations can be taken into account at stages 1 – 3 (Screening, Appropriate Assessment, and consideration of Alternative Solutions). These tests are sequential. This is supported by the ruling in C-521/12. Paragraph 36 is key on two points here: “[...] The assessment of any IROPI and that of the existence of less harmful alternatives requires a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified”. The damage to the site is identified through appropriate assessment, which necessarily precedes the alternatives and IROPI tests.

Corry and Fingleton Reviews

The Overview of this consultation states that “Evidence from the Corry Review, and the Habitats Regulations Post Implementation Review (PIR) has suggested that the current HRA guidance contributes to uncertainty, delays and overly precautionary decisions”.

The Corry Review states that its case study of Hinckley [sic] Point C demonstrates that implementation of the Habitats Regulations “is also resulting in high-cost mitigation measures being implemented”. This is a theme that was built upon in the recent Fingleton Review.

D&S IFCA has already outlined at length the flaws in the Corry and Fingleton Reviews, and provided examples of how uncertainty and delay have been misattributed to regulation, and how best available data have not been used appropriately:

<https://www.devonandsevernifca.gov.uk/wp-content/uploads/2025/12/Devon-and-Severn-IFCA-Response-to-Fingleton-Nuclear-Regulatory-Review-2025-v1.0-1.pdf>

Given that the Corry Review places so much emphasis on the role of greater data transparency in reducing uncertainty, and the use of data to power decision-making, 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 meaningfully 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 and, in this case, the application of Habitats Regulations Assessments.