



Briefing January 2023

EDF Refuses to Back Down on Acoustic Fish Deterrent Planning Condition for Hinkley Point C.

A condition placed on EDF by the Environment Agency (EA) when it was awarded permission to build Hinkley Point C (HPC) was that Acoustic Fish Deterrents (AFDs) would be installed on the two massive cooling water intake heads 3 kilometres offshore from the nuclear site. Since February 2019, EDF has been seeking a variation on this planning condition.

In late November 2019 the EA advised EDF that its preliminary position was that it was unable to conclude removal of the AFD would have no adverse effect. On 4 August 2020 EDF served the EA with a deemed refusal notice, and in September appealed to the Secretary of State against the deemed refusal.

The appeal was heard by the Planning Inspectorate (PINS) from 8 to 24 June 2021. PINS normally hears and makes decisions on permit appeals. In this instance, the Secretary of State (SoS) for Environment and Rural Affairs, Rt Hon. George Eustice MP, decided he would make the final decision. The PINS inspector produced a report presenting recommendations for final determination by the Secretary of State.¹

On 2nd September 2022, after much delay, the SoS (at that time still George Eustice) dismissed EDF's appeal to remove the acoustic fish deterrent (AFD) conditions from the original permit.²

But EDF refuses to give up. The Company indicated it would challenge this decision by Secretary of State through Judicial Review.

In January 2023, the Environment Agency reported that it had received an application to vary the operational Water Discharge Activity (WDA) permit, to remove conditions that relate to an Acoustic Fish Deterrent (AFD) and add a waste stream for discharge from the Fish

¹ The Inspector's Report is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101903/environmental-permit-appeal-app-epr-573-hinkley-point-c.pdf

² The Secretary of State's Decision Letter is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101961/hpc-decision-letter-220902.pdf

Recovery and Return system (FRR). This was similar to the application made in 2019, and deemed to be refused by the applicant in 2020.³

However, the key change since 2019 is that the Environment Agency has now decided that the appropriate way of regulating HPC's cooling water intake is through the Development Consent Order (DCO) process rather than Water Discharge Activity (WDA) permitting process. This brings the Environment Agency's approach in line with the way the process has worked at Sizewell C.

The Environment Agency will still assess the impact of removing the requirement for an AFD on aspects relating to the potential for water pollution and/or effects on habitat and species directly affected by the discharge from the fish recovery and return outfall, but it won't be looking at the impact of the cooling water intake.

EDF will now have to apply to PINS for a variation to the HPC DCO to remove the condition that they install Acoustic Fish Deterrents (AFDs) on the cooling water intakes. In order for them to have the best chance of persuading the Inspectors to Permit the removal, EDF is in discussion with interested parties, including the Environment Agency, about the measures they plan to take to improve the prospects of fish populations and fish assemblies in the Bristol Channel and to compensate for fish losses including two fish protection measures they will retain in the absence of the AFD. EDF says its aim is that HPC won't have a negative impact on fish/marine life in the Bristol Channel.

In response to a public consultation held by the Environment Agency in 2019, marine and conservation groups, including the Angling Trust, Blue Marine Foundation, Bristol Channel Federation of Sea Anglers, Severn Rivers Trust, Somerset Wildlife Trust and Wildfowl & Wetlands Trust, argued that up to half a million fish would be sucked into HPC every day if the new cooling water intakes were installed without an AFD.⁴

The Severn Estuary supports some of the most important and protected habitats in the UK, with its vast tidal range playing a major role in creating the unusual physical conditions of the Estuary. The intertidal zone of mudflats, sandbanks, rocky platforms, and saltmarshes is one of the largest in the UK. This diversity of habitats allows the Estuary to support internationally important numbers of waterfowl and large numbers of aquatic invertebrate populations. The Estuary also provides a valuable corridor for migratory fish and acts as a key nursery area for many species.⁵

The Environment Agency has launched a 20-day consultation on the WFD application. And has announced a 'Meet the regulator' Teams meeting on 2nd February.

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https://7c08w.r.a.d.sendibm1.com/mk/mr/magfJxshGKJs3JOlub9SSdizxiMKdfxb39tvQH0xdJDrCzs_p9yaNOeXiTktj4ThGg7ct9SiyQNYBhvBfDw4jIFfME1Xc9bflsGt37wIHodLCt3WeBEKbvfXPHj4wRGZo2tV5NU

⁴ See https://www.no2nuclearpower.org.uk/wp/wp-content/uploads/2021/01/AFD_Briefingv2.pdf

⁵ See <https://www.no2nuclearpower.org.uk/wp/wp-content/uploads/2021/08/HinkleyBiodiversity.pdf>

Bibliography

Briefing: EDF's Appeal against the Environment Agency's Deemed Refusal to allow a permit variation relating to the installation of an Acoustic Fish Deterrent at Hinkley Point C. January 2021 https://www.no2nuclearpower.org.uk/wp/wp-content/uploads/2021/01/AFD_Briefingv2.pdf

Briefing: "EDF's Hinkley C Nuclear Power Station could wipe out 11 billion fish – decimating stocks in Severn Estuary for 60 years". August 2021
<https://www.no2nuclearpower.org.uk/wp/wp-content/uploads/2021/08/HinkleyBiodiversity.pdf>

Stop Hinkley Press Release 26th August 2021: "George Eustice MP must reject EDF's plans for a Severn Estuary Fish Killing Machine".
<http://stophinkley.org/press-releases/george-eustice-mp-must-reject-edfs-plans-for-a-severn-estuary-fish-killing-machine/>

Stop Hinkley Letter to George Eustice dated 7th October 2021
<https://www.no2nuclearpower.org.uk/wp/wp-content/uploads/2021/11/Letter22.pdf>