Case Name: *Oceana v Secretary of State for Energy Security and Net Zero & Ors* [2025] EWHC 3146 (Admin) 28 November 2025

Full case: Read Here

Commentary: This case concerned a judicial review challenge to the lawfulness of three appropriate assessments ("**AA**"). These AAs, published by the Secretary of State for Energy Security and Net Zero ("**First Defendant**") for the purpose of discharging the First Defendant's function under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 ("**the 2001 Regulations**"), would enable the Oil and Gas Authority (trading as North Sea Transition Authority) ("**Second Defendant**") to grant Petroleum Act licenses as part of the 33rd Seaward Oil and Gas Licensing Round. These licences are for the searching and boring for, and for the getting of, petroleum, including oil and gas, which can be found naturally in or beneath the territorial seas adjacent to the United Kingdom.

The Claimant submitted that the AAs were not complete and were, therefore, unlawful, by failing to consider (Ground 1) the impact of accidents caused by oil and gas activities on Marine Protected Areas ("**MPAs**"), (Ground 2) the impact of climate change on increasingly vulnerable MPAs and in relation to the licenced activities, and (Ground 4) cumulative and in-combination effects of the licenced activities on the MPAs. The Claimant also contended that (Ground 5) the First Defendant failed to provide cogent reasons for departing from advice from the Joint Nature Conservation Committee. The Claimant furthermore sought to add a further ground of challenge which contended that (Ground 6) the AAs were conducted unlawfully as Straight to Second Term Licences.

Mould J dismissed all of the Claimant's grounds of challenge, considering that it was perfectly proper for the First Defendant to take the view that the AAs needed only to assess the adverse effects on the conservation areas to an extent proportionate to the precision of the plans, or lack thereof, at this early stage.

Discussion

Whilst the AAs are the stated target of this judicial review, the specific decision under challenge is the First Defendant's decision, taken pursuant to regulation 5(3) of the 2001 Regulations, to agree to the grant of 31 Petroleum Act licences ("**Licences**").

The Claimant contended that the AAs did not contain complete, precise, and definitive findings and conclusions capable of removing all scientific doubt as to the effects of the licensed activities on Special Areas of Conservation, Special Protected Areas, and, in particular, MPAs. Pursuant to the precautionary principle, this meant that the First Defendant's decision to agree to the grant of the Licences was unlawful because he could not properly be satisfied that there was no reasonable doubt that there would be no adverse effects on the integrity of any protected site. Consequently, the decision taken by

the Second Defendant to grant the Licences was, in each case, also unlawful. The Claimant accordingly proceeded on four grounds of challenge, and sought to add a further ground of challenge.

The relevant consenting regime for offshore oil and gas is, Mould J considered, a multi-stage consenting process. Adverse effects on protected sites must be assessed at every relevant stage of the consenting procedure, although only to the extent that is possible based upon the precision of the plan: as per the opinion of Advocate General Kokott in ***Commission v United Kingdom*** [2006] Env LR 673 ("**EC v UK**"), and applied by the Court of Appeal in ***R (Forest of Dean (Friends of the Earth)) v Forest of Dean District Council*** [2015] EWCA Civ 683; [2015] PTSR 1460 ("**Forest of Dean**").

The defence to the Claimant's challenge rests on the supposition that it is right and proper for the First Defendant to conclude that at this early stage in the consenting process, it is not possible to carry out a meaningful assessment of the likely effects of activities and works carried out under the Licences, in particular, as to the risks posed to MPAs of accidental events by works carried out under future consents. That is because it is not possible to know, at this early stage, details of the location, nature, and timing of those activities, might they even be carried out at all. Indeed, whether from climate change caused by GHG emissions from activities carried out under the licences, or from accidents that occur in relation to the activities in the initial phase and before consent, risk could not be established on a basis that is specific to certain MPAs, and could only be established on a general and uncertain basis.

Mould J agreed with this defence, and rejected all of the Claimant's grounds of challenge. Notably, he viewed that the First Defendant and the Offshore Petroleum Regulator for Environment and Decommissioning had a reasonable basis in the circumstances to conclude that their method properly accorded with the precautionary approach which Article 6 of Council Directive 92/43 and regulation 63(2) of the Conservation of Habitats and Species Regulations 2017 required: ***C G Fry and Son Limited v Secretary of State for Housing, Communities and Local Government*** [2025] UKSC 35 at [56]-[57].

Despite defeat for the Claimant in court, this judgment raises two points of interest for future strategic climate litigation, whether in relation to future consents specifically granted pursuant to the Licences, or concerning other licences for oil and gas activities.

First, by resting its defence on a commitment to consider adverse effects on areas of conservation at every relevant stage to an extent proportionate to the precision of the plan, assessment by the First Defendant must be accordingly updated at each subsequent stage of the procedure: *EC v UK*; and *Forest of Dean*. In particular, this will require the Defendant to better grapple with in-combination effects later on. This difficulty, taken together with the need to carry out environmental impact assessments, which will have

to take into account Scope 3 emissions in any event, may well prove fatal for future consents pursuant to the Licences: ***R (Finch) v Surrey County Council*** [2024] UKSC 20; [2024] PTSR 988.

Second, Mould J concluded that despite having heard substantial evidence from the Claimant's expert, the Claimant could not demonstrate any specific harm to one or more of the MPAs from activities carried out under the Licences. Climate change could only be said to cause harm to the territorial marine environment generally. Risks of accidents due to activities carried out under the Licences could not be located to any specific MPAs either, owing to the uncertainty of the geographical distribution of putative consents.

Mould J may have intended for this reasoning to be left, in part, as *obiter dicta.* For both Ground 1 and Ground 2, he explained that there would be no gap left in the assessment of harm, as elucidated by the mandatory requirements of a regulatory regime designed to prevent oil and chemical spills and discharges, and the environmental impact assessment regime which requires consideration of climate harm. Nevertheless, it raises an interesting question as to the role of expert evidence in environmental judicial review, where the specificity of harm to protected sites is often scientifically uncertain, but to the court, clarity as to this point may prove determinative in certain circumstances.

Case summary prepared by Adam Choudhury