

Application for judicial review of new UK deep water oil licenses

Introduction

Greenpeace has recently applied to the High Court for judicial review of the Secretary of State's decision to grant oil production licenses in the deep waters¹ of the Atlantic Margin west of Shetland. We are seeking an order quashing the licences and/ or a declaration that the granting of such licenses is unlawful.²

The grounds for our claim include that the Secretary of State for Energy and Climate Change has failed to carry out an "appropriate assessment" of the risks new drilling poses to protected habitats and species in light of the Deepwater Horizon disaster. (An appropriate assessment is an environmental assessment of the potential risks to areas protected under the Habitats Directive.) The judicial review was lodged in the High Court on 12th November 2010 and is case number CO/117841/2919.

What is a judicial review?

Judicial review is the "procedure by which you can seek to challenge the decision, action or failure to act of a public body such as a government department or a local authority or other body exercising a public law function"³ by asking the Court to exercise its powers of review of the lawfulness of administrative decisions. The usual remedy from a successful judicial review is that the government "will be ordered by the court to reconsider or change its decision."⁴

What are Greenpeace demanding?

Greenpeace is asking for the following remedies in respect of decisions made by the Secretary of State for Energy and Climate Change:

- A quashing order in respect of Seaward Production Licence No.P1740,⁵ granted to Faroe Petroleum⁶ on 4th October 2010.
- A declaration that the government's decisions of 22nd October 2010 that no appropriate assessment is required, under Article 6 of Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna,⁷ in respect of licences for oil exploration activities in deep water, is unlawful.
- A declaration that the government's decision of 26th October 2010 to grant further Seaward Production Licences in respect of the exploration and production of oil in deep water, pending the outcome of the completion of an appropriate assessment following the outcome of the investigation into the causes and implications of the BP Deepwater Horizon rig explosion, is unlawful.
- A declaration that the government's reliance on the conclusions reached in the Strategic Environmental Assessment of June 2009 insofar as it relates to the exploitation of oil reserves in deep water areas is unlawful.

Oil and the Atlantic Margin

The Atlantic Margin is an area of the Atlantic Ocean on the edge of the UK Continental Shelf (UKCS) which by the oil industry's own admissions is "characterised by extreme environmental conditions such as wind, wave, temperature and water depth."⁸

Oil exploration west of Shetland began in the 1970s⁹ and the basin is thought to hold around 17% of the UK's remaining oil and gas,¹⁰ equivalent to around 3 billion barrels of oil.¹¹ However, the extreme nature of the local environment means it is technically challenging to operate in, hence the area remains much less developed than other parts of the UKCS, especially the North Sea. Since 1999 only 33 exploratory wells have been drilled on the Atlantic Margin.¹²

However, as oil production at mature fields in more accessible parts of the UKCS begins to decline, the Atlantic Margin west of Shetland is now seen by both industry and government as having an increasingly central role in the UK's oil supply.¹³ As a result, more and more oil companies are applying to the UK government's Department of Energy and Climate Change for licenses to drill exploratory wells in the region,¹⁴ increasingly in waters over 1,500m deep.¹⁵

Oil licensing in the UK

The Department of Energy and Climate Change (DECC) grants all licences and consents for new drilling operations on the UKCS. New licenses are awarded as part of annual licensing rounds, when companies are invited to apply to drill on specific "blocks" of open water.

This is done under the Offshore Petroleum and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended)¹⁶ and the licensing stage precedes the drilling consent stage.

Following the most recent 26th licensing round 144 licenses were offered by the government.¹⁷

DECC also awards drilling consents. These relate to a particular area or well. For example, DECC gave Chevron a drilling consent for Lagavulin well on the 30th December 2010 despite Chevron's modelling showing a spill lasting only 14 days could reach the shores of Scotland, Norway Greenland and the east coast of England¹⁸. There is a decision due over another controversial project proposal from the little known US oil company, Hess. Again the company has told DECC that a spill lasting ten days would hit coasts from as far away as Norfolk, Germany and the Netherlands.

After the BP blow out in the Gulf of Mexico, there is mounting concern about the safety of offshore drilling in UK waters. The HSE has undertaken a number of inspections over the past year which have exposed critical safety issues on a number of North Sea rigs.¹⁹ The regulator found only one-in-30 of Britain's North Sea oil platforms was in a good condition when inspected²⁰.

What is the Greenpeace case really about?

We want to make sure that the government follows its own rules before allowing new licenses for oil drilling. This means not assuming there is "zero risk" of a spill and instead carrying out adequate environmental assessments under the Habitats Directive, including consideration of the lessons from the Deepwater Horizon disaster, which thus far it has been unwilling or unable to do. Until the Government is in a position to eliminate risk to protected areas and species it should not go ahead.

What will happen next?

Our application will be considered by a judge on the papers (i.e. without a hearing) in the High Court in London today. There are a number of possible outcomes:

- Permission refused – Greenpeace have the right to renew the application at an oral hearing.
- Permission granted. The government will have 28 days within which to serve their defence. We reply and the case is then fixed for a full hearing.

- The Judge orders a “rolled-up” hearing – formally this means that the application for permission and the review itself will be heard together; effectively it is the green light for a hearing of the application for judicial review.

If the High Court decides that they will hear our application for review, the JR will formally begin. The government will have 28 days to prepare a legal defence of their position and present it to the Judge who will then consider both sides, although if the judge considers that the case is urgent it may be “expedited” and the time limits will be shorter.

What do you expect your case to achieve?

If the High Court agrees we have a case, this would throw into doubt the viability of more than 20 deep sea drilling licenses and would lead to a tightening up of the process for approving dangerous oil drilling projects in deep waters around the UK.

1 For the purposes of the proposed judicial review, new oil wells are considered to be “deep water” when drilled at depths of over 300m. This is consistent with the views of the UK government, Health and Safety Executive and Maritime and Coastguard Agency. See

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/450we10.htm>

² The Government has granted one licence, to Faroe Ltd.. It has decided to grant a further 22 but these have not yet been issued.

3 <http://www.hmcourts-service.gov.uk/cms/1220.htm#two>

4 <http://www.elc.org.uk/pages/lawukjudicial%20review.htm>

5 <https://www.og.decc.gov.uk/upstream/licensing/licencedocs/P1740.pdf>

6 <http://www.fp.fo/Default.aspx>

7 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0043:20070101:EN:PDF>

8 http://www.uk.total.com/activities/west_of_shetland.asp

9 http://www.dongenergy.co.uk/e_and_p/exploration/pages/background.aspx

10 https://www.og.decc.gov.uk/UKpromote/wos_task.htm

11 <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/45010.htm>

12 https://www.og.decc.gov.uk/information/bb_updates/appendices/Appendix4.htm#fn1

13 <http://www.oilandgasuk.co.uk/news/news.cfm/newsid/487>

14 <http://www.pilottaskforce.org.uk/data/newsarchive.cfm/173/0/0>

15 <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenergy/450/45005.htm>

16 <http://www.legislation.gov.uk/ukxi/1999/360/contents/made>

17 http://www.decc.gov.uk/en/content/cms/news/pn10_112/pn10_112.aspx

¹⁷ <http://www.guardian.co.uk/business/2010/dec/07/shetland-deepwater-oil-spill-forecast>

¹⁹ <http://blogs.ft.com/energy-source/2010/09/15/bps-failures-are-symptomatic-of-a-wider-problem/>

²⁰ <http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8284455/BP-shuts-UK-field-after-oil-leak.html>