Marine Management Organisation

V

John Sauven

Greenpeace UK Ltd

Ruling on Jurisdiction

1. The MMO has brought a prosecution under section 85 of the Marine Coastal Access Act 2009 against the two Ds. John Sauven is the Chief Operating Officer of Greenpeace. The Ds assert that the MMO has no jurisdiction to bring the prosecution as the allegation occurred beyond UK territorial waters and the allegation complained of falls outside the exceptions that permit coastal states, under the *United Nations Convention on the Laws of the Sea* 1982 (UNCLOS), to assert jurisdiction over this area of the sea. I heard legal argument on the point on 1st and 2nd December 2021; this is my legal ruling.

Facts

2. The facts broadly do not seem to be in dispute between the parties.
3. Brighton Offshore is an area of sea about 45 km south of West Sussex. It was designated a Marine Conversation Zone by the UK Government in January 2016. Its seabed of coarse sands and gravel hosts a diverse range of species and protects deep water habitats that contain hydroids, bryozoans and sponges

where hermit crabs and starfish thrive and an assortment of animals including worms, sea anemones and bivalves.

4. On 7th January 2020 a boat owned and operated by Greenpeace, the Esperanza, took on board a shipment of 20 granite boulders at the port of Rostock, Germany. The Esperanza was flagged to the Netherlands.
5. By 12th February the vessel was anchored 5 nautical miles off Brighton.
6. A warning was issued on 15th February 2020 to Greenpeace by officers of the MMO that the Ds needed a licence to carry out any proposed marine licensable activity and that one had been neither sought nor issued.
7. Greenpeace assert that three types of fishing methods damage the marine beds of areas such as Brighton Offshore when used: bottom trawlers, fly-shooters and supertrawlers as their methods and depth of use disturb the habitats and so the flora and fauna.
8. On 23rd February 2020 an email was sent by Mr Sauven to the Secretary of State for the Environment, Food and Rural Affairs George Eustice MP informing him that the boulders were about to be deposited at Brighton Offshore. The actions of Greenpeace were to protest at the British Government's lack of action in preventing certain types of fishing methods that damage the marine environment. The placing of boulders on the sea bed was designed to deter the undesirable fishing methods.
9. A vessel with MMO officers, Ocean Marlin, was present at the time of the protest and a similar warning to that issued on the 15th February was repeated to Greenpeace on 23rd February 2020.
10. On 23rd and 25th February 2020 from the Esperanza 20 granite boulders were deposited onto the seabed at Brighton Offshore. There was a film crew on an adjoining vessel to

record the protest, and a banner saying 'Get Ocean Protection Done' was flown from Esperanza. The names of well-known public figures were visible on the boulders. Publicity for the protest was sought to raise the issue before the public.

11. On 26th February 2020 the Esperanza entered the port of Shoreham and MMO officers spoke to the occupants and requested certain items.

Legal proceedings

12. Under section 85(1) and 65 (1) of the 2009 Act it is a criminal offence to carry out a marine licensable activity without a licence. Section 65(1) says: '*No person may carry on a licensable activity except in accordance with a marine licence granted by the appropriate licensing authority*'. Section 85 makes s.65 a criminal offence.

13. The MMO assert that depositing of boulders is a licensable activity under s.66; that Brighton Offshore is within the UK marine licensing area (see s.66(4)); and that no licence was issued prior to the boulders being deposited.

14. The appropriate licensing authority is the MMO (see s.115 of the 2009 Act and article 4 of the Marine Licensing Order 2011).

15. Mr Sauven, on behalf of both Ds, was invited for an interview but declined.

16. The MMO is an organisation based in Newcastle and usually bring their prosecutions in the city.

17. The Ds were summoned to Newcastle Magistrates Court who at a hearing on 30th July 2021 elected trial by jury. The matter came before me at Newcastle Crown Court, where this preliminary issue on jurisdiction was taken. The trial, if there is to be one, is due to start on 6th June 2021 before me, sitting with a jury, and estimated to last 5 days.

EEZ, UNCLOS and the 2009 Act

18. Which state has jurisdiction over a vessel sailing on the seas at Brighton Offshore?

19. The UK territorial sea is an area that extends to 12 nautical miles from the coast. A coastal state has sovereignty and can impose a legal regime that covers its own territorial sea.

20. An (Exclusive Economic Zone) EEZ is an area beyond and adjacent to the territorial sea of a coastal state. It extends 200 nautical miles from the coastline or is the median between two coastal states' boundaries if their EEZ boundaries would overlap.

21. Brighton Offshore falls outside the UKs territorial sea and within the UK's EEZ.

22. The legal regime of any coastal state for an EEZ is fettered by the provisions of Part V of UNCLOS. A coastal state cannot impose its own legal regime with regard to its EEZ in excess of that permitted by UNCLOS.

23. Article 92 of UNCLOS states '*Ships shall sail under the flag of one state only and…shall be subject to its exclusive jurisdiction on the high seas'*.

24. Article 58 of UNCLOS states '*In the EEZ, all states…enjoy, subject to the relevant provisions of the Convention, the freedoms referred…of navigation…and other internationally lawful uses of the sea related to these freedoms such as those associated with the operation of ships*.'

25. The Greenpeace vessel was flagged to the Netherlands and not the UK. It is therefore, subject to several provisions in UNCLOS, free to navigate and sail in the UK's EEZ and remain

under the legal regime of the Netherlands when it sailed in the UK's EEZ by virtue of Articles 92 and 58.

26. Article 56 of UNCLOS does provide exceptions that permit coastal states (as long as they act in a manner compatible with the provisions of UNCLOS) to assert jurisdiction over vessels flagged to other states in certain circumstances in their EEZs.

27. The relevant UNCLOS provision in this case is Article 56(1)(b)(iii) which says '*In the EEZ the coastal state has…jurisdiction as provided for in the relevant provisions of this Convention with regard to…the protection and preservation of the marine environment*'.

28. The MMO assert that the licensing regime of the 2009 Act is compatible with this exception set out in Article 56 of UNCLOS and so the UK is entitled to assert the provisions of the licensing regime in the EEZ to non-UK flagged vessels.

29. The question for this court therefore is: did the depositing of boulders by the crew on a non-UK flagged vessel in the UK's EEZ fall within the licensing regime of the 2009 Act so that the MMO has jurisdiction to take enforcement proceedings, or did the depositing fall outside the exception provided by Article 56 and so beyond the jurisdiction of the UK as the coastal state to enforce their domestic licensing regime?

<u>UNCLOS and domestic legislation</u>

30. The operation of the principles to which a coastal state can assert its domestic laws within its EEZ, and the proper interpretation of UNCLOS, is illustrated by two cases. The tension between the exercise of freedom of navigation within an EEZ under UNCLOS, under Articles 92 and 58, and the legislative enforcement of coastal states via Article 56 is examined.

31. M/V Saiga No 2 (St. Vincent and the Grenadines v Guinea), Case No 2 was a 1999 judgement from the International Tribunal of the Sea.

32. A vessel flagged to St. Vincent and the Grenadines, the Saiga, an oil tanker, and its Ukrainian crew were sailing in an EEZ 250 km off the west coast of Africa. The vessel was selling gasoline oil (bunkering) to other vessels. The crew were arrested, the vessel detained by officers of the Republic of Guinea, the cargo of gasoline seized and criminal charges were filed against members of the crew under the Customs Code of Guinea. Gasoline oil was controlled by the Code in certain waters. The main charge was that under the law of Guinea it was unlawful to import gas oil into their customs radius.

33. The tribunal found that the extension of domestic customs law into the EEZ was contrary to the Convention. The question for the tribunal was: was the state of Guinea entitled to enforce its customs laws in an EEZ? The Tribunal found that there was no exception under Part V of UNCLOS that gave the Republic of Guinea the jurisdiction to take enforcement proceedings in relation to vessels flagged to another state in its EEZ. The law officers from Guinea therefore did not have the power to enforce the domestic customs code. The laws and regulations of Guinea did not apply to the Saiga as they were incompatible with the Convention because they were beyond the scope of the jurisdiction provided by Article 56. The arrest and detention of the crew of the Saiga and the prosecution of its Master and confiscation of the cargo were contrary to the Convention.

34. Arctic Sunrise Arbitration (Netherlands v Russia) was a 2015 judgement by the tribunal established by UNCLOS. Netherlands claimed at the tribunal that Russia had violated its obligations towards them under UNCLOS. Russia chose not to be present, nor make representations to the tribunal.

35. A Greenpeace vessel flagged to the Netherlands had entered an EEZ off Russian waters in order to protest at Russian oil production. The vessel was boarded by Russian officials (said to be of the special forces division) and the crew detained in pre-trial detention under Russian domestic law and charges brought for piracy and hooliganism.

36. The tribunal ruled that Russia had acted in excess of the legal regime permitted under Article 56 of UNCLOS in the EEZ by enforcing its domestic legislation, and so had breached its obligation to the Netherlands under the Convention. The boarding, seizure and detention had lacked any legal basis, Russian domestic law being insufficient in these circumstances.

<u>Arguments</u>

<u>MMO</u>

37. Part XII of UNCLOS requires member states (of which the UK is one) to implement a system of marine protection. The 2009 Act was passed by the UK Parliament (and came into force on 6th April 2011) to comply with its duties imposed by UNCLOS. The Act set up the marine licensing regime, and the MMO to enforce it, in areas that include the EEZ that contains Brighton Offshore.

38. Article 192 of UNCLOS says '*States have the obligation to protect and preserve the marine environment*'.

39. Brighton Offshore is in the UK marine licensing area. Section 66 of the 2009 Act defines what is a marine licensable activity. This includes such things as scuttling ships and igniting material. 'Depositing' any substance or object from a vessel into the sea is one of the marine licensable activities.

40. The UK Parliament were entitled to pass s.66 in its current terms as it was compliant with UNCLOS. Article 56 (1) (b) (iii)

grants the coastal state of an EEZ jurisdiction with regard to *'the protection and preservation of the marine environment'*. The relevant marine licensable activity in this case is permitted by Art 56 of UNCLOS as it falls within that exception, and so the MMO on behalf of the relevant coastal state (here the UK) can enforce its licence regime on a vessel flagged to another state.

41. The phrase in Art 56 '*protection and preservation of the marine environment*' is wide and deliberately so. The licensing regime is in furtherance of the protection of the marine environment and so is Article 56 complaint.

42. The MMO works on the basis that the whole of the 2009 Act is UNCLOS compliant – otherwise its determining officers in applying the licencing regime would face an unworkable task in relation to non-UK vessels.

43. In the <u>Saiga</u> case Guinea had purported to enforce its customs code in its EEZ which falls well outside the exceptions in Article 56 and so it not surprising that a ship flagged to another state fell outside Guinea's domestic law.

44. In the <u>Arctic Sunrise</u> case the Greenpeace vessel flagged to the Netherlands was entitled to the freedom to sail (subject to the jurisdiction of the Netherlands) and Russia was granted no legal right to board, detain and prosecute members of the crew by any provisions of UNCLOS.

45. Neither case assist Greenpeace directly here, because the prosecution by virtue of s66 of the 2009 Act are specifically for marine protection and so within Art 56. But the cases do assist in indicating the operation of UNCLOS in EEZs and how an international convention and domestic legislation must be construed/understood together.

46. In addition: the UK was obliged up until 31st December 2020 to conform to the EU Common Fisheries Policy (CFP), its laws and regulations. It is only since leaving the EU that the UK has been permitted to amend its policy towards methods of

fishing. The current post-EU position is as per the CFP because to avoid a hiatus the UK carried over the EU laws and regulations while it embarked on a programme of review, collection of data and consultation. This process had to wait until after the trade agreement between the UK and the EU was finalised. The actions by Greenpeace within two months of leaving the EU (and the taking of the boulders on board the vessel within 7 days of leaving the EU) was in these circumstances too soon to be an effective or realistic protest.

47. In summary it is said on behalf of the MMO: the 2009 Act is UNCLOS complaint. Greenpeace deposited material from the Esperanza in the UK's EEZ. Such depositing is a marine licensable activity. Greenpeace failed to obtain a licence before doing so. Therefore, they committed an offence under the 2009 Act, and the MMO are entitled to enforce it by prosecuting.

Greenpeace arguments

48. On the particular facts of this case there is no basis in international law for the UK to impose or enforce a licensing requirement. The UK's jurisdiction to protect and preserve the marine environment is only as wide as that provided for by the relevant provisions of UNCLOS.

49. Articles 92 and 58 of UNCLOS read together mean that the vessel Esperanza was entitled to the exclusive jurisdiction of its flagged state (Netherlands), subject to Article 56.

50. The MMO can only claim jurisdiction to bring this (or any) prosecution because of UNCLOS and the exception in Article 56 rather than the 2009 Act. The 2009 Act provides the mechanism but Article 56 of UNCLOS the jurisdiction. The MMO has mistakenly sought to divorce the 2009 Act from

UNCLOS. It is not sufficient for them to assert that the provisions of the 2009 Act is UNCLOS compliant generally under the Art 56 exception. It is incumbent on MMO only to prosecute in a particular case on its particular facts if it falls specifically within an Art 56 exception.

51. Just because the 2009 Act may derive the UK's legal duties under UNCLOS generally it does not follow that all the licensable activities listed in s.66 are compliant. The court should approach this the other way round and ask itself: is this particular marine licensable activity permitted by an exception within Art 56?

52. MMO's enforcement powers are subject to the limits imposed by UNCLOS (and no more). Here on the facts the activity was outside the exception provided by Art 56 and so unenforceable. So, even if the activity was licensable under the 2009 marine licensing regime, it, on its facts, falls outside the exception provided by Art 56 the MMO should not prosecute and if they do the court should declare that there is no jurisdiction to do so.

53. Article 56 (1) (b) (iii) does not provide the jurisdiction to the UK (and so the MMO) to enforce on the facts of this case. The boulders were not being deposited or dumped, they were being placed in the sea as a protest against the laxness of the UK Government in relation to their failure to prevent damaging fishing methods. The boulders were natural granite and therefore not harmful nor polluting to the marine environment.

54. The relevant article 56 exceptions (and UNCLOS generally) are to be read in the light of the object and purpose of protecting and preserving the marine environment from harmful and polluting dumping. That is not what Greenpeace did on the particular facts of this case.

55. If the activity complained of cannot be shown to be either harmful or polluting then it falls outside the exception of Art 56

and beyond the jurisdiction of the coastal state, whatever the terms of the 2009 Act. Here the actions of Greenpeace (which are not in dispute) was outside the exception provided by Art 56 and so unenforceable by the coastal state (via the MMO).

56. In summary, the Esperanza was flagged to the Netherlands and so that state, not the UK, retain jurisdiction to enforce its legal regime (see Art 92). The protest involved no harmful dumping or polluting. The Dutch retain enforcement exclusivity on the facts and circumstances of this case. The Ds should be subject not to the UK's 2009 Act but to the Dutch Water Act (which itself derives from UNCLOS).

Analysis

57. The marine licensable activity complained of here is the depositing of a number of boulders into the sea. Section 66(1) lists the activities that are licensable (within the UK marine licensing area). They include '*1. To deposit any substance or object…either in the sea or on or under the sea from any… vessel*'.

58. There are various other licensable activities listed such as scuttling vessels, dredging, depositing explosive substances and articles, incinerating substances and objects etc..

59. The Act therefore uses the more widely defined word 'deposit' rather than the more pejorative and narrow word 'dumping'.

60. Art 56 of UNCLOS provides an exception for the purpose of '*the protection and preservation of the marine environment*'.

61. Giving 'deposit' its natural meaning within the phrase 'depositing any substance or object in, on or under the sea' seems on the face of it that it's a restriction (and so licensable) for the purpose of protecting and preserving the marine

environment. If that is right, then the licensable activity would be in accord with the object and purpose of UNCLOS (and so permitted under the Art 56 exception).

62. Article 1 of UNCLOS defines some terms. Art 1(1)(4) defines '*pollution of the marine environment*' as the '*introduction by man directly or indirectly of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities*.'

63. The definition of what is included in pollution of the marine environment in this Article is a wide one (and not one of closed categories). If that is right, then for Parliament to use the word 'deposit' in section 66 would meet the UK's obligations under UNCLOS to protect and preserve the marine environment. The phrase '*deposit any substance or object'* would cover '*introduce… substances…which results or is likely to result in'* the deleterious effects as set out in Article 1.

64. Here Greenpeace introduced substances into the marine environment which were designed to result in a hindrance to the marine activity of certain types of fishing. That was their stated purpose. So, on this view their activity as defined by Article 1 falls into the definition of UNCLOS of '*pollution of the marine environment*'. The Ds may argue that the undesirability of the methods of fishing on the marine environment they were seeking to prevent makes their stance preferable re: protecting the environment, but at this stage of the case I am merely considering the question of jurisdiction and whether the relevant provision of section 66 the 2009 Act goes beyond what is permitted by Article 56 of UNCLOS.

65. Ms Brimelow QC, on behalf of the Ds, submits that the MMO by enforcing a licensing regime that requires a licence for 'depositing…' are wrongly expanding pollution to include non-polluting activities. But, it seems to me, the phrase 'deposit any substance or object' is necessarily wide and flexible to meet the wide and flexible requirements to protect the marine environment that the Convention places on the UK.

66. Article 210(1) says '*states shall adopt laws and regulations to prevent, reduce, and control pollution of the marine environment by dumping'*.

67. Ms Brimelow argued that by virtue of Article 1(1)(5)(b)(ii) the word 'dumping' '*does not include placement of matter for a purpose other than the mere disposal thereof; provided that such placement is not contrary to the aims of the Convention'*. By virtue of Article 1(1)(5)(a)(i) 'dumping' means '*any deliberate disposal of wastes or other matter from vessels…at sea'*. Her argument is that the purpose of Greenpeace's actions in sending the boulders overboard was for the good reason of protest and so not for 'mere disposal thereof' and so was not 'dumping'.

68. Ms Brimelow also relied on *The Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matters* 1972 and its replacement the 1996 *London Protocol* for a definition of 'dumping'. She also drew the Court's attention to the 1992 *Convention for the Protection of the Marine Environment of the North Atlantic* (OSPAR). Further she sought to persuade the court to consider the 2009 Act licensable activity within the context of Article 220 of UNCLOS.

69. However, Art 56 (1)(b)(iii) uses neither the word dumping nor pollution. The key question for this court is whether the use of the words 'deposit any substance or object' in section 66 satisfies the exception allowed in Article 56. Certainly 'dumping' as defined in Article 1, or vessel-source pollution,

would fall foul of section 66 of the 2009 Act, but Parliament was entitled, in my judgement, to give a relatively wide scope to their marine licensable activities (and one wider than dumping) as long as it fell within the restricted remit of Article 56 to protect and preserve the marine environment.

70. Ms Brimelow's argument that Greenpeace's actions were not under international law 'dumping', may on these facts turn out to be correct. But the 2009 Act is entitled to include in its protection and preservation for the marine environment provision beyond the narrow 'dumping' and include the wider 'deposit' if it falls within Art 56(1)(b)(iii) and Art 1(1)((4) read in the light of the object and purpose of the Convention.

71. Therefore, in my judgement the MMO do not have to prove that the Ds were involved in 'dumping' or 'polluting' to obtain the jurisdiction to prosecute in England and Wales, merely that the licensable activity was within the definition of protecting or preserving the marine environment. Article 56 does not grant an unfettered jurisdiction to the UK, but in my judgement the licensable activity identified here, 'depositing', does fall within the compass of Article 56.

72. So, in my judgement the phrase '*deposit any substance or object*' in, on or under the sea contained within section 66 of the 2009 Act is UNCLOS compliant as interpreted in accordance with the Convention's objects and purpose. In my judgement on the facts and circumstances of this case, the marine licensable activity undertaken by the Ds was within the remit of Article 56(1)(b)(iii) and so an exception to the rights of a vessel flagged to another state to claim jurisdiction by that state rather than the relevant coastal state.

Orders

73. As a matter of law, I find for the above reasons that the prosecution of the Ds, on these facts, by the MMO, under the licensing regime and the 2009 Act, is compatible with UNCLOS; and so there is jurisdiction in the courts of England and Wales for the MMO to bring these enforcement proceedings against these Ds.

74. The decision by MMO to not proceed against the third D Greenpeace Limited (subject to further documents) is noted. The MMO application to join the indictments against Greenpeace UK Limited and John Sauven is granted. The proposed four count joint indictment is preferred.

75. The Ds are to serve any abuse of process argument for the indictment to be stayed in accordance with CPR 3.28 by 1 2 22. MMO written response by 18 2 22. The case is listed for a 1 day legal argument on 25th February 2022 before me, parties and counsel to appear in person. The hearing will consider: the abuse arguments, and if appropriate: arraignment, the dates of service of the DCS and draft agreed facts, final witness requirements and the composition of the jury bundle.

76. Costs of this hearing are reserved to the end of the case.

Public interest

77. One of the ironies of this litigation is that both the MMO and Greenpeace are committed to improving the marine environment. Greenpeace assert that their protest was in the public interest, while the MMO assert it is in the public interest to prosecute them for it. The MMO is a creature of statute and

Greenpeace a campaigning charity, but both are committed to protecting and preserving the marine environment in places such as Brighton Offshore. The MMO purports to do so by enforcing the licencing regime under the 2009 Act and Greenpeace by protests such as the one undertaken here. Greenpeace protest was for a perceived lack of marine protection by the UK government and the MMO prosecutes them in the name of marine protection. The parties in this case should be allies not antagonists; they should be acting in harmony given their stated purpose and objectives are the same. Greenpeace should be a supporter of the licensing regime and the MMO should support the prevention of any harmful deep sea fishing methods over important marine sea-beds. It touches on the absurd that this litigation is happening at all.

78. The MMO say that it is in the public interest to prosecute the Ds. The reasons given to me in court were: (1) not to enforce this breach of the licensing regime would bring the regime into disrepute and (2) not to enforce would look like favouritism by the MMO towards a well-known organisation.

79. That is not, in my opinion, how the public interest test whether or not to prosecute should operate. For example the CPS regularly choose not to prosecute, or elect to discontinue a prosecution, for many varied public interest reason that neither bring the criminal law into disrepute nor attract intimations of favouritism. On the contrary the decision not to prosecute, when the evidential test is met and the public interest test is not, can be evidence that the rule of law is being followed not undermined. Discontinuing a prosecution because it is not in the public interest is not a precedent that adversely influences future enforcement action (and certainly would not preclude future action against these Ds). Each case is fact specific and should be not be overly influenced, in this court’s view, by the

integrity of a legal system nor dependent on how famous the person or organization charged is.

80. I require the MMO, given the unusual facts of this case, to reconsider whether or not it is in the public interest to continue with this prosecution. The following factors should be taken into account by them, including:

- Both the licensable activity that required a licence and the protest undertaken by the Ds were for the express purpose of seeking to protect the marine environment.
- The licensing regime could be better used as a source of protection against those who actively seek to harm the marine environment.
- The boulders were, I am told, hard natural granite. I am also told that there is no evidence they were actually harmful to the marine environment; the MMO's assessment has, I am told, revealed that the actions of Greenpeace were not dangerous.
- The fact that warnings that were given by the Ds in advance and afterwards, the co-ordinates of each boulder made public and holes made in each boulder to allow them to be lifted back off the sea bed in due course.
- In the months after this protest Greenpeace continued to campaign to ban supertrawlers, fly-shooters and bottom trawlers from 10 offshore Marine Protected Areas (including Brighton Offshore).
- The effect that any protest has had on achieving the aim of the action in preventing or at least raising awareness and/ or pressure to stop in relation to harmful methods of deep-sea fishing.

- A protest undertaken to protect the marine environment (and one which it turns out does not/may not harm it) could be seen to although technically and legally fall within the licensing regime but outside its spirit.
- Greenpeace have been campaigning for 50 years for licensing regimes on areas of environmental protection.
- The right to protest at sea has been recognised in law. Exceptions to the right to protest should be narrowly interpreted and a balance struck between the interests at stake. Protests on matters of public concern are entitled to heightened protection. A breach of law does not necessarily warrant interference (although of course the right to protest would not provide a defence to the charge). A state should have 'broad shoulders' when approaching any protest. (See *Shell UK Ltd v Stitching Greenpeace Council* [2020] CSOH 7).
- The fact that Greenpeace is a charity.
- The fact that this charge under the licensing regime is a strict liability offence.
- The 2009 Act introduced a licensing regime to protect the marine environment <u>and</u> Greenpeace were also seeking to protect the marine environment. Should the MMO be prosecuting in the name of marine protection the Ds actions in trying to raise awareness of the Government's perceived failures in relation to marine protection?

Set against that are the factors in the public interest to prosecute, including:

- The Ds deposited boulders at Dogger Bank in 2019 and then twice more on 23rd and 25th February 2020 at Brighton Offshore, and they may have continued without this legal action being commenced.
- The warnings about unlicensed activity that were issued in advance by MMO officers on the two later occasions putting then Ds on notice.
- The fact that Greenpeace should be supporting the licensing system not seeking to undermine confidence in it.

81. Whether to prosecute or not, or to discontinue or not once started, is a decision for the prosecuting authority and not this court. If the MMO in good faith inform the court that the prosecution is to continue in the public interest, so be it. But, notwithstanding that, this court requests that the MMO reflect carefully on this case, and inform the Ds and the court in writing by 26th January 2022 whether the prosecution is to continue in the public interest or not.

HHJ Edward Bindloss

Newcastle Crown Court

12th January 2022