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To: alexa.cole@noaa.gov

Cc: Royal Norwegian Embassy in Washington <emb.washington@mfa.no>; Pat Moran - NOAA Federal <pat.moran@noaa.gov>; Myklebust, Olav <olav.myklebust@mfa.no>; Opland, Torleiv <Torleiv.Opland@mfa.no>

Subject: The Regulation of Harvesting of Snow Crab in U.S. Waters

Dear Ms. Cole

I refer to my previous contact with Mr. Moran focusing on the regulation of snow crab harvesting in U.S. waters. As mentioned in my conversation with Mr. Moran, Norway would appreciate the assistance of NOAA (National Oceanic and Atmospheric Administration) in order to clarify a number of aspects related to the management of tanner crab/snow crab (*Chionoecetes opilio*) in the waters off Alaska, as well as the treatment of crab and crustacea as a sedentary species under the legislation of the United States.

Background – Regulation of Snow Crab Harvesting in the Barents Sea

Norway is the respondent in a claim brought before the International Centre for Settlement of Investment Disputes (ICSID) by a Latvian individual and a Latvian shipping company under the Norway/Latvia Bilateral Investment Treaty (BIT). The claimants were involved in the harvesting of snow crab in the Barents Sea prior to this activity being regulated by the coastal States Norway and the Russian Federation. Some of the vessels involved were also active in crabbing in the Bering sea before moving to the Barents sea.

Snow crab is a relatively new species to the Barents Sea and was first registered in the area in 1996. By 2013 the snow crab population had become sufficiently abundant to sustain a commercially viable fishery, and actors from Norway and Russia as well as third country vessels engaged in the harvesting of snow crab on the continental shelf in the Barents Sea.

The Barents Sea is a relatively shallow area, and the whole area in question is continental shelf. The continental shelf is in its entirety divided between the coastal States Norway and the Russian Federation. A part of the continental shelf is situated outside of the 200 nm limit of both Norway and Russia. This area is commonly referred to as the Loophole, where the water column is high seas but the continental shelf belongs to these two States. A map of the Barents Sea showing the jurisdictional areas of Norway and Russia respectively is enclosed for easy reference.

In 2015 Norway introduced a ban on the harvesting of snow crab on Norway's continental shelf. As of December 2015 this ban was also applicable on the Outer Continental Shelf of Norway beyond 200 NM. Russia did likewise in 2016.

Questions

Norway is seeking information on the regulation of snow crab harvesting in US jurisdictional areas. Norway would appreciate receiving information on the following topics:

1. When did the United States first declare crabs (especially, though not exclusively king and tanner crabs) to be sedentary species belonging to the continental shelf State:
 - a) Was the first official declaration through the adoption of the “Submerged Lands Act” of 22 May 1953 (Section 2(e) refers to natural resources including crabs)?
 - b) If already before, can you please provide the reference to and Act or Presidential Proclamation or other official document, and – if possible – provide us with a copy of the document?
 - c) The United States ratified the 1958 Continental Shelf convention in 1961. Was a declaration regarding sedentary species made at that time? Was a statement regarding which species that the United States considered to be sedentary species included in the Presidential statement to the Senate proposing the ratification, or other document at that time?

2. According to an ADFG Fact sheet Fishing for tanner crabs off the coast of Alaska started in 1961. It is informed that tanner crabs historically *“were harvested by both domestic and foreign fleets, with the Japanese and Soviet fleets concentrating their efforts in the Bering Sea. By the early 1970s, allocations for foreign vessels were being sharply reduced. The Magnuson Fishery Conservation and Management Act of 1976 (the 200-mile limit) has limited foreign fishing in United States waters.”* According to The Agreement relating to fishing for king and tanner crab between the United States and the USSR of 12 February 1971 the parties *“Have agreed as follows: 1. The king crab and tanner crab are natural resources of the continental shelf over which the coastal state exercises sovereign rights for the purposes of exploration and exploitation in accordance with the provisions of article 2 of the Convention on the Continental Shelf .”* Both the US and the USSR had at that time become parties to the 1958 Geneva Convention on the Continental Shelf, and the text of the agreement makes it clear that both parties regarded king and tanner crabs as sedentary species belonging to the continental shelf. Identical articles were included in the agreements for 1973 and 1975, i.e. until the United States declared its economic zone in 1976.
 - a) Was the Agreement with the USSR of 1971 the first time that the United States entered into an international agreement that recognized crabs (in particular king or tanner crabs) and/or crustacea as sedentary species subject to the sovereign rights of the continental shelf State?
 - b) If the United States has entered into more such agreements with other States, could you please provide us with references? (We would assume that such agreements may have been entered into with neighbouring States like Mexico and Canada. Or States with long distance fleets like Germany, Poland, Spain, France and South Korea).
 - c) It would appear that Japan on its part maintained that the tanner crab was a resource of the high seas, and the exchange of notes between the US and Japan of 24 December 1974 reflects the different position of the Parties with respect to the status of the tanner crab. Did the United States

enter into later agreements with Japan, where Japan accepted the view of the United States regarding sedentary species?

- d) Apart from Japan in 1974, cf. the exchange of notes cited above, has the US' designation of crab as a sedentary species been contested by other States?
3. Are you aware of any discussion in the US – scientific, legal or otherwise - on the status of tanner crab/snow crab as a sedentary species? Do you have official NOAA publications that discusses the sedentary nature of snow crab?
 4. Does/did the US crab fishery take place inside as well as outside of 200 nm? Is harvesting of crabs on the US continental shelf regulated inside as well as outside of 200 nm, and – if so – are the regulations identical in respect of access for foreign flagged vessels?
 5. According to the fact sheet referred to above “The Magnuson Fishery Conservation and Management Act of 1976 (the 200-mile limit) has limited foreign fishing in United States waters”.
 - a) Is it possible to describe the effect the 1976 Magnuson Act had on crabbing performed by non-US vessels, in particular what restrictions were applied to participation by foreign flagged vessels, over what period of time such restrictions were phased in, and if compensation was paid to foreign flagged vessels that were prevented from continuing their fishing activity?
 - b) Has the US' limiting of harvesting of crab in US waters (for foreign flagged vessels) been contested by other States?
 6. When fishing for tanner crab/snow crab started in the early 60'ies (according to the factsheet cited above) did the activity start out as unregulated? Was it in principle open for fishers of all nationalities/flag states? When regulations were introduced, how were they framed and what was their legal basis? (If this becomes too complex to answer in any detail, please advise where further information may be found.)
 7. We understand that the Magnusson fishery conservation and management act drastically reduced the fishing opportunities of foreign flagged vessels in US waters, and the agreements between the US and the USSR/Japan contains regulations for some seasons in the 1970'ies. As of today:
 - May foreign flagged vessels still participate in harvesting of tanner/snow crab on certain conditions? (i.e., foreign vessels may apply for or buy a US permit, foreign flagged vessels may harvest based on agreement between the US and the flag State or other type of arrangement)
 - If applicable, has the regulation for foreign flagged vessels changed over the years, if “yes” when and why?
 - The issue of introduction of new regulations applicable to foreign flagged vessels is of general interest and not only limited to tanner/snow crab,

although tanner/snow crab regulations are of particular interest. If applicable, how did changes in USA's fishing regulations affect foreign flagged vessels that were already engaged in fishing/catching activities in US jurisdictional areas? (A comprehensive reply is not expected, but any examples would be useful.)

8. Are there any examples where foreign flagged vessels have been arrested and/or prosecuted for harvesting tanner/snow crab in US jurisdictional areas without a US permit? If yes, did the violation take place inside or outside of 200 nm?

US assistance in responding to the above-mentioned questions will be highly appreciated. We would also appreciate references to relevant texts included, such as web addresses or copies of documents, so that they may be used in the proceedings. Due to the timelines of the proceedings, we would be grateful if the information could be provided within three weeks. If clarifications are needed, or if the US has information or assessments that could be of relevance, but that are not captured by the questions above, please do not hesitate to contact us.

Kind regards
Petter Meier
Counselor for Fisheries and Oceans
Embassy of Norway, Washington, D.C.