



**SUBMISSION
TO
OSLO DISTRICT COURT**

Tromsø, 19 October 2020

Claimant: SIA North Star Ltd
Miera iela 87a-13
1013 RIGA

Legal counsel: Attorney Hallvard Østgård
Law firm Østgård DA
Post box 1151
9261 Tromsø

Defendant: The Royal Ministry of Trade, Industry and Fisheries

Legal counsel:

Case concerns: Challenge of the decision – Rejection of application for exemption to allow catching snow crab in Svalbard

1 INTRODUCTION

The case concerns the question of whether the Directorate of Fisheries' decision of 13 May 2019 – which concerns the rejection of an application for an exception to allow catching snow crab in Svalbard's territorial waters – is invalid.

The parties to the case are SIA North Star LTD (hereinafter SIA) on the one hand, and the Ministry of Trade, Industry and Fisheries on the other.

It is assumed that 2 days should be set aside for the main hearing. Legal mediation is not relevant.

2. FACTS

SIA is a Latvian shipping company that is engaged in catching crab. The company owns three vessels that are equipped for such catching, including the vessel Senator which was mentioned in the so-called “snow crab case” HR-2019-228-S.

For some years, the company has been catching crab in the sea areas around Svalbard. At a certain point, Norway then introduced a ban on this catch. In January 2017, the shipping company's vessel was arrested and charged with illegal catching. That case ended with a decision by the Supreme Court where the shipping company was convicted.

While the case was ongoing, in 2018 the shipping company applied for a permission to fish for crab. This was rejected by the Directorate of Fisheries on 9 October 2018, stating that vessels from the EU do not have the right to catch snow crab unless it is based on a bilateral agreement. Such an agreement does not exist. It is referred to in

Appendix 1: Letter from the Directorate of Fisheries of 9 October 2018

Subsequently, on 28 February 2019 SIA applied again for a permit for an exception from the ban on catching snow crab as provided by Regulation of 19 December 2014 No. 1836 on a ban on catching snow crab § 1 for the three vessels Senator, Solvita and Saldus, see page 1 in

Appendix 2: Application of 28 February 2019

As the shipping company did not receive any feedback from the directorate, a reminder was sent on 22 March 2020, see

Appendix 3: Reminder av22. March 2019

The Norwegian Directorate of Fisheries adopted a decision on refusal on 13 May 2010, see

Appendix 4: Letter from the Directorate of Fisheries of 13 May 2019

The Directorate pointed out that according to the Snow Crab Regulations, it is prohibited to catch snow crab in the Norwegian Sea territory, inland waters and on the Norwegian continental shelf, cf. § 1. It was further pointed out that the condition for granting an exception from the ban is that the vessel has an acquisition permit (*ervervstillatelse*) in accordance with the Participant Statutes (*Deltakerloven*). As the three vessels did not have such a permit, the condition for an exemption was therefore not met.

The decision was appealed by the law firm Østgård DA on 31 May 2020, see

Appendix 5: Complaint of 31 May 2019

Neither in the appeal instance was the case followed up within a reasonable time by the Directorate, nor was any kind of feedback given as to what was the cause behind it. On 26 August 2020, a reminder was therefore sent, see

Appendix 6: Reminder of 26 August 2019

The case was then sent to the Ministry of Trade, Industry and Fisheries on 10 September 2019, see

Appendix 7: Letter from the Directorate of Fisheries of 10 September 2019

The Ministry of Trade, Industry and Fisheries then rejected the appeal on 14 November 2019, resulting in that the Directorate of Fisheries' decision of 13 May 2019 is upheld, see

Appendix 8: The Ministry of Trade, Industry and Fisheries' rejection of an appeal of 14 November 2019**3. LEGAL CONSIDERATIONS****3.1**

It is stated that the rejection of the application for a permit to catch snow crab is based on an incorrect application of the law. This is because the decision is contrary to the complainant's rights under the Svalbard Treaty. The rejection of the complaint is therefore invalid.

3.2

The rules on the prohibition of catching snow crab are found in the Regulations on catching snow crab of 19 December 2014. The Directorate justified the complaint on the grounds that the SIA did not have a license as required by Section 2 of the Regulations to be able to give the vessel a permit for crab fishing.

It appears from the decision that the condition for obtaining a permit to catch snow crab is that the vessel has an acquisition permit in accordance with the Act of 26 March 1999. It follows from the Participant Statutes § 5 that an acquisition permit for the relevant vessel group is granted only to an owner and a vessel if the owner is a Norwegian citizen or a company with the Norwegian majority ownership and control.

As the Ministry points out, Section 2 was repealed on 22 March 2019, and the exception scheme was replaced by a requirement for a license to participate in the catching of snow crab in accordance with the licensing regulations.

The Ministry has therefore assessed the complaint based on the licensing regulations and points out that a condition for being granted a permit, cf. Section 6-2, second paragraph, is that “[..] new crab permits can only be granted to vessels that have another operating basis in the form of a special permit or participation access (*deltakeradgang*).” As the Ministry points out on page 3, second paragraph of its refusal, this has no bearing on the outcome of the case. The key point is that the regulations, both before and after the modification, prevent foreign vessels from obtaining a snow crab catching permit.

3.3

Pursuant to Articles 2 and 3 of the Svalbard Treaty, citizens of all treaty states have the right to fish and catch on the Svalbard continental shelf. The right applies without any form of discrimination or unequal

treatment, cf., *inter alia*, Rt. 2014 page 272. Any discrimination or unequal treatment based on the nationality is contrary to the Svalbard Treaty.

The Regulations on snow crab according to the wording set conditions for granting permits that only Norwegian vessels can comply with. It is therefore obvious that the Regulations are both formally and effectively in breach of the Svalbard Treaty's prohibition of discrimination and unequal treatment. Neither the Directorate nor the Ministry has provided any objective reason under the Svalbard Treaty for refusal to grant the permit to the shipping company.

The Directorate has stated that all Norwegian vessels that applied for a permit to catch snow crab have been granted the application. Similarly, no foreign vessels have received a permit. There is thus also a discrimination in the way the Regulations are implemented, without any objective reason having been proven under the Svalbard Treaty for such discrimination.

3.4

The company is aware that Norway believes the Svalbard Treaty to be inapplicable to the continental shelf. Norway is the only party having this opinion, and such an understanding of the treaty is incorrect.

3.5

The company is aware of Norway claiming that Svalbard does not have its own continental shelf. This is an untenable position. At the UN's recognition of the continental shelf around Svalbard, the archipelago of Svalbard was the basis for the Norwegian claim. The part of the Norwegian continental shelf that is based on Svalbard as a land territory is thereby covered by the Svalbard Treaty and the rights the citizens of the treaty have under the treaty are applicable.

3.6.

Latvia has acceded to the Svalbard Treaty. The shipping company SIA North Star thereby holds the rights that follow from the treaty, including protection against discrimination and unequal treatment.

3.7

In other words, it can be stated that the vessel meets all technical requirements to obtain a permit. It is only the requirement of nationality to obtain participant access, which is invoked as an obstacle to the application being granted.

Neither has the Directorate or the Ministry provided any circumstances regarding the vessel that provide a factual basis for rejecting the application.

3.8

We can then conclude that the refusal to grant a permit for catching snow crab entails a violation of the shipping company's rights under the Svalbard Treaty.

The decision to reject must therefore be declared invalid. The consequence of this is that the case must be returned to renewed processing by the Directorate of Fisheries, where the application must be assessed on the basis of the conditions that do not contradict the Svalbard area.

4. EVIDENCE, PROVOCATIONS AND PROCEDURAL RELATIONS

In addition to the documentary papers presented, a party explanation is offered from the shipping company.

This case originates from a criminal case that was decided by the Supreme Court, where the Supreme Court advised the shipping company to file a civil lawsuit. It was in connection with the criminal case,

contact between the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Trade, Industry and Fisheries, the Government Attorney, Assistant Government Attorney and appointed assistant prosecutor for the Supreme Court Tolle Stabell, as well as the Attorney General and the State Attorneys in Tromsø and Finnmark. All written correspondence between the above listed institutions and persons in connection with the criminal case is provoked, cf. Section 21-5-5.

The company's representative is Latvian but speaks good English. The trial must therefore be interpreted into English.

5. CLAIM

On behalf of SIA North Star Ltd. the following is finally

claimed:

1. The Royal Ministry of Trade, Industry and Fisheries rejection of an appeal of 14 November 2019 to be declared invalid.
2. The Royal Ministry of Trade, Industry and Fisheries ordered to reimburse SIA North Star Ltd.'s legal costs within two weeks.

TROMSØ, 19 October 2020

The law firm Østgård DA

/signature/

Hallvard Østgård DA

Attorney



DIRECTORATE OF FISHERIES

Sia North Star Ltd.

Division: Fisheries Regulation Section
Inquiries to: Hanne Østgård
Telephone: +47 46805205
Our reference: 18/8105
Your reference:
Date: 09.10.2018

Att:
Peteris Pildegovics

Harvesting of snow crab on the Norwegian continental shelf

Reference is made to your letter of 1 June 2018 and to previous correspondence regarding snow crab.

Harvesting of snow crab on the Norwegian continental shelf is prohibited unless an exemption has been granted. No such exemption has been granted to any foreign vessels.

As explained in our letter of 25 May 2018, harvesting of snow crab of the Norwegian continental shelf by vessels flying the flag of an EU member state must be based on bilateral agreement between Norway and the EU.

Yours sincerely

Stein-Åge Johnsen
Head of Section

Hanne Østgård
Senior Adviser

This letter is approved for electronic submission and does not need a handwritten signature

Address:

Sia North Star Ltd.



SIA "North Star Ltd."
Tomsona iela 30-78, Rīga,
LV-1013, LATVIA

Reg. Number: 40103765463
Nordea Bank AB
ACC: LV24NDEA0000084140054

Rīga

28 February, 2019

Dear Sirs,

SIA NORTH STAR LTD. (registration number 40103765463, address: Miera iela 87a-13, Rīga, LATVIA, incorporated in Republic of Latvia), based on the available information on the official web side of Fiskeridirektoratet (<https://fiskeridir.no/Yrkesfiske/Regelverk-og-reguleringer/J-meldinger/Gjeldende-J-meldinger/J-260-2017>), based on the automated translation from the Norwegian to the English language requests the dispensation from the general ban on snow crab catches on Norwegian Continental shelf.

Our understanding is that based on the Paragraph 1 of the Regulation "J-260-2017: Prohibition of Capture of Snow Crab" – all vessels, including Norwegian and foreign vessels are not allowed to catch the snow crab on Norwegian Continental shelf.

§ 1 General Prohibition

Norwegian and foreign vessels are prohibited from catching a crab in the Norwegian territorial sea and inland waters, and on the Norwegian continental shelf. For Norwegian vessels, the ban also applies to the continental shelf of other countries.

However, based on the Paragraph 2 we assume that we fit into the requirements listed:

§ 2 Dispensation

Exemption may be granted from the prohibition of catching a crab to vessels that have been granted a license to acquire fishing outside the territorial waters. If the acquisition license is limited to the capture of certain species, dispensation may only be granted if the acquisition permit includes the capture of a snow crab. Dispensation is granted on the following terms:

- Vessels involved in catching a snow crab can be required to report beyond what is entered in the catch log if the Institute of Marine Research requires data. An example may be sampling of catch.

- Observers from the Institute of Marine Research and the Directorate of Fisheries shall be entitled to participate free of charge on board vessels catching a snow crab.

Application for dispensation is sent to the Directorate of Fisheries.

We are in the position to provide a valid license to catch other species not only snow crab – on the Norwegian Continental shelf, and we are ready for all other conditions mentioned; 1) to report the catches to the Institute of Marine Research; 2) to place the observers from the Institute of Marine Research if required.

Moreover, in we also are ready to land the catches (live crab) of the vessels Solvita and Saldus to the on-shore based production facility in Batsfjord, in order to maximize the economical and financial contribution of our company to the

Fra: peteris pildegovics <peteris.pildegovics@gmail.com>
Sendt: torsdag 28. februar 2019 15:04
Til: Postmottak
Emne: Letter on dispensation for snow crab catches on Norwegian continental shelf 28.02.2019
Vedlegg: Letter snow crab 28.02.19 2.pdf; Letter snow crab 28.02.19 1.pdf

Dear Sirs,

Please find enclosed the application.

If there are any questions or uncertainties, please let me know immediately.

Best regards,

Peteris Pildegovics
SEA NORFISH LTD
+371 29 206 827



North Star

SIA "North Star Ltd."
Tomsuņaiela 30-38, Rīga,
LV 1013, LATVIA

Reg. Number 40103765463
Nordea Bank AB
ACC: LV24NDEA0000084140054

arctic region of Eastern Finnmark.


Taking into account all the above, please consider the letter as an application for Dispensation to catch snow crab on the Norwegian Continental Shelf.

The vessels details are below:

1. Senator (IMO 6812986, call signal YLAC);
2. Solvita IMO 8520173, call signal YL2892);
3. Saldus IMO 8423155, call signal YL2888).

I am at your disposal to answer any questions or clarify any deficiencies.

Best regards,


Peteris Pildogovics
SIA NORTH STAR LTD.
Owner/chairman of the Board



SIA "North Star Ltd."
Tumsona iela 30-39, Rīga,
LV-1013, LATVIA

Reg. Number 40103765463
Nordea Bank AB
ACC: LV24NDĒA0000004146054

Riga

22 March 2019

REPEATED REQUEST!!

Dear Sirs,

I still have not received any reply on my letter from 28 February 2019.

I am following the recommendation of the Supreme Court of Norway and I am applying for dispensation to catch snow crab on the Norwegian Continental shelf of Barents Sea.

SIA NORTH STAR LTD. (registration number 40103765463, address: Miera iela 87a-13, Riga, LATVIA, incorporated in Republic of Latvia), based on the available information on the official web side of Fiskeridirektoratet (<https://fiskeridir.no/Yrkesfiske/Regelverk-og-reguleringer/J-meldinger/Gjeldende-J-meldinger/J-260-2017>), based on the automated translation from the Norwegian to the English language requests the dispensation from the general ban on snow crab catches on Norwegian Continental shelf.

Our understanding is that based on the Paragraph 1 of the Regulation "J-260-2017: Prohibition of Capture of Snow Crab" – all vessels, including Norwegian and foreign vessels are not allowed to catch the snow crab on Norwegian Continental shelf.

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Norwegian and foreign vessels are prohibited from catching a crab in the Norwegian territorial sea and inland waters, and on the Norwegian continental shelf. For Norwegian vessels, the ban also applies to the continental shelf of other countries.

However, based on the Paragraph 2 we assume that we fit into the requirements listed:

§ 2 Dispensation

Exemption may be granted from the prohibition of catching a crab to vessels that have been granted a license to acquire fishing outside the territorial waters. If the acquisition license is limited to the capture of certain species, dispensation may only be granted if the acquisition permit includes the capture of a snow crab. Dispensation is granted on the following terms:

- Vessels involved in catching a snow crab can be required to report beyond what is entered in the catch log if the Institute of Marine Research requires data. An example may be sampling of catch.

- Observers from the Institute of Marine Research and the Directorate of Fisheries shall be entitled to participate free of charge on board vessels catching a snow crab.

Application for dispensation is sent to the Directorate of Fisheries.

We are in the position to provide a valid license to catch other species not only snow crab – on the Norwegian Continental shelf, and we are ready for all other conditions mentioned; 1) to report the catches to the Institute of Marine

SIA "North Star Ltd."
Tomsona iela 30-38, Rīga,
LV 1013, LATVIA



Reg. Number 40103765463
Nordea Bank AB
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Research; 2) to place the observers from the Institute of Marine Research if required.

Moreover, in we also are ready to land the catches (live crab) of the vessels Solvita and Saldus to the on-shore based production facility in Batsfjord, in order to maximize the economical and financial contribution of our company to the arctic region of Eastern Finnmark.


Taking into account all the above, please consider the letter as an application for Dispensation to catch snow crab on the Norwegian Continental Shelf.

The vessels details are below:

1. Senator (IMO 6812986, call signal YLAC);
2. Solvita (IMO 8520173, call signal YL2892);
3. Saldus (IMO 8423155, call signal YL2888).

I am at your disposal to answer any questions or clarify any deficiencies.

Best regards,


Peteris Pildēgovics
SIA NORTH STAR LTD.
Owner/Chairman of the Board

From: peteris pildegovics <peteris.pildeovics@gmail.com>

Sent: Friday 22 March 2019 12:12

To: Post office

Subject: Request on snow crab dispensation 22.03.2019

Attachments: Fisk Dir snow 22.03.2019.pdf

Follow-up flag: Follow up

Flag status: The flag



DIRECTORATE OF FISHERIES

North Star Ltd.

Division Fisheries Regulation Section

Signature: Hanne Østgård

Telephone: +47 26204202

Communication: 1913320

Valid reference

Date: 13.05.2019

Harvesting of snow crab on the Norwegian continental shelf

Reference is made to your application to harvest snow crab on the Norwegian continental shelf dated 28 February and 22 March 2019.

According to the Norwegian regulations of 19 December 2014 no. 1836 relating to a prohibition against harvesting of snow crab section 1, it is prohibited to harvest snow crab in the territorial waters of Norway and on the Norwegian continental shelf. These regulations also apply to foreign vessels.

Pursuant to section 2 of the snow crab regulations the Directorate of Fisheries may grant exemptions from the prohibition for vessels which are granted a commercial fishing licence in accordance with the Act of 26 March 1999 no. 15 relating to the right to participate in fishing and hunting.

The vessels mentioned in your application do not possess such a licence, and the requirements for obtaining a permit to harvest snow crab in accordance with the snow crab regulations are therefore not met. Consequently, your application is rejected.

This decision may be appealed to the Ministry of Industry, Trade and Fisheries. The appeal must be sent to the Directorate of Fisheries within three weeks from the date on which this decision was received, cf. the Public Administration Act sections 28 and 29.

Yours sincerely,

Stein-Åge Johnsen
Head of Section

Hanne Østgård
Senior Adviser

This letter is approved for electronic submission and does not need a handwritten signature.

List of recipients
North Star I.td.

Copy to:

Attachments:



Directorate of Fisheries
The regulation section
PO Box 185 Center
5804 Bergen
Email: postmottak@fiskeridir.no

Their ref.: 19/3320 Hanne Østgård
Our ref.: 11681 / 1
Client: 36350
Responsible partner: Hallvard Østgård

TROMSØ, 31 May 19209

APPEAL FOR DECISION - SIA NORTH STAR

1. Introduction

I refer to the Directorate of Fisheries' decision of 13 May 2019, where vessels from the company SIA North Star were denied a license for crab fishing on the Norwegian continental shelf.

The deadline for complaints is three weeks from 13 May 2019. Complaints are hereby submitted to the Ministry of Trade, Industry and Fisheries within the deadline for complaints. The basis for the appeal is that the decision is contrary to the appellant's rights under the Svalbard Treaty.

2. The Directorate's justification

The rules for the permission to fish for snow crab can be found in the Regulations on catching snow crab of 19 December 2014.

The Directorate has justified the complaint on the grounds that SIA Norths Star's vessel does not have a license which, in accordance with section 2 of the Regulations, is necessary to be able to grant the vessel permission for crab fishing.

It appears from the decision that the condition for obtaining a permit to catch snow crab is that the vessel has an acquisition permit in accordance with the Act of 26 March 1999. It follows from the Participant Statues (*Deltakerloven*) §5 that an acquisition permit for the relevant vessel group is granted only to an owner and a vessel if the owner is a Norwegian citizen or a company with Norwegian majority ownership and control.

TROMSØ
Storgata 124
Ph. 77 67 99 99

OSLO
Kristian Augusts gate 3
T 77 67 99 99

Post box 1151, 9261 Tromsø / post@ostgard.no / www.ostgard.no / facebook.com/advostgard

3. The grounds of the complaint

3.1 The decision violates the shipping company's rights under the Svalbard Treaty

3.1.1

Pursuant to Articles 2 and 3 of the Svalbard Treaty, citizens of all treaty states have a right to fish and catch on the Svalbard continental shelf. The right applies without any form of discrimination or unequal treatment, cf. *inter alia* Rt 2014/272. Any discrimination or unequal treatment based on the nationality is contrary to the Svalbard Treaty.

The Regulations on snow crab according to the wording set conditions for granting permits that only Norwegian vessels can comply with. It is therefore obvious that the Regulations are both formally and effectively in breach of the Svalbard Treaty's prohibition of discrimination and unequal treatment.

The Directorate has not provided any objective reason under the Svalbard Treaty for refusal to grant the permit to the shipping company.

Without affecting the legitimacy of the complaint, I add that the Directorate has stated that all Norwegian vessels that have applied for a permit to catch snow crab have been granted the application. Similarly, no foreign vessels have been granted a permit. There is thus also discrimination in the way the Regulations are implemented, without any objective reason having been proven under the Svalbard Treaty for such discrimination.

3.1.2

The company is aware that Norway believes the Svalbard Treaty to be inapplicable to the continental shelf. Norway is the only party having this opinion, and such an understanding of the treaty is incorrect.

3.1.3

The company is aware of Norway claiming that Svalbard does not have its own continental shelf. This is an untenable position. At the UN's recognition of the continental shelf around Svalbard, the archipelago of Svalbard was the basis for the Norwegian claim. The part of the Norwegian continental shelf that is based on Svalbard as a land territory is thereby covered by the Svalbard Treaty and the rights the citizens of the treaty have under the treaty are applicable.

3.1.4

Latvia has acceded to the Svalbard Treaty. The shipping company SIA North Star thereby obtains the rights that follow from the treaty, including protection against discrimination and unequal treatment.

3.1.5

Although in the company's opinion it is irrelevant to the complaint, I add that the vessel meets all technical requirements to obtain a permit. It is only the requirement of the nationality to obtain participant access, which prevents the application from being granted.

Neither has the Directorate provided any circumstances regarding the vessel that provide a factual basis for rejecting the application.

3.1.6

We can then conclude that the refusal to grant the permit which the shipping company has applied for, entails a violation of the shipping company's rights under the Svalbard Treaty.

3.2 There is no ban on catching snow crab

The Supreme Court has ruled that the snow crab is sedentary under the Convention on the Law of the Sea, cf. the judgment included in Rt 2019/282. The company is of the opinion that this is a misinterpretation of the Convention on the Law of the Sea. The snow crab is not sedentary, and therefore it belongs to the water column and not the continental shelf.

The application of the prohibition set in Section 1 of the Regulations is limited to only the continental shelf and not the water column. There is therefore no ban on catching snow crab in the fish protection zone around Svalbard. The shipping company should therefore have been granted the permit to catch snow crab for this reason alone.

4. Conclusion

Following from the above, I hereby request to cancel the decision by the Directorate of Fisheries and to grant the application, so that Norway's obligations under international law are complied with.

In the contrary case, the complaint is requested to be sent to the appeal body for further processing.

Respectfully yours
The law firm Østgård DA
/signature/
Hallvard Østgård DA
Attorney

From: Hallvard Østgård
To: "Postmottak"
Blind copy:

Subject: SV: Appeal against decision case 19 / 3320- reminder
Date: Monday 26 August 2019 10.25.00
Attachments: image001.jpg

I refer to the pending complaint as submitted by SIA North Star on 31 May 2019.
I have not received information that the complaint has been processed by the Directorate. Nor has it been sent to the appellate body.
I refer to the Public Administration Act §11 a) according to which the case must be processed within 1 month. The deadline has long since expired.
I request feedback on the status of the case and when the complaint can be expected to be processed.

Hallvard B. Østgård
Attorney / Partner
Right to appear before the Supreme Court

Storgata 124
PO Box 1151
N-9261 Tromsø

Phone: (+47) 77 67 99 99
Mobile: (+47) 91 83 84 61
Email: ho@otgard.no
Internet: www.ostgard.no

Ostgard_Maillogo

Tromsø Oslo

Information in this email may contain confidential material. Any misuse of incorrect information may result in legal liability.

Ministry of Trade, Industry and Fisheries
Att.:
Postbox 8090 Dep.
0032 OSLO

Submission of appeal against rejection of application for access to catch snow crab on the Norwegian continental shelf

There is a complaint from the law firm Østgård DA dated 31 May 2019. Copy of the case documents is attached (./.)

The party Latvian shipping company SIA North Star in the inquiries of 28 February and 22 March 2019 applied for an exception from the ban on catching snow crab for the vessels Senator, Solvita and Saldus, cf. Regulations of 19 December 2014 No. 1836 on a ban on catching snow crab.

The Directorate of Fisheries rejected the application by its decision of 13 May 2019. In the decision, they pointed out that the vessels do not have an acquisition permit or the Participant Act. The conditions for exemption from the prohibition were consequently not met.

The basis for the appeal is stated, first, that the decision violates the shipping company's rights and the Svalbard Treaty. It is pointed out, *inter alia*, that citizens of all treaty states have the right to fish and catch on Svalbard's continental shelf. The party has claimed that the snow crab regulations both formally and in practice violate the Svalbard Treaty's prohibition of discrimination and different treatment by setting the conditions that only Norwegian vessels can meet.

Claimants further state that there is no ban on catching the snow crab. This is because the shipping companies do not consider the snow crab to be a sedentary species. The snow crab thus belongs to the water column and not the continental shelf, to which the regulations apply.

The Norwegian Directorate of Fisheries points out that the application was processed in accordance with the Snow Crab Regulations § 2. This provision does not allow for an exception to be made from the requirement for an acquisition permit. We are also aware that the Regulations were amended with effect from 1 July 2019 without any part thereof being relevant in this case.

The Directorate of Fisheries cannot assess all the information included in the complaint and providing the basis for a final assessment of the case. The complaint is therefore sent to the Ministry of Trade, Industry and Fisheries for processing.

With regards
Trond Ofterno
section chief

Hanne Østgård
senior adviser

The letter is approved electronically and is sent without a handwritten signature



DET KONGELIGE
NÆRINGS- OG FISKERIDEPARTEMENT

THE ROYAL MINISTRY OF TRADE, INDUSTRY AND FISHERIES

Law firm Østgård AS

Their ref

Our ref
19 / 5223-3

Date
November 14, 2019

SIA North Star – complaint against rejection of application for the permit to catch snow crab on the Norwegian continental shelf by the vessels Senator, Solvita and Saldus

We refer to a complaint from Law firm Østgård, on behalf of SIA North Star, dated 31 May 2019, as well as other documents in the case.

SIA North Star is a party to the case and the complaint was received in time, cf. the Public Administration Act § 29. The Ministry of Trade, Industry and Fisheries may, as an appeal body, examine all aspects of the case, including taking into account new circumstances, cf. the Public Administration Act § 34.

Background

The application

On 28 February 2019, SIA North Star applied for an exception from the ban on catching snow crab in Regulation of 19 December 2014 no. 1836 on a ban on catching snow crab (snow crab regulations) § 1 for the three vessels Senator, Solvita and Saldus. On 22 March, the shipping company sent a reminder, in which they pointed out that they follow the recommendation from the Norwegian Supreme Court and apply for an exception from the ban on catching snow crab in the snow crab regulations § 1.

The Norwegian Directorate of Fisheries' decision

The Directorate of Fisheries decided on a rejection on 13 May 2019. In the decision, the directorate wrote that according to the snow crab regulations, it is prohibited to catch snow crab in Norwegian sea territory and inland waters, and on the Norwegian continental shelf, cf. § 1. to make an exception from the prohibition in § 2, but that a condition for granting an exception is that the vessel has an acquisition permit (*ervertstillatelse*) in accordance with the Participant Statutes (*Deltakerloven*). The three vessels for which exemption is applied for do not have an acquisition permit, and the conditions for exemption were therefore not met.

Complain

The law firm Østgård appealed the decision on behalf of the shipping company SIA North Star on 31 May 2019.

The complaint states that Articles 2 and 3 of the Svalbard Treaty provide all citizens of all treaty states the right to fish and catch on the Svalbard continental shelf. It is stated that this right applies without any form of discrimination or unequal treatment, cf. Rt. 2014 p. 272. Regulations on snow crab, according to complaints, both formally and effectively violate the Svalbard Treaty's prohibition of

Postal address	Office address	Telephone*	Department	Caseworker
PO Box 8090 Dep	Kongens gate 8	22 24 90 90	Fisheries and	Oda Helene
0032 Oslo		Company No.	aquaculture	Elvemo Myhrer
postmottak@nfd.dep.no	www.nfd.dep.no	91 2 660 680	department	22 24 67 22

discrimination and unequal treatment. It is stated that there is no objective reason for this differential treatment.

The complaint also states that Norway is alone in believing that the treaty will not apply to the shelf, and it is stated that such an understanding is incorrect.

Furthermore, claimants disagree that snow crab is a sedentary species, and believe that snow crab belongs to the water column and not the continental shelf. It is therefore stated that since the Snow Crab Regulations § 1 apply to the continental shelf, there is no prohibition on catching snow crab.

On 10 September, the Directorate of Fisheries will send the complaint to the Ministry of Trade, Industry and Fisheries. The Directorate of Fisheries found no reason to reverse the decision and therefore forwarded it for further appeal to the Ministry of Trade, Industry and Fisheries.

The Ministry's assessment

Pursuant to Article 77 of the Convention on the Law of the Sea, Norway as a coastal state has the exclusive right to manage snow crab on the Norwegian shelf. The wording of the Svalbard Treaty, the history of negotiations and general rules on treaty interpretation clearly state that the treaty's equal treatment rules only apply in territorial waters, i.e. within 12 nautical miles.

The Ministry does not agree with the claimant's allegation that snow crab is not a sedentary species. Our view is supported by the Supreme Court in Rt. 2019 p. 282, and we are content here to refer to the argumentation the Supreme Court provides in sections (45) - (58) of the judgment. In the decision, the Supreme Court has Rt. 2014 p. 272, to which reference is made in the complaint, did not take a position on the question of whether the treaty applies on the continental shelf, or took a position on the treaty's scope of application in general.

It follows from the Snow Crab Regulations § 1 that it is "prohibited for Norwegian and foreign vessels to catch snow crab in the Norwegian sea territory and inland waters, and on the Norwegian continental shelf".

At the time the shipping company submitted its application, the catching of snow crab was regulated by an exception scheme in Section 2 of the Snow Crab Regulations, whereby a vessel could be granted an exception from the ban on catching snow crab if it had been granted an acquisition permit under the Participant Act for fishing outside territorial waters.

With effect from 1 July 2019, the exception scheme in the Snow Crab Regulations § 2 was repealed. It is still prohibited to catch snow crab, but the exception scheme has been replaced by a requirement for a license to participate in the catching of snow crab according to Regulation No. 1157 of 13 October 2006 on special permits to engage in certain forms of fishing and catching (the licensing regulations). The regulation of snow crab in general was not changed, the purpose of the rule change was to get the capture of snow crab into more traditional forms of regulation of fishing and catching.

The shipping company SIA North Star applied for an exemption before the regulations were changed, but since vessels with an exemption under the Snow Crab Regulations must in any case apply for a snow crab permit under the Licensing Regulations, it is natural to now assess the application against the terms of the Licensing Regulations. This has no bearing on the outcome of this case.

It follows from the licensing regulations § 6-1 that the Directorate of Fisheries may grant permits for the catching of snow crabs in the Barents Sea. The conditions for being granted a permit follow from § 6-2.

According to § 6-2 first paragraph, the vessel must be registered in the Register of Norwegian Fishing Vessels (*Merkeregisteret*) and be suitable and equipped for catching snow crab. Furthermore, it follows

from the second paragraph that "[t]he crab permit may only be granted to vessels that have another operating basis in the form of a special permit or participant access."

None of the three vessels, i.e. Senator, Solvita and Saldus, meet the conditions in § 6-2, and can thus not be granted a license pursuant to § 6-1 of the Licensing Regulations, cf. § 6-2.

Section 6-2 lists some other conditions that may also result in granting of a snow crab permit, none of which apply in this case.

As the Ministry has found that the complaint clearly cannot be satisfied, it is not considered necessary to discuss other grounds for refusal.

Decision

The complaint is rejected. The Directorate of Fisheries' decision of 13 May 2019 is upheld.

The decision is final and cannot be appealed, cf. the Public Administration Act § 28.

With best regards
Vidar Landmark
Chief of Operations

Martin Bryde
department director

The document is electronically signed and therefore does not have handwritten signatures

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Directorate of Fisheries