

**(ROYAL NORWEGIAN MINISTRY OF TRADE, INDUSTRY AND FISHERIES)**

Advokatfirmaet Østgård DA

Your ref.

Our ref.

Date:

19/5223-3

14 November 2019

**SIA North Star - appeal of rejection of application for the right to harvest snow crab on the Norwegian continental shelf with the vessels Senator, Solvita and Saldus.**

We refer to the appeal from Advokatfirmaet Østgård on behalf of SIA North Star dated 31 May 2019 and the other documentation in the case.

SIA North Star is a party to the case and the appeal was submitted by the statutory deadline, cf. Section 29 of the Norwegian Public Administration Act. As the appeal body, the Ministry of Trade, Industry and Fisheries can examine all aspects of the case and take new circumstances into consideration, cf. Section 34 of the Norwegian Public Administration Act.

**Background**

*The application*

On 28 February 2019, SIA North Star applied for an exemption from the prohibition against the catching of snow crab in Section 1 of Regulations no. 1836 of 19 December 2014 relating to the prohibition against catching of snow crab (Snow Crab Regulations) for the vessels Senator, Solvita and Saldus. The shipping company sent a reminder on 22 March 2019 in which they noted that they were following the recommendation from the Supreme Court of Norway and applying for an exemption from the prohibition against the catching of snow crab in Section 1 of the Snow Crab Regulations.

*The decision by the Norwegian Directorate of Fisheries*

The Norwegian Directorate of Fisheries handed down a decision to reject the application on 13 May 2019. In the decision, the Directorate wrote that the Snow Crab Regulations prohibited the catching of snow crab in Norwegian territorial sea and internal waters and the Norwegian continental shelf, cf. Section 1. Reference was also made to Section 2 of the Regulations permitting exemptions from the prohibition, however a requirement for an exemption to be granted is that the vessel has a commercial licence pursuant to the Participation Act. The three vessels for which an exemption was sought do not have commercial licences and the conditions for granting an exemption were therefore not satisfied.

### *The appeal*

Advokatfirmaet Østgård appealed the decision on behalf of SIA North Star on 31 May 2019.

It was asserted in the appeal that Article 2 and 3 of the Svalbard Treaty grant all citizens of all treaty states the right to engage in fishing and hunting on Svalbard's continental shelf. It was asserted that this right applies without any form of discrimination or differential treatment, cf. among other things, Rt. 2014, page 272. According to the appellant, the Regulations relating to snow crab are both formally and essentially in violation of the prohibition in the Svalbard Treaty against discrimination and differential treatment. It was asserted that there are no reasonable grounds for this differential treatment.

The appellant also asserted that Norway alone is of the opinion that the treaty does not apply on the continental shelf and that this understanding is incorrect.

The appellant also disagreed that snow crab are a sedentary species and was of the view that snow crab are part of the water column and not the continental shelf. It was therefore asserted that since Section 1 of the Snow Crab Regulations applies to the continental shelf, there is no prohibition against the catching of snow crab.

On 10 September 2019, the Norwegian Directorate of Fisheries sent its appeal recommendation to the Ministry of Trade, Industry and Fisheries. The Directorate had found no grounds to reverse the decision and had therefore forwarded it on for further consideration by the Ministry of Trade, Industry and Fisheries.

### **The Ministry's assessment**

Pursuant to Article 77 of the United Nations Convention on the Law of the Sea, as a coastal state, Norway has an exclusive right to exploit snow crab on the Norwegian continental shelf. The wording of the Svalbard Treaty, as well as its negotiating history and general rules relating to the interpretation of treaties, clearly indicate that the rules for equal rights in the treaty only apply in territorial waters, i.e. within 12 nautical miles.

The Ministry does not agree with the appellant's assertion that snow crab are not a sedentary species. Our view is supported by the Supreme Court in Rt. 2019, page 282, and we consider it sufficient to make reference to the discussions of the Supreme Court in paragraphs 45 to 58 of the judgment. In the decision in Rt. 2019, page 272, which is cited in the appeal, the Supreme Court did not consider whether the treaty applies on the continental shelf nor did it consider the general scope of the treaty.

Section 1 of the Snow Crab Regulations states that it is "prohibited for Norwegian and foreign vessels to catch snow crab in the Norwegian territorial sea and internal waters, and on the Norwegian continental shelf."

On the date the shipping company submitted their application, the catching of snow crab was regulated by an exemption scheme in Section 2 of the Snow Crab Regulations which entailed that a vessel could be granted an exemption from the prohibition against catching snow crab if a commercial licence had been issued pursuant to the Norwegian Participation Act to harvest outside of territorial waters.

The exemption scheme in Section 2 of the Snow Crab Regulations was repealed effective from 1 July 2019. It is still prohibited to catch snow crab, however the exemption scheme has been replaced by a requirement for a licence to engage in the catching of snow crab pursuant to Regulations No. 1157 of 13 October 2006 relating to special permits to conduct certain forms of fishing and hunting

(Licencing Regulations). The rules relating to the catching of snow crab otherwise remained unchanged, and the purpose of the amendment was to include the catching of snow crab in more traditional forms for regulating fishing and hunting.

The shipping company SIA North Star applied for an exemption before the rules were amended, however since vessels with an exemption pursuant to the Snow Crab Regulations must still apply for a snow crab licence in accordance with the Licencing Regulations, it is now natural to consider the application in relation to the conditions in the Licencing Regulations. This is of no significance to the outcome of this case.

Section 6-1 of the Licencing Regulations states that the Norwegian Directorate of Fisheries can issue licences for the catching of snow crab in the Barents Sea. The conditions for being issued a license are stipulated in Section 6-2.

Pursuant to Section 6-2, subsection 1, the vessel must be registered in the Norwegian Register of Fishing Vessels and be suitable and equipped for the catching of snow crab. Subsection 2 also states that "a snow crab license can only be granted to vessels that have a different basis for operations in the form of a special permit or participation access rights."

None of the three vessels (Senator, Solvita and Saldus) satisfy the conditions in Section 6-2 and can therefore not be issued a licence pursuant to Section 6-1 of the Licencing Regulations, cf. Section 6-2.

Section 6-2 lists certain other factors that may also result in a snow crab licence being issued, however none of these are applicable in this case.

Since the Ministry has found that the appeal cannot be accepted, it is not considered necessary to discuss other grounds for dismissal of the appeal.

#### **Decision**

The appeal is dismissed. The decision by the Norwegian Directorate of Fisheries of 13 May 2019 is upheld.

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

With kind regards

Vidar Landmark

Director General

Martin Bryde

Head of Department

*This letter has been electronically approved and sent without a handwritten signature.*

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Norwegian Directorate of Fisheries