

Environment - Norway

Svalbard Act amendments regulate use of heavy oil

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June 11 2012

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Background

Due to the melting of polar ice, new transport connections by sea have emerged in the Arctic regions around the archipelago of Svalbard. The islands' geographical location provides a strategic advantage for activities that may arise in the region.

New discoveries made in the Barents Sea have contributed to the region's image as a potential area for petroleum activities. An ongoing environmental impact assessment of the area around Jan Mayen Island contributes to this view. The previously disputed area in the eastern Barents Sea and around Jan Mayen Island may prove to be a new source of natural resources in an area not subject to legal restrictions as Svalbard is.

The Svalbard Treaty, which was signed between Norway, the United States, Denmark, France, Italy, Japan, the Netherlands, Sweden, and Great Britain, Ireland and the British overseas dominions in 1920, recognises the full and absolute sovereignty of Norway over Svalbard. The signing parties were given equal rights to engage in commercial activities on the islands. As of 2012, Norway and Russia are utilising this right.

According to the official Norwegian position on this issue, as a coastal state Norway has jurisdiction over the continental shelf and the maritime areas around Svalbard. This position is a source of conflict between the parties. The United Kingdom and Spain, among others, have made official statements regarding the scope and extent of the treaty, claiming that the treaty applies not only to the islands and the territorial waters, but also to the continental shelf and the maritime zone up to the 200-mile limit.

The increased interest in the natural resources around Svalbard and the northern regions poses a threat to the environment. Thus, Norway has passed amendments to the relevant environmental legislation in order to counteract any potential negative effects that the new activities may have on the Arctic environment.

Svalbard Act

Norway has sovereignty of Svalbard, including the territorial sea surrounding the islands. According to Section 2 of the Svalbard Act,⁽¹⁾ Norwegian private and criminal law apply to activities on Svalbard.⁽²⁾ Other legislation is applicable to Svalbard only if it explicitly states this.

The majority of the environmental legislation applicable to activities on the Norwegian mainland does not apply to activities on Svalbard, such as the Norwegian Pollution Control Act,⁽³⁾ the Nature Diversity Act,⁽⁴⁾ the Culture Heritage Act⁽⁵⁾ and the Planning and Building Act.⁽⁶⁾⁽⁷⁾ Thus, the Svalbard Environmental Protection Act⁽⁸⁾ pertains to the protection of the unique Svalbard environment and covers a wide range of issues, such as nature conservation, planning and building regulations and pollution control.

The act provides for the preservation of "a virtually untouched environment in Svalbard with respect to continuous areas of wilderness, landscape elements, flora, fauna and cultural heritage".⁽⁹⁾ Section 5 of the act also sets out a general duty of care and a duty to provide information for all activities on Svalbard. This includes an obligation for the management of any entity that carries out activities on Svalbard to ensure that any party acting on its behalf and involved in such activities is aware of the provisions of the act and its subsequent regulations regarding the protection of Svalbard's flora, fauna, cultural heritage and the natural environment.

Prohibition on use of heavy oil

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Not only is heavy oil detrimental to the environment if an oil spill occurs, but it may also have a negative impact on the vulnerable Arctic environment when used as fuel onboard vessels. The use of heavy oil as fuel may also lead to the release of soot that can be harmful to the Svalbard environment.

From 2015 it will be prohibited to use heavy oil as fuel in protected Svalbard areas, comprising both nature reserves and national parks, some of which stretch into the territorial sea. Up to 84% of the territorial sea at Svalbard is included in the protected areas, making the amendment of importance for ships operating in the Arctic. Due to the expected increase in ship traffic in the Arctic region, the Norwegian authorities have amended the act in order to deal with the expected increase in ship traffic.

To a large extent, the authorities have laid down conservation regulations, applicable in the protected areas, which prohibit the use of heavy fuel pursuant to Section 12 of the act.⁽¹⁰⁾ This would limit the existing prohibition on use of heavy oil to the areas covered by the conservation regulations.

The amended Section 82a of the act gives the Ministry of the Environment the authority to lay down regulations on the quality of fuel used in the territorial sea at Svalbard. This provision may also be the basis for a prohibition applying to areas of the territorial sea that are not covered by the existing prohibition; the result could be a complete prohibition on the use of heavy oil as fuel, including in the ship traffic corridors, which are not covered by the prohibition set out in the conservation regulations.⁽¹¹⁾ The amendment will enter into force on July 1 2012, but will not become effective until the ministry issues a regulation on the use of fuel in territorial waters not covered by the existing regulations.

Although the amendment to the act does not set down a complete prohibition, it gives the ministry the authority to issue regulations regarding the use of fuel, and it may become an important instrument in the protection of the unique environment of the Svalbard archipelago.

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Endnotes

(1) Act 11/1925 Relating to Svalbard. The act establishes that Svalbard is a part of the kingdom of Norway and also includes provisions on the administration of Svalbard.

(2) Unless otherwise stated.

(3) Act 6/1981 Concerning Protection Against Pollution and Concerning Waste.

(4) Act 100/2009 Relating to the Management of Biological, Geological and Landscape Diversity. This act states that Chapter 7 is applicable to Svalbard and Jan Mayen Island.

(5) Act 50/1978 Concerning the Cultural Heritage.

(6) Act 71/2008 Relating to Planning and the Processing of Building Applications.

(7) See Section 2 of the Svalbard Environmental Protection Act; cf Sections 2 and 3.

(8) Act 79/2001 Relating to the Protection of the Environment at Svalbard.

(9) Cf Section 1 of the Svalbard Environmental Protection Act.

(10) According to Section 12 of the Svalbard Environmental Protection Act the authorities may lay down regulations regarding protected areas at Svalbard and may lay down provisions regarding activities within the protected areas.

(11) Such as some parts of the Ice Fjord.

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