

# Catching of snow crab in the Loophole

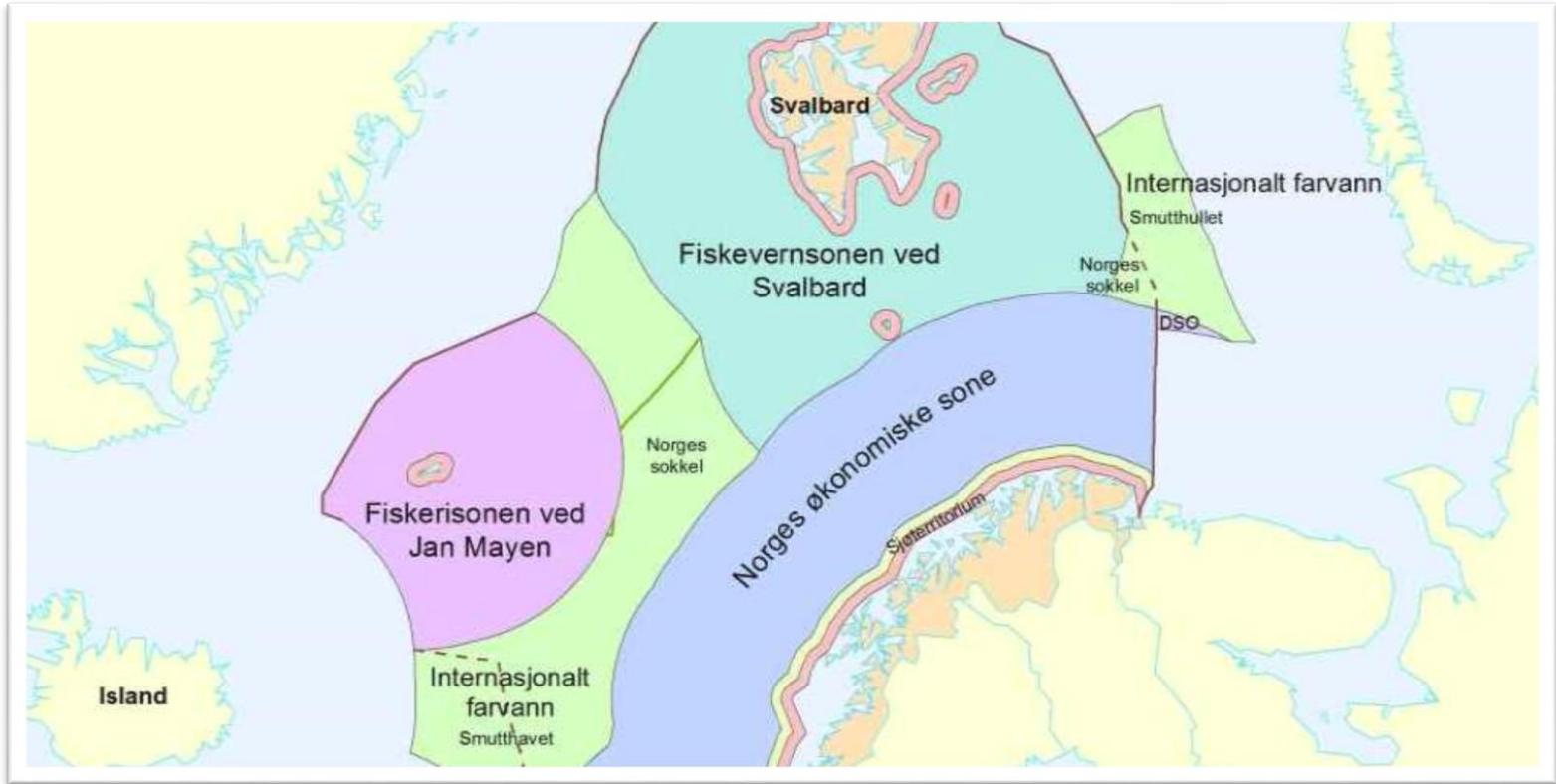
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# Catching of snow crab in the Loophole

1. The «Juros Vilkas» case (HR-2017-2257-A)
2. UNCLOS art. 77 vs NEAFC Convention
3. Is snow crab a sedentary species? (Not an issue before the Supreme Court)

# «Juros Vilkas» case – Background

- Fishery resources in the Loophole regulated by NEAFC Convention of 1980 as amended in 2006
- Norway and Russia agreed on the maritime delimitation in the Barents Sea in September 2010
- The 2006 amendment to the NEAFC Convention that included sedentary species in its scope entered into force in 2013
- Snow crab fishing in the Loophole started in 2013
- Regulation prohibiting catching of snow crab in force 1 January 2016
- Lithuanian flagged vessel, with fishing permit issued on 30 December 2015 by the flag state
- Vessel arrested in Båtsfjord in July 2016 after having caught snow crab on the NCS in the Loophole
- Q1: Is the Regulation contrary to Norway's public international law obligations, i.e. NEAFC Convention?
- Q2: Is snow crab a sedentary species in terms of UNCLOS art. 77?

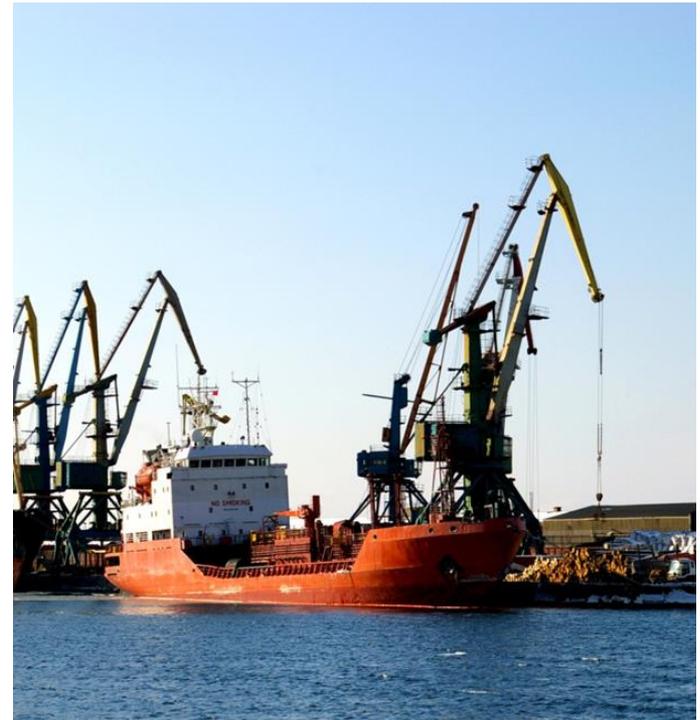




# UNCLOS art. 77 vs NEAFC Convention

## Questions before the Supreme Court:

- Does the UNCLOS have a higher rank than NEAFC SCE?
  - SC: Did not decide on the issue
- Is NEAFCs Scheme of Control and Enforcements (“NEAFC SCE”) binding rules of public international law?
  - SC: “Yes”
- Does the catching of snow crab on the continental shelf fall within the scope of the NEAFC SCE?
  - SC: Likely so, but avoided deciding on the issue
- Does the flag state have an exclusive right to issue fishing permits for the Loophole?
  - SC: “No – Not clearly stated in NEAFC SCE”



# UNCLOS art. 77 vs NEAFC Convention (cont.)

- Does the flag state have an exclusive right to issue fishing permits for the Loophole?
  - SC: "No – Not clearly stated in NEAFC SCE"
- UNCLOS art. 77:

## **Article 77**

### **Rights of the coastal State over the continental shelf**

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

# UNCLOS art. 77 vs NEAFC Convention (cont.)

- NEAFC SCE art. 4:

## **Article 4 - Authorisation to Fish**

### **1. Each Contracting Party shall:**

- a. authorise the use of fishing vessels flying its flag for fishing activities only where it is able to exercise effectively its responsibilities in respect of such vessels;
  - b. ensure that only authorised fishing vessels flying its flag conduct fishing activities;
  - c. ensure that fishing vessels flying its flag comply with applicable recommendations adopted under the Convention;
  - d. undertake to manage the number of authorised fishing vessels and their fishing effort commensurate to the fishing opportunities available to that Contracting Party;
- State practice indicated that Norway had accepted foreign fishing permits for catching of snow crab since 2013
  - SC concluded that not an express consent for the purpose of UNCLOS art. 77

# Is snow crab a sedentary species?

- Not an issue before the Supreme Court. Question still pending.
- UNCLOS art. 77:
  - *1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. [...]*
  - *4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.*
- Same wording as in Geneva Convention of 1958 on the Continental Shelf, art. 2
- Official preparatory works indicate that *crustacea* should not be covered by the definition
  - (cf. Marjorie M. Whiteman, "Conference on the Law of the Sea: Convention on the Continental Shelf", 52nd annual American Journal of International Law, page 629)

# Is snow crab a sedentary species? (cont.)

- The Australian delegate who spoke on behalf of the countries that proposed the wording, including Norway, stated that:
  - *“the permanent intimate association of certain living organisms with the seabed [justifies] giving the coastal States exclusive rights in regard to such organisms”.*
  - *“The living organisms of the seabed and subsoil belonging to sedentary species comprised coral, sponges, oysters, including pearl oysters, pearl shell, the sacred chank of India and Ceylon, the trochus and plants.”*
  - *“It would be senseless to give coastal States exclusive rights over mineral resources such as the sands of the seabed but not over the coral, sponges and the living organisms which never moved more than a few inches or a few feet on the floor of the sea.”*
  - The states that had proposed the wording, including Norway; *“had agreed that no crustacea or swimming species should be covered by the definition”.*

# Is snow crab a sedentary species? (cont.)

- Challenge 1: EU previously accepted snow crab as sedentary species. Also expressed that view as late as August 2015
- Challenge 2: Several other states regard crabs in general as sedentary species (UK: “Crabs crawl, lobsters swim.”)
- Pending legal and factual question whether snow crab is a sedentary species under UNCLOS art. 77
  - Issue pending before Hålogaland Appeal Court in the “Senator” case



Thank you!



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