

FOCUS NORTH

Maritime Jurisdiction and Commercial Activity

Produced by the research company Ocean Futures, Oslo for the Norwegian Atlantic Committee

Maritime jurisdiction zones

The Law of the Sea gives coastal states a variety of rights, privileges and responsibilities. For example, a coastal state may establish different, but clearly defined zones extending out from the coast and along the seabed. The coastal state's rights and authority varies in each of the zones, as illustrated in Figure 1. All of the Arctic states have established these zones around their territories, including the mainland as well as islands and archipelagos. The baseline forms the starting point of these maritime zones.

The **baseline** is the line along the coast from which the different zones are measured. As a general rule, it is the low-water line. In certain circumstances it may be drawn as a straight line between points (for example, across the mouths of rivers and fjords, around shoals and islands close to land, and in other special circumstances).

Inland waters are comprised of all marine areas which lie inside the baseline, such as rivers and fjords. Here the coastal state has the same sovereignty as it has over its land territory. Among other things, they may deny access to foreign vessels.

The **territorial sea** extends from the baseline up to 12 nautical miles (22 km) to sea. It comprises the airspace, sea surface, water column and seabed. Here the coastal state has full sovereignty, although

ships of other states may sail through it as long as their passage is "innocent"; that is to say, it does not disturb the coastal state's peace, good order or security. Norway extended its territorial sea from 4 to 12 nautical miles in 2004.

The **exclusive economic zone (EEZ)** extends from the territorial sea and out to a limit of 200 nautical miles (370 km) from the baseline. Here the coastal state has jurisdiction over natural resources, installations, research and environmental protection. Foreign vessels enjoy the same freedom of navigation in the EEZ as they do on the high seas.

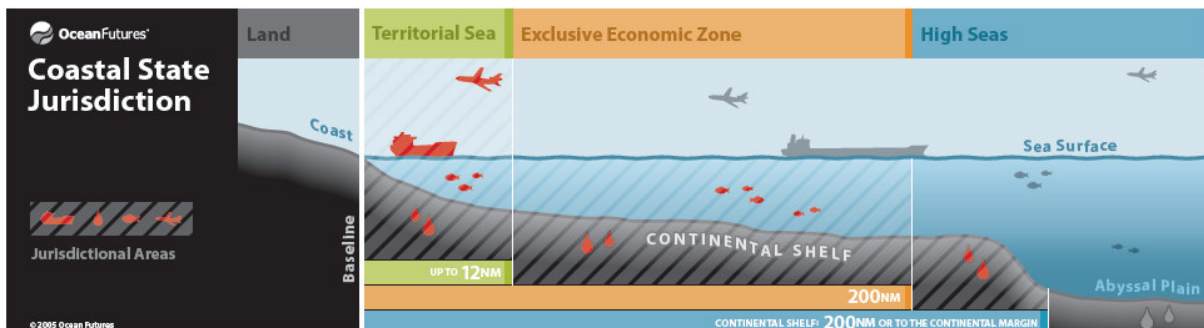
Coastal states may adopt laws to prevent and control pollution from ships. Normally, these may not restrict freedom of navigation in the exclusive economic zone. Under special circumstances, they may establish more restrictive measures to protect the environment within specially defined areas. Such measures might include mandatory shipping lanes, compulsory pilotage, etc.

The **continental shelf** is the submerged prolongation of a coastal state's land mass out in the sea. It comprises the seabed and subsoil to the outer edge of the continental margin, or out to 200 nautical miles (370 km) if the continental margin does not extend to that distance. The coastal state has sovereignty over the exploration and use of natural resources on and in the continental shelf.

The disputed area between Norway and Russia

Norwegian and Russian claims to economic zones and shelves overlap in the Barents Sea. Norway and Russia disagree on where the maritime

Figure 1 – Coastal state jurisdiction within the different maritime zones





boundary should be drawn. Although negotiations on a boundary agreement have taken place since 1974, the parties have yet to reach an agreement.

When claims overlap, international law requires the boundaries be set by agreement. In keeping with the Law of the Sea Convention, these agreements must be based on established principles of international law in order to reach an *equitable* solution.

The usual solution is to base the boundary on a median line. A median line is equidistant from the nearest points of the two states' baselines.

Historic title, geographic factors and other special circumstances, however, may make other principles for drawing the boundary appropriate

Negotiating positions

Norway desires to fix the maritime boundary using the median-line principle. Russia, on the other hand, believes that due to a variety of special circumstances, it should be drawn along a meridian (32° 04' 35" east longitude) that stretches from Varanger fjord to the North Pole.

This line coincides with the westernmost line in the Russian sector claim for territories in the North. Sector claims have been advanced by Canada and Russia in the Arctic and by countries which claim territories in Antarctica. The sector-line principle is a disputed concept without basis in international law.

Figure 2 illustrates the disputed area (*Det omstridte område*), median line (*Norsk-russisk midtlinje*) and Russian sector line (*Russisk sektorlinje*).

Commercial significance

There are particularly two resources of commercial significance in the disputed area:

Oil and gas – Norway and Russia are in agreement not to allow exploration drilling, prospecting or commercial activity in the disputed area until the boundary has been clarified. Nevertheless, some seismic surveys were conducted in the area during the 1980s. According to the Russian energy ministry, the disputed area holds 6.4 billion tons oil equivalent (400 million tons of oil and 5800 billion cubic meters of gas). However, the disputed area has no proven reserves, since exploratory drilling has not yet taken place.

Fisheries – Regulating fishing in the disputed area was once a politically charged and conflict-ridden issue. The so-called Grey Zone Agreement has gone a long way in resolving the fishing conflict in the absence of a final boundary agreement.

The Grey Zone

Fisheries management in the disputed area was taken up as a separate issue. Norway and Russia concluded a temporary agreement on fishing in 1978. The agreement defined a new area, the so-called Grey Zone (*Gråsonen* in Figure 2), where the parties could fish and inspect fishing vessels in accordance with agreed arrangements.

The Grey Zone includes part of the disputed area as well as areas of undisputed Norwegian and Russian maritime jurisdiction.

This provisional agreement has been renewed every year since 1978. For the most part, the fishing arrangements have functioned as intended.

Svalbard

Svalbard is an anomaly in the world of international law. Although the Svalbard Treaty of 1920 gave Norway sovereignty over the archipelago, it also gave the other signatories rights to fish and conduct other economic activities on an equal basis on the islands and in the territorial seas. The treaty has been signed by 44 states.

Since 1920, new concepts of international law have extended coastal state jurisdiction through the establishment of the exclusive economic zone and the continental shelf.

Does the Svalbard Treaty's equal treatment principle apply in these new zones? Norway claims it does not, and thus Norway may establish an EEZ and continental shelf around Svalbard with the same rights as it has around mainland Norway. The other parties claim the Svalbard Treaty also applies in these zones, and thus they have the same rights of equal access and use in these zones as they have in the territorial sea around Svalbard.

The Fishery Protection Zone

In 1977, Norway established a fisheries protection zone extending 200 nautical miles around Svalbard. The intention was to improve fisheries management in the area. The fisheries protection zone is not a full exclusive economic zone, but an area where Norwegian authorities apply Norwegian fishing regulations. Access to fishing in the area is non-discriminatory and is determined on the basis of traditional fishing—that is, fishing activity which has historical roots. From a juridical point of view, most countries do not recognize the legal foundation for establishing the zone. Nevertheless, the regulations are largely complied with in practice.

The continental shelf

The Svalbard Treaty's application to the continental shelf has been a dormant issue. It is now moving back to the political agenda as oil and gas production move to the Barents Sea.

Norway claims that the shelf around Svalbard is a part of the Norwegian shelf, which extends from mainland Norway up to and beyond the island group and out to the deep sea bed under the ice.

Jan Mayen

In 1980, Norway established a fishing zone extending 200 nautical miles around Jan Mayen. The zone is not a full exclusive economic zone, as only fishing rights apply. Its establishment led to disagreements with Denmark (Greenland) and Iceland over where the maritime boundaries should be drawn. The disagreements have since been resolved, following a compromise with Iceland in 1981 in which Norway gave up disputed area, and with Denmark in 1993 through a ruling by the International Court at The Hague.

The Barents Sea Loophole & Banana Hole

The Loophole (*Smuttthullet* in Figure 2) is an area in the Barents Sea surrounded by, but outside

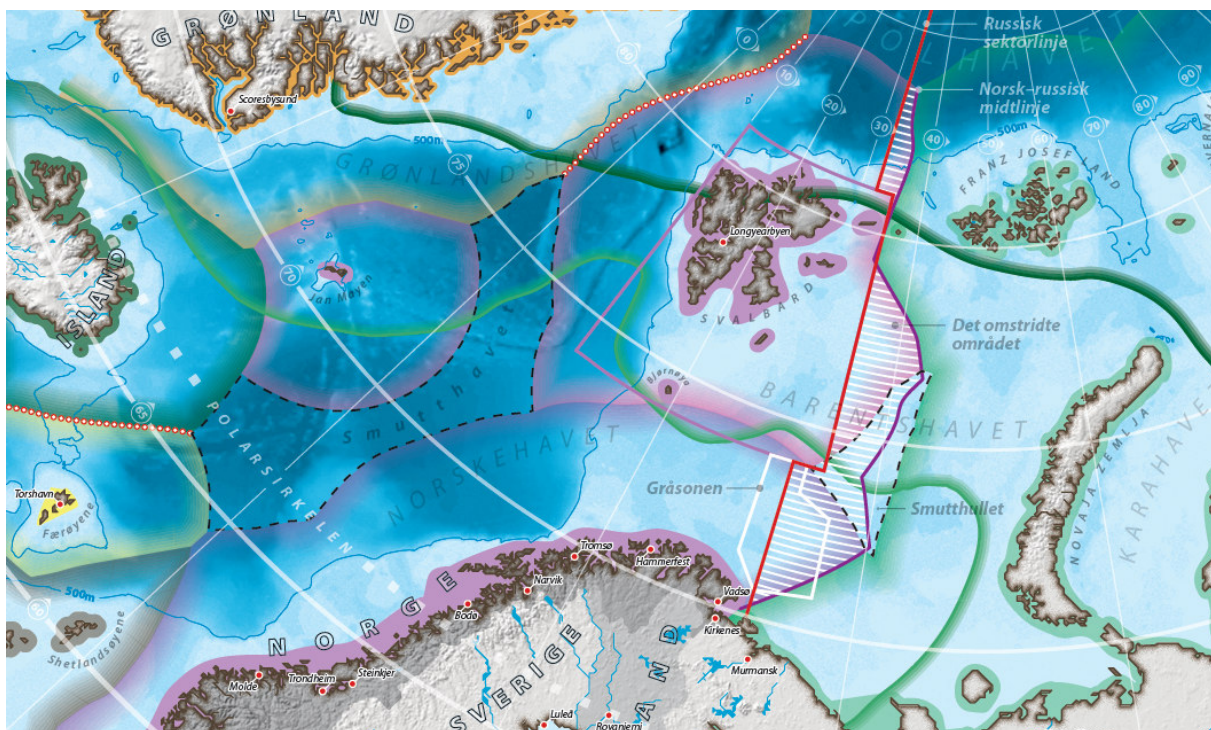
the exclusive economic zones of Norway and Russia, and the fishery protection zone around Svalbard. The seabed lies within the continental shelves of Norway and Russia.

The Banana Hole (*Smuthavet* in Figure 2) is an area surrounded by, but outside the economic zones of Norway, Faeroe Islands, Iceland and Greenland, and the Svalbard and Jan Mayen fisheries zones. Parts of the seabed in the Banana Hole lie within the continental shelves of these countries.

Both of these areas are High Seas. Under the Law of the Sea, they are open to fishing by vessels from all states. Unregulated fishing on fish stocks that migrate through such areas from adjacent exclusive economic zones has at times been intense. This has jeopardized the coastal states' ability to manage the stocks in a sustainable manner.

Various legal measures have been taken to regulate fishing. These include bilateral and regional agreements, a UN convention from 1995 on fishing on the high seas, and efforts through the North East Atlantic Fisheries Commission. For the most part, these efforts have resolved fishing problems in both the Barents Sea Loophole and Banana Hole. Fish stocks could come under renewed pressure should fishing vessels from nations that are not party to the regional agreements begin fishing in these zones.

Figure 2 – Maritime jurisdiction areas in the North



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Conflicts and their effects on commercial activity

Maritime disputes in the North limit commercial activity. This occurs through three mechanisms:

Legal constraints

Under the Law of the Sea, states should not take actions that may jeopardize reaching a final delimitation agreement. Initiating or authorizing commercial activity, such as issuing oil production licences, might be considered a prejudicial action. In the absence of a provisional agreement, such as the Grey Zone agreement, this restriction severely limits commercial activity in disputed areas.

Norway and Russia respect this principle by not allowing exploration drilling in the disputed area.

Self-imposed constraints

Parties to a dispute may limit their own activity as a way of reducing conflict. Svalbard is a good example. Norway could have established an EEZ around Svalbard and asserted exclusive resource rights, but chose instead to establish a fishery protection zone and allow other countries to fish on a non-discriminatory basis. Furthermore, Norway has not granted petroleum production licenses on the continental shelf around Svalbard, although it has permitted seismic prospecting.

Uncertainty

Jurisdictional disputes create uncertainty. Uncertainty increases the risk of conflict, which in turn restrains investment and economic activity. Therefore, it is unlikely that a commercial actor would conduct exploration drilling on the shelf around Svalbard as there is a lack of clarity over their legal title to develop a find.

Conflict resolution and commercial activity

States use five principal strategies in handling issues under dispute. Norway has used nearly all of them in addressing disputed matters in the North:

- To conclude a final agreement;
- To accept a third party's settlement;
- To accept the status quo;

- To conclude a provisional/partial agreement;
- To exercise force.

There is a relationship between the degree of commercial activity in an area and which strategy the parties to a conflict have chosen. The best basis for commercial activity is legal certainty. A final agreement provides certainty and predictability, whether it is negotiated directly or is the result of a third party's settlement.

Commercial interests commonly play an important role in dispute resolution. Pressure from domestic companies can increase the focus to find a solution, prompt a change in strategies, and open parties to consider different compromise solutions.

Norwegian oil companies have openly underscored the importance of resolving the Barents Sea maritime boundary. From their point of view, a quick resolution will allow them to begin long-range plans as well as to better compete against foreign companies. The government typically views such pressure as counterproductive, as it may compromise their negotiating position.

It is not necessarily vital to have complete regional agreement on boundary issues before initiating activity. For example, the Caspian Sea has several boundary disputes between the five coastal states. Although companies have not initiated activity directly inside disputed areas, they have nonetheless invested heavily in the region and in countries that have unresolved boundary disputes.

Provisional and partial agreements can provide a basis for commercial activities. The Grey Zone agreement is an example in the fishing sector, and a provisional agreement between East Timor and Australia is an example of a temporary agreement that paves the way to full petroleum exploitation in a disputed area.

In no way does this mean that the resolutions in the Caspian Sea or East Timor can be directly applied in the Barents Sea. Whether temporary agreements are appropriate is a matter for the parties to determine. Russia has suggested joint venture agreements for developing petroleum resources in the disputed area, but Norway has consistently declined on the basis they interfere with achieving a final boundary delimitation. In other words, what is commercially and legally acceptable is not necessarily politically acceptable.

Summarized from "Maritime Jurisdiction, Conflicts and Commercial Activity in the Northern Areas" (9/2005), available (in Norwegian) at ocean-futures.com

