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# Opening new northern sea areas to petroleum exploration: the case of Norway

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Energy Law Conference 24-26 September 2014,  
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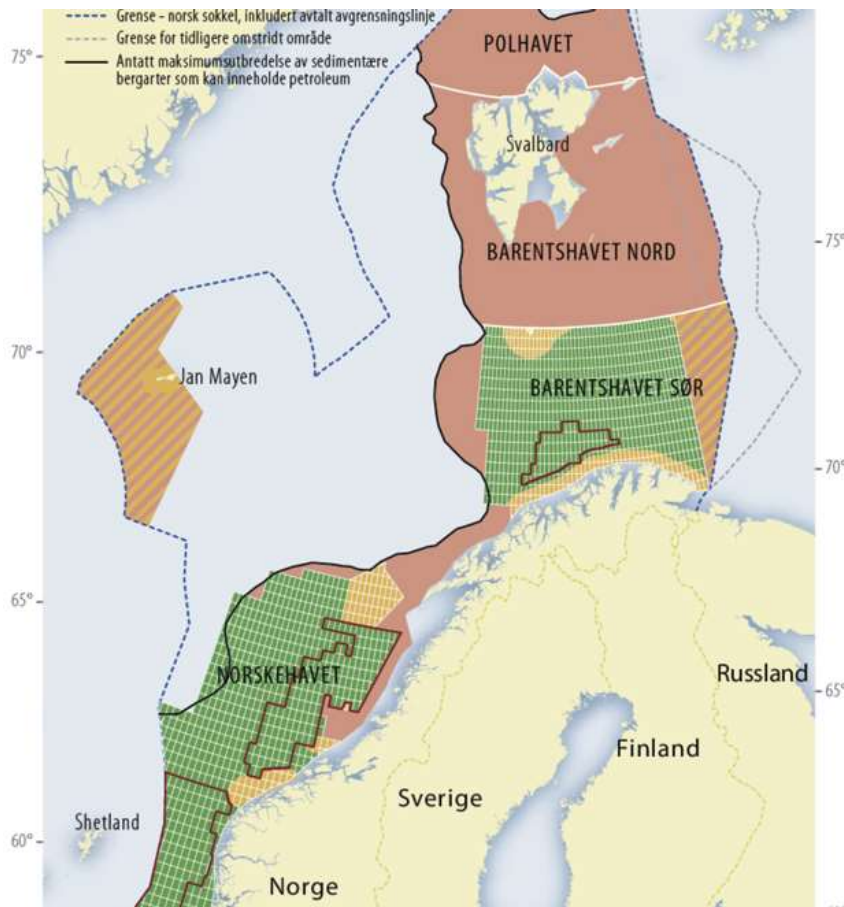
# Outline

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- Background
- Superior environmental legal framework
- The process of opening areas on the basis of the Act 29 November 1996 No. 72 relating to petroleum activities
- The Nature Diversity Act of 18 June 2009 No.100
- The legal significance of environmental considerations
- Conclusions

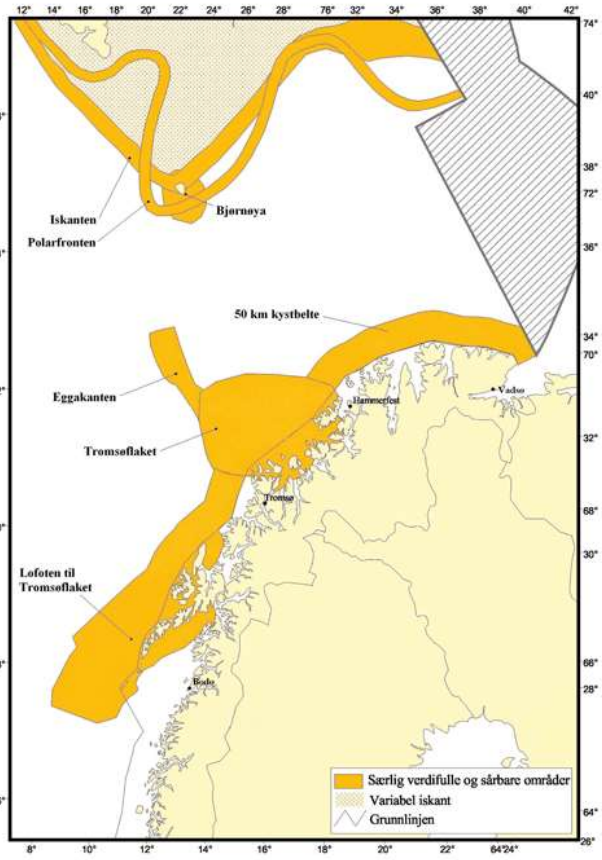


# Background



- Large areas in the north of Norway are not opened for petroleum activities
- The political frames for petroleum activities and other human activities follow from the Integrated Management Plan for the Marine Environment of the Barents Sea – Lofoten Area

# Background



# Superior environmental legal framework

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- Grunnloven § 112
- International environmental obligations:
  - Law of the Sea Convention
  - Convention on Biological Diversity
  - The OSPAR Convention



Photo: Reuters

# The process of opening areas for petroleum activities

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- The process of opening areas is regulated in the Act 29 November 1996 No. 72 relating to petroleum activities
- Section 1-1:

“The Norwegian State has the proprietary right to subsea petroleum deposits and the exclusive right to resource management”
- Section 3-1(opening of new areas):

“Prior to the opening of new areas with a view to granting production licences, an *evaluation shall be undertaken* of the various interests involved in the relevant area. In this evaluation, *an assessment shall be made* of the impact of the petroleum activities on trade, industry and the environment, and of possible risks of pollution, as well as the economic and social effects that may be a result of the petroleum activities.”

# The Nature Diversity Act

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- Section 1 (the purpose of the act):  
«to protect biological, geological and landscape diversity and ecological processes through conservation and sustainable use..., now and in the future...»
- The relationship between the Petroleum Act and the Nature Diversity Act
- Section 4 (management objectives for habitat types and ecosystems):  
“The objective is to maintain the diversity of habitat types within their natural range and the species diversity and ecological processes that are characteristic of each habitat type. The objective is also to maintain ecosystem structure, functioning and productivity to the extent this is considered to be reasonable.”

# Nature Diversity Act

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- **Section 7 (the principles for official decision-making set out in sections 8 to 12)**

“The principles set out in sections 8 to 12 *shall serve as guidelines* for the exercise of public authority, including when an administrative agency allocates grants, and for the management of real property. Decisions *shall state how these principles have been applied* in an assessment under the first sentence.”
- **Section 8 (knowledge base)**

“Official decisions that affect biological, geological and landscape diversity *shall, as far as is reasonable*, be based on scientific knowledge of the population status of species, the range and ecological status of habitat types, and the impacts of environmental pressures. The knowledge required shall be in reasonable proportion to the nature of the case and the risk of damage to biological, geological and landscape diversity.”



# Nature Diversity Act

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- **Section 9 (precautionary principle):**

“When a decision is made in the absence of adequate information on the impacts it may have on the natural environment, *the aim shall be to avoid possible significant damage to biological, geological or landscape diversity*. If there is a risk of serious or irreversible damage to biological, geological or landscape diversity, lack of knowledge shall not be used as a reason for postponing or not introducing management measures.”

- **Section 10 (ecosystem approach and cumulative environmental effects):**

“Any pressure on an ecosystem shall be assessed on the basis of the cumulative environmental effects on the ecosystem now or in the future.”

# The legal significance of the environmental considerations

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- Environmental considerations shall be part of the evaluation
- No direction with regard to the weight of the relevant considerations
- Environmental considerations strengthened by the Nature Diversity Act
- New principles are introduced which are mandatory and which clarify in what situations environmental considerations must be decisive

# Conclusions

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- Environmental considerations play an important role in the opening process
- To a large extent a political decision whether an area should be opened
- The decisions are difficult (impossible) to review
- Depend on a "political protection" of sensitive areas – no legal basis for marine protected areas outside the territorial sea

# Thank you!

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