October 2018

CIRCULAR H-6/18

LAWS AND GUIDELINES FOR PLANNING AND RESOURCE UTILISATION IN COASTAL MARINE AREAS

Introduction

In this circular, the Ministry of Local Government and Modernisation will provide information about how the Planning and Building Act and important sector laws relating to coastal marine areas should be viewed in conjunction with each other and coordinated. The Planning and Building Act of 2008 extended its geographic scope in the sea to one nautical mile from the baseline. For this area, the municipalities adopt land-use plans to regulate marine land use. The Act of 2008 contains several options for differentiating land uses by objective, zones requiring special consideration and provisions. A better knowledge base and new digital tools improve our possibilities of planning in marine areas. They enable better coordination of central government, county and local government activities, and provide a basis for decisions on the use and protection of resources and on overall assessment of development projects. At the same time, a number of sector laws also apply to these areas, and it is therefore important to view plans and sector law processing in conjunction with each other.

This circular replaces circular T-4/96 Laws and guidelines for planning and resource utilisation in the coastal zone. The circular concerns coastal zone planning in the land-use part of the municipal master plan. Regional plans and zoning plans are also discussed in brief. The emphasis is on providing an updated and broad presentation of the laws that have a bearing on coastal zone planning.

Coastal marine areas are marked by a growth in activity and new forms of utilisation, which often give rise to conflicts of interests. Aquaculture is an important industry along parts of the coast, at the same time as it can have an adverse impact on the environment and public access. There is a need for active planning in order to facilitate growth in the aquaculture industry within an environmentally sustainable framework. New industries, such as the cultivation and harvesting of sea grass, pose challenges that have implications for land-use planning. Other types of conflicting interests in coastal marine areas also need clarification, for example between marinas and environmental considerations, or between aquaculture sites and the Armed Forces' shooting ranges and training areas. Based on national climate and transport goals, an increase can be expected in transport of goods by sea, and it is therefore important to ensure safe fairways. New industries like breaking up scrapped oil installations, wind power production and mining waste disposal sites impact on the marine and onshore environment in different ways.

Land-use planning must take account of Sami interests and traditional use of coastal marine areas for fjord fishing. It follows from Section 3-1 first paragraph (c) of the Planning and Building Act that the Sami culture, economic activity and social life shall be protected.

Public right of access, including to the shore zone, must be considered when planning marine land use, but private rights – for example shoreline access rights – can also have implications for municipal land-use planning.

The system of planning is the same for marine and onshore areas. Planning in coastal marine areas is of more recent date, however, and the municipalities often face planning-related and legal challenges of a different kind from those they encounter on land. Widely varying depths and currents are special features of the marine areas. Since the marine areas consist of water, measures in one place can have consequences for land-use in other areas, including across municipal and county borders. At the same time, the possibility of combining utilisation and protection is greater in the sea than on land, and it is possible to plan for different activities on the surface, in the water column and on the seabed.

The need for holistic planning, with coordination and clarification of which is the competent authority, has increased, both at municipal and county level. The Planning and Building Act is the cross-sector law that is meant to ensure such coordination of central government, county and local government interests in land use. In the Planning and Building Act of 2008, coordination is highlighted as a key principle in Section 1-1 on the purpose of the Act. This means that proper coordination between the planning process and subsequent processing under sector laws must be greatly emphasised. This will ensure a more rapid and flexible processing, while also allowing for necessary clarifications to be made at appropriate stages of the process.

Our knowledge base and possibility of better and more accurate planning in marine areas are developing fast. That means that more can be clarified in plans in areas where the knowledge base is good that in areas where the knowledge base is poorer. At the same time, in areas with much activity and many interests to be considered, greater clarification is needed in the plans. It is important, therefore, to have good processes in place to ensure that plans are updated and have the right level of detail in relation to the available knowledge. The system for clarification and stipulation of land use set out in the Planning and Building Act is based on broad involvement and political decisions. At the same time, licensing legislation and individual sector laws will set requirements and conditions for the concrete projects, which are not naturally a matter for the planning decision, but which can serve as guidance for choosing between land-use options.

Updated municipal plans will strengthen the municipalities' role and freedom of action to develop aquaculture and other marine-based industries. They will also reduce local conflicts and the need for processing dispensation applications. It will therefore result in greater predictability for the industry and more efficient case processing.

1 The Planning and Building Act in coastal marine areas

Introduction

Act of 27 June 2008 No 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act) is the most important law regulating land use and public planning. The Act incorporates two main elements: rules on planning and rules on the processing of building applications. The rules on planning aim to ensure an overall assessment of future land use and social development in an area, while the rules on processing building applications aim to ensure assessment of each individual project.

1.1 Scope

According to Section 1-2 of the Planning and Building Act, it applies to both land and sea, including watercourses. In marine areas, it applies to a zone extending one nautical mile from the baseline. The background to the extension of the scope to one nautical mile from the baseline in the most recent Planning and Building Act, was the need to clarify and balance interests in the marine zone through municipal and regional planning. One specific reason was to facilitate the implementation of EU's Water Framework Directive in planning under the Act. Developments in aquaculture and fisheries combined with increasing use of coastal areas for recreational and pleasure craft purposes, have increased the need for more coordinated planning in the coastal zone. The goal is to facilitate good and sustainable resource utilisation and growth in the aquaculture industry, while also ensuring long-term protection of natural diversity, cultural heritage sites and a good balancing of the various user interests. The extended substantive as well as geographic scope leave the municipalities much room for planning in coastal marine areas, while also making them responsible for meeting national goals. The county authorities also have important roles to play, both as regional planning authorities and through being responsible for economic development.

The Planning and Building Act does not apply to wind power plants or other installations for the production of energy that are subject to a licensing requirement under the Energy Act, the Water Resources Act or the Watercourse Regulation Act; see Section 1-3 of the Planning and Building Act. The relationship between the Planning and Building Act and the energy and watercourse legislation is described in more detail in Chapter 9.

1.2 Plan types – Introduction

Plan types mentioned in the Planning and Building Act that have a bearing on the use of marine areas can be divided into legally binding and non-binding plans. They are part of

a plan hierarchy in which overall plans define the framework for more detailed plans and projects.

Regional plans are prepared by the county authorities and may be limited to a certain theme or part of a county. They are not legally binding, but shall form a basis for the county, central government and municipal authorities' planning and activities. The county authorities may adopt temporary regional plans prohibiting the implementation without consent of specific building and construction projects in certain areas for up to ten years. The purpose of this is to ensure sensible control of land use pending the revision of municipal land-use plans.

The Planning and Building Act aims to ensure that legally binding plans are prepared for all parts of a municipality, including the marine areas. The land-use part of the municipal master plan is meant to ensure this. Planning must be adapted according to need, and the level of detail sought in municipal master plans will therefore vary. The Planning and Building Act's requirement for a zoning plan for major building and construction projects also applies to the marine zone. What should be deemed to constitute a major building and construction project depends on a concrete assessment of local conditions.

The land-use part of the municipal master plan may contain provisions on the types of project for which a zoning plan is required, either in the form of an area zoning plan or a detailed zoning plan. New marinas, harbours and fairway improvement projects are examples of such project types. A zoning plan will normally not be required for new aquaculture sites because necessary clarification will be provided in the municipal master plan and the subsequent processing under the Aquaculture Act.

Even though the Planning and Building Act is based on most of the planning taking place at the municipal level, the planning has to be done within the framework set by national and regional guidelines. For planning to promote sustainable development, it may be necessary to look across municipal boundaries and consider plans in a broader perspective through the use of regional and inter-municipal plans.

National expectations of regional and municipal planning are defined by central government every four years. The national expectations are to be followed up by the county and municipal councils in their regional and municipal planning strategies, and in the subsequent planning.

Central government planning guidelines and planning provisions are other instruments used to provide guidance on municipal planning. The document *Statlige planretningslinjer for differensiert forvaltning av strandsonen langs sjøen (2011)* provides guidelines for land-use in a 100-m-wide belt along the shoreline and is particularly important in relation to the marine zone.

1.3 Regional and inter-municipal plans

The rules on regional and inter-municipal plans are set out in Chapters 8 and 9 of the Planning and Building Act.

Regional plans provide guidance for municipal plans and may or may not include a planning map. Guidelines for land use in regional plans can become legally binding if provided for in a regional planning provision, or if the regional plan is incorporated into a municipal plan with legally binding effect. The rules on planning programmes and environmental impact assessments apply equally to regional plans containing guidelines for land use. Separate rules exist for the drafting of regional planning maps.

Inter-municipal plans may or may not include a planning map. They are not legally binding until they are adopted as legally binding plans by the individual municipality.

Planning in the marine zone requires good knowledge of the marine environment and the particular interests that come into play in coastal marine areas. Use of regional and inter-municipal plans is advantageous in that the municipalities gain access to a common updated knowledge base and are able to prepare planning programmes and environmental impact assessments together.

1.4 Municipal master plan

The rules on municipal master plans are laid down in Chapter 11 of the Planning and Building Act. All municipalities are required to have a municipal master plan comprising a social element with an implementation element and a land-use element. The social part shall specify the municipality's overall goals and strategies, including for social and industrial/commercial development and environmental protection, and shall serve as a basis for the municipality's prioritisation in different sectors. Municipal assessments and priorities with a bearing on the municipal administration of marine areas, should be described in the social part.

The land-use part includes planning maps, provisions and a plan description, and constitutes a long-term plan for land use in the municipality. It should be of an overriding nature, following up the goals and strategies described in the social part. The land-use part of the municipal master plan shall describe the main features of land utilisation in the municipality to the necessary extent. The land-use part is legally binding. Anyone who intends to make use of land or resources is thus obliged to comply with the provisions of the plan.

Within the framework of national goals and guidelines, the Planning and Building Act affords the municipalities considerable flexibility with respect to how marine areas are

addressed in the land-use part of the municipal master plan. The level of detail and choice of objective and provisions shall be adapted to the concrete planning situation.

The Act sets out six main objectives that may be used in the land-use part of the municipal master plan. These main objectives may be broken down into sub-objectives as required. It is particularly Section 11-7(6) 'Use and conservation of the sea and watercourses with associated shore zone' that is used in marine areas. The objective is a continuation of Section 20-4 first paragraph (5) of the Planning and Building Act of 1985, while the term 'shore zone' has been introduced to ensure that land-use objectives are consistent between land and sea. By 'associated shore zone' is meant areas on land that are directly associated with the sea and the use of marine areas. For example, a quay can cover both land and sea areas, and the same land-use objective should therefore be used for both. It is important to indicate the shoreline in such plans.

The main objective 'use and conservation of the sea and watercourses with associated shore zone' may be broken down into the sub-objectives public access, fairways, fishing, aquaculture, nature areas and outdoor recreation areas, two or more of which may be combined. It must be kept in mind that all sub-objectives, including aquaculture, are part of the main objective. The Act states that, if no sub-objectives are defined, necessary provisions shall be adopted to clarify the conditions for use and conservation of the areas.

Municipalities that choose to only define a main objective for the marine areas, without sub-objectives or further provisions, have in effect not conducted a land-use assessment. That means that they waive the possibility of controlling land use, and leave the decisions to the authorities that administer the sector laws. A municipality that, based on resource considerations or for other reasons, chooses to use a main objective only, should therefore consider adopting provisions on planning requirements for marine projects or other provisions to clarify land use. All municipalities should have a land-use part in the municipal master plan that includes a concrete assessment of land use in coastal marine areas, and where different interests and considerations are weighed against each other.

It follows from Section 11-11(3) of the Planning and Building Act that the municipal master plan may set out provisions regarding use of the water surface, water column and seabed. The municipality can thus decide on use of the surface area as well as on requirements and conditions for use of the water column and seabed. For example, there is a growing need to use three-dimensional plans in narrow waters and in port/harbour areas. Such plans can, for example, show the impacts of a project, while also establishing binding requirements for land reclamation, for deepening a fairway or for a new aquaculture site with indication of the moorings.

The level of detail of a municipal master plan may vary, including in the marine areas. The municipality should decide on the level of detail as early as in the planning

programme. The Act confers extensive rights to combine, specify and sub-divide objectives. The municipalities are free to issue provisions on what separate or combined land uses are permitted in an area. Different parts of the marine zone may, following an assessment of need, be regulated to a different level of detail and subject to different provisions. Environmental impact assessments shall be conducted for new land uses, regardless of how these are presented on the planning map.

The environmental impact assessment forms part of the plan description and shall be adapted to the municipal master plan, which is the overriding governing instrument for land use. In order to ensure transparency about the assessments, the planning programme shall always specify how existing knowledge relating to relevant environmental and social themes is to be used in the impact assessment. Examples of relevant themes are noise, air quality, odours, visual pollution, water quality, natural diversity, outdoor recreation, cultural heritage sites, landscape, Sami interests, reindeer herding, public access, fishing and other public interests. Requirements for procuring new knowledge may be set, but such requirements must be founded on the planning situation. Reference is also made to the Impact Assessment Regulations (*Forskrift om konsekvensutredninger*) of 21 June 2017 with guidelines (*T-1493 – Konsekvensutredninger - kommuneplanens arealdel*). Requirements have likewise been defined for risk and vulnerability assessments; see Section 4-3 of the Planning and Building Act.

For marine areas, it is common to combine various sub-objectives. This requires knowledge about which activities are and are not compatible. Public access, fishing, nature and outdoor recreation are activities that can normally be combined. If a marine area is designed for multiple uses involving projects for which an application is required, such as an aquaculture site or a marina, the impact assessment must cover the chosen uses for the whole area in question.

Shoreline access rights can also have a bearing on the municipality's allocation of land uses in marine areas. Shoreline access rights are the rights of landowners in the sea outside their property boundaries, including the right of access by boat (*tilflottsrett*), land reclamation rights and salmon-fishing rights. Shoreline access rights are not enshrined in any act of law, but are common law rights.

Marine aquaculture is usually stated as a sub-objective in accordance with Section 11-7(6) Use and conservation of the sea and watercourses with associated shore zone. The municipality may also allocate an area to marine aquaculture in combination with other sub-objectives. In an area allocated to aquaculture, account should also be taken of the need for moorings, either by including them in the land-use objective or by other indication on planning maps and in provisions.

What types of land use can be combined with the sub-objective of nature area, will depend on what natural features the area offers. For example, a nature type that includes the seabed, such as beds of eel grass or shell sand deposits, can be combined with fishing and outdoor recreation. In such cases, the municipality should clarify land

use by defining sub-objectives, preferably with more detailed provisions and a map to illustrate the conditions for land use. It is also important to map fairways and to issue provisions on permitted forms of traffic in the fairway.

The municipality is obliged to have a municipal master plan and to keep it updated in accordance with local needs. The municipality is required to decide whether the current plan should be revised in whole or in part through adopting a municipal planning strategy within one year after the municipal council is constituted. Both industries and needs can change quickly in marine areas, and the municipality should take this into account when considering whether to revise the land-use part of the municipal master plan. When considering what the municipality's planning needs are, account must be taken of input from business and industry, the local population, the county and relevant central government authorities. A failure to update plans can reduce the municipality's possibility of exercising control through land-use plans. Instead of serving as an important instrument to facilitate sustainable and good adaptation for industry and other purposes, outdated plans can be an obstacle to such development.

1.5 Zoning plan

A zoning plan is 'a land-use plan map with appurtenant provisions specifying use, conservation and design of land and physical surroundings'; see Section 12-1 first paragraph of the Planning and Building Act. The plan shall also contain a plan description that specifies the objectives of the plan, its main contents and impacts; see Section 4-2 of the Planning and Building Act. A zoning plan is usually more detailed than the land-use part of the municipal master plan and covers a smaller geographical area.

A zoning plan may be prepared in the form of an area zoning plan or a detailed zoning plan. Area zoning plans are prepared by the municipality where there is a need for more detailed clarification of land use in certain areas than it is expedient to include in the municipal master plan or its land-use part. Detailed zoning plans are used to follow up the land-use part of the municipal master plan or area zoning plans, and are intended to provide a necessary planning basis for building and construction projects. Detailed zoning plans can be prepared by the municipality or submitted by private individuals, developers, organisations and other authorities.

According to Section 12-1 second and third paragraph, zoning plans shall be prepared if provided for in the land-use part of the municipal master plan or it it follows directly from the Act. A zoning plan shall also be prepared 'where there is otherwise a need to ensure proper clarification of the plan and implementation of major building and construction projects and other projects that could have substantial impacts on the environment and society.' What constitutes 'major building and construction projects' must be subject to a concrete assessment, with the decisive point being whether the project alone or its potential impacts will significantly change the existing environment. Certain projects will, by virtue of their size alone, trigger an obligation to prepare a zoning plan. In other cases, an obligation to prepare a zoning plan is triggered for

projects that are not per se very big, but that are located in vulnerable areas. Projects that could have substantial impacts on the environment and society will normally also be subject to a requirement for an impact assessment if such an assessment has not been conducted already; see Sections 4-1 and 4-2 of the Planning and Building Act and the Impact Assessment Regulations. For example, projects that come into conflict with the municipal master plan may trigger a requirement for a zoning plan.

Zoning plans shall weigh different interests against each other at an appropriate level of detail, clarify any conflicting objectives, clear areas for development and ensure protection/conservation. Like other plans under the Planning and Building Act, zoning plans are adopted by the municipal council. An adopted zoning plan authorises the municipality to expropriate properties for implementation of the plan within ten years after the decision is made; see Section 16-2 of the Planning and Building Act.

Section 12-5 of the Planning and Building Act lists land-use objectives for zoning plans, which, as far as marine areas are concerned, are largely identical to those in the land-use part of the municipal master plan. Examples of project that may require a zoning plan in the marine areas are fairway improvements, marine disposal sites, transport and communication installations, industrial and harbour areas and other projects requiring a detailed clarification of land use. A zoning plan will not normally be required for aquaculture sites. The municipal master plan and clarification of the location will usually provide a sufficient framework for the activity.

Threshold limits for permitted pollution and other environmental quality requirements may be defined for the planning area as provided for in Section 12-7(3) of the Planning and Building Act. This also applies to projects and requirements for new and ongoing activities within the planning area, or to take account of factors outside the planning area. Where the plan allows for a project that also requires permission under one or more sector laws, the municipality must coordinate the application of such provisions in the plan with the processing under sector laws.

Zoning plans may provide for special operating and maintenance measures for use and conservation of the sea and watercourses in the zoning area as provided for in Section 12-7(9) of the Planning and Building Act. There are nonetheless certain limitations on the extent to which commercial and industrial operations and activities may be regulated. This applies in particular to commercial activities that are regulated by other legislation or sector-based systems, such as industrial installations and aquaculture. The municipalities should exercise great caution in laying down conditions for aquaculture in their land-use plans where other sector regulations apply. The conditions for approval and operation of aquaculture undertakings are laid down in the system for site approval, which is coordinated by the county authority.

It must be ensured that case processing under the Planning and Building Act and processing under sector laws are coordinated in terms of both content and time, so that the case processing as a whole does does not take longer than necessary.

1.6 Building applications

The building applications part lays down a number of procedural and material rules for projects. Section 20-1 of the Planning and Building Act regulates what projects fall under the scope of the building applications part. These include the erection and material alteration of buildings, structures and installations, material landscape interventions, road construction and sites for temporary buildings, structures or installation, for example houseboats. The scope of the building application provisions with respect to watercraft is defined in Section 1-5 of the Building Application Regulations.

It is important to note that the term 'project' has a narrower meaning in Section 20-1 than in Section 1-6 of the Planning and Building Act. Should the municipality want to control and clarify marine land-use relating to projects that fall under the scope of Section 1-6, this should be indicated in land-use objectives and provisions in the municipal master plan or a zoning plan. In several cases, the Ministry has concluded that sites for mooring pleasure craft do not fall under the scope of the term 'project' as used in the building applications part. However, the use of such moorings for securing boats can make it difficult to implement a plan. The municipality may, based on a concrete assessment, demand that such moorings be removed in accordance with the Act's provisions on sanctions.

1.6.1 The Planning and Building Act distinguishes between permanent and temporary projects

The Planning and Building Act distinguishes between permanent and temporary projects. Temporary projects, regardless of size and scope, are exempt from the duty to submit an application and the duty to use responsible enterprises, provided that the projects are not left in place for more than two months. An application is required for temporary projects that will be left in place for up to two years, but they are exempt from the requirement to use responsible enterprises. Projects that will remain in place for more than two years are deemed to be permanent projects and subject to the requirements for application and use of a responsible enterprise. Floating cabins (houseboats) are an example of projects that could be either temporary or permanent.

Temporary projects must not be sited in contravention of Section 30-5 of the Planning and Building Act. That means that a project must not be sited so as to obstruct public right of way or outdoor recreation, or be of material nuisance to its neighbours. Such projects must otherwise comply with the material provisions of the Planning and Building Act insofar as they are applicable, including the rules relating to fire safety, distance, accessibility, environmental factors and architectural design.

Many projects in the marine zone concern permanent structures and installations requiring application and use of responsible enterprises. Examples are wharfs, quays, piers, docks and bridges. Furthermore, the preparatory works to the Planning and Building Act mention dredging and the establishment of artificial beaches as specific

examples of what might constitute material landscape interventions and thus require application.

Insofar as they are applicable, the material rules set out in the building applications part apply to permanent structures or installations and material landscape interventions, including marine projects; see Section 30-4 of the Planning and Building Act. Examples of applicable material requirements are those provided for in Sections 28-1, 29-2 and 29-4 of the Planning and Building Act.

Exemption from certain requirements provided for in the Planning and Building Act for projects being processed under other acts of law

Some marine projects are exempt from certain requirements in the Planning and Building Act. This applies to floating marine aquaculture installations where a licence application has been processed under the Aquaculture Act. It also applies to the erection, re-erection and repair of navigational markers that are processed under the Harbours and Fairways Act, and to the re-erection and repair of piers and other breakwater structures where the developer is the Norwegian Coastal Administration (NCA) or a municipality, provided that the installation was legally sited in the first place.

Follow-up of contraventions

Chapter 32 of the Planning and Building Act contains rules on following up contraventions. Projects that fall outside the scope of the building applications part may also be followed up in accordance with the sanction rules if they are in contravention of a plan. As mentioned above, the positioning of a single mooring for use by pleasure craft falls outside the scope of the term 'project' as used in the building applications part, but the removal of such moorings pursuant to the sanction provisions of the Act may nonetheless be ordered following a concrete assessment should it prevent or obstruct the implementation of a plan.

1.6.2 Guidance

For further guidance relating to the building applications part, you are referred to Circular H1/10 on the entry into force of the the building applications part of the Planning and Building Act. More detailed rules are also provided in the 2010 Building Applications Regulations. The Norwegian Building Authority has published a guide to those regulations.

1.7 Prohibition on building in the shore zone

Section 1-8 of the Planning and Building Act upholds and tightens the prohibition on building in the shore zone and replaces Section 17-2 in the Planning and Building Act of 1985 prohibiting building on and partitioning off property in a 100-metre belt along the shoreline. Protection of the shore zone is important in order to safeguard free public access and outdoor recreation along the coast. In planning land use, the municipality must decide what developments may be permitted within the 100-metre belt. Particular attention must be paid to the natural and cultural environment, outdoor recreation, landscapes and other public interest considerations. In the interest of the general public, it is particularly important to avoid building in areas where the shore zone is in high demand. Planning in the shore zone shall be based on the central government guidelines for differentiated management of the shore zone of 25 March 2011: Statlige planretningslinjer for differensiert forvaltning av strandsonen langs sjøen av 25. mars 2011. The purpose of those guidelines is to safeguard general public interests and avoid unfortunate building along the shore. The coast is broken down into three categories, and the strictest guidelines apply to central areas in high demand.

As a point of departure, the Act prohibits all building in the shore zone. The prohibition on building does not apply to areas that in the municipal master plan are allocated to necessary buildings for agriculture, reindeer herding, fishing, aquaculture or access by sea, however. Nor does the prohibition on building apply to building land that has been otherwise delimited in the land-use part of the municipal master plan or a zoning plan. Furthermore, municipalities may grant dispensation from the prohibition.

In plans that regulate land use for building purposes only, the prohibition on building in the 100-metre belt will continue to apply until it is decided to otherwise delimit the building land. This also applies to land that is designated for scattered building in accordance with Section 11-11(1) and (2).

The prohibition in Section 1-8 third paragraph applies to all projects within the 100-metre belt. It has been clarified that the prohibition takes precedence over old zoning plans in which building land is not delimited, as stated in the Ministry of Local Government and Modernisation's letter to the county governors of 8 March 2017.

1.8 Objections from affected authorities

The Ministry of Local Government and Modernisation issued guidelines for raising objections in planning matters in circular H-2/14. An appendix to the circular lists those authorities that are competent to raise objections in planning matters under the Planning and Building Act.

The rules on raising objections are set out in Sections 5-4, 11-16 and 12-13 of the Planning and Building Act. Affected central government bodies, county authorities, the Sami Parliament and other municipalities may raise objections to the land-use part of

the municipal master plan, municipal sub-plans and zoning plans on issues of national or material regional importance, or matters that are of material importance to their respective spheres of responsibility. It is clear from circular H-2/14 that objecting authorities should take great care not to overrule the discretionary judgement of a municipal council on local matters. Several sector authorities have issued circulars and provided other guidance on how to safeguard their respective spheres of responsibility in the planning process and on the threshold for raising an objection.

Sector authorities that are competent to raise objections have a right and a duty to participate in planning processes where these can potentially have an impact on the interests that the sector authority is charged with protecting. If they fail to observe that duty, they may lose their right to raise objections in the case in question. Objections shall be raised at the earliest opportunity and no later than by the deadline for input to the consultation process. New objections may not be raised against land-use objectives and planning provisions against which objections have previously been raised.

The legal implications of objections are that the municipal planning decision does not become legally binding and that the authority to make the final planning decision passes to the Ministry of Local Government and Modernisation. The planning process will not start anew when the case is transferred to the Ministry, but the Ministry, in its capacity as the overriding planning authority, will lead the process to its conclusion. If the objections are limited to specific parts of the plan, the municipal council may, with legally binding effect, adopt those parts of the plan to which there are no objections.

It is an international law obligation to consult indigenous peoples in matters that concern their interests. That obligation is met through the objection scheme.

1.9 Dispensation from the municipal master plan and zoning plans

The land-use part of the municipal master plan and zoning plans are legally binding according to their content as described in land-use objectives and provisions. As a rule, land allocation issues should be considered through a thorough planning process for land use as provided for in the Planning and Building Act, with the decision being made by the municipal council. The municipality may nonetheless grant dispensation on certain conditions, as provided for in Section 19-2 of the Planning and Building Act, even if the project is contrary to such plans and provisions. The dispensation provision is based on the need to sometimes make exceptions or deviations.

The municipality has a limited right to grant dispensations. It is a requirement that the considerations behind the provision from which dispensation is sought are not significantly disregarded. In addition, a weighing of interests must be carried out, comparing the advantages and drawbacks of the project. The advantages of granting dispensation must clearly outweigh the disadvantages. That means that the municipality may not normally grant dispensation when the considerations behind the

provision from which dispensation is sought are persistent and strong. As a point of departure, whether the legal conditions for granting dispensation are present is deemed to be a discretionary decision on the application of the law that may be reviewed by the courts.

It follows that, only where the formal legal conditions for granting dispensation are met, does the provision of the Public Administration Act on emphasising local self-government become relevant to the weighing of interests to determine whether dispensation should be granted. It is applicable in the same way to the processing of complaints and reviews by the courts. Dispensations may not be granted from rules of procedure. This applies to both planning and building application cases. With respect to the planning requirements that follow from Section 11-9(1) or 12-1 of the Planning and Building Act, dispensation may be granted from those requirements provided that the plan does not require an environmental impact assessment. The general conditions for granting dispensation must always be present, however. If, following an assessment of the legal criteria, the municipality concludes that it has a legal right to grant dispensation, it must consider whether to grant such dispensation.

1.10 Participation in the planning

In 2014, the Ministry of Local Government and Modernisation prepared a guide on planning participation H-2302 B, and reference is made to that document for further information.

The Planning and Building Act places great emphasis on transparency, information and involvement of all interested parties, both private and public. The planning authority shall ensure a transparent planning process and facilitate participation from the local community and dialogue with stakeholders, whether they are represented by an organisation or not. The municipality should keep in mind that marine planning involves some different stakeholders and users from those involved in onshore planning. Some groups also have less experience of planning work. Involvement of the affected parties in each case must therefore be facilitated so that they are given an opportunity to provide input to the process.

Chapter 5 of the Planning and Building Act sets out general requirements for public participation in planning processes. Section 5-1 of the Act states that anyone who presents a planning proposal shall facilitate public participation. It follows from that provision that the planning authorities have a duty to take appropriate action to arrange for the desired participation. The municipality shall ensure that the requirement is met in planning processes carried out by other public bodies or private parties. The municipality has a special responsibility for ensuring the active participation of groups requiring special facilitation. Groups and stakeholders who are unable to participate directly shall be ensured good opportunities of participating in some other way.

Section 5-2 of the Planning and Building Act states that all planning proposals shall be distributed to the affected public authorities and other interested parties, inviting comments within a stipulated deadline, in accordance with the provisions that apply to each type of plan. At the same time, the proposal shall be presented to the public for scrutiny and shall be made available subject to more detailed rules. Furthermore, the commencement of planning work shall be publicly announced as indicated in Section 11-12 second paragraph and Section12-8 second paragraph.

The formal steps described in the processing rules for the individual plan types must be seen as minimum requirements for processing and public participation. In general, steps should be taken early on in the planning process to clarify how active participation is to be facilitated. In the case of plan types for which a planning programme is required, arrangements for participation should as far as possible be prescribed in the planning programme. Every region is also required to have a regional planning forum in place, where the municipalities and regional authorities are required to present municipal and private planning proposals in an early phase. With effect from 1 July 2017, the Planning and Building Act was amended so that it is now mandatory for all county authorities to establish and operate a regional planning forum. With effect from the same date, the Act was supplemented by new provisions in Section 12-8 on start-up meetings for private planning proposals; see circular H-6/17.

1.11 Maps and geodata

Maps and other geographic information are necessary to all phases of planning work and development, including preparatory assessments, implementation and the collection of knowledge about what actually happens to the land over time.

Section 2-1 of the Planning and Building Act retains provisions on duties relating to maps and geodata. It follows from Section 2-1 first paragraph that the municipality shall have access to adequate base maps for carrying out its tasks under the Planning and Building Act. It follows from the second sentence that the central government authorities shall make national map data available to all municipalities. Central government authorities shall contribute to providing national databases of official base maps (*DOK*), including the land register, marine chart data, topographic map databases and national geodetic information. Central government bodies shall also collaborate with the municipalities on setting up and updating joint map databases.

It follows from Section 2-1 second sentence of the Planning and Building Act that the municipality may require anyone submitting a planning proposal or project application to prepare maps where maps are required to reach a decision. Section 2-2 states that the municipality shall keep a register of all applicable land-use plans in the municipality, including of any provisions pertaining thereto or other information of significance to municipal planning work. Where expedient, municipalities may establish joint registers through inter-municipal collaboration.

Mapping and planning regulations (*kart- og planforskriften*) have been introduced in pursuance of Sections 2-1 and 2-2, to further facilitate access to reliable geodata; see the description of objective in Section 1 of the regulations. For further information, reference is made to the guidelines in veiledning til forskrift om kart, stedfestet informasjon, arealformål og digitalt planregister. The guide elaborates on how the provisions of the regulations should be understood and contains a description of the data set for official base maps, including drafting rules on how to use land-use objectives and special consideration zones in the design of land-use plans.

The Norwegian Mapping Authority is responsible for coordinating the geographic infrastructure, as well as public property information and land registration. The Mapping Authority consists of a land division, marine division, geodetic division and land registry division. The central government, municipal and county authorities shall collaborate on infrastructure and make it electronically available; see Section 4-6 of the Geodata Act.

2 The Planning and Building Act as an instrument for coordinated planning

2.1 Introduction

The regulatory framework for management and resource utilisation in coastal and marine areas is fragmented, and several important acts of law are in the form of enabling acts supplemented by more comprehensive provisions in the form of regulations. Commercial activity in the marine areas is largely based on public licences, while the sea is otherwise largely without owners and freely accessible to the general public.

The extension of the area of application and geographic scope of the Planning and Building Act to include marine areas has created new opportunities for municipal and regional coordination and facilitation of future-oriented land use in coastal and marine areas. It is clear from the preparatory works to the Planning and Building Act that planning in accordance with the Act is intended to function as a common arena for sectors and interests across administrative levels.

2.2 Projects and land-use plans that affect marine public access and navigability

Administrative responsibility and authority under the Harbours and Fairways Act are divided between central government and municipal authorities. The municipality is responsible for ensuring the safety and navigability of ports and harbours and the

municipality's marine areas, with the exception of main and secondary fairways for which the central government authorities have administrative responsibility; see Section 7 of the Harbours and Fairways Act. The establishment of projects in or close to the sea could impact the safety and navigability of the marine waters. It is therefore important to ensure that the planning proposal does not affect the safety of the main or secondary fairways. Marinas or aquaculture sites in or close to a fairway are examples of issues to which the municipality must pay particular attention.

In the municipal master plans, main and secondary fairways shall be incorporated in multi-use objectives that include public access (for example, public access, fairway, fishing, nature and outdoor recreation areas). In some areas, it is appropriate to use the sub-objective fairway or public access to indicate that priority is given to maritime traffic. This may apply to waters where there is a high risk due to traffic density, narrow waters, harbour and fishing port approaches, and any place where deepening projects have been carried out, are planned or have been proposed in the National Transport Plan.

When planning use of marine areas, a distinction can be made between areas requiring exclusive use and areas allowing for combined use. Marinas, aquaculture sites and lay-up locations are examples of projects that are difficult to combine with other uses, while fishing and public access are examples of uses that can usually be combined. It is possible to combine various sub-objectives at both the municipal master plan level and at the zoning plan level. It is a condition that safety and navigability do not suffer as a result of combining land-use objectives.

It follows from Section 32 first paragraph of the Harbours and Fairways Act that project permissions must be coordinated with the municipality as planning and building authority. Unless the municipality has granted dispensation, permission may not be granted contrary to land-use plans adopted in accordance with the Planning and Building Act; see the second paragraph of the provision.

2.3 Prohibition on the use of water scooters under the Planning and Building Act

On 18 May 2017, the Regulations on use of water scooters etc. were repealed by the Ministry of Climate and the Environment. As a point of departure, water scooters are thus given the same status as other pleasure craft. Municipalities that want to introduce local rules on speed and use of the municipality's marine areas may do so by issuing provisions on public access to marine areas in the land-use part of the municipal master plan and in zoning plans; see Sections 11-11(6) and 12-7(1) and (2) of the Planning and Building Act. Local speed regulations and public order regulations for use of water

scooters may also be adopted under the Harbours and Fairways Act, and provisions may be adopted for conservation areas.

The most commonly used objective in marine areas is 'Use and conservation of the sea and watercourses with associated shore zone' (Section 11-7(6) of the Planning and Building Act). The objective may be broken down into the categories public access, fairways, fishing, aquaculture, nature areas and outdoor recreation areas, two or more of which may be combined. If the main objective is used, provisions must be made to clarify the land use. When preparing land use plans in accordance with the Planning and Building Act, the emphasis shall be on environmental and social interests. That means that concrete assessments must be carried out of the need to protect and prioritise different interests. This will apply to, for example, vulnerable nature areas and areas that the municipality wants to prioritise as silent areas or areas for outdoor recreation such as kayaking and sailing.

The preparatory works to the planning part of the Planning and Building Act (Proposition to the Odelsting No 32 (2007–2008) page 225) emphasises the need to introduce provisions on water scootering in particular. It is stated that: 'Furthermore, in marine areas there may be a need to regulate the use of motorised watercraft, for example water scootering in general and watercraft traffic in the vicinity of bathing places, nature areas, fairways etc.'

Any limitations on access must be assessed in light of considerations relating to outdoor recreation, conservation or commercial interests. It may also be relevant to ban traffic in a defined zone along the shore to protect a noise-sensitive built-up area ashore.

Through the use of such provisions, the municipalities will be able to prohibit use of water scooters in defined areas. If the municipality wants to introduce provisions prohibiting the use of water scooters pursuant to the Planning and Building Act, the marine area should be designated for an objective that does not include public access, for example marine nature area, or for a combined nature and outdoor recreation objective, that includes a ban on water scootering. The area to which the provision shall apply may also be shown as a regulated area on the planning map, regardless of planning objective.

For further guidance, reference is made to the brochure dated 6 June 2017 (regulation of speed and the use of marine waters, rivers and lakes for water scootering), prepared by the Ministry of Transport and Communications.[1]

[1]https://www.regjeringen.no/no/dokumenter/regulering-av-fart-og-bruk-av-farvann-elver-og-innsjoer-nar-det-gjelder-vannscootere/id2555695/

2.4 Harvesting of kelp and other seaweed[2]

Wild-living marine resources belong to the Norwegian society as a whole and their harvesting is managed by central government authorities. As a point of departure, it is prohibited to harvest kelp and other seaweed, and such harvesting is subject to local regulations issued in compliance with the Marine Resources Act. The municipalities shall be actively involved in these processes.

They may allocate fishing and marine nature areas in the municipal master plan. Such allocation must be based on concrete conditions, for example mapped highly valued nature types, seabird colonies and spawning grounds. The municipality's prioritisation in the municipal master plan will serve as the basis for the municipality's input to the process of preparing new regulations on kelp trawling.

The municipality may use the Planning and Building Act to allocate areas for the production of kelp and other seaweed. Legal authority for this is found in Section 11-11(7) of the Planning and Building Act in that areas may be allocated to aquaculture subject to more detailed provisions on types of aquaculture.

2.5 Pollution and the environment

According to Section 2(2) of the Pollution Control Act, the pollution control authorities shall coordinate their activities with the planning authorities, so that the Planning and Building Act is used in conjunction with the Pollution Control Act in order to avoid and limit pollution and waste problems. According to Section 11 fourth paragraph of the Pollution Control Act, overall solutions to pollution problems should be sought for wider areas and on the basis of general plans and zoning plans. Where an activity will come into conflict with the final plan prepared pursuant to the Planning and Building Act, the pollution control authority shall only grant permission under the Pollution Control Act subject to consent from the municipality. By consent is meant that the planning authorities grant dispensation or makes a minor amendment to the plan.

Planning is important for goal achievement within the framework of prioritised national environmental goals relating to climate, noise, local air pollution etc. Legal authority for provisions to protect the environment is found in both the land-use part of municipal master plans (Section 11-9(6)) and the zoning plans (Section 12-7(3)). Such provisions will be legally binding. Provisions in the land-use part of the municipal master plan may be in the form of general environmental provisions, while the zoning plans will contain

[2] The issue has lacked clarification for some time, but some clarification has been provided, including in an article by PhD Candidate Siv Elen Årskog Vedvik at the University of Bergen in *Kart og Plan* 2016 No 4 pp. 295-304.

further details and be more specific. In cases that also require permission under the Pollution Control Act, it is important to coordinate any provisions of the land-use plans with the permit. Section 12-7(3) of the Planning and Building Act makes it possible to define environmental quality requirements and requirements for limiting pollution in zoning plans in terms of noise levels, air quality and water quality, as well as time limits and requirements for technical solutions in the planning area and for new projects.

With respect to aquaculture, the municipality decides which areas may and may not be used for aquaculture in its overall land use planning (municipal master plan). When drawing up land-use plans in accordance with the Planning and Building Act, the municipality will refer to *inter alia* the Nature Diversity Act, the Water Regulations and possibly the regime relating to national salmon fjords and national salmon watercourses and the quality norm for wild salmon.

Aquaculture licences are processed under the Aquaculture Act and require emission permits, which are processed under the Pollution Act. In areas allocated to aquaculture, the municipality should consider whether the project will be granted a licence under the Aquaculture Act and permit under the Pollution Control Act and, if applicable, on what conditions. If an area is considered unsuitable for certain types of aquaculture because of local environmental conditions, it should not be allocated for those types of aquaculture in the plan. Hence it should not be necessary to have special provisions on pollution from aquaculture under the Planning and Building Act.

It may be relevant to use Section 11-8(a) 'Safety, noise and danger zones, with an indication of the cause of danger or environmental risk' in areas where special consideration is required because of pollution. For such zones, provisions prohibiting or laying down conditions for projects and/or activities as described in Section 1-6 of the Planning and Building Act may be stipulated in the land use part of the municipal master plan. Corresponding provisions may be included in the zoning plan.

2.6 Aquaculture

As a rule, areas for aquaculture should be clearly indicated in the land-use part of the municipal master plan. The county authority and municipality are expected to secure sufficient areas for fisheries and aquaculture in its coastal zone planning, and to weigh such considerations against environmental considerations and public interests. The high ambitions for growth in the aquaculture industry will require the allocation of sufficient areas in the municipal master plans. The goal can only be achieved through good collaboration between the municipal, county and central government authorities.

Areas for aquaculture may be allocated under the sub-objective aquaculture under the main objective in Section 11-7(6) of the Planning and Building Act 'Use and conservation of the sea and watercourses with associated shore zone'. Aquaculture may also be combined with one or more of the other sub-objectives. It is also possible for the municipality to incorporate aquaculture as part of the main objective, but that would

not provide any clarification of the conditions for use and protection of the areas in question. The municipality must therefore adopt provisions to clarify this; see Section 11-7 third paragraph of the Act. The framework for such provisions must be seen in conjunction with the use and protection of the water surface, water column and seabed; see Sections 11-9 and 11-11(3).

Regardless of what solutions are deemed to be most expedient, the municipality must assess the impacts of the planned land use.

If the municipality chooses to allocate the area for a combination of objectives that includes aquaculture, it must pay attention to the compatibility of the different activities. Provisions or guidelines should be adopted with further criteria for siting installations. In the vast majority of cases, aquaculture entails a type of use that makes other use of a perimeter zone around the installations difficult, for example for public access or fishing. In wider multiple-use areas that include aquaculture, a specific weighing of different interests will only take place in connection with the allocation of sites.

Aquaculture sites fall under the scope of point 1(f) in Annex II to the Impact Assessment Regulations, and must therefore be considered in accordance with Chapter 3 of those Regulations. An assessment of the impacts of the municipal master plan does not exempt from having to consider the need for an impact assessment in connection with a licence application under the Aquaculture Act. It is the county authorities that decide whether an impact assessment is required.

More detailed assessments of environmental impacts, supplementing the assessments in the municipal master plan, will be conducted in connection with the processing of site applications under the Aquaculture Act. Hence it is not necessary to include a detailed clarification of all environmental factors in the municipal master plan. The municipalities should be very cautious about laying down conditions for aquaculture in their land-use plans where other sector regulations apply. The conditions for approval and operation of aquaculture sites are laid down in the system for site approval, which is coordinated by the county authorities.

In many cases, municipal plans for marine areas may be outdated. In such cases, it may be necessary to use dispensations, for example to move or extend an area that has been allocated to aquaculture in the municipal master plan, for example where a larger area is required for moorings. At the same time, extending an aquaculture area may come into conflict with other important interests. Such cases must therefore be properly elucidated, and the application for dispensation must be distributed for consultation to all parties affected by the project. It is a condition for granting dispensation that the formal requirements in Section 19-2 of the Planning and Building Act are met.

3 The Nature Diversity Act

Introduction

Lov om forvaltning av naturens mangfold (naturmangfoldloven) – the Nature Diversity Act of 19 June 2009 No 100 is the most important law relating to nature management. The Ministry of Climate and Environment is the competent authority and the county governors have a key role in administering the Act. Among other things, the Act contains general provisions on official decision-making and rules on the management of species, nature types, protected areas, alien organisms and genetic material. The Act covers all nature, and it applies to all sectors involved in nature management or decision-making with a bearing on nature. According to section 2, the geographical scope of the Act covers Norwegian land territory, including lakes and watercourses, and Norwegian coastal waters extending to 12 nautical miles from the baseline (the territorial sea). Hence the Nature Diversity Act has a wider scope than the Planning and Building Act, which only covers coastal waters to one nautical mile from the baseline.

3.1 The implications of the Nature Diversity Act for planning in the coastal zone

Chapter II of the Nature Diversity Act contains general provisions on sustainable use. These provisions have major implications for planning in the coastal zone.

The management objectives in Sections 4 and 5 are to maintain nature types, ecosystems and species indigenous to Norway. In processing cases that raise such issues, the administration must consider whether its decision can potentially make it difficult or impossible to attain the management objectives. In considering this, attention must first and foremost be given to endangered species (and populations) and nature types.

Section 6 sets out a general duty of care relating to natural diversity, applying equally to public authorities and private private parties. It follows from Section 7 that any exercise of public authority that affects natural diversity shall be based on the principles set out in Sections 8 to 12, and that the decision shall refer to the assessment. The 'environmental law principles' referred to in Sections 8 to 12 include the knowledge base (Section 8), the precautionary principle (Section 9), the ecosystem approach (Section 10), the principle that the costs of environmental degradation shall be borne by the developer (Section 11) and the principle of environmentally sound techniques and methods of operation (Section 12).

These principles constitute case processing rules intended to ensure that natural diversity is taken into consideration when exercising authority in a way that affects nature. Together with the management objectives set out in Sections 4 and 5, the principles shall form an integral part of assessments under sector laws (including the Nature Diversity Act) and the Planning and Building Act. They have implications for both the preparation of a case and the actual decision-making.

The planning authority is responsible for ensuring that natural diversity and the requirements in Chapter II of the Nature Diversity Act are taken into account in designing and processing plans. Natural diversity considerations shall therefore be incorporated in the planning programme and in planning maps, planning provisions and plan descriptions, with impact assessments if required. It is important to apply the principles at an early stage of the planning process and make them an integral part of the assessments under the applicable legal provisions. Attention to natural diversity in an early phase can prevent or reduce potential conflicts between nature and other public interests in that it will be possible, during a phase with several available options, to chose solutions that give rise to less conflict, make adaptations and introduce mitigating measures. Often, assessments in an early phase will thus speed up the project.

The scope of assessments under Chapter II of the Nature Diversity Act must be adapted to the planning level. In overriding plans, such as regional plans and the land-use part of municipal master plans, the assessments will naturally be of a more general nature than in zoning plans. This also has a bearing on how binding the guidelines in the plan are for future land-use allocation affecting natural diversity. As a rule, it can be assumed that the Nature Diversity Act's requirement for assessments has been met when an impact assessment of a plan has been completed, the assessment has been distributed for consultation and additional assessments have been undertaken or found to be unnecessary. The Nature Diversity Act requires all official decisions, including planning decisions, to explicitly state what assessments have been made under Sections 8 to 12 of the Act. The county governors and the Norwegian Environment Agency have the important tasks of providing information and guidance on the application of the provisions in Chapter II of the Act and of seeking to ensure that assessments are made at the correct level. For a more elaborate discussion of the rules, see the guide on Chapter II of the Natural Diversity Act.

Section 13 of the Act concerns quality norms for natural diversity. Any quality norm that exists in a field will have a bearing on the exercise of authority. So far, the quality norm for wild salmon is the only quality norm that has been adopted.

The regulations on priority species prohibit removing, harming or destroying such species. Some of the regulations also contain provisions that protect the ecological function areas of such species. Planning must not be in contravention of the regulations. If planning entails removing, harming or destroying a priority species or its ecological function area, dispensation must have been granted from the prohibitions set out in the regulations. Dwarf eelgrass is one example of what is currently designated as a priority species. For more detailed information, see the Environment Agency's regulations on priority species M24-2013. Chapter VI of the Nature Diversity Act contains rules on selected habitat types. In their capacity as planning authority, the municipalities have been assigned a special position in the management of selected habitat types in that legally binding land-use plans will take precedence over the provisions of the Nature Diversity Act relating to the implications of a habitat type being designated as selected; see Section 53 fourth paragraph of the Nature Diversity Act.

There is legal authority under the Planning and Building Act to protect individual areas based on the objective of conserving the natural environment: see Section 11-8 on special consideration zones in the land-use part of the municipal master plan. Provisions may be adopted in pursuance of the land-use objective 'use and conservation of the sea and watercourses' so as to ensure good nature management; see *inter alia* Section 11-9(6) and Section 11-11(3) and (6) of the Planning and Building Act. The allocation of special consideration zones for nature conservation purposes may also be followed up in zoning plans.

3.2 Marine protected areas

Chapter V of the Nature Diversity Act contains provisions on protected areas. There are five categories of protected areas (national parks, landscape protection areas, nature reserves, biotope protection areas and marine protected areas), each with different levels of restriction. All the different forms of protected areas can include marine areas. Further rules on what activities and projects may be implemented are given in individual protection regulations. Planning must take place within the framework of the protection regulations that apply to the area.

Under Section 39 of the Nature Diversity Act, marine protection areas may be established on the grounds of their marine conservation value, including as special function habitats for land-living species.

Under the Nature Diversity Act, marine protected areas may be established that extend up to 12 nautical miles from the baseline (the territorial sea). Together with areas

protected under other legislation, these areas shall form a network of conservation and protection areas intended to preserve ecosystems and nature assets. In these areas, all activity that can potentially diminish the value of what is being protected shall be regulated in accordance with the relevant protection objective.

Activity that does not come into conflict with the protection objective will generally continue to be permitted. The protection objective and restrictions may apply to the seabed, water column, surface or any combination thereof. Marine protected areas may be based on several concurrent objectives. In addition to protecting important nature areas against adverse impacts, such areas may also serve as important reference areas for research and monitoring.

It follows from Appendix 1 to the Impact Assessment Regulations adopted by Royal Decree on 21 June 2017 that impact assessments shall be prepared in accordance with the Planning and Building Act for protected areas as mentioned in the Nature Diversity Act covering more than 250 km^2.

4 Cultural Heritage Act

Introduction

The most important act for securing and preserving cultural heritage sites and monuments is the Act of 9 June 1978 No 50 relating to Cultural Heritage (the Cultural Heritage Act). Rules on the division of responsibility etc. relating to cultural heritage sites are set out in the regulations adopted by Royal Decree of 9 February 1979 No 8785, as amended. The Ministry of Climate and the Environment is the competent administrative agency for the Act. The Directorate for Cultural Heritage is the Ministry's expert body relating to the development of a central-government cultural heritage policy. The county councils and the Sami Parliament have the primary responsibility for managing and providing guidance in relation to cultural heritage sites.

The Act does not specify a geographic scope; it also applies to cultural heritage sites and cultural heritage environments on the seabed, however. The Cultural Heritage Act applies to Norwegian territorial sea, i.e. to the waters within 12 nautical miles of the baseline. As from 1 January 2004, Norway also established an adjacent zone covering another 12 nautical miles. Section 4 of the Territorial Waters Act states that legislation on 'the removal of objects of an archaeological or historical nature applying to the territorial sea is also applicable to the contiguous zone.' This means that the Cultural Heritage Act applies to the waters extending 24 nautical miles from the baseline.

4.1 Key provisions

Several of the provisions of the Act apply to planning in the coastal zone.

4.1.1 Automatically protected cultural heritage sites and monuments

Section 4 of the Cultural Heritage Act lists heritage sites and monuments that are automatically protected under the Act. As a point of departure, this comprises all traces of pre-Reformation human activity (i.e. from before 1537), and standing structures confirmed as originating from before 1650. The second paragraph states that all Sami sites and monuments older than 100 years are automatically protected.

Section 9 of the Act provides for a duty of inquiry in connection with the planning of public and major private projects. By 'public projects' is meant central government, county and municipal projects, or projects that are largely publicly funded such as road construction, watercourse regulation and other public building and construction works.

The duty of inquiry also applies to the drawing up of zoning plans. There is no further clarification of what might constitute a 'major private project' in the preparatory works, but this is briefly mentioned in circular T-2/2007: 'If the purpose of the project is primarily of a commercial nature in that it is intended for rental or sale and is not needed for own use, it will normally not be considered a *minor* project'.

It follows from Section 8 fourth paragraph that dispensation from automatic protection may be granted by way of a zoning plan. The cultural heritage administration decides the question of dispensation through issuing an opinion on the plan, and defines necessary conditions relating to archaeological investigation/excavation, monitoring etc. The final planning decision constitutes a dispensation decision and the conditions for such dispensation are incorporated as provisions in the plan.

4.1.2 Ship finds etc.

It follows from Section 14 of the Cultural Heritage Act that the State has right of ownership to boats (shipwrecks) more than 100 years old, hulls, gear and any cargo that the boat carried when there is no longer any reasonable possibility of identifying the owner. From 14 second paragraph, it also follows that the provisions in Sections 9, 10 and 11 second paragraph apply correspondingly to any such ship finds. Harbours or ferry landings are often developed in areas that have been used as harbours or anchoring places for a long time, and where finds of wrecks, the remains of wrecks, or objects that were thrown overboard over the years can be expected. Such cultural heritage objects are subject to the same provisions regarding the duty of inquiry as automatically protected cultural heritage sites and monuments.

Section 14 of the Cultural Heritage Act has not been coordinated with the Planning and Building Act's provisions on zoning plans. Permission to interfere with ship finds in the zoning plan area must therefore invariably be granted as dispensation in the form of a separate decision under Section 14 second paragraph second sentence. To facilitate the implementation of projects as planned, it is most expedient to coordinate the processing of applications for dispensation with the planning process. It should also be possible to stay applications for dispensation under Section 14 of the Cultural Heritage Act where objections to the plan could render confirmation impossible.

4.1.3 Cultural heritage sites and monuments protected by protection orders

Monuments and sites of more recent origin may be protected by protection orders. Sections 15, 19 and 20 of the Cultural Heritage Act confers legal authority to protect structures and the surrounding area as well as cultural environments. Protection of the

surrounding area in Section 19 may refer to vertical or horizontal space, i.e. it may apply to a delimited space around, above and below a structure protected under Section 15. For example, the water column above a seabed structure protected by order may be thus protected insofar as it is necessary in order to secure the heritage structure, and public access to the area may be regulated accordingly.

Dispensation from protection by order may only be granted for projects that do not entail any material intervention. Any project requiring such interference, would also require de-listing of the heritage site.

4.2 Case processing and planning process collaboration

Responsibility for administration of cultural heritage sites and monuments is regulated in the Regulation to the Cultural Heritage Act. The Regulations regulate what agencies have authority and responsibility under individual provisions of the Cultural Heritage Act. Authority and responsibility are divided both substantively and geographically.

The county councils and Sami Parliament have first-line responsibility as cultural heritage authorities, and shall be consulted on and submit proposals relating to land-use plan. This entails responsibility for assessing whether archaeological registration is needed and for carrying out such registration. It is also the county councils and Sami Parliament that must be consulted first of all – by the developer or municipality – when projects are to be initiated that could potentially affect protected cultural heritage sites or ship finds. The cultural heritage authority will then see to it that the case is submitted to the right bodies in the cultural heritage administration – whether for an opinion, a decision or to initiate excavation/care (inquiry and maintenance). All administrative bodies involved in cultural heritage management have a duty to collaborate on cases of mutual interest. Representatives of the county councils/Sami parliament are required to participate in the meetings of the regional planning forum, when matters affecting cultural heritage sites are on the agenda.

It is the regional maritime museums (Norwegian Maritime Museum, Museum Stavanger – Stavanger Maritime Museum, Bergen Maritime Museum, the NTNU University Museum, and the University Museum in Tromsø) that have first-line authority and responsibility for excavation or care of underwater heritage sites. These institutions are responsible for archaeological work at automatically protected underwater heritage sites, and for ship finds, cargo etc. originating after 1537.

The national archaeological museums (Museum of Cultural History, University of Oslo, Museum of Archaeology, University of Stavanger, the University Museum of Bergen, the NTNU University Museum, the University Museum in Tromsø) are responsible for archaeological work relating to boats, hulls, gear, cargo etc. from before 1537 that are

found ashore. The regional archaeological museums and the regional maritime museums are responsible in their respective regions. The maritime museums discharge ownership responsibilities on behalf of the State.

In the case of underwater heritage sites, it is the county authorities that are responsible for granting dispensations.

The municipalities may initiate the drawing up of separate plans for heritage sites, cultural environments and landscapes. Such a plan can serve as a basis for preparing land-use plans, and can highlight the municipality's cultural heritage policy. Cultural heritage considerations may also be incorporated into municipal sub-plans for the coastal zone.

The municipality can protect cultural heritage sites, cultural environments and landscapes by means of:

- special consideration zones, with provisions or guidelines set out in municipal master plans/sub-plans or zoning plans; see Sections 11-8 and 12-6 of the Planning and Building Act;
- provisions on land use in municipal master plans/sub-plans or zoning plans; see Sections 11-10, 11-11 and 12-7 of the Planning and Building Act;
- general provisions in municipal master plans/sub-plans; see Section 11-9 of the Planning and Building Act;
- the 'agriculture, nature, outdoor recreation and reindeer husbandry' land-use objective, with protection of cultural heritage sites and cultural environments as a sub-objective in zoning plans; see Section 12-5(5) of the Planning and Building Act;

Provisions in municipal master plans/sub-plans or zoning plans are important to ensure good management of heritage sites, heritage environments and landscapes, and they are also necessary in areas designated as special consideration areas or for which land-use objectives have been defined. As mentioned above, the duty of inquiry mentioned in Section 9 of the Cultural Heritage Act applies to the drawing up of zoning plans. The Planning and Building Act's requirements for environmental impact assessments of projects that could potentially have a material impact on the environment and society must also be complied with. Major projects in coastal marine areas can have a material impact on the cultural environment and important landscapes, for example cultural heritage sites. For further information about cultural heritage management in connection with planning under the Planning and Building Act, you are referred to the

following guide from the Norwegian Directorate for Cultural Heritage: *Kulturminner, kulturmiljøer og landskap. Planlegging etter plan- og bygningsloven.*

In processing project applications, the municipality has a duty to coordinate all projects that require the permission or consent of another authority or where the project plans must be submitted for consideration by another authority; see Section 21-5 of the Planning and Building Act. This also applies to marine projects that need to be clarified with the cultural heritage authorities. Furthermore, Section 25 of the Cultural Heritage Act establishes that the municipality has a duty to notify the county authority when it becomes involved in, i.e. becomes aware of, projects that fall under the scope of the Cultural Heritage Act. The cultural heritage authorities shall help to ensure that the municipality has sufficient knowledge to be able to clarify the relationship with heritage sites in a start-up meeting.

4.3 Coverage of costs

Section 10 of the Cultural Heritage Act states that the developer shall cover the costs of inquiries or excavations associated with projects as mentioned in Sections 8 and 9. 'If there are special reasons', the Ministry may decide that all or some of the costs shall be covered by the State. In the case of 'less extensive private projects', the State shall cover all or some of the costs if they become 'unreasonably heavy' for the developer. Circular T-2/2007 provides guidelines for covering the costs of archaeological works in connection with minor private projects. The circular implies a minor change to previous administrative practice in that such costs shall to a greater extent be covered by the State. It also sets out some factors to be considered when deciding what should be understood by a 'less extensive private project' and 'unreasonably heavy'.

4.4 Knowledge base

Askeladden is the Directorate for Cultural Heritage's official database of protected cultural heritage sites and cultural environments in Norway. Askeladden is a tool for cultural heritage management. Employees of central, regional and local cultural heritage authorities, public administration staff, consultants, researchers and students are granted access to the database. Kulturminnesøk.no is a public website that provides an overview of Norway's cultural heritage sites and cultural environments.

5 The Pollution Control Act

Introduction

The Act of 13 March 1981 No 6 Concerning Protection Against Pollution and Concerning Waste (the Pollution Control Act) is the most important law with respect to protection of the natural environment against pollution, reducing existing pollution, reducing the amount of waste and promoting better waste management. The purpose of the Act is to ensure that the quality of the environment is satisfactory, so as to prevent pollution and waste from having harmful or adverse effects on human health and welfare, or on nature's capacity for production and self-renewal. The Ministry of Climate and Environment is the superior authority for administration of the Pollution Control Act. Responsibility for contingency plans for dealing with acute pollution etc. rests with the Norwegian Coastal Administration and the Ministry of Transport and Communications.

The Pollution Control Act applies to pollution and waste in the natural environment. The scope of the Act covers locally sourced business and industry and other sources in mainland Norway, its islands and territorial waters extending to 12 nautical miles from the baseline, and in its territorial airspace. The Act also applies to threats of pollution within the realm, and to sources of pollution located in or constituting a threat of pollution within Norway's economic zone, if the source is a Norwegian vessel or installation. Norway's economic zone covers the waters extending 200 nautical miles from the baseline. By 'installations' is primarily meant oil installations on the Norwegian continental shelf, but also mobile and fixed facilities that can be used for industrial production or waste incineration.

5.1 Key provisions

What is meant by 'pollution' is defined in Section 6 of the Pollution Control Act:

'For the purpose of this Act, pollution means:

1. the introduction of solids, liquids or gases to air, water or ground,
2. noise and vibrations,
3. light and other radiation to the extent decided by the pollution control authority, and
4. effects on temperature,

which cause or may cause harm or nuisance to the environment. The term pollution also covers anything that may aggravate the harmful or nuisance effects of previous pollution, or that, in combination with environmental impacts as are mentioned in points 1 to 4 above, causes or may cause harm or nuisance to the environment.'

'Pollution' as defined in the Act, is thus a very broad term. The main rule relating to pollution follows from Section 7 first paragraph, which implies that, as a point of

departure, is is prohibited to 'possess, do, or initiate' anything that may entail a risk of pollution unless it is lawful pursuant to Sections 8 or 9, or permitted under a decision made pursuant to Section 11.

Pollution is thus only permitted if a special permit has been obtained from the pollution control authority as provided for in Section 11 (*Special permit for any activity that may cause pollution*). When a pollution permit is granted pursuant to Section 11, the pollution control authority may lay down conditions pursuant to Section 16 to mitigate any harmful or nuisance effects of the pollution. This scheme, whereby pollution may be permitted subject to conditions, is an important policy instrument in controlling pollution.

It follows from Section 8 first paragraph that pollution from, among other things, fishing, aquaculture, forestry, housing, offices and temporary construction sites is permitted under the Act. Section 8 third paragraph lays down a general exemption from the requirement for an emission permit pursuant to Section 11 for pollution that does not entail 'significant harm or nuisance'. Pollution may also be permitted by regulations as provided for in Section 9.

Section 7 second paragraph of the Pollution Control Act makes it clear that where there is a risk of pollution in contravention of the Act, the person responsible for the pollution has a duty to implement measures. The person responsible has a duty to prevent such pollution, to stop, remove or contain the effects of any pollution that has already occurred, and to mitigate any harmful or nuisance effects. If the person responsible does not fulfil the duty to implement measures in accordance with Section 7 second paragraph, the pollution control authority may, pursuant to Section 7 fourth paragraph, order him to implement measures.

5.2 Application of the Pollution Control Act and the Pollution Control Regulations

5.2.1 Polluted seabed

It is a priority for the authorities to clean up seabed pollution. In Report No 14 (2006–2007) to the Storting – *Working together towards a non-toxic environment and a safer future – Norway's chemicals policy* – the Government presented an overall plan of action for action plan for contaminated sediments. The plan of action included cleaning up contaminated seabed sediments in 17 prioritised coastal and fjord areas, and in prioritised harbours and shipyards. The overriding goal of the clean-up work is to remove contaminated sediments from circulation, i.e. to remove them from the ecosystem.

Legal authority for the pollution control authorities' orders in seabed pollution cases is found in Section 51 (surveys), Section 7 fourth paragraph (remedial measures) and

Section 11 (emission permits) of the Pollution Control Act. The pollution control authorities can hold accountable and issue orders to a wide circle of parties, and several parties may be held responsible for a single pollution event. In practice, the land owner/leaseholder, a previous polluter or the current operator of a port/shipyard may be held responsible. As a point of departure, whoever is responsible for the pollution may be ordered to cover the costs of surveys and clean-up, among other things.

5.2.2 Dredging and dumping etc. in the sea and watercourses

Sections 22-3 and 22-4 of the Pollution Control Regulations lay down a general prohibition on dredging and dumping from vessels in the sea and watercourses, unless the pollution control authority has granted permission pursuant to Section 22-6. As a point of departure, placement in the sea or watercourses of materials for purposes other than those for which they were initially built or constructed (including the establishment of artificial reefs) is also prohibited; see Section 22-5 of the Regulations. Which pollution control authority is competent in cases concerning dredging and dumping from vessels and placement of material in the sea and watercourses is indicated in Section 22-6. Dredging and dumping from shore, including land reclamation, are not regulated by the Pollution Control Regulations and shall be considered pursuant to Section 7 first paragraph, Section 11 and, if applicable, Section 8 third paragraph of the Pollution Control Act. In Circular T-3/12, the county governors were delegated pollution control authority in such cases. Consideration under the Pollution Control Act must be coordinated with any land-use plans under the Planning and Building Act, which may contain provisions relating to the water surface, water column or seabed.

5.2.3 Building and excavation works in the shore zone

Chapter 2 of the Pollution Control Regulations on cleaning up contaminated land in connection with building and excavation work is applicable to projects in the shore zone that predominantly take place on land and only to a small extent in the sea. One example would be the building of a quay on contaminated land. Most cases that come under the scope of Chapter 2 of the Pollution Control Regulations will also require a permit under the Planning and Building Act's provisions on building applications, as they will be deemed to constitute 'material landscape interventions'.

5.2.4 Artificial sand beaches

Dumping sand to establish/maintain artificial sand beaches can in many cases have an adverse impact on marine biodiversity through the spread of particles and through silt covering vulnerable seabed fauna. It is deemed to constitute pollution as defined in Section 6 of the Pollution Control Act. It is therefore necessary to apply to the county governor for a permit under the Pollution Control Act if a project entails 'significant harm or nuisance'; see Section 8 third paragraph of the Planning and Building Act. Most

such projects will require a building application and depend on an approved plan or dispensation being granted under the Planning and Building Act.

5.3 Coordinated application of the Pollution Control Act and the Planning and Building Act

Planning and case processing under the Planning and Building Act and the Pollution Control Act should be well-coordinated. According to Section 2(2) of the Pollution Control Act, the pollution control authorities shall coordinate their activities with the planning authorities, so that the Planning and Building Act is used in conjunction with the Pollution Control Act in order to avoid and limit pollution and waste problems. Such coordination is also required by Section 11 fourth paragraph of the Pollution Control Act, according to which overall solutions to pollution problems should be sought for larger areas as a whole and on the basis of general plans (regional and municipal master plans) and zoning plans. The provision entails both that the planning authorities must seek to integrate the resolution of pollution and waste issues in planning land use and resource utilisation as provided for in the Planning and Building Act, and that the pollution control authorities must take account of the plans in its decision pursuant to Section 11 of the Pollution Control Act.

It follows from the preparatory works to the Pollution Control Act that a permit for polluting activity may be refused if the planning authorities could be unfavourably bound by such a permit or if it is desirable to resolve the issue in a plan rather than to process individual cases. The situation may also be that an application under the Planning and Building Act is likely to be rejected. To avoid such a situation, the pollution control authority may refer the applicant to having the case processed under the Planning and Building Act first. At the same time, the pollution control authority may not, without the consent of the competent planning authority, grant an emission permit in contravention of land-use plans that have been approved under the Planning and Building Act; see Section 11 fourth paragraph last sentence of the Planning and Building Act. By 'final plans' is meant land-use plans adopted in the land-use part of the municipal master plan, in a municipal sub-plan or in an area zoning or detailed zoning plan.

The provision in Section 11 fourth paragraph of the Pollution Control Act must also be seen in conjunction with the possibility of adopting environmental requirements under the Planning and Building Act. According to Section 12-7(3) of the Planning and Building Act, environmental quality goals and pollution control goals may be defined for activities, among other things to ensure good water quality.

Measures to limit pollution adopted pursuant to the Planning and Building Act can remove much of the need for special consideration under the Pollution Control Act, if the harmful and/or nuisance effects are satisfactorily addressed in land-use plans. It is

the pollution control authorities that decide whether pollution issues have been satisfactorily addressed under the Planning and Building Act.

6 The Water Regulations

Introduction

The Water Regulations were adopted in pursuance of the Pollution Control Act, Planning and Building Act and Water Resources Act, and implement the EU Water Framework Directive ('Water Directive') that entered into force in 2000. The purpose of the Water Regulations is stated in Section 1:

'The purpose of these regulations is to define a framework for establishing environmental goals that, as far as possible, will ensure overall protection and sustainable use of water resources. The regulations shall ensure the preparation and adoption of regional management plans and pertaining action programmes with a view to meeting the environmental goals, and shall ensure that necessary knowledge on which to base this work is obtained.'

Environmental goals shall be adopted for each individual water resource. All freshwater, groundwater and water in near-coastal areas shall be protected against deterioration, improved and restored. As a rule, all water resources shall maintain or attain a good ecological status or good ecological potential and good chemical status in accordance with further specified criteria. As a point of the departure, the environmental goals shall be attained by 2021. The Ministry of Climate and the Environment is responsible for coordination and follow-up of the Water Directive at the national level in close collaboration with other ministries, while the county governors have special responsibility for coordination and quality assurance of the environmental knowledge base that the plans are to be based on.

6.1 Important provisions in the planning process

Municipal planning under the Planning and Building Act and administration of different sectors can affect the aquatic environment and water quality. The regional water management plans, which are finally approved by the Ministry of Climate and the Environment, and Section 12 of the Water Regulations are of particular relevance to municipal planning in the coastal zone.

6.1.1 The water management plans

The environmental goals are to be attained through environmentally based and cross-sectoral water management plans with pertaining action plans. The plans shall be

reviewed and updated as necessary every six years. Eleven county authorities have been appointed as competent water region authorities, and each of them is charged with preparing a regional plan. The water region authority shall coordinate the planning work together with a water region committee consisting of local government representatives, among others. The regional plans and pertaining management plans shall be followed up in other municipal and regional planning.

For more detailed guidance on the legal framework and important interpretative issues relating to the practical implementation of Section 12 of the Water Regulations, see the letter of 23 February 2015 from the Ministry of Climate and the Environment.

7 The Norwegian Armed Forces' use of marine coastal areas

The Armed Forces primarily need coastal marine areas for shooting and exercise activities. In addition, the Armed Forces will need to control access to certain areas out of consideration for important defence installations or to prevent observation of their activities. The Armed Forces' land-use needs are presented in municipal master plans and zoning plans, either under the land use objective 'Armed Forces', as special consideration zones to safeguard against danger or as special consideration zones subject to restrictions under the Planning and Building Act with reference to areas restricted under separate regulations.

7.1 Restricted areas

Access prohibitions/restrictions in and around important defence installations and areas may be adopted by Royal Degree. The regulations on restricted areas for use by the Navy (*Forskrift om militære forbudsområder innen Sjøforsvaret*) define 16 marine areas with access restrictions. Legal authority for these Regulations is found in Section 18(a) of the Security Act.

7.2 Shooting and exercise ranges

The Armed Forces need regular training to fulfil their mission. Such training requires restrictions on access, partly to gain maximum benefit from the exercises and partly because the exercises may put civilians at risk. This is particularly true in the case of shooting exercises. Marine shooting and exercise ranges are primarily used by the Navy and Air Force, but are also be used by other parts of the Armed Forces.

The Armed Forces' shooting and exercise ranges, established after World War II, are documented and published in Official Norwegian Report NOU 2004:27 *Forsvarets skyte- og øvingsfelt – Hovedrapport fra det rådgivende utvalg til vurdering av Forsvarets øvingsmuligheter*. The report covers both marine and onshore shooting ranges and shows their geographical locations and how far they extend.

Norway's marine shooting and exercise ranges were reviewed by the Armed Forces in 2015, with an assessment of which shooting and exercise ranges could be closed down and which should be kept for continued use. Boundary changes were proposed for some of the shooting ranges.

7.3 Land-use policy instruments

The Planning and Building Act was amended in 2008 to apply to marine areas extending one nautical mile from the baseline. At the same time, *The Armed Forces* was added as a separate land-use objective for municipal master plans and zoning plans; see Sections 11-7(4) and 12-5(4) of the Planning and Building Act. The Act also authorised the inclusion of special consideration zones in the plans to safeguard against danger; see Sections 11-8 and 12-6 of the Planning and Building Act.

Shooting and exercise ranges were established before the Planning and Building Act was amended to apply to marine areas, so most of the marine exercise ranges currently lack formal status under the Planning and Building Act. Their use is thus not protected should other interested parties apply and be granted a permit to use the same areas for other purposes. Shooting and exercise ranges are time-limited danger zones that can possibly be combined with other types of public access, while the establishment of permanent facilities, for example aquaculture facilities, may be incompatible with the Armed Forces' use of its shooting ranges.

The Norwegian Defence Estate Agency is charged with securing the Armed Forces' land-use interests through consultative input to municipal and county land-use plans and through being the authority competent to raise objections to protect the interests of the Armed Forces.

The Agency seeks to secure the Armed Forces' shooting and exercise ranges and restricted areas in municipal master plans and regional/inter-municipal coastal zone plans though input on the use of the land-use objective 'The Armed Forces' and special consideration zones.

Pursuant to Section 28 of the Ports and Fairways Act, the Norwegian Coastal Administration is responsible for processing applications for projects that could have consequences for the Armed Forces or its own sites, facilities or activities. Any project that could impact on the Armed Forces' facilities or activities will thus also be subject to approval under that Act.

7.4 Map and depth data

According to Section 4 of the Act relating to information about certain specific areas, sensitive objects and seabed conditions (the Information Control Act), it is prohibited to record or otherwise use information about specific seabed conditions without consent. The Armed Forces decide what information this applies to on the basis of what

information could potentially have harmful consequences for the independence and security of the realm and other vital national security interests should it become known to unauthorised persons. This also means that the information is classified and must be treated in accordance with the requirements laid down in the Security Act. It is assumed that the above restriction has a direct bearing on the management of marine areas, where civilians, as a point of departure, cannot freely record and/or share information with society at large. On application, the Armed Forces may grant a permit for recording or otherwise using such information, including for accessing such information. Work is under way to draw up regulations to further regulate this prohibition.

8 The Energy Act and Offshore Energy Act

The Act relating to the generation, conversion, transmission, trading, distribution and use of energy etc. (Energy Act) of 1990 and the Act on Offshore Renewable Energy Production (Offshore Energy Act) of 2010 have consequences for the management of marine areas. Norway has natural conditions for exploitation and development of new forms of energy production in coastal and marine areas. Wind power plants take up much space and can come into conflict with other important environmental and public interests. In future, other forms of energy production in coastal marine areas, such as tidal and wave power, could also become important.

All electric power production and transmission plants subject to a licensing requirement must have a licence from the authorities. The Planning and Building Act's requirement for a zoning plan for the implementation of major building and construction projects that could significantly impact the environment and society, does not apply to wind power plants or other energy production plants that are subject to a licensing requirement under the Energy Act, the Water Resources Act or the Watercourse Regulation Act; see Section 12-1 third paragraph last sentence of the Planning and Building Act.

The Ministry of Petroleum and Energy and the Water Resources and Energy Directorate (NVE) are licensing authorities for new hydropower and wind power plants, and for power transmission lines. The King is the competent authority for licensing major power transmission systems.

With effect from 1 January 2018, the municipalities are competent to licence micro and mini hydropower plants; see Section 64 second paragraph of the Water Resources Act. The municipalities may also process applications to build small wind power plants of up to 1 MW under the provisions of the Planning and Building Act.

The construction of wind power plants for connection to high-voltage systems is subject to a licensing requirement under the Energy Act The Act applies as far as to the baseline, and its purpose is to 'ensure that the generation, conversion, transmission, trading,distribution and use of energy are conducted in a way that efficiently promotes the interests of society, which includes taking into consideration any public and private interests that will be affected.' Further provisions regulating the licence application process are found in Chapter 2 of the Energy Act.

Wind power plants of more than 10 MW fall under the scope of the Impact Assessment Regulations of 21 June 2017, and require an environmental impact assessment (Annex I). Small wind power plants that are subject to a licensing requirement shall be subject to more detailed assessment (Annex II). NVE is the competent authority for processing wind power plant applications under the Impact Assessment Regulations. According to Section 2-1 second paragraph of the Energy Act, when licence applications are subject

to the requirement for an environmental impact assessment, the assessment shall be enclosed with the application.

A provision has been included in Section 6-4 third paragraph of the Planning and Building Act, whereby the Ministry of Petroleum and Energy is competent to decide that a final licence shall have the same effect as a central government land use plan. The provision is intended to prevent the initiation and implementation of municipal zoning processes that come into conflict with energy production plants for which licences have been granted. The provision is also relevant in situations where a licence has been granted for a project that comes into conflict with the land-use part of a municipal master plan and the municipality does not want to accommodate the licence in its zoning plans or grant dispensation from that part of the master plan. For power transmission lines in central and regional grids, it is sufficient to process a licence application; see Section 1-3 second paragraph of the Planning and Building Act.

The Offshore Energy Act applies outside the baseline. The Act applies to the territorial sea (extending 12 nautical miles from the baseline) and to the Norwegian continental shelf, and there is legal authority for applying it throughout Norway's economic zone; see Article 1 of the Constitution. The Act is intended to facilitate utilisation of offshore renewable energy resources. At the same time, Section 1-2 seventh paragraph also allows for application of the Act inside the baseline (internal waters). This means that the Offshore Energy Act may be applied to the whole marine zone that comes under the scope of the Planning and Building Act. Under Section 2-2 of the Act, the King in Council may to open up specific areas for offshore energy production, with a view to awarding licences under Section 3-1.

Report No 25 to the Storting (2015–2016) is based on the Government's wish to facilitate long-term development of profitable wind power production in Norway, and the aim of clarifying what offshore areas it may be relevant to open up for licence applications for offshore wind power production.

9 The Aquaculture Act

9.1 Introduction

The Act of 17 June 2005 No 79 relating to Aquaculture (the Aquaculture Act) entailed a modernisation of the policy instruments for facilitating the development of the Norwegian aquaculture industry. The Ministry of Trade, Industry and Fisheries is the competent administrative authority for implementation of the Act. The new Act introduced measures to secure greater access to capital and more capacity for restructuring by allowing licences to be freely transferred between private parties (without being subject to official approval) and by allowing aquaculture licences to be pledged as security. The focus was transferred from *who* owned the activities to *how* they were actually operated. Clearer environmental requirements were also established for those who were involved in the industry.

In order to limit the costs for the industry of public processing of applications, steps were taken to rationalise the processes for setting up aquaculture operations and to shorten case processing time. Another goal was to facilitate coordinated land use; see Report No 19 to the Storting (2004-2005) on the development of marine industries (*Om marin næringsutvikling)*. The Aquaculture Act sets out guidelines for balancing land-use interests when allocating aquaculture sites, so as to ensure co-existence with other users of the coastal zone.

Section 1 of the Aquaculture Act states that: 'The purpose of this Act is to promote the profitability and competitiveness of the aquaculture industry within the framework of a sustainable development and contribute to the creation of value along the coast.'

The aquaculture industry is primarily an export industry, and the description of the purpose of the Act stresses its international competitiveness as a weighty consideration in the administration of the provisions of the act. The preparatory works to the Act also stress that the industry's profitability and competitiveness shall be promoted within the framework of a sustainable development. The industry shall be administered so as to ensure that it is adapted in the interest of marine biodiversity and the marine environment. Environmental considerations cover both pollution and ecological impacts. Satisfactory management of marine ecosystems to the benefit of society is essential to secure long-term profitability and value creation in the industry.

The Aquaculture Act applies to Norway's land territory, territorial waters, economic zone and continental shelf. The King may adopt regulations deciding that the Act shall apply in whole or in part to Svalbard; see Section 3.

9.2 Key provisions

9.2.1 Chapter 2 of the Act – Aquaculture licences

9.2.1.1 The licence requirement

It is prohibited to engage in aquaculture activity without a licence. If follows from Section 4 first paragraph that an aquaculture licence may be obtained in two ways: either through being granted by the Ministry (delegated to the the Directorate of Fisheries/county governors) or through being transferred between private parties. In both cases, the licence holder must be registered in the aquaculture register in order to engage in aquaculture activity; see Section 4 second paragraph. When new licences are applied for, it is up to the administration to decide, at its own discretion, whether an aquaculture licence should be granted.

9.2.1.2 The content of an aquaculture licence (specific species, limited geographical area etc.)

Section 5 of the Aquaculture Act states that an aquaculture licence entitles to 'the production of specific species in limited geographic areas (sites) subject to the prescribed restrictions on the scope of the licence that apply at any time.'

An aquaculture licence will normally cover several specific sites, each of which must be specifically approved by the awarding authority. In most cases, each individual site will also be covered by more than one licence. There are requirements for aquaculture sites to lie fallow between each production cycle.

In order to ensure optimum and sustainable operations, it may be necessary to move operations between different sites as provided for in the licence. The form of operation requiring fallow sites can entail moving a licence in and out of a municipality on a regular basis. Aquaculture licences for salmon, trout and rainbow trout are geographically linked to one of the Directorate of Fisheries' regions and, as a point of departure, they can only be utilised in the region where the licence was granted. Exceptions from the provision only apply to enterprises that have been granted a licence for what is referred to as inter-regional biomass harvesting, or that have been granted dispensation under the Salmon Allocation Regulations.

9.2.1.3 Maximum allowable biomass (MAB)

Licences for farming fish are limited in terms of maximum allowable biomass (MAB). A standard marine grower licence for farming salmon, trout and rainbow trout is limited to 780 tonnes MAB in Nordland and counties further south, while a standard licence in Troms is limited to 945 tonnes MAB. The quantities of 780 and 945 tonnes indicate maximum allowable biomass per licence. There is a difference in MAB for licences in Troms and Finnmark county because growth is slower in the northernmost county than

in the rest of the Norway. The increment in biomass per licence is intended to compensate for this.

9.2.1.4 Procedure for processing of new aquaculture applications

According to Sections 4 and 6 of the Aquaculture Act, the Ministry may grant aquaculture licences on application, provided that the applicant meets certain conditions. Applications for licences under the Aquaculture Act require processing on the basis of a number of acts with pertaining regulations, to be considered by the respective sector authorities. These acts are the Food Safety Act and Animal Welfare Act (the Norwegian Food Safety Authority) and the Pollution Control Act (the county governor).

The county governor may issue an opinion in each individual case relating to nature protection, vulnerable nature, biodiversity and outdoor recreation, fishing and hunting interests (see also the provisions of the Nature Diversity Act). Permission is also required from the NCA under the provisions of the Harbours and Fairways Act. The Directorate of Fisheries may issue an opinion regarding traditional fishing interests. Where a freshwater supply is needed for aquaculture, additional permission is required under the Water Resources Act (the Norwegian Water Resources and Energy Directorate – NVE).

If follows from Section 6 first paragraph (b) of the Aquaculture Act that the requirements in Section 15 concerning the relationship to land-use plans and protection measures must be met for an aquaculture licence to be granted. Land-use interests must also have been weighed in accordance with Section 16; see Section 6 first paragraph (c). Furthermore, it follows from Section 6(a) of the Aquaculture Act that it is a general condition for granting a licence that it is 'environmentally responsible'. Official decision that could impact natural diversity must also be considered in light of the principles that follow from Sections 8 to 12 of the Nature Diversity Act; see Section 7 of that Act.

The provisions for assessing aquaculture applications pursuant to the Food Safety Act and Animal Welfare Act are specified in the Regulations on the establishment and expansion of aquaculture sites, pet shops etc. (*Forskrift om etablering og utvidelse av akvakulturanlegg*) (the 'Establishment Regulations'). According to Section 7 of the Establishment Regulations, the Norwegian Food Safety Authority shall consider in particular those factors that affect the risk of infection for the aquaculture site that is applied for and the surrounding environment.

When all sector authorities have reached their decision, the awarding authority (county governor) shall make a decision in accordance with the Aquaculture Act, based on an overall assessment. In practice, the case processing entails that the municipality and the various agencies that administer the sector legislation have 'a right to veto' the establishment of new aquaculture sites. Aquaculture licences may only be granted if necessary permissions have been obtained from the competent authorities relating to

fish health, fish welfare and the environment, and if the siting of the facilities is not in contravention of adopted land-use plans.

9.2.1.5 Further details regarding the case processing (coordination, deadlines etc.)

The application process for granting clearance for aquaculture sites is coordinated by the county authorities. The application is addressed to the county in which the site being applied for is located. The Regulations on coordination and deadlines for processing aquaculture applications (*Forskrift om samordning og tidsfrister i behandlingen av akvakultursøknader*) sets deadlines for the various authorities involved in processing the applications. The Regulations apply to all sector authorities with the exception of the administrative authority under the Water Resources Act (NVE).

The county authorities shall record the time spent on processing the application from its receipt until a final decision is reached. Within two weeks from the date of receipt of a complete application, the county authority shall forward the application to the municipality in which the site being applied for is located, to the sector authorities and other authorities whose opinion is required. The municipality's opinion, if applicable accompanied by comments from public consultation, shall be received by the county authority no later than 12 weeks after the municipality received the application. On receipt, the county authority shall immediately forward any comments received after announcement or making the application available for comment, and any opinion issued by the municipality, to the sector authorities and other authorities competent to issue opinions. The sector authorities are required to reach a decision within four weeks of receipt of comments etc. Opinions from other authorities shall be received by the county authority by the same deadline.

The awarding authority shall complete its processing of the application within four weeks of receiving consent or rejection of the project from the sector authorities. This deadline does not apply if a decision by the sector authorities is appealed before the awarding authority has reached a decision. The sector authorities shall consider appeals within 12 weeks, and shall submit their decision to the awarding authority. According to the Regulations, the case processing should not normally take more than 22 weeks. Time spent on appeals come in addition to that.

9.2.1.6 The authorities' duty of coordination on establishing aquaculture

Section 8 of the Aquaculture Act contains rules for coordination in cases concerning the establishment of aquaculture. It follows from the provision that the various authorities that are competent under the Act, including the planning authority, have a duty to undertake an 'efficient and coordinated processing of applications'. Regulations on coordination and deadlines for the various authorities' processing of aquaculture applications have been adopted in pursuance of the Act.

9.2.2 Chapter 3 of the Act – Environmental considerations

Section 10 of the Aquaculture Act states that aquaculture shall be established, operated and abandoned in an environmentally justifiable manner. It is stressed in the comments on this provision that the duty implies that aquaculture operations shall be conducted in such a way that they do not at any time have a materially adverse impact on the environment. The provision permits provisions to be adopted to secure environmentally justifiable production and intervention in any production that is not environmentally justifiable.

Section 11 of the Aquaculture Act on environmental monitoring requires that any person who holds or applies for an aquaculture licence shall conduct the necessary environmental surveys and document the environmental condition of the area affected by the site. The comments on this provision make it clear that by environmental surveys is meant surveys relating to *inter alia* pollution risk and ecological impacts, including biodiversity.

In pursuance of Section 11 of the Aquaculture Regulations, Section 35 lays down a requirement for environmental surveys to be conducted at the frequencies that follow from NS-9410 or a corresponding international standard or recognised norm. Section 36 of the Regulations contains provisions on measures to be taken in the event that a site's environmental standard is unacceptable. In such cases, the Directorate of Fisheries, in consultation with the county governor's environmental department, may issue a decision to fallow the site.

Section 12 states that installations and equipment used in aquaculture must be safely designed, have safe characteristics, and be used with the necessary caution. Regulations on technical requirements for fish-farming installations (the 'NYTEK Regulations') have been adopted in pursuance of the provision. The purpose of the NYTEK Regulations is to: 'contribute to preventing fish from escaping from floating aquaculture facilities though ensuring that installations are maintained to a safe technical standard.

Among other things, the NYTEK Regulations set out requirements for product certification, site surveys, mooring analyses, mooring deployment, and installation certificates for all floating aquaculture facilities. Section 13 of the Aquaculture Act requires the holder of an aquaculture licence to be a member of an association, established by the Ministry, that will cover the expenses incurred by public or private parties in removing organisms that have escaped or otherwise spread from an aquaculture site in an undesired manner. In pursuance of that Section, Regulations have been adopted that contain further provisions on the tasks of the association and on the duty to pay a fee.

According to Section 14 of the Aquaculture Act, the Ministry may prohibit aquaculture facilities, order them to be moved or issue other conditions as necessary to protect areas of particular value to aquatic organisms. Pursuant to that Section, Regulations

have been issued setting out special requirements for aquaculture-related activities in or near national salmon watercourses and national salmon fjords.

9.2.3 Chapter 4 of the Act – Land use

If follows from Section 6 first paragraph (b) of the Aquaculture Act that the requirements in Section 15 concerning the relationship to land-use plans and conservation measures must be met for an aquaculture licence to be granted. A weighing of land-use interests must also have been conducted as provided for in Section 16; see Section 6 first paragraph (c).

It follows from Section 15 that, unless consent is obtained from the competent planning or conservation authority, aquaculture licences may not be granted in contravention of:

- land-use plans adopted under the Planning and Building Act,
- conservation measures adopted under Chapter V of the Nature Diversity Act,
- conservation measures adopted under the Cultural Heritage Act.

Before a licence may be granted, a weighing of interests must also be carried out in accordance with the requirements in Section 16. Section 16 states that the Ministry shall weigh land-use interests when allocating aquaculture sites. In weighing these interests, particular weight shall be given to:

- the area needed by the applicant for the planned aquaculture production,
- alternative use of the area for other aquaculture,
- other use of the area, and
- conservation interests that do not come under the scope of Chapter V of the Nature Diversity Act or the Cultural Heritage Act.

9.2.4 Chapter 5 of the Act – Registration, transfer and mortgaging of aquaculture licences

Sections 18 to 20 of the Aquaculture Act contain provisions on registration and transfer of aquaculture licences and pledging them as security. Once a licence has been granted, it is freely transferable; see Section 19 of the Act. This is a manifestation of the operational focus of the Aquaculture Act. It is stated in the preparatory works that: 'What is important is how, and not by whom, the activities are operated.'

Section 22 of the Aquaculture Act requires that any person who participates in activities that come under the scope of the Act must have the necessary technical expertise to do do so. Furthermore, according to Section 23, the operator of an aquaculture facility has a duty to put in place and implement systematic control measures. In pursuance of that Section, Regulations have been adopted on internal control to meet the requirements of the aquaculture legislation. The aquaculture undertakings' internal control system

shall contribute to ensure compliance with requirements issued in or in pursuance of the Aquaculture Act, Food Safety Act and Animal Welfare Act.

9.2.5 Public access and prohibition on fishing: marking of aquaculture facilities

It follows from Section 18 first sentence of the Aquaculture Regulations that fishing within 100 metres of the facility and public access within 20 metres of the facility are prohibited. Section 18 second sentence of the Regulations specifies that the distance is measured from a straight line drawn between the actual peripheral points of the facility along the surface. Appendix 2 to the Regulations on fairway and navigation markers prescribes that the peripheral points of aquaculture installations shall be marked with 'special markers' as recommended by the International Association of Lighthouse Authorities (IALA), and that 'peripheral points are defined as the points to which the installation's anchors or moorings are attached, or the points at which ropes, wires, chains or similar that form part of the anchoring or mooring system are deep enough not to obstruct maritime traffic or damage or be damaged by such traffic.'

9.2.6 Case processing and collaboration in the planning process

The Directorate of Fisheries is the official advisory and executive body for aquaculture management in Norway. The Directorate carries out supervision and control of the aquaculture industry pursuant to the Aquaculture Act. Some of the Directorate's tasks are delegated to the regional offices. Many tasks related to development, supervision, quality assurance and processing of appeals are still carried out at the national level.

Since the Administration Reform entered into force on 1 January 2010, the county authorities have been responsible for granting licences for farming and sea ranching of marine growers of anadromous and marine species. This includes the authority to decide on applications linked to existing licences and sites. The county authority is also responsible for processing applications for freshwater aquaculture licences, for submitting objections on behalf of mariculture interests in municipal planning processes and for the assessments made pursuant to the Regulations on environmental impact assessments.

The county authorities have a right and duty to assist the municipalities in planning matters that concern their area of responsibility, plans or decisions, and must provide the planning authorities with information that could be of significance for the planning; see Section 3-2 third paragraph of the Planning and Building Act. Such assistance may entail providing expert opinions on plans, impact assessments, dispensation applications, and contributing map information. When necessary, the county authority may appeal dispensation decisions and submit objections. The county authority is the planning authority for regional plans, which can also be important instruments in ensuring sufficient and appropriate areas for aquaculture.

Other public bodies, such as the Sami Parliament, have the right to participate in the planning where their areas of responsibility are affected. The Sami Parliament also has the right to raise objections under the Planning and Building Act against land-use or zoning plans that ignore or do not protect interests of material importance to the Sami culture.

The Directorate of Fisheries, as the sector authority, is still responsible for safeguarding overall national fisheries and aquaculture interests, and for promoting such interests in municipal land-use planning processes. In its capacity as the sector authority, the Directorate shall also issue opinions relating to fisheries and aquaculture interests on dispensations and environmental assessments under the Planning and Building Act.

10 The Outdoor Recreation Act

10.1Introduction

Outdoor recreation and accessing forests, fields, mountains and coastal areas are widely pursued leisure activities in Norway. Public right of access is a free common good and an important basis for outdoor recreation. Public access to the shore zone is also important for outdoor recreation. In the vicinity of cities and major urban centres, and particularly in areas where there are many holiday cabins, such access is under pressure, among other things from dispensations from the prohibition on building in the 100-metre belt.

The Ministry of Climate and the Environment is the competent authority in matters relating to the Act of 28 June 1957 No 16 relating to outdoor recreation (the Outdoor Recreation Act). The purpose of the Act was incorporated in 1996 and reads as follows: 'The purpose of this Act is to protect the natural basis for outdoor recreation and to safeguard the public right of access to and passage through the countryside and the right to spend time there etc. so that opportunities for outdoor recreation as a leisure activity that is healthy, environmentally sound and gives a sense of well-being are maintained and promoted.'

In addition to property rights, shoreline access rights confer certain rights in coastal and marine areas that need to be taken into account in outdoor recreation. The Supreme Court of Norway stated the following in Rt. 2011 p. 556 (42): 'Shoreline access rights confer a number of rights on the owner of a shoreside property, regardless of whether he also has title to the seabed, such as right of access by sea, the right to construct a quay or boat berth and reclamation rights'; for further details, see Falkanger and Falkanger: *Tingsrett*, 6th edition, 2007, pp 95–99, and Myklebust: *Strandrett og offentleg styring av arealbruk i sjø*, 2010. These rights are also conferred on owners of properties with a deep shoreline. Furthermore, neighbour law and public-law rules afford significant protection against the initiation of operations or activities in the sea along the shoreline that will constitute a great nuisance to the owners of the land above the shore.

10.2 Key provisions

Section 2 first paragraph of the Outdoor Recreation Act lays down the rule that 'any person' may pass through outlying fields throughout the year, provided that it is done with 'consideration and due care'. The second paragraph regulates a number of other activities, while the third paragraph refers to motorised access being regulated under the Act on motorised access to uncultivated land and watercourses (*Motorferdselloven*).

Important provisions relating to the use of coastal and marine areas are found in Sections 6, 7, 8 and 9 of the Outdoor Recreation Act. Section 6 states that passage by

sea is free for all. It is permitted to pass as far as the shore is covered by water, including across the area between the ocean drop-off and the beach, where the seabed is subject to property rights. The Recreational Craft Act lays down requirements for fitting out and use of all types of pleasure craft. Legal authority for setting speed limits at sea and in rivers and lakes is found in the Harbours and Fairways Act. It follows from Section 7 of the Outdoor Recreation Act, that permission must be obtained to use a quay or jetty, but that the owner may not object to the use of 'other mooring devices (rings, bolts etc.)' in uncultivated land for shorter periods provided that such use takes place 'without unduly hindering the owner or user'.

The Act does not regulate overnight stays in a boat at sea. This is a long-standing tradition and custom everywhere along the coast where seafarers have moored and stayed overnight for shorter or longer periods as needed. It follows from Section 8 of the Outdoor Recreation Act that any person is entitled to bathe in the sea, provided it is done 'at a reasonable distance from inhabited cabins and without unduly hindering or inconveniencing others'. In Rt. 2007 p. 102 (47), the Supreme Court found the distance to an inhabited property to be a material factor in assessing what constitutes an undue hindrance; it is not possible, however, to define a general limit. At the same time, the requirement for propriety is strict, and it is not enough that the bathing is perceived as annoying by the landowner.

Section 11 of the Outdoor Recreation Act lays down restrictions on the right of access. It follows from that Section that consideration and due care must be exercised in relation to those who live in the vicinity or use the area, and in relation to commercial interests. For example, it is not permitted to interfere with fishing nets or other fishing gear. Section 12 sets out a rule on compensation where a person has caused harm or inconvenience.

Section 13 of the Outdoor Recreation Act prohibits setting up what are referred to as illegal barriers in the shore zone. It means that the owner or user of the land may not put in place any measure to hinder public access. The prohibition applies to everything from fences, platforms, and lawns to jetties etc. Section 13 is applicable in cases where no permission for such measures has been granted, for example under the Planning and Building Act. The municipality is entitled to order the removal of such barriers; see Section 40 of the Outdoor Recreation Act.

According to Section 15 of the Outdoor Recreation Act, the municipality may introduce further rules of conduct in areas visited by many people, including in marine areas. According to Section 14, the municipality may charge a reasonable fee for use of a beach, camp site or other developed outdoor recreation area, proportionate to the measures that have been put in place.

10.3 Relationship between the Outdoor Recreation Act and the Planning and Building Act

The Planning and Building Act applies on a par with and supplements the Outdoor Recreation Act.

A zoning plan may be necessary where it is desirable to supplement the public's rights under the Outdoor Recreation Act or put in place facilitation measures. For areas regulated for outdoor recreation and nature conservation, zoning provisions may be adopted to regulate the right of access, for example by prohibiting certain harmful forms of use.

For public right of access to be of any value, suitable areas must be available. Land-use planning under the Planning and Building Act is thus a very important part of the work to facilitate outdoor recreation. The planning provisions in the Planning and Building Act offer good options for promoting outdoor recreation interests, in both general social planning and land-use plans.

The county governor is responsible for protecting national outdoor recreation interests linked to the shore zone, watercourses and mountain areas, and may raise objections in the interest of outdoor recreation. It follows from Section 22 of the Outdoor Recreation Act that the municipality, county and county governor 'shall seek to promote outdoor recreation interests within the geographical areas for which they are responsible'. Within the scope of the Norwegian Local Government Act, each individual municipality may freely decide how to organise the promotion of outdoor recreation. The Norwegian Environment Agency is the specialist public agency for outdoor recreation, and much of the day-to-day and operational work in this field is delegated to that agency.

Section 35 of the Outdoor Recreation Act confers authority to issue permits for marking and other measures to facilitate access to uncultivated land, for example, by way of coastal footpaths. The Norwegian Environment Agency has been delegated authority by the Ministry to issue intervention permits. The agency's work is based on a number of policy documents that have been adopted through the years, most recently Report No 18 to the Storting (2015-2016) on outdoor recreation. It is primarily municipalities and inter-municipal outdoor recreation councils that take the initiative to obtain central government support for securing outdoor recreation areas and that are responsible for the daily operation and supervision of such areas. Recent years have seen greater involvement on the part of central government authorities, and areas in the coastal zone and green areas in urban and built-up areas are now prioritised in the scheme. The county governor is the regional representative of the state as the owner of land secured for outdoor recreation. The county authority submits recommendations regarding applications to secure new land to the Norwegian Environment Agency, and follows up the municipalities and outdoor recreation councils' management of the land.

The areas that are secured through collaboration between the central government authorities and municipalities, outdoor recreation councils and counties are surveyed and selected in accordance with developments in land-use in the municipal master plans. Most public recreation areas are secured through voluntary agreements between public agencies and private landowners, while some are secured by expropriation under the Planning and Building Act.

11 The Harbour and Fairways Act

Introduction

The Harbours and Fairways Act entered into force on 1 January 2010 and is administered by the Ministry of Transport and Communications. The purpose of the Act is twofold. Firstly, the Act shall 'facilitate good navigability, safe passage and safe use and management of the fairway in accordance with the interests of the general public and of fisheries and other industries'; see the first paragraph of the provision. Secondly, the act shall facilitate rational and safe harbour/port operations in connection with sea transport and combined transport.

The Act applies to Norway's territorial waters and internal waters. Subject to adaptation as necessary, the Act may also be made applicable to Svalbard and Jan Mayen. With certain adaptations, the Harbours and Fairways Act was made applicable to Svalbard by Regulations of 30 December 2009 No 1846 relating to harbours and fairways on Svalbard.

11.1Key provisions

Administrative responsibility and authority under the Act is divided between central government and municipal authorities. Central government authorities have administrative responsibility and authority under the Act, unless otherwise stated in provisions issued in or in pursuance of the Act. The Ministry has administrative responsibility and authority for main and secondary fairways. The Norwegian Coastal Authority (NCA) is the national agency for maritime transport, maritime safety and acute pollution response. The competence to issue administrative decisions under the provisions of the Act is primarily delegated to the NCA.

It follows from Section 9 of the Harbours and Fairways Act that the municipality has administrative responsibility and authority in the area where the municipality has planning authority under the Planning and Building Act, unless otherwise provided for in the Harbour and Fairways Act and its regulations. Under Section 10 of the Act, the

municipality may delegate authority to an inter-municipal collaboration as provided for in the Act on inter-municipal undertakings, That Section must be seen in conjunction with Section 45 on the municipality's organisation of its own ports/harbours.

The rules in Chapter 3 of the Harbours and Fairways Act are meant to contribute to safety in Norwegian waters and fairways through, for example, traffic regulations, rules on the duty to notify of hazards and requirements for navigational aids.

Section 13 of the Harbours and Fairways Act regulates the Ministry's authority to regulate marine traffic through regulations or individual administrative decisions. The provision includes several concrete examples of what is meant by 'traffic regulation': speed, shipping channels (traffic separation/route planning measures), orders to use particular fairways etc. The list is not intended to be exhaustive. The Marine Traffic Regulations and the Regulations on speed limits at sea and in rivers and lakes are key regulations issued pursuant to Section 13. The municipal council may make individual decisions and adopt local regulations on speed limits in the municipality's marine areas, lakes and rivers. It is up to the municipality to decide whether to issue speed regulations. To be valid, speed regulations must be approved by the NCA's head office, however; see Section 4 first paragraph of the Regulations on speed limits at sea and in rivers and lakes. In that connection, reference is made to the guide on drawing up local speed regulations, issued by the NCA's head office.

The NCA's head office has been granted authority to issue regulations as provided for in Section 13 (c), prohibiting the use of certain waters or fairways by certain watercraft or groups of watercraft, or laying down special conditions for such use. The competence to issue regulations is limited to situations where the need for regulation arises as a consequence of a concrete event in the area. It could be an accident, oil spill or other unforeseen event, or a planned project requiring restrictions on access.

In order to facilitate more transport by sea, it is necessary to secure a complete and continuous network of fairways, lawfully established and serving the whole nation. According to Section 16 of the Harbours and Fairways Act, the Ministry may establish main and secondary fairways and other categories of fairways. This is accomplished through the Fairway Regulations, which stipulate the geographical boundaries of main and secondary fairways, and thus the boundaries between areas where administrative responsibility and authority rests with the municipality and central government authorities, respectively, under the provisions of the Harbours and Fairways Act. Where a main or secondary fairway runs right up to a quay, the central government authority's

responsibility for that fairway in the harbour area is limited to establishment of and repairs to the fairway; see Section 3 second paragraph of the Fairway Regulations.

Section 17, which authorises the Ministry to establish vessel traffic services for monitoring, controlling and regulating maritime traffic, and Section 19, which concerns aids to navigation, are other important provisions of the Harbours and Fairways Act, intended to contribute to safety and navigability in Norwegian waters. It follows from Section 19 first paragraph that the central government authorities have overall supervisory and administrative authority for navigational aids (beacons, cardinal and lateral markers etc.), while the second paragraph prohibits the establishment, removal, moving, modification etc. of the aids mentioned except by prior decision or permission from the Ministry.

Chapter 4 of the Harbours and Fairways Act lays down rules to ensure control of what projects may be undertaken in the sea or on land that can affect conditions in the fairway. The duty of application applies to any project or activity that could impact on the safety or navigability of the waters. What is decisive is the *impact* of the project, and it is sufficient that there is a reasonable possibility that the project can have a disruptive impact on maritime traffic. Section 27 contains a non-exhaustive list of projects that require permission – for example, mooring installations, vessel lay-ups and jetties.

Applications for projects in the municipality's marine area are processed by the municipality; see Section 27 first paragraph. The Regulations on projects that require permission from the NCA lists a number of projects that must nonetheless always be considered by the NCA, regardless of where they are to be implemented. The NCA must also process applications for projects in main or secondary fairways and projects that can impact the safety or navigability of such fairways.

Section 29 of the Harbours and Fairways Act regulates the right to specify conditions in permits issued pursuant to Section 4 and supplements the general conditions principle. Section 30 confers legal authority on the Ministry to prohibit or impose conditions on the implementation of projects, in the form of regulations or individual administrative decisions, if it is necessary to conserve particular areas of special value to marine biodiversity. Section 33 confers the authority to order the developer to carry out necessary surveys to enable satisfactory processing of applications by the administration in accordance with Section 4 of the Act.

Most ports are owned by the municipality, while some are private. The state does not own any ordinary ports for marine traffic, but owns publicly funded installations and/or infrastructure in fishing ports.

Chapter 6 of the Harbours and Fairways Act lays down several general rules relating to municipal and private ports. Section 39 states that owners and operators of ports open for public use have a duty to receive vessels. That duty is based on the principle of free competition relating to transport by sea, and the principle of non-discriminatory access to important infrastructure. The provision is no obstacle to ports/terminals focusing on serving specific market segments, for example ferry traffic. The ports are not obliged to receive vessels they lack the infrastructure to serve. It is clear from the second sentence of the first paragraph that port owners and operators may stipulate limitations on the right to call at a port out of consideration for 'safety, the environment and the fisheries industry.' The preparatory works stress that the fisheries industry has been given a special position, and that the fishery ports are an important part of the fisheries' infrastructure.

Sections 40 and 41 of the Harbours and Fairways Act define the scope of port operation and maintenance, while Section 42 regulates the use of ports in more detail. Section 42 first paragraph states that, unless otherwise provided for, the municipality may issue rules in the form of regulations on keeping ports in order and use of ports, while Section 42 third paragraph makes it clear that the rules on permission for certain projects apply correspondingly to lay-ups in ports. Section 43 confers legal authority for measures to prevent acts of terror and other intentional unlawful acts targeting a port/terminal or another vessel using the port/terminal.

For more detailed guidelines to the Act, reference is made to the guide to the Harbours and Fairways Act issued by the NCA's head office.

11.2 Case processing and collaboration in the planning process

On account of being port owners and responsible for land-use planning, the municipalities play an important role in securing good framework conditions for efficient operation of the ports. Port operations depend on seaside land being made available and on access to sufficient land and infrastructure in the form of roads etc. It is also important to consider issues related to housing objectives and harbour/port activities in conjunction with each other, so that conflicts of interests are avoided as far as possible.

Furthermore, municipal land-use planning shall secure sufficient space for safe navigation and manoeuvring of maritime traffic, and account must be taken of any main and secondary fairways passing through the municipality's marine areas. How far main and secondary fairways extend geographically follows from the Fairway Regulations, as

mentioned above. It is important to involve the NCA in the planning with a view to clarifying how much space is needed for marine traffic. Important factors to consider in relation to maritime traffic are the size and manoeuvring capacity of the vessels that pass through the area, traffic density, the traffic situation, natural conditions, currents and winds, environmental risks and risks to persons. Because of widely varying traffic situations and local conditions, the space required for maritime traffic will vary.

Section 32 of the Harbours and Fairways Act requires coordination of measures requiring permission under the Act. It follows from the first paragraph that the competent authority under the Harbours and Fairways Act and the municipality as the competent authority under the Planning and Building Act have a duty to ensure coordinated and efficient processing of applications. It follows from the second paragraph that permission under the Harbours and Fairways Act may not be granted in contravention of land-use plans adopted in accordance with the Planning and Building Act, though the developer may nonetheless apply for dispensation from the competent planning and building authority.

In its capacity as a national transport agency, the NCA shall safeguard the interests off harbours/ports and sea transport in planning processes provided for under the Planning and Building Act, and is therefore competent to raise objections; see Section 5-4 of the Planning and Building Act.

12 The Marine Resources Act

12.1Introduction

The Act of 6 June 2008 No 37 relating to the management of wild-living marine resources ('Marine Resources Act') is the most important law for the management and regulation of wild-living marine resources and is administered by the Ministry of Trade, Industry and Fisheries. The Act is intended to ensure responsible and holistic resource management, and important principles such as the precautionary principle and ecosystem-based management are therefore incorporated into the Act. The Act has contributed to more holistic management of all wild-living marine resources.

The Marine Resources Act is an enabling act with a wide scope that provides legal authority for establishing and allocating quotas between groups of vessels, regulating the fishing and other harvesting of wild-living marine resources, protection and conservation measures, and control and sanctions for breaches of fisheries legislation.

It follows from Section 1 that the purpose of the Marine Resources Act is to: 'ensure sustainable and economically profitable management of wild living marine resources and genetic material derived from them, and to promote employment and settlement in coastal communities.'

12.1.1 To whom do the marine resources belong?

The title to wild-living marine resources is held by ' Norwegian society as a whole'; see Section 2. The preparatory works conclude that the central government is responsible for managing species and marine ecosystems in such a way that a surplus can be produced and harvested.

12.1.2 New act – wider area of application

The scope of the Marine Resources Act as amended has been extended to all wild-living marine resources and pertaining genetic material, not just traditional hunting and fishing. This means that the Act also regulates harvesting of kelp and other seaweed. The substantive scope is described in more detail in Section 3 of the Act.

Harvesting and cultivation of kelp and other seaweed and kelp constitute a growth industry of consequence for planning in coastal and marine areas. Harvesting is regulated in separate Regulations. The Directorate of Fisheries has legal authority to permit and regulate harvesting of kelp in certain regions by means of regional regulations. Such permits are granted for up to five years at a time.

12.1.3 Fundamental considerations and principles in the Act

A management principle has been introduced into the Marine Resources Act whereby it is the surplus generated by marine resources that may be harvested, so that these resources can also benefit future generations. That means that resources may be harvested without explicit legal authority being provided in regulations, but that the authorities have a duty to regularly consider what kind of measures are needed to ensure the sustainable management of wild-living marine resources.

The management principle and other fundamental considerations in the management of marine resources are set out in Section 7 of the Marine Resources Act. Among other things, it is stated that the administration shall apply the precautionary principle and an ecosystem-based approach that takes biodiversity into account.

12.1.4 Obligations to the Sami people

The Marine Resources Act clarifies Norway's obligations to indigenous peoples. Section 7(g) of the Act establishes that the management measures shall contribute to safeguarding the material basis for the Sami culture. The Coastal Fisheries Board for Finnmark followed this up in NOU 2008:5 *Retten til fiske i havet utenfor Finnmark*, which introduced amendments to the Marine Resources Act and the Act on the right to participate in fishing and hunting (the 'Participation Act') in order to ensure that fisheries legislation would continue to be in compliance with international law going forward. Among other things, legal authority was established to appoint a Fjord Fishing Board for Finnmark, Troms and Nordland; see Section 8b of the Marine Resources Act. Such a Fjord Fishing Board was appointed in 2014 to provide advice on the management of the fjord fisheries in the three northernmost counties, with particular emphasis on Sami use and its importance to local Sami communities. Section 21 of the Participation Act was supplemented by a new paragraph providing for the right to fish, on certain conditions, for persons living in Finnmark and certain areas of Sea Sami settlement in Troms and Nordland.

12.2Case processing and collaboration in the planning process

The Directorate of Fisheries is the authorities' advisory and administrative agency for fisheries and aquaculture management in Norway. It is largely responsible for the practical regulation and control of the fisheries through the year. As regional representatives of the central government authority, the Directorate of Fisheries's regional offices shall participate in land-use planning under the Planning and Building Act.

The Directorate of Fisheries has a right and a duty to contribute to land-use plans in matters concerning its area of responsibility; see Section 3-2 of the Planning and Building Act. Such assistance may entail providing opinions on the various plans,

environmental assessments and dispensation applications, contributing map information, and appealing dispensation decisions and raising objections if necessary.

The Marine Resources Act is both commercially and environmentally important and contains a number of policy instruments for ensuring the sustainable utilisation and conservation of wild-living marine resources. The Act provides a legal basis for introducing temporary and permanent measures to protect or conserve populations and habitats. For example, an area may be closed for bottom-trawling or temporarily closed for fishing because of the presence of fry. Another example is the establishment of conservation areas, including the seven lobster conservation areas that have so far been established along the Norwegian cost.

Some protection and conservation objectives are considered and implemented in separate fisheries management processes. It is important for the planning authorities to be aware of these processes and to collaborate with the fisheries administration and have access to relevant information and data on coastal marine fisheries. The planning authorities in Nordland, Troms and Finnmark must also take account of the work of the Fjord Fishing Board for Nordland, Troms and Finnmark. Further guidance on the fisheries authorities' involvement in planning in the coastal zone can be found in the Directorate of Fisheries' guidelines on coastal zone planning.