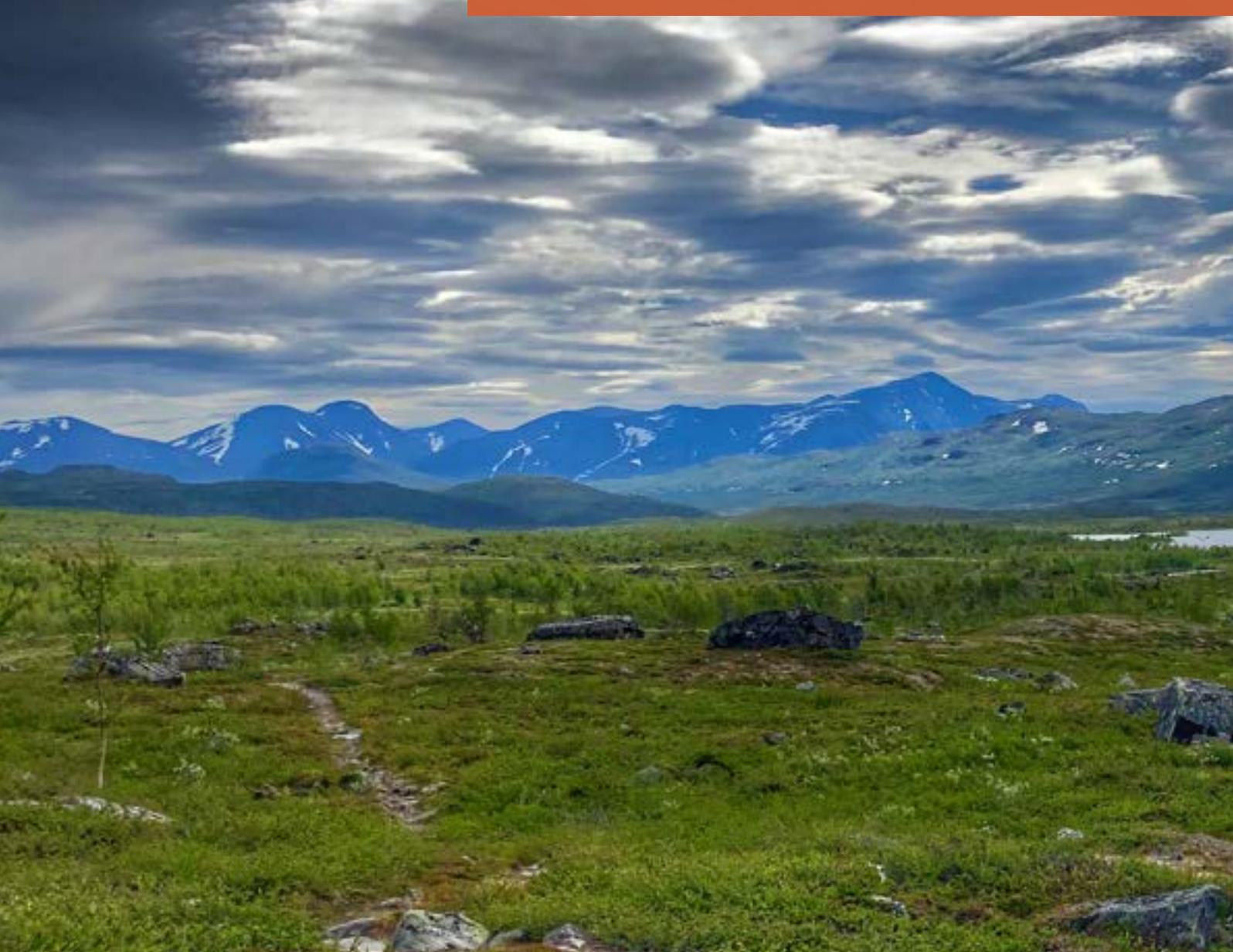




Policy Brief 4

The Planning of Arctic Landscapes and Seascapes and Its Impact on Sustainability



Distributive justice is an underlying issue in landscape and seascape planning

How has the economic exploitation of Arctic resources determined spatial planning ?

How does climate and physical landscape influence Arctic planning?

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327



POLICY BRIEFS in the Series

JUSTNORTH Policy Brief 1:
DECISION-MAKING FOR A SUSTAINABLE ECONOMIC DEVELOPMENT IN THE ARCTIC

JUSTNORTH Policy Brief 2:
JUSTICE IN ENVIRONMENTAL AND SOCIAL IMPACTS ASSESSMENTS

JUSTNORTH Policy Brief 3:
OWNING AND MANAGING LIVING AND RENEWABLE NATURAL RESOURCES AND BIODIVERSITY

JUSTNORTH Policy Brief 4:
THE PLANNING OF ARCTIC LANDSCAPES AND SEASCAPES AND ITS IMPACT ON SUSTAINABILITY

JUSTNORTH Policy Brief 5:
CLIMATE CHANGE FACTORS IN MULTI-REGULATORY RESPONSES IN THE NORTH

JUSTNORTH Policy Brief 6:
GOVERNANCE INSTITUTIONS FOR THE ARCTIC



About these briefs

JUSTNORTH policy briefs are topical outputs drawing upon research previously conducted in the JUSTNORTH project, an undertaking funded by the European Union under Horizon 2020 programme. In these briefs, we build on the findings of the research conducted in 17 case studies (Work Packages 2-4), and underpinned by the comprehensive overview of various concepts, schools and forms of justice (Work Package 1).

The objective is to assess the sustainability of the regulatory frameworks influencing the sustainability of the economic activities developed in the Arctic. Sustainability, understood here as the responsible use and management of spaces, common goods and shared resources with the aim of guaranteeing a fair use and enjoyment of them by future generations, is intrinsically linked to the idea of justice.

With the aim to reach to a wider audience, the policy briefs constitute short analysis on different aspects of regulatory, policy and governance frameworks in the Arctic. As such, they are knowledge resources for policymakers, scholars and stakeholders/rightsholders. They will also serve as background papers in the process of co-producing an EU Policy Analysis Report and Recommendations.

Beyond the valuable contributions made by the authors in their policy briefs, each brief opens with outlining relevant findings of the JUSTNORTH case studies, highlighting issues identified by researchers and

research participants as problematic, challenging or having implications on the actors' perceptions of justice. Second, we provide an overview of the regulatory and policy frameworks related to the earlier identified findings. We asked: Which frameworks correspond to or address these problematic issues? What public goods are to be promoted and harms mitigated? Are future generations considered? What is the spatial scale of these policies and regulations?

Third, we consider the outlined governance frameworks from the point of view of justice. The procedural, distribute, recognition and restorative forms of justice are highlighted, alongside the rights, balance of different values and interests and opportunities for participation. We ask if the governance frameworks themselves can be sources of social ills and injustices.

Fourth, the relevance of discussed policies and regulations from the perspective of the Sustainable Development Goals is captured. Finally, we provide initial thoughts on recommendations or areas where recommendations could be proposed and developed – these will become subjects for discussion with Arctic stakeholders and rightsholders leading towards proposing recommendations at the end of JUSTNORTH project.

JUSTNORTH Case Studies informing JUSTNORTH POLICY BRIEFS

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Opportunities For Sustainable Mobility and Addressing Transport Poverty in Iceland

Lead researchers:

Benjamin Sovacool, Sussex University
Paul Upham, Sussex University

DataCentres 2

Sustainable Digitisation & Resilient Communities: Low Carbon Data Centres in Greenland, Iceland & Norway

Lead researchers:

Benjamin Sovacool, Sussex University
Chukwuka Monyei, Sussex University

WindNO 3

Renewable and Ethical?: Motivation for Wind Power Resistance in Sápmi & the Norwegian Arctic

Lead researchers:

Ragnhild Freng Dale, Western Norway Research Institute
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Lead researchers:

Roman Sidortsov, Sussex University,
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Lead researchers:

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Fisheries 7

Changing coastal communities, fisheries governance and equity issues in Iceland

Lead researchers:

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Tourism 8

Communities, Globalisation and Marine Tourism in Northern Iceland

Lead researchers:

Niels Einarsson, Stefansson Arctic Institute,
Edward Huijbens, Wageningen University,
Edward Ariza, Universidad Autonoma Barcelona
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Lead researchers:

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Jon Ingimundarson, Stefansson Arctic Institute

Research Stations 10

Field Research Stations, Sustainable Development, and Knowledge Production in the North

Lead researchers:

Hele Kiimann, Uppsala University
Susan Millar, Uppsala University

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Northern Seas, Global Connections: Shipping, Search & Rescue and Small Communities in Canada & Norway

Lead researchers:

Corine Wood-Donnelly, Nord University
Hannes Hansen-Magnusson, Cardiff University

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Polar Tourism, Cruise Ships and Northern Communities: Competing Interests and Resource Use

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Lead researchers:

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JUSTNORTH

Policy Brief 4

The Planning of Arctic Landscapes and Seascapes and Its Impact on Sustainability

August 2022

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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327

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EXECUTIVE SUMMARY

THE PLANNING OF ARCTIC LANDSCAPES AND SEASCAPES AND ITS IMPACT ON SUSTAINABILITY

This JUSTNORTH policy brief considers issues of planning and shaping in the Arctic through the prism of the impact that the main economic activities conducted in the region have on landscapes and seascapes. Special attention has been given to competing uses of these spaces in relation to questions of justice. As an outcome of this research, planning and shaping appears to be intertwined with decision-making, as access to decision-making processes determines the stakeholders' influence on the management of spaces and their uses.

KEY MESSAGES

Landscape and seascape planning can be defined as the “development and application of strategies, policies, and plans to create successful environments, in both urban and rural settings, for the benefit of current and future generations.”¹

Distributive justice is thus an underlying issue in landscape and seascape planning, that is, the fair distribution of burdens and benefits between the members of a community after having considered their needs and claims (social justice). In order to legitimately attain this distributive balance, the participation of relevant stakeholders in the planning and shaping decision-making is key (procedural justice).

A myriad of drivers - political, economic, cultural, technological, and natural - have a paramount impact on the spatial configuration of landscapes and seascapes.² In the Arctic, two main drivers have influenced planning political decisions:

- Throughout history, the economic exploitation of the Arctic and its resources has determined spatial planning and shaping in a way that affected both landscapes and traditional ways of life, with economic requirements at times eroding traditional cultures and livelihoods.
- Arctic planning is also deeply influenced by climate and physical landscape and is thus tightly linked to sustainability challenges³. In such a context, social well-being very much relies on resilient and sustainable landscape planning.

¹ Landscape Institute, “Landscape planning introduction”, <<https://www.landscapeinstitute.org/technical-resource/landscape-planning-introduction/>> accessed 11 September 2022.

² A. Hersperger and M. Bürgi, “How Do Policies Shape Landscapes? Landscape Change and its Political Driving Forces in the Limmat Valley, Switzerland 1930-2000” (2010) 35 LR 259.

³ M.J. Kenny, Urban Planning in the Arctic: Historic Uses and the Potential for a Resilient Urban Future, (Arctic Yearbook 2017) 134.



RELEVANT FINDINGS

The increasing development of several economic activities in the Arctic poses the question of which stakeholders (or rightsholders) have privileged access to using land- and seascapes, and in influencing decision-making when different activities are competing for the use of spaces. Planning and shaping of space and landscape has, therefore, a great impact on their potential uses, contributing both to creating and transforming social and cultural practices, as well as existing relations with places. As such, spatial planning should consider decision-making issues in order to gain legitimacy. In the Arctic, the development of some economic activities has revealed the contentious aspects that lie behind the competing uses of spaces. Some of these contentions pertain to:

TOURISM

Tourism is a growing industry in the Arctic with potentially important impacts on the planning of space and landscape. Infrastructures such as road networks and airports simultaneously influence an area's touristic appeal but they also heavily affect landscapes. Across the High North, a burst in nature-oriented "last chance" tourism driven by climate change has resulted in an increase in job opportunities and in incentives for the maintenance of traditional livelihoods. However, over-tourism can lead to detrimental environmental impacts on the region's biodiversity.

In Húsavík (Northern Iceland), whale-watching activities have transformed what was a primarily fishing-based community into a tourism hotspot reinforced by an expansion of the cruise sector in the region. As a result, fishing, whale-watching and cruise shipping represent competing commercial interests affecting Icelandic seascapes.

TRANSPORT

Planning for infrastructure and transportation is a political priority as it increases connectivity in a way that is both socially and economically beneficial. This is especially the case in the Arctic region where the fact that urban settlements are geographically scattered tends to lead to "transport poverty"⁴. On the other hand, efficient transport networks and infrastructures are tightly intertwined with economic development and opportunities - as mentioned above in terms of tourism for instance. However, projects and investments in transport can often collide with other legitimate uses of space.

For instance, the Arctic Railway plans aiming to extend railway tracks in Finland to reach the Arctic Ocean have already sparked many reactions arguing that they would divide reindeer pastures and disturb fishing and hunting activities. As such, the foreseen economic profit resulting from this project appears to imply detrimental effects on traditional livelihoods.

⁴Transport poverty is a term used when someone may not be able to afford or access essential transport services, restricting their ability to travel for fundamental needs, such as employment, education, or healthcare. CSI-Transport.



RESOURCES EXPLOITATION

As already mentioned in others policy briefs⁵, the exploitation of resources such as minerals, oil or gas is one of the main economic activities deployed in the Arctic region. Although they may represent a source of significant economic benefits, planning and shaping landscapes and seascapes to favour these activities often collides with other possible uses and results in both environmental and social detrimental impacts. As was the case with decision-making issues as well, while the regulatory framework appears to be sustainability-oriented, at times its implementation differs, thus leading to social conflict.

The North Slope region in Alaska is host to Prudhoe Bay, the largest conventional oil field in the United States. The plans for oil exploitation in the protected Arctic National Wildlife Refuge (ANRW), albeit currently suspended, would put this unique landscape and its biodiversity at risk.

In Sweden, the operation of the world's largest iron ore mine has forced the relocation of the city of Kiruna due to geological instability and infrastructural risks derived from mining activities. In turn, said relocation will expand the settlement and disturb fragile Arctic environment.

⁵ See Policy Brief "Decision-making for a sustainable economic development in the Arctic: A JUSTNORTH policy brief".



RELEVANT REGULATORY/POLICY FRAMEWORK

In its analysis of the relevant regulatory and policy framework related to decision-making issues in the Arctic region, the subsequent section of this brief has been guided by the following questions: What is the regulatory and policy framework that responds to or governs the issues identified as relevant? What are the justice questions and issues related to the described governance framework? Although the Case Studies this brief draws on were mainly focused on national regulatory frameworks, relevant international instruments are also mentioned when they become part of the law of the land⁶.

TOURISM

Maritime operations of ships and cruise activities are regulated through national and international legislation. At international level, under the aegis of the 1982 UNCLOS, the UN International Maritime Organization established a convention system concerning safety and pollution prevention at sea (MARPOL, 1973; SOLAS, 1974; SAR, 1983). Additionally, the 2015 International Code for Ships Operating in Polar Waters is mandatory in the Arctic region. Two regional instruments adopted under the Arctic Council's umbrella are especially remarkable: the 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic and the 2013 Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic⁷.

As a result of its status as member of the European Economic Area, Iceland has been required to develop a Marine Spatial Planning (MSP) by European directive⁸. The Icelandic National Planning Strategy (NPS) sets out a national policy to guide municipalities in the planning and uses of oceans and coastal areas, as well as in land planning and regional development. The NPS establishes that subsequent legislation must ensure that planning is oriented to sustainable development and resilience, as well as to enhancing both people's quality of life and Iceland's economic competitiveness.

In 2018, the Icelandic Parliament introduced the Planning for Coastal and Marine Areas Act (PCMAA) with the explicit aim of balancing the interests of competing users of the marine environments through improved decision-making processes. In its aims to engage with stakeholders and to provide an equitable use of seascapes and their resources, the Act is concretely directed at strengthening procedural justice.

Additionally, it establishes that regional councils are responsible for coastal area plans for projected uses and infrastructures susceptible to affect marine environments. These plans require public participation and a broad consultation process of affected parties and institutions before being reviewed and approved by the National Planning Agency according to the principles of PCMAA and of the Environmental Impact Assessment Act.

⁶ Depending on its source, the reception of international law by states can be direct after the crystallization of the rule, as is the case of custom. International treaties become part of national law when they have been ratified by the particular state and when the state's constitutional requirements have been fulfilled. Other sources of international law generally follow these two ways of reception into national law.

⁷ See also H. Hansen-Magnusson, "The Web of Responsibility in and for the Arctic" (2019) 32 CRIA 132.

⁸ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial



As can be seen in the case of the town of Húsavík, different activities such as fishing, cruise shipping, and whale-watching are often colliding over the same maritime areas. The post-Covid era has witnessed a surge in tourism that can lead to pressures on traditional livelihoods, but also to tensions between tourism-related enterprises.⁹ For instance, cruises-related landings and activities on shore cause disturbances to the whales' habitat and migration routes, thus negatively impacting whale watching activities. In addition, both these tourism enterprises can have negative impacts on seascapes' environments and on traditional activities such as fishing. Therefore, these issues relate directly to distributional justice due to concerns over competing maritime uses and to recognitional justice aspects, such as those related to the value of respect and the preservation of cultural ecosystem services.

A joint guide for incoming cruise and passenger ships was released in 2019 to address, among other issues, the respectful behaviour that is expected from parties going ashore towards marine fauna and flora. Similarly, whale watching activities in Iceland are generally following a voluntary code of conduct developed by whale watching professionals and international experts¹⁰. Public perception of tourism in Iceland is generally positive as a key driver in the strengthening of employment and income. However, concerns over overcrowding are also expressed, especially regarding tourism's contribution to marine and atmospheric pollution¹¹.

TRANSPORT

The Finnish regulatory framework concerning spatial and land-use planning establishes a hierarchical system of plans. Under the 1999 Land Use and Building Act (LUBA), the state develops national land-use objectives that subsequently steer regional development and the underlying principles guiding land

use. At local level, municipalities develop general objectives for their respective territories before establishing particular uses for specific areas¹². LUBA contains provisions to ensure the environmental, economic, social, and cultural sustainability of planning, with additional restrictions on land use being implemented by the 1996 Nature Conservation Act and the 2014 Environmental Protection Act. In addition, in issues relating to transport, Finland's regulatory framework is supposed to be guided by the European transport policy that "aims to ensure the smooth, efficient, safe, and free movement of people and goods throughout the EU."¹³

Railway transport thus appears to fulfil most of the goals and requisites of both Finnish regulations and European policy orientation. Consequently, the Arctic Railway project is presented as a green alternative to other modes of

transport, while simultaneously leading to increases in commerce, tourism and employment that would be beneficial for regional development. However, the projected rail track passes through reindeer herding areas and through the Sámi Homeland. As such, concerns exist regarding possible environmental degradation along with disturbances in Sámi traditional livelihoods. Paradoxically, environmental degradation resulting from the Arctic Railway project may have negative effects on the landscape's touristic attractiveness. The dispute thus seems to be not only about different interests at stake, but also between different perspectives prioritizing either economic growth or environmental and/or Indigenous values in relation to nature. In order to try and reconcile these divergences, the 1991 Wilderness Act and the 2011 Railway Act establish that negotiations with affected local populations are mandatory when planning a railway affecting wilderness areas.

⁹ Iceland Tourism Research Centre <<https://www.rmfi.is/en>> accessed 12 September 2022.

¹⁰ Ice Whale, "IceWhale's Code of Conduct for Responsible Whale Watching - Operators Manual - "(2016).

¹¹ Iceland Tourism Research Center <<https://www.rmfi.is/en>> accessed 12 September 2022.

¹² Land Use and Building Act 1999 & Local Government Act 2015.

¹³ European Transport Policy 2020.



Additionally, the consultation processes included in the 1990 Reindeer Husbandry Act and the 1995 Act on Sámi Parliament must be implemented since the Arctic Railway may affect Sámi cultural rights in the Sámi Homeland (further reinforced by the nationally ratified ICCPR and UNDRIP). Initially, many reindeer herders and the Sámi Parliament opposed the Arctic Railway as they considered it to be an instance of green colonialism and argued their voices and suggestions were not considered. Although the proposed plan is currently off the agenda, it is assumed it will be raised again in the future. Additionally, a new plan for a railway connecting main tourist destinations in Southern and Central Lapland is now emerging. If this happens, Finnish authorities must ensure the implementation of appropriate assessment and compensation mechanisms that take into account distributional, procedural and recognitional aspects of justice, in particular the inclusion of the Sámi in the planning processes.

RESOURCES EXPLOITATION

UNITED STATES

Oil and gas production in Alaska depends on the subsurface rights resulting from the categorization of land among various owners and interests. Under the 1958 Statehood Act, the state was granted most

of the land while national wildlife and parks were set aside under federal control (as is the case of the unique Arctic National Wildlife Refuge, ANWR). In 1971, the Alaska Native Claims Settlement Act (ANCSA) resulted in the extinguishment of native title in exchange for transfers of land to native-owned corporations. Additionally, the 1980 Alaska National Interest Lands Conservation Act allocates lands and establishes licenses-granting processes for oil and gas exploration and exploitation. Indigenous communities benefit directly from oil exploitation when it occurs on native corporations' lands. However, some of the main Alaskan oil fields, such as Prudhoe Bay and Kuparuk, are also located on state land in between ANCSA corporations. As a result, native communities generally do not have a say in planning decisions nor do they receive exploitation's benefits in excess of the Permanent Dividend Fund payments received by all Alaskans. As for ANWR, it was declared off-limits for oil exploitation although permission could be granted by an act of Congress¹⁴.

With the Prudhoe Bay oil production in the state of steady decline over the last two decades, a national debate has unfolded regarding the possibility of opening the ANWR for oil exploration at the expense of putting at risk this very special landscape and its unique flora and fauna.

¹⁴ Alaska National Interest Lands Conservation Act 1980, s 1003.

While Trump's administration decided to open a public auction for exploration and exploitation licences, President Joe Biden revoked this decision¹⁵. In 2017, Donald Trump issued Executive Order 13795 in what constituted an illegal use of Section 12 a) of the 1953 Outer Continental Shelf Lands Act (this Section only allows the President to protect areas from oil exploitation, but only the US Congress can revoke an already established protection). In addition, in accordance with the existing regulatory framework surrounding spatial planning and shaping, a regional advisory committee composed of local members must be formed in order to present opinions and recommendations on any matter related to the Alaska's flora and fauna. However, some stakeholders believe that their claims that exploiting a protected natural area would result in significant environmental impacts on local biodiversity¹⁶ were often disregarded. As a result, the Natural Resources Defence Council and Earthjustice, on behalf of a large coalition of stakeholders, decided to bring the case to the Alaskan courts. In April 2021, the Ninth Circuit of the Appeals Court of Alaska ruled in favour of the coalition¹⁷.



SWEDEN

The Swedish Government's Arctic Strategy 2015-2020 and the Swedish Mineral Strategy provide general guidelines to fulfil the 2016 European Landscape Convention's goals regarding sustainable extraction of ore and minerals and landscape protection. Regarding general land use and planning, the Swedish national government provides general principles that municipalities must follow in their plan-making process¹⁸. Specifically, exploration and exploitation licenses are granted under the 1991 Mineral Act and the 1992 Minerals Ordinance. The license-granting procedure requires applicants to successfully pass a government-led environmental impact assessment (in which stakeholders' consultation is contemplated) and to submit remediation plans to mitigate adverse impacts resulting from mining activities. However, when this regulatory framework is considered together with the 1998 Environmental Code, the 1971 Reindeer Husbandry Act, or the 2010 Planning and Building Act, it appears that special protections granted to the environment

and to traditional and Indigenous livelihoods and culture are often coming second to activities considered to be of national interest (such as mining).

Due to the mining activities of state-owned company Luossavaara-Kirunavaara AB (LKAB), the city of Kiruna has been relocated three kilometres from its original location. Stakeholders generally agree on the overall negative environmental impacts of mining and, more specifically, Kiruna's relocation has been criticized due to unfair and uncertain arrangements for compensation and to the resulting encroachment on lands used by the local Sámi community for reindeer herding. Nonetheless, several actors consider this as an opportunity to build a more sustainable city, an outcome in which LKAB was initially clearly invested through remediation plans consulted with stakeholders. However, its recent turn towards the sole promotion of mining activities, coupled with the overlap that exists between members of LKAB's governing bodies and members of regulatory bodies, is concerning.¹⁹

¹⁵ E. Conde, "Un (pen)último anuncio de la administración Trump, antes de morir: "se subastan concesiones de explotación de petróleo en el refugio de vida silvestre del Ártico" (2020) 23 ICEI Papers.

¹⁶ See Being Caribou (2005).

¹⁷ E. Conde, "La política ártica de la Unión Europea en perspectiva geopolítica: de la cooperación pacífica a las rupturas árticas (2017-2022)", (2022) 74 REDI 127.

¹⁸ Planning and Building Act 2010.

¹⁹ CS4-Post-Industrial.

SUSTAINABLE DEVELOPMENT GOALS AND PLANNING

In regard to planning and shaping of landscapes and seascapes, the different regulatory frameworks analysed above generally tackle the same United Nations Sustainable Development Goals (SDGs), be it explicitly or implicitly. Industry, Innovation, and Infrastructure (SDG 9) and Sustainable Cities and Communities (SDG 11) appear to be two main orientations of land and maritime planning in the Arctic.

With their prioritization of resilience, sustainability, inclusivity and safety, these goals fit well with the needs of the region in the future and promote the importance of urban areas on a global scale²⁰. SDG 8 (Decent Work and Economic Growth) is also especially central in the planning regulatory framework given that creating employment is often an explicit orientation of planning activities. However, balance should be found, otherwise this particular SDG ends up being at risk for some people or some communities. For instance, some planning regulations and decisions can lead to disturb Indigenous traditional livelihoods or even to unemployment in areas targeted by some economic activities (e.g. tourism disrupting traditional economies, resource extraction with no local benefits) or instead left untargeted by these economic opportunities (i.e. uneven regional development).

As a result, while spatial planning and shaping in the Arctic can lead to Reduced Inequalities (SDG 10), it can also have the opposite effect. Finally, as we have seen in the different cases mentioned above, while the planning and shaping regulatory frameworks generally seem to place sustainability among their priorities, significant environmental and social impacts are still apparent and insufficiently addressed by existing legislation and policies. As such, SDG 3 (Good Health and Well-Being), SDG 14 (Life below Water) and SDG 15 (Life on Land) are put at risk.



²⁰ F. Biermann; K. Norichika and R. Kim, "Global Governance by Goal-setting: The Novel Approach of the UN Sustainable Development Goals" (2017) 26-27 COSUST.

RECOMMENDATIONS

- 1 Sharing knowledge between planners and scientists is crucial, although a great challenge, with both professions being required to understand the needs and capabilities of the other²¹. Additionally, local communities and Indigenous peoples are also holders of local and traditional forms of knowledge that are equally important for planning processes. In order to achieve sustainability in the use of landscapes and seascapes, meaningful dialogue and epistemological exchanges between these different parties need to be ensured.
- 2 Planning landscapes and seascapes can potentially have negative effects on cultural meanings, stories, memories and traditional knowledge and, as such, have human rights implications. The key issue for a compromise in competing uses of landscapes and seascapes is finding ways in which Indigenous peoples or other communities practicing traditional livelihoods can benefit from other uses of the spaces. “Innovative benefit-sharing does not have to be pure monetary compensation.”²²
- 3 Debates and decision-making processes concerning landscape and seascape planning should also be explicitly limited in time and any industrial development should be communicated to local communities sufficiently ahead of time so they can plan and organise their lives and activities accordingly. Otherwise, the extensive duration of planning processes may lead to long-term social and economic anxieties, as well as to some degree of procedural injustice.
- 4 Strengthening some aspects of justice such as the recognition and participation of all involved parties is thus a crucial task on the path to actualize distributive justice in planning and shaping regulations and policies. In order to attain such an ideal, a fair consideration of all the competing spatial uses and associated needs, claims, and benefits is required.



²¹ I. Eliasson, “The Use of Climate Knowledge in Urban Planning” (2000) 48 LUP 31.

²² CSI3-Railway.



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Arctic Economies, Environments and Societies



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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 869327

