

Melissa Patrician



**SYSSELMESTEREN
PÅ SVALBARD**

Our date:
29.07.2021

Our reference
20/02879-39

Your date:
23.07.2021

Svar på søknad om helikopterlanding i forbindelse med filming - OceanX

The Governor refers to your updated application for helicopter permission received here 23.07.2021. We also refer to our reply dated 16.07.2021 to your original application, our reference 20/02879-36.

Application and background

You apply for a maximum of 30 landings, only on vessel helideck, in the period from 6th of August to 16th of September 2021 divided into 3 periods, cf. table 1 beneath. The locations applied for are South-Spitsbergen National Reserve in the vicinity of Hornsund and Northeast-Svalbard Nature Reserve in the vicinity of Southport. The purpose of the applied helicopter traffic is described to be (quotation) “*.filming of landscapes, scenics and wildlife..*”. The helicopter will be operated from the research vessel M/V OceanXplorer1, where local scientists are on board to perform scientific fieldwork in Svalbard.

The filming operations are being conducted in cooperation with Dr. Nigel Hussey (RiS-ID11774, permit in process), Dr. Jacek Jania (RiS-ID10511, amendments to RiS-ID No. 10511, Permit No. 16/01186-73 in process), Dr. Jon Aars (RiS ID2381, Permit No. 17_00389-25) and Dr. Christian Lydersen (RiS-ID10501, Permit No. 21_01197-2) to conduct research on Greenland sharks, glaciology, polar bears, and large cetaceans.

The helicopter traffic will be performed by using a light helicopter type AS-350B3, described as a “*..relatively ‘quiet’ aircraft*” in the application. It is further informed that (quotation) “*..it is out greatest concern to make sure we minimize our footprint during our time in Svalbard, and we will be constantly monitoring for any disruption to wildlife.*” The flights will, according to the application, be within the regulations set by the Norwegian Air Traffic act, and the helideck aboard the research vessel is ‘certified’ for this type aircraft operations.

The application states that OceanX would like to coordinate flights for both scientific and filming purposes with the scientific flights to minimize environmental impacts. The 30 flights applied for are thus for filming only and will add to those flights already covered by an existing scientific permit.

Table 1: The flight-times are planned as follows, cf. also figure 1:

Project phase	Period	Number of flights	Area
Phase 1	06.08.2021-20.08.2021:	maximum of 10 flights	in Hornsund area, Sør-Spitsbergen national park
Phase 2A	24.08.2021-28.08.2021	maximum of 10 flights	Sørporten area, Nordaust-Svalbard nature reserve
Phase 2B	29.08.2021-04.09.2021	maximum of 10 flights	Sørporten area, Nordaust-Svalbard nature reserve
Phase 3	08.09.2021-16.09.2021	All flights coordinated with RIS-ID 11501	Isfjorden area

Figure 1: Flight locations applied for





In the Governor's reply dated 16.07.2021 to your original application, we give some guidance and ask for more detailed information in order to consider your application, including the following:

- we need more detailed information than given in the present application. It is required that you inform on your flight schedule; where you plan to land, if you apply for flying below the limits in each of the protected areas applied for, and when your flights will take place.
- a more detailed account for the possibilities of coordinating the filming activities with the current scientific fieldwork to minimize the need for helicopter traffic, with special focus on avoiding protected areas.
- the application must explicitly justify the need of using helicopter instead of other possible methods as e.g., filming from boat or by use of UAV/drone or on foot.
- you must account for the choice of locations and justify why it is necessary to interfere with protected areas.
- according to the regulations relating to protected areas, *special reasons* must exist to grant exemptions. To your information, the assessment of whether a measure or an activity can be considered as a *special reason* will be based on the information given in the application.
- note that permission to disturb wildlife for filming is generally unlikely to get in Svalbard. Thus, you must account for how you plan to film the current wildlife without illegal disturbance. Filming of "wildlife" is also a very general purpose and should preferably be specified.
- the opportunity for granting permissions for helicopter landings or for flying below the high-limit in protected areas for other than scientific reasons or work of importance to the public interest are in general very limited.

Regulations

The locations applied for is within protected areas where the *Regulation relating to the national parks South-Spitsbergen, Forlandet and North West - Spitsbergen, on the nature reserves North East-Svalbard and South East-Svalbard, and on the nature reserves for birds on Svalbard* (from here named the Regulation) apply.

Nordost-Svalbard nature reserve

According to the Regulations section 15, it is prohibited to land with aircrafts, and to fly with aircrafts below 500 m from the ground. Furthermore, section 25 provides that mammals and birds are protected against all types of damage and disturbance.

Section 28 provides that the Governor may grant exemptions for scientific purposes as long as this do not conflict with the purpose of the nature reserve (§28 c) or for other activities when special reasons so indicate, and the activity does not conflict with the purpose of the nature reserve (§28 d).

Sør-Spitsbergen national park



According to the Regulations section 4, it is prohibited to land with aircrafts, and to fly with aircrafts below 300 m from the ground and within 1 nautical mile from the coastline. Section 8 provides that mammals and birds are protected against damage and disturbance of every kind.

According to section 11 the Governor may grant exemptions for scientific purposes as long as this does not conflict with the purpose of the national park (§11 c) or for other activities when special reasons so indicate, and the activity does not conflict with the purpose of the national park (§11 e).

Principles regarding exercise of authority under the Svalbard Environmental Protection Act (the Act)

The precautionary principle, cf. the Act section 7, the principle of cumulative environmental effects, cf. the Act section 8, and the principle of environmentally sound technology, cf. the Act section 10, shall form the basis for the exercise of authority under the Svalbard Environmental Protection Act, cf. the Act section 6.

The precautionary principle provides that when an administrative body lacks adequate information on the effects that an undertaking may have on the natural environment or cultural heritage, its authority under the Act shall be exercised in a manner designed to avoid possible damage to the environment.

The principle of cumulative environmental effects provides that any activity that is started in Svalbard shall be assessed on the basis of the cumulative effects on the natural environment and cultural heritage that would result.

The principle of environmentally sound technology provides that activities in Svalbard shall make use of the technology that puts the least possible pressure on the environment.

The Governor's considerations

The updated application give some additional information as a basis for processing the case. We though emphasize that the application does not clarify the following requested information:

- if you apply for flying below the limits in each of the protected areas.
- a more detailed account choice of locations and justify why it is necessary to interfere with protected areas, and for the possibilities of choosing alternative locations to avoid protected areas.
- explicitly justify for the need of using helicopter instead of other possible methods as e.g., filming from boat or by use of UAV/drone or on foot
- account for why the applied traffic should be considered as a special reason, cf. the Regulations sections 28 and 11.
- specification of what is included in the purpose "filming of wildlife".

According to the Regulations the Governor may grant exemptions for scientific purposes as long as this do not conflict with the purpose of the nature reserve/national park, or for other activities when special reasons exist, and the activity does not conflict with the purpose of nature reserve/ national park. The Governors' opportunity to grant exemptions from the regulations for "special reasons" is meant to be a safety valve for incidents and possible activities not taken into account at the time the



regulations were made. The regulations are strict, and the opportunities for granting exemptions are narrow. As a main rule, the Governor does not grant exemption from the regulations if the applied activity can be done outside the protected area, or there are more environmentally friendly alternatives. The applicant does not account for why the applied traffic should be considered as a special reason, cf. the Regulations sections 28 and 11.

The Governor consider filming landscapes, scenic and wildlife on Svalbard a general desire which may be invoked by both professional companies and private persons. Landing and flying with helicopter below the hight-limits provided in the Regulations for the current protected areas clearly involves a risk of disturbing wildlife. According to the Act section 5, all kinds of traffic and activities which may disturb, and stress the wildlife in Svalbard are considered undesirable.

The purpose behind regulating helicopter traffic in the protected areas are among others to prevent unnecessary disturbance. Alternative locations and methods as e.g., filming outside protected areas, and from boat or by use of UAV/drone or on foot are to be preferred. Such alternative methods are not accounted for in the application, cf. the Act section 10 (The principle of environmentally sound technology). Flying with helicopter is among the most interfering methods, with a high risk of disturbing wildlife. A management practice permitting helicopter traffic with the general purpose of filming may cause non-desirable negative environmental effects, and thus contradict the purpose of the protected areas, cf. the Act sections 7 and 8 and the Regulation sections 3 and 14 (purpose of the national park and the nature reserve).

On this basis, the Governor concludes that the helicopter traffic applied for is not to be considered as a special case. The issues concerning potential conflict with the purpose of nature reserve/ national park are thus not further processed.

The application inform that the film crew will coordinate with already permitted scientific flights. For the sake of clarity, we emphasize that the permissions for using aircraft for scientific purposes only applies to the scientific personnel, and that no other persons (e.g., filming personnel) have permission to join these flights. It is prohibited for filmcrew or any other person which is not part of the scientific crew to join a scientific helicopter flight unless this is explicitly applied for and specified in a permission from the Governor. In this context we emphasise that the regulations are strict, and the opportunities for granting such exemptions are narrow.

The Governor's decision

The Governor has considered your application and made the following decision:

The Governor does not grant permission for the helicopter traffic as applied for. The decision is made under the provision of the Regulation relating to the national parks South-Spitsbergen, Forlandet and North West - Spitsbergen, on the nature reserves North East-Svalbard and South East-Svalbard, and on the nature reserves for birds on Svalbard sections 11 and 28.

Right to complain

According to Norwegian law you are entitled to complain about the present decision. Written complaints must be submitted within three weeks of receiving this letter. The complaint must be submitted to the Governor.



Regards

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Ingunn Løvdal
Advisor nature management

This document is approved and expedited electronically without signature

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Miljødirektoratet
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