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Bergen, 08 March 2025

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Case No: 91458 Document No: 1497562  
Case related to Case 87599

This complaint draws attention to the concurrence of assessments made in the JUDGMENT OF THE COURT 5 March 2025\* (Environment – Directive 2000/60/EC – Framework for action in the field of water policy – Article 4(7)(c) – Reasons of overriding public interest within the meaning of Article 4(7)) In Case E-13/24,

## **Introduction**

Open aquaculture violates WFD.

Preamble to the WFD

(1) *“Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.”*

The Norwegian Water Regulations section 12 does not reflect WFD article 4(7). It's not just section 12 that doesn't reflect the WFD. The administrative error is due to the fact that the “Norwegian Water Regulations” were written several years before the WFD was formally incorporated into Norwegian law. The Norwegian authorities recognise the errors, which has led to the “Norwegian Water Regulations” being put out for consultation.

Incorrect transformation and implementation of the WFD in Norwegian law results in consistent administrative problems regarding granting licences and permitting open aquaculture in the sea in coastal waters. The aquaculture industry's contribution to the global food supply, income, shares and taxes, the consideration of employees, settlements and social deprivation is not satisfied as the exemption rules anchored in WFD 4(7).

This is a simple exercise for the ESA. Consider the WFD articles in general and WFD 4(7) in relation to the aquaculture industry, point by point, with all RBMPs added alongside. Use the EFTA Court's case E-13/24 as a recipe.

The undersigned has pointed out the breach of the WFD to ESA for several years. I am greatly surprised that ESA has not applied the same assessment criteria that the EFTA Court has now applied to the Førdefjord case at a much earlier stage. The undersigned recommends that ESA take a thorough approach and follow up on the EFTA Court's assessment in relation to the aquaculture industry in Norway.

### **The prohibition of deterioration is absolute.**

WFD Article 1(a) sets the direction: *“prevent further deterioration and protect and improve the condition of aquatic ecosystems and, with regard to water needs, also terrestrial ecosystems and wetlands that are directly dependent on aquatic ecosystems”*.

WFD Article 4(1)(a)(ii): *“Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;”*

WFD Article 4(1)(a)(iii): *“Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;”*

ESA's letter Document No: 1487985: *“The Directorate is currently in the process of assessing Norway's River Basin Management Plans, as mandated by Article 18(1) of the WFD. The Directorate plans to finalise that assessment by the first half of 2025. To best make use of its limited resources, the Directorate intends to follow up on potential deficiencies relating to the River Basin Management Plans within the context of that assessment. Considering the concerns raised in your complaint, as well as other related complaints submitted to the Authority in recent years from different stakeholders, the Directorate intends to consider the environmental impact of aquaculture as a key issue of concern in its upcoming assessment of Norway's River Basin Management Plans.”*

*“The Directorate further notes that the main tool to implement the Water Framework Directive is the adoption of River Basin Management Plans pursuant to Article 13 of the WFD. Those plans must contain, among other things, a programme of measures to attain the environmental objectives (Article 11 of the WFD) and sufficient explanations for the use of exemptions from the environmental objectives (Articles 4(4)(b), 4(5)(d), 4(6)(e) and 4(7)(b) of the WFD).”*

### **The EFTA Court has recently issued its judgment on the dumping of mining waste in the Førdefjord In Case E-13/24. The letter is attached in its entirety.**

The transfer value is high between the assessments made in the Førdefjord case and the aquaculture industry. Note that the EFTA Court refers to the preamble of the WFD: Article 1, Article 4(1)(a) with reference to Article 4(7). Case 89164, which has been established for all mining cases in Norway, is an example of an assessment of common features of the practice, which must also be carried out for the aquaculture industry. ESA must realise that the same assessment issues that the EFTA Court has addressed regarding the dumping of mining waste in the Førdefjord also apply to the aquaculture industry's practice of open cages along the Norwegian coast (farmed salmon, rainbow trout, cod and other species).

ESA has received overwhelming evidence that the aquaculture industry is practicing outside the WFD. ESA must consider the common denominators in the aquaculture industry and not just individual cases (assess case by case). The similarities between dumping mining waste in the Førdefjord and the aquaculture industry's practices are as follows:

- privately owned companies
- economic reasons
- tax revenue for the state and municipality
- income for shareholders
- income for employees
- employment
- settlements
- food market
- overriding public interest
- qualified preponderance of interest
- overriding public interest.

The aquaculture industry practices outside the WFD. The Norwegian authorities must be ordered by ESA to implement the necessary measures that result in the aquaculture industry practising within the framework of the WFD. Time is already up. ESA must write to the Norwegian authorities stating that the practice must be changed immediately. A new absolute deadline can be set for the national implementation. The prohibition of deterioration is absolute.

Casehandler Rune Birger Nilsen