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Complaint: Norway violates the Water Framework Directive

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1.0. Background

Norway has participated fully in the joint European implementation strategy for the Water Directive "European Common Implementation Strategy" (CIS) for the Water Framework Directive (WFD) since 2001. The water management plan "River Basin Management Plan" (RBMP) was approved by the Ministry of Climate and Environment 1st July, 2016 and should be in line with the WFD.

WFD is now formally part of Norwegian legislation, in force on 14th December, 2018. The Green Warriors of Norway (NMF) claims that "vannforskriften" Norwegian Regulation on a Framework for Water Management of 2006 (The Water Regulation) do not fully incorporate the WFD to Norwegian law. While The Water Regulation does not prevent Norwegian coastal waters and fjords from continuous environmental degradation, WFD emphasizes just that through the WFD Article 1: "prevents [waters from] ***further*** deterioration" (italics added). Thus this part's claims that the Norwegian provisions do not satisfy the EEA Agreement Article 7 litra b): "Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee ***shall be binding*** upon the Contracting Parties and be, or be made, ***part of their internal legal orde***r as follows … (b) an act ***corresponding*** to an EEC directive shall leave to the authorities of the Contracting Parties the choice of ***form*** and ***method*** of implementation".

2.0. Introduction

NMF is aware that complaints have previously been submitted by various organizations concerning aquaculture. On May of 2014, several Non-Governmental Organization (NGOs) sent a letter of concern to the ESA, arguing that Norway had failed to include biological effects of aquaculture in WFD implementation. On November, 2015, the NGOs also sent a formal complaint to the ESA.

http://www.vannportalen.no/english/complaint/the-complaints/

NMF supports the very thorough complaint from these NGOs. NMF notes that the Norwegian Government refers to legislation that is not in line with the WFD. Pollution Control Act and

Regulation on operation of aquaculture facilities (Aquaculture Operation Regulations) neither refers to or is in line with the WFD.

On 3rd December, 2015, ESA invited the Norwegian Government to provide information which touches the core of this complaint:

http://www.vannportalen.no/globalassets/nasjonalt/dokumenter/organisering/europeisk--eus-rammedirektiv/esa-sin-oppfolging-av-norges-gjennomforing-av-vanndirektivet/klagesak-til-esa-om-problemer-rundt-oppdrettsnaringen/2015/151203-klagesak-oppdrett----brev-fra-esa.pdf

> *"Please provide information on whether there are plans to update the national strategy (Government Strategy for an Environmental Sustainable Aquaculture) in order to ensure compatibility with Norway`s obligations under Directive 2000/60".*

Answer:

> *"The Strategy for an Environmentally Sustainable Aquaculture was developed by a former Government (Stoltenberg II). The Norwegian Parliament (Stortinget) has, in their ruling on the "White paper on predictable and environmentally sustainable growth in Norwegian salmon farming industry" (Meld. St. 16 (2014-2015), instructed the present government to ensure that visions of this strategy will be upheld and that future administrations should retain these visions".*

NMF comments: The Strategy for an Environmentally Sustainable Aquaculture can only be considered a vision of ambition and is not in line with the WFD. Meld. St. 16 (2014-2015) (White paper) has no connection or obligation to the WFD.

By 14th December, 2018, the WFD became statutory in Norway. The Water Regulation of **15th December, 2006**, have failed to fully transform WFD. It is only the **Naturmangfoldloven** (Nature Diversity Act) Section 26a, which was adopted by the Norwegian Government on 20th November, 2018, which specifically refers to the WFD. Technically, only the Nature Diversity Act provides the formal statutory authority for the implementation of the WFD.

WFD training package on EU water legislation summarizes:

> Member States must inter alia implement "the necessary measures to prevent deterioration of the status of all bodies of surface water" *(Article 4, para. 1, (a)(i))*, an obligation which the court judges "does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive" *(Case C 461/13* Bund für Umwelt und Naturschutz Deutschland*, para. 43; Case C-346/14* Commission v Austria*, paras. 53-55).*»
> Source:
> http://ec.europa.eu/environment/legal/law/7/module_3_1.htm

NMF comments: It is undisputed that that the WFD according to the EEA Agreement Article 7 litra b) is binding upon Norway. As unveiled in the continuation there are a mismatch between The Water Regulation and WFD.

3.0. Limitations

This appeal relates to the aquaculture industry in Norwegian, with focus on salmon and Anadromous rainbow trout farming in open cages.

4.0. Purpose

The purpose of this request:

- Make the Norwegian state realise that WFD must be implemented in Norwegian law and Justice.
- Try to make the Norwegian state aware that current practice must be changed in a way that isolates the aquaculture industry from the wild ecological self-regulating nature, associated with coastal waters and fjords.
- Motivate the Norwegian Government to realise that land based closed containment system is the only sustainable solution. There must be a deadline for transformation from open cage farming to closed containment system.

5.0. References

Meld. St. 16 (2014-2015)

Forutsigbar og miljømessig bærekraftig vekst i norsk lakse- og ørretoppdrett

Source:
https://www.regjeringen.no/no/dokumenter/meld.-st.-16-2014-2015/id2401865/

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Report to the Storting (White paper) 16 (2014-2015)

Predictable and environmentally sustainable growth in Norwegian salmon and trout farming.

Source:
https://www.regjeringen.no/no/dokumenter/meld.-st.-16-2014-2015/id2401865/

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2000/60/EC of 23 October 2000 Article 1:

NMF comments: Bold text added.

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) **prevents further deterioration** and **protects** and **enhances** the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
(b) promotes sustainable water use based on a long-term protection of available water resources;
(c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
(e) contributes to mitigating the effects of floods and droughts and thereby contributes to:
- the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,
- a significant reduction in pollution of groundwater,

- the protection of territorial and marine waters, and
- achieving the objectives of relevant international agreements, including those which aim to prevent and eliminate pollution of the marine environment, by Community action under Article 16 (3) to cease or phase out discharges, emissions and losses of priority hazardous substances, with the ultimate aim of achieving concentrations in the marine environment near background values for naturally occurring substances and close to zero for man-made synthetic substances.

Source:
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000L0060-20141120&qid=1485938661229&from=EN#page=9
(http://ec.europa.eu/environment/legal/law/7/module_3_1.htm)

The relevant provision in relation to the waste on the seabed residue is WFD-Article 4 no. 6 Quotation:

> *"Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:".*

The Norway incorporation has taken place by the Nature Diversity Act Section 26a, coming in force 14.12.2018:

Naturmangfoldloven § 26a

Kongen kan fastsette de forskrifter som er nødvendige for å gjennomføre Europaparlaments- og rådsdirektiv 2000/60/EF av 23. oktober 2000 om fastsettelse av rammer for fellesskapstiltak for vannpolitikk (vanndirektivet) i norsk rett.
Source:
https://lovdata.no/lov/2009-06-19-100/§26a

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Nature Diversity Act Section 26a

The King may determine the rules necessary for the implementation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (WFD) in Norwegian legislation
Source:
https://lovdata.no/lov/2009-06-19-100/§26a

NMF comments: The Norwegian Environment Agency claims that the Norwegian The Water Regulation (2006) is fully incorporate the EU WFD provisions. The appropriate provision is The Water Regulation Section 12:

Vannforskriften § 12 Ny aktivitet eller nye inngrep

Ny aktivitet eller nye inngrep i en vannforekomst kan gjennomføres selv om dette medfører at miljømålene i § 4–§ 7 ikke nås eller at tilstanden forringes, dersom dette skyldes: …
b) ny bærekraftig aktivitet som medfører forringelse i miljøtilstanden i en vannforekomst fra svært god tilstand til god tilstand.

Source:
https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

The Water Regulation Section 12 New activity or new intervention.

New activity or new intervention in a water body can be carried out even if this means that the environmental goals in section 4- section 7 are not achieved or that the condition deteriorates if this is due to: ...
(b) new sustainable activity leading to deterioration of the state of the environment in a water body from very good to good condition.
Source:
https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446

6.0. Discussion

6.1. Those who live by and with nature

Indigenous people

The border treaty between Sweden and Norway was signed in October 1751, and the "Lappekodisil" was designed as an addition to the treaty to ensure the Sami traditional customs and rights in the areas that remained in a foreign state. By recognizing Sami customs and industries, including traditional use of land and water, the Lappekodisil has been in a special position as a treaty of international law in the Sami context right up to our time and still has legal significance. There are many cultural and traditional carriers along Norway's extensive coast. What about their common law, customary law and the right to live by what nature provides?

«Fiskesløyfen» («Fishing loop») and customs

Fishing loop represents the connection between fishermen, local community, fishing grounds, market and reception structure and other conditions that make up fishermen's practices throughout the year. It is not easy for a fisherman to move to other fishing grounds, everything is connected in a fine balance created through the generations of the coastal people. The use of customary rights and rights to traditional fishing areas used Norway actively to its advantage vis-à-vis England in the «fisheries case». The dispute was about determining how far Norway's territorial requirements expanded to sea. Norway put great emphasis on the special conditions that applied to fishing along the coast, a fishery that had developed rules that deviated from Roman law's «free ocean» teachings. The case was brought up by The Hague in 1951 and was ruled in Norway`s favour.

As far back as history, the coastal sea for traffic and fishing has been a living condition for the coastal population and especially for the northern Norwegian population. Nevertheless, the coastal fisherman must also comply with current laws and use of gears and tools. An active precautionary principle for protecting species and stocks. With the aquaculture industry's entry, politicians turned to their own coastal fishermen and helped to push them away from their traditional fishing grounds. Fishing grounds are seized or rather expropriated. The fishermen themselves say:

«We have fished for generations here. I think we have the right to hold on to our fishing grounds. The fish farmers are intruders, and we have fished here and kept our lives going in combination with agriculture«.

Experience-based knowledge

Experience-based knowledge is based on own local observations and experiences, or is transmitted in oral tradition between generations. The coastal fishermen experienced early on what the aquaculture industry could bring with them. Wild salmon and sea trout were negatively affected and coastal cod disappeared from its natural spawning grounds. The pollution from the aquaculture plants came into operation with the current and influenced the fishing nets, gears and trawls.

Norwegian law emphasizes experience-based knowledge, but is the law enforced?

Naturmangfoldloven (2009) § 8 Andre ledd (Kunnskapsgrunnlaget)

Myndighetene skal videre legge vekt på kunnskap som er basert på generasjoners erfaringer gjennom bruk av og samspill med naturen, herunder slik samisk bruk, og som kan bidra til bærekraftig bruk og vern av naturmangfoldet.
Source: https://lovdata.no/dokument/NL/lov/2009-06-19-100

Nature Diversity Act (2009) Section 8 Second paragraph (The knowledge base)

The authorities will also emphasize knowledge based on the generation's experiences through the use of and interaction with nature, including such Sami use, and which can contribute to sustainable use and protection of natural diversity.
Source: https://lovdata.no/dokument/NL/lov/2009-06-19-100

In addition, the European Human Rights Declaration (ECHR) puts pressure on people to be deprived of their livelihoods.

Science-based knowledge and ethics

Researchers play an increasingly central role in this context, for example, as experts and advisors in risk assessments and in political decisions, and increase the need for extended ethical guidelines for research practice. A researcher should have a strong back, and the cases where scientists take nature into defense, often face violent opposition from business, lawyers and especially money-hungry coastal mayors. In fact, the Government has to a very limited extent limited the growth in the aquaculture sector despite the fact that experience-based and research-based knowledge indicates that the industry negatively affects nature over time.

Both the importance of science and technology for social development and economics, as well as the new roles and responsibilities of researchers, are factors that increase the need for expanded ethical research guidelines. The question is, and how much experience-based knowledge is emphasized when decisions are to be made?

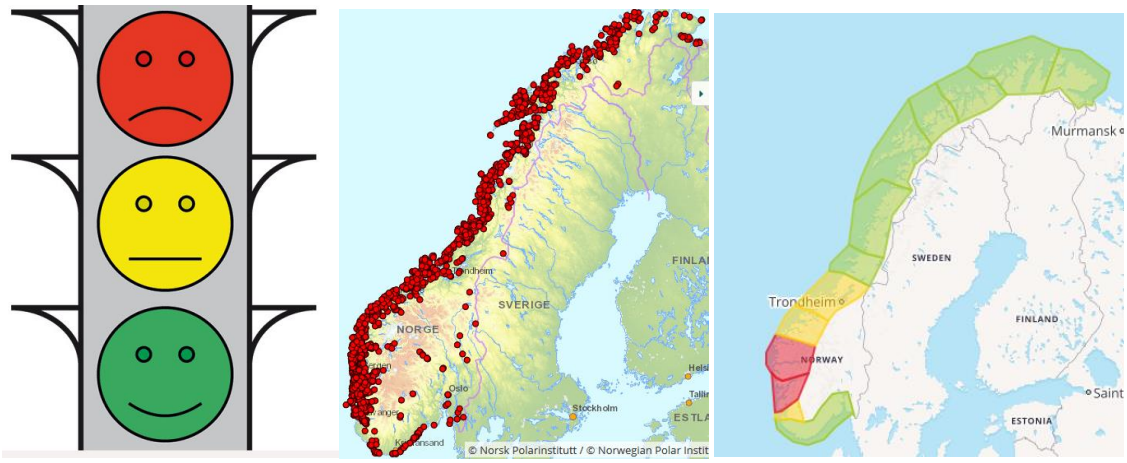
NMF claims that profit and labor considerations should not undermine the fundamental environmental concerns anchored in the WFD. Continuous environmental defeats can also result in a decrease in the engagement of ordinary people.

Blue growth out of phase

According to the Directorate of Fisheries biomass register, 3,500 (average) open cages with salmon and anadromous black-listed rainbow trout have been reported along the Norwegian coast. It doesn't stop there; the Government suggests a fivefold increase of the industry. The salmon auction 2018 opened to expand by 13952 tons of salmon from Nord-Trøndelag to East-Finnmark. Even in the almost untouched area from the Swedish border to Jæren, the aquaculture industry will increase by 593 tons.

Millions of wrasses are harvested from their natural habitat, and the farmed salmon will now be fed with «Calanus finmarchicus» that will be fished in large quantities. As you know, Calanus finmarchicus are the food of fish larvae in all stages. "Environmentally it can be defended" is used extensively by politicians, but no one can refer to anchoring in the law. "What should we live by" expresses some politicians and raises their shoulders. The politicians are concerned that red traffic lights in Hordaland result in a financial loss of NOK 1.2 billion. How many billions of dollars are lost on damaged fjords, rivers and watercourses? These attitudes are in complete out of phase with nature, which means that the opportunities of ecology for maintaining its dynamic life are not maintained, which is intact with EU overall view.

6.2. The traffic light system



The environmental indicator **"Traffic light system"** was introduced based on (Meld. St. 16 (2014-2015). Report to the Parliament (White paper) 16 (2014-2015) In 2019. Salmon lice are still the only production regulating factor in the traffic light system.

With this recently introduced system, our coast is divided into regions, 13 salmon and rainbow trout production areas. The environmental effect of the aquaculture industry in these areas indicates which colour the system indicates. Green (less than annual 10 percent mortality in wild fish) gives growth, Yellow (10 - 30 percent annual mortality) gives "on-site rest" while Red (more than 30 percent annual mortality) provides reduction, but not until two years later. The rule is that there is knowledge and research-based data that provides the basis for the colour scheme. The only environmental effect that will regulate the traffic light is the effect of salmon lice have on wild salmon fish and sea trout.

Environmental factors such as waste, viruses, infections, bacteria, spread of disease, use of chemicals, medicine use, fish welfare and escape are not a regulatory factor for the aquaculture industry. Had all of these environmental factors been weighted then the colour chart had looked different. In production area 3 and 4 from Karmøy to Stadlandet, it is red, so annual mortality of more than 30 per cent of the wild salmon fish is accepted. The aquaculture

industry is now questioning the researchers' reports and has initiated its own research to try to eliminate the red traffic light in areas 3 and 4. The red colour will not lead to negative consequences, but if not one will cope with the salmon lice problem during the next two years, production must be adjusted downwards.

The traffic light system thus acts as a reactive system that does not change course until long after the damage has occurred. There is so little wild salmon left that they fit in three cages. The genetic integrity of wild salmon and sea trout is contaminated due to escapes over many decades.

In 2018, it was reported that 160,000 salmon and 3,000 rainbow trout had escaped. There are also many escapes that have not been reported. The sea trout are highly exposed to all environmental factors, especially in areas 3 and 4. Fishing loop, traditions, culture and living conditions in and around the coast and fjords are destroyed by the aquaculture industry's practice. It is always good news to convey, but the fact is that over 45 years of trial and failing has partly destroyed the ecology along the Norwegian coast. There are only closed plants that are the solution and it is such technology that Norway must adapt and replace the existing open fish farms.

Background for the introduction of the traffic light system

Meld. St. 16 (2014-2015) Forutsigbar og miljømessig bærekraftig vekst i norsk lakse- og ørretoppdrett. Report to the Storting (White paper) 16 (2014-2015):

This is an unofficial translation of the Norwegian version. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

NMF comments: Bold text and italics added.

Quotation:

2. Oppsummering:

> Skal oppdrettsnæringen være underlagt en forutsigbar vekstpolitikk må det derfor ***fastsettes hvilken miljøpåvirkning samfunnet skal akseptere***. Regjeringen mener at miljømessig bærekraft må benyttes som den viktigste forutsetningen for å regulere videre vekst i oppdrettsnæringen.

2. Summary:

> If the aquaculture industry is to be subject to a predictable growth policy, it must therefore, ***be determined which environmental impact society must accept***. The Government believes that environmental sustainability must be used as the most important precondition for regulating further growth in the aquaculture industry.

2.1 Forutsigbart system for kapasitetsendring:

> Et system basert på en handlingsregel gir næringen forutsigbarhet ved at den vil vite hvilke kriterier som må være oppfylt for å kunne få vekst, hvor ofte vekst skal vurderes, og hva som skjer ***når miljøeffekten er akseptabel, moderat eller uakseptabel.*** Et system med fastsatte miljøindikatorer gir sterke insentiver til å drive miljømessig bærekraftig og til å investere i produksjonsteknologi og driftsformer som bidrar til at næringens miljømessige fotavtrykk ikke øker proporsjonalt med produksjonen. Ordningen vil gi næringen stor innflytelse på hvordan den skal utvikle seg. Regjeringen vil derfor gi oppdrettsnæringen forutsigbare rammebetingelser gjennom at kapasitetsendringer knyttes til en handlingsregel

basert på et modulbasert system med miljøindikatorer og produksjonsområder.

2.1 Predictable system for capacity change:

A system based on a rule of action provides the industry with predictability by knowing which criteria must be met in order to be able to grow, how often growth is to be assessed, and what happens ***when the environmental effect is acceptable, moderate or unacceptable***. A system of set environmental indicators strengthens incentives to operate environmentally sustainable and to invest in production technology and operating modes that contribute to the industry's environmental footprint not increasing proportionally with production.
The scheme will give the industry great influence on how it will develop. The Government will therefore give the aquaculture industry predictable framework conditions by utilizing capacity change to an action rule based on a modular system with environmental indicators and production areas.

2.2 Utforming av handlingsregel

Ut fra forutsetningen om at regjeringen ønsker forutsigbar og miljømessig bærekraftig vekst, innebærer systemet at næringens produksjonskapasitet bør øke i områder med liten påvirkning på miljøet, mens kapasiteten i områder med ***uakseptabel påvirkning bør reduseres***. ***I områder med moderat påvirkning bør kapasiteten fryses.***

2.2 Designing a rule of action:

Based on the premise that the government wants predictable and environmentally sustainable growth, the system means that the industry's production capacity should increase in areas with little impact on the environment, ***while capacity in areas with unacceptable impact should be reduced. In areas with moderate impact, the capacity should be frozen.***

2.4 Miljøindikatorer

Regjeringen vil velge indikatorer som har god korrelasjon med produksjonskapasiteten innenfor et produksjonsområde. Dette innebærer at endringer i produksjonskapasitet/biomasse i sjøen henger sammen med miljøpåvirkningen i området, bade ved økninger og reduksjoner i produksjonskapasiteten. Dette innebærer at ikke alle næringens miljøutfordringer vil kunne fungere som indikatorer. ***De for tiden største miljøutfordringene til oppdrettsnæringen er lakselus og genetisk påvirkning av ville laksebestander fra rømt oppdrettsfisk. Andre viktige miljøpåvirkninger er utslipp av næringssalter og organisk materiale, sykdommer og bruk av fôrressurser***. Det er et godt samsvar mellom mengden oppdrettsfisk i sjøen, nivå av lakselus på oppdrettsfisken og hvor stor påvirkning lakselus har på ville laksebestander, særlig sjøørret. Derfor er lakselus påvirkning på ville bestander godt egnet som indikator. Lusenivåene vil imidlertid variere også etter faktorer som næringen ikke kan påvirke, som for eksempel sjøtemperatur og saltinnhold i vannet. Vurderingene som må gjøres, og modellene som benyttes, vil derfor måtte ta høyde for slike variasjoner.

2.4 Environmental indicators

The Government will select indicators that have good correlation with production capacity within a production area. This means that changes in production

capacity/ biomass in the sea are related to the environmental impact in the area, both with increases and reductions in production capacity. This means that not all the industry's environmental challenges will be able to function as indicators. ***The currently greatest environmental challenges to the aquaculture industry are salmon lice and genetic influence of wild salmon stocks from escaped farmed fish. Other important environmental impacts are emissions of nutrient salts and Organic matter, diseases and the use of feed resources.***
Therefore, salmon lice impact on wild populations is well suited as an indicator. The lice levels, however, will also vary according to factors that the industry cannot affect, such as sea temperature and salt content in the water. The assessments that must be made and the models used will therefore have to take account of such variations.

Når det gjelder rømming, er det ikke en så nær sammenheng mellom oppdrettsnæringens produksjonskapasitet og antall rømt fisk. Den geografiske spredningen av rømt oppdrettsfisk er i tillegg stor, med til dels tilfeldig vandringsmønster. I et system som skal virke innenfor produksjonsområder er det derfor vanskelig å bruke rømming som en indikator.

When it comes to escapes, there is no such close connection between the fish farming industry's production capacity and the number of escaped fish. The geographical spread of escaped farmed fish is also large, with some random migration patterns. Therefore, one system that is to work within production areas is difficult to use as an indicator.

Utslipp av næringssalter regnes ikke som et vesentlig miljøproblem i dag. En utfordring med bruk av utslipp som indikator er dels at det vil være flere kilder til utslipp enn oppdrett, og dels at det meste av næringssaltene på norskekysten kommer med havstrømmer fra andre land. Det er derfor ikke gitt at miljøtilstanden bedres selv om oppdrettsproduksjonen reduseres. Utslipp kan likevel bli et vesentlig problem i fremtiden dersom produksjonen flerdobles med gjeldende driftsteknologiske løsninger og lokalitetsstruktur. Det bør derfor startes et arbeid med å utvikle en indikator for utslipp innenfor produksjonsområder, som et supplement til dagens indikatorsystem som virker på lokalitetsnivå.
På sikt må det vurderes om en slik indikator skal innføres.

Emissions of nutrients are not considered a major environmental problem today. One challenge with the use of emissions as an indicator is partly that there will be more sources of emissions than aquaculture, and partly that most of the industrial salts on the Norwegian coast come with ocean currents from other countries. It is therefore not given that the environmental condition improves even if the production of fish is reduced. Emissions can nevertheless become a significant problem in the future if the production is multiplied by current operating technology solutions and site structure. Work should therefore be initiated to develop an indicator for emissions within production areas, as a supplement to the current indicator system that works at the site level. In the long term, it must be considered whether such an indicator should be introduced.

Sykdommer og andre parasitter enn lakselus, anses i første rekke å være et produksjonsproblem og ikke et problem for miljøet rundt anleggene eller for viltlevende bestander. Videre er det ikke en tilstrekkelig sammenheng mellom produksjonskapasitet i et produksjonsområde og utbredelse av sykdommer til at sykdom er egnet som indikator, ut i fra den kunnskapen som foreligger i dag. Dette

gjelder også for produksjonstap eller svinn. Tapene varierer mye mellom lokaliteter innenfor samme område. Nyere studier viser også at en stor del av svinnet skyldes dårlig smoltkvalitet og driftsmessige forhold ved den enkelte lokalitet.

Diseases and other parasites other than salmon lice are primarily considered to be a production problem and not a problem for the environment around the plants or for wild populations. Furthermore, there is not a sufficient correlation between production capacity in a production area and the prevalence of diseases that disease is suitable as an indicator, based on the knowledge available today. This also applies to production losses or wastage. The losses vary widely between locations within the same area. Recent studies also show that a large part of the waste is due to poor smolt quality and operational conditions at the individual locality.

Tilgangen på fôrråvarer vil kunne begrense veksten i norsk oppdrettsnæring. Forråvarer er en global ressurs. Det er ingen direkte sammenheng mellom produksjonskapasiteten i norsk oppdrettsnæring og høsting av bærekraftige fôrressurser globalt. Det er derfor ikke hensiktsmessig at fôrressurser inngår i norske myndigheters vurdering av vekst.

The raw material is o global resource. There is no direct correlation between the production capacity in the Norwegian aquaculture industry and the harvesting of sustainable feed resource lobby. It is therefore not appropriate that feed resources be included in Norwegian authorities' assessment of growth.

Ut i fra vurderingene av de ulike miljøpåvirkningene, **mener Regjeringen at lakselus vil være den riktige indikatoren å benytte på kort og mellomlang sikt i en handlingsregel for kapasitetsjustering på tillatelsesnivå innenfor avgrensede produksjonsområder.** På lengre sikt kan utslipp også være en aktuell indikator. Dersom andre miljøpåvirkninger i fremtiden skulle bli en utfordring som kan knyttes til kapasitetsvekst i et produksjonsområde, kan indikatorer for dette utvikles og tas inn i et modulbasert system.

Based on the assessments of the various environmental impacts, **the Government believes that salmon lice will be the correct indicator to use in the short and medium term in an action rule for capacity adjustment at the permit level within limited production areas**. In the longer term, emissions can also be a current indicator. If other environmental impacts in the future should become a challenge that can be linked to capacity growth in a production area, indicators for this can be developed and incorporated into a modular system.

6.3. Central scientific report released after 2017

Havforskningsinstituttets Risikorapport norsk fiskeoppdrett 2018 (Institute of Marine Research Risk report Norwegian fish farming 2018)
https://www.hi.no/filarkiv/2018/02/risikorapport_2018.pdf/nb-no

The summary is also published in English. The Institute of Marine Research provides expert advice to the Ministry of Trade, Industry and Fisheries through written reports. The summary in the scientific reports is characterized by uncertainty, knowledge gaps and the need for more research. The report describes the challenges that were also known in 1974. The difference is that today's farming is far more widespread and intensive. The essence of the matter is that the environmental challenges have not been solved.

Veterinærinstituttet (Norwegian Veterinary Institute)
https://www.vetinst.no/rapporter-og-publikasjoner/rapporter/2019/fiskehelserapporten-2018

Norwegian Veterinary Institute also refers to major challenges related to fish welfare. There is concern about high mortality through the delousing process and the high spread of infection with spread. The EU's new animal health regulations also impose stricter requirements on Norway, not only to control serious diseases, but also to actively combat these.

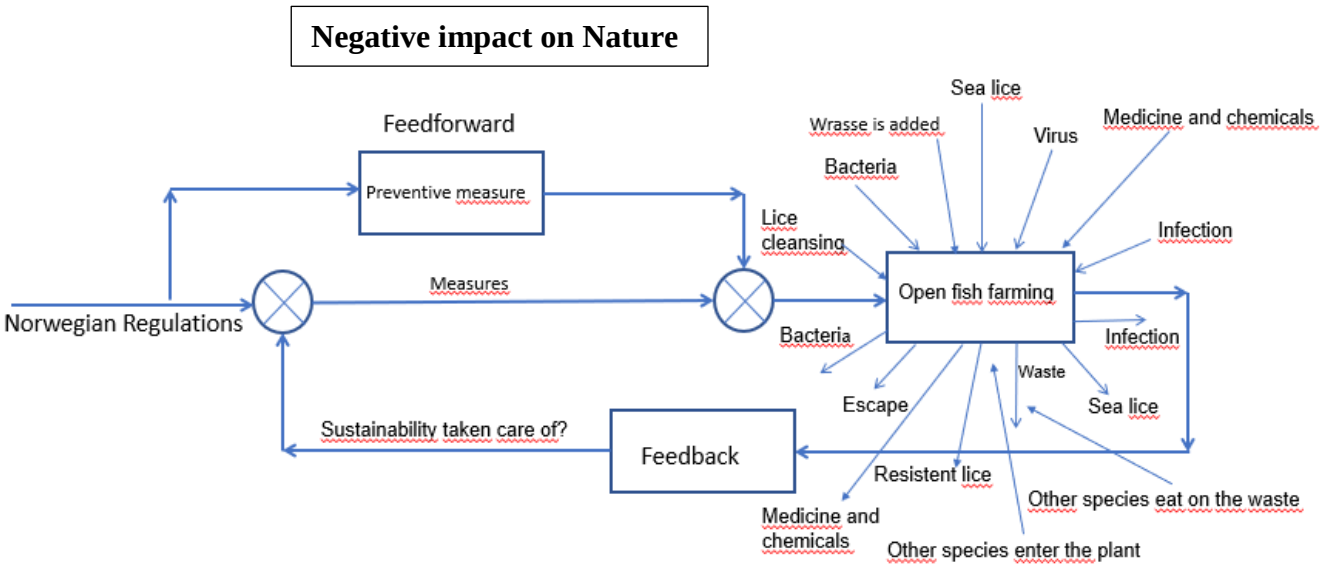
The Veterinary Institute believes that farming of salmon in closed cages seems to be a very effective method for combating salmon lice because the environmental conditions can be controlled better and especially because of good water flow and training of the fish it may be possible to get faster growth in closed cages than in open. The collection and reuse of sludge is also an important advantage of closed cage technology. Closed cages require good technical solutions and focus on welfare and water quality. Mortality due to infectious diseases, wounds or poor smolt quality can be a challenge in closed, as in open cages. The element phosphorus follows the waste into the sea. The world cannot afford to lose phosphorus this way.
https://www.vetinst.no/nyheter/oppdrett-av-laks-i-lukkede-merder

6.4. Open cages

Open cages release waste into the sea in the form of nitrogen, the element phosphorus and organic matter. In addition, microplastic contributes from lining, rope of synthetic fiber, lice skirts, fastening materials and other rubbish. Salmon lice, Caligus elongatus (skottelus), tapeworms, viruses, infections, diseases in which Western Norway in particular is infested with the highly contagious and lethal pancreatic disease (PD), bacteria (especially skin wounds), escapes, medicine use, chemical use, high mortality associated with thermal and mechanical delousing, other fish species that feed around the cages, resistance problems and poor fish welfare characterize everyday life. The problems increase with the density of cages in an area. Anadromous rainbow trout is a spring alley and pushes away the eggs that the wild salmon left in the autumn.
It is a large and complex factory on the sea that poses a serious threat to life in the cages, in coastal waters, fjords and in watercourses. This is the last heavy industry in Norway that is not required to clean its emissions. Wild salmon, sea trout and sea lion are endangered in many fjords, rivers and watercourses.
Genetic Integrity is important and is strongly threatened. The coastal cod disappears from its spawning grounds. Shrimp fields are affected by chemicals. Waste from the cages destroys the seabed. The «fishing loop» ceases and the coastal fisherman is displaced with their families. Fishing traditions and experience-based knowledge through generations disappear from different areas.

Over 40 years of unresolved issues of the same and new environmental challenges are more than enough to conclude that the current practice of open cages is over.

Open cage illustration



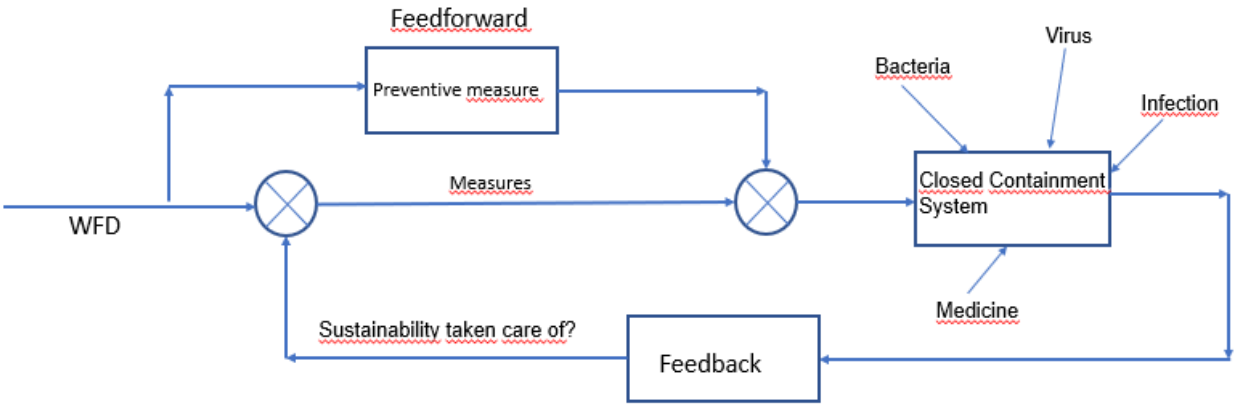
6.5. Closed Containment System

NMF has intentionally not chosen to discuss closed containment system (CCS) in detail in this complaint. That's because NMF wants to open up for the politicians, along with industry and locals, to realize that onshore CCS near the market is the only viable road. It is a fact that closed containment system near the market will also reduce CO2 emissions.

At this time, the globe is warming up at a pace that humanity has not experienced before. The use of solar energy, wind power and hydropower as an energy carrier are important technological driving factors in parallel with onshore closed plants.

Nature is linked locally and globally. We all have a responsibility to protect, preserve and improve our lifestyle and living conditions. The use of uncertainty, lack of knowledge, profit and labor as an argument for not making the right choices does not benefit either nature or man. Sustainability is more than words. Time has come for smart technology that works with and for nature and not against nature.

CCS-Positiv Control



6.6. Stabilised and non-stabilised stock threats

Source: **Status of wild Atlantic salmon in Norway 2018. Norwegian Scientific Advisory Committee for Atlantic Salmon**

https://www.vitenskapsradet.no/Portals/vitenskapsradet/Pdf/Status%20of%20wild%20Atlantic%20salmon%20in%20Norway%202018.pdf

NMF comments: Bold text added.

The abundance of wild Atlantic salmon has declined. The number returning from the ocean to Norway each year is now less than half of the level thirty years ago. In 2017, about 530 000 salmon were estimated to return, which was an increase from 2016, but still on a low level. The declined abundance has reduced, and in some cases eliminated, the harvestable surplus available for fisheries. Due to the decline of Atlantic salmon, fisheries have been greatly reduced. Annual catches in the sea and rivers are reduced from 1500 to 500-600 tonnes during the last 30 years. The reduced exploitation has more than compensated for the decline, and the number of salmon spawning in the rivers has increased during recent years. In 2017, there were enough spawners in most rivers, which means that the natural capacity of the rivers to produce salmon juveniles was utilised. Hence, salmon populations are not restricted by lack of spawners, with a few exceptions.

Reduced salmon populations are caused both by human impacts and a general and large-scale reduction in survival at sea. Populations in middle and western Norway are most severely reduced. Escaped farmed salmon, salmon lice and infections from salmon farming are the greatest anthropogenic threats to Norwegian wild salmon. The proportion escaped farmed salmon in the rivers is reduced in recent years, and the risk of further loss of wild salmon due to escaped farmed salmon is reduced from **very high to high**.

The knowledge of infections from salmon farming is poor. Hydropower production, other habitat alterations, acid rain and introduced pink salmon are also major anthropogenic threats to wild salmon, **but the risk of further loss is smaller than for the threats related to salmon farming.** Hydropower production and other habitat alterations significantly impact wild salmon, but the negative impact will likely not expand in the future. However, there is large potential for further mitigation measures.

Due to liming of rivers and reduced emissions, the risk of increased negative impacts due to acid rain is small. Salmon populations in southern Norway have increased due to the comprehensive liming programs. The threat to wild salmon from the introduced parasite Gyrodactylus salaris is now greatly reduced. Number of rivers with known occurrence of the parasite has been reduced from fifty to seven, due to successful eradication measures. Wild salmon have been re-established in rivers where the parasite has been eradicated. The risk of further spreading is reduced. **Sea trout populations are greatly reduced in large parts of the country (western and middle Norway and several rivers in northern Norway**), but stable in eastern and southern Norway. **Agriculture, other habitat alterations and salmon lice seem at present to be the most serious threats to sea trout**.

Genetic influence on wild salmon

Fresh report in Norwegian:

https://www.dn.no/fiske/vidar-wennevik/oystein-skaala/havforskningsinstituttet/tidobling-av-romt-oppdrettslaks/2-1-578234

Institute of Marine Research. Risk report Norwegian fish farming. Summary in English.

https://www.imr.no/publikasjoner/andre_publikasjoner/risikovurdering_miljovirkninger_av_norsk_fiskeoppdrett/nb-no

The report is characterized by a lack of knowledge, assumed risk assessment, recognition of poor results and the need for more research. Much of the content is very similar to the report that was published by the same institute in 1974 which dealt with salmon lice and disease.

NMF Salmon report 2019

https://www.nmf.no/2019/05/02/lakserapporten-overlevert-til-mattilsynet-og-riksrevisjonen/

NMF has recently published a comprehensive and elaborate report that addresses aquaculture at Norway's coastal waters and fjords. This is the result of three years of work, and several thousand hours of work. The report represents the ultimate in research, environmental understanding and conscience. The entire report, excluding heritage and genetics, has been read and approved by Erik Slinde, former research director at the Institute of Marine Research. The previous report from the Environmental Protection Association in 2010: "Environmental Facts on Norwegian Fisheries" led to the Office of the Auditor General of Norway report in 2012, which mainly addressed the same issues as the Environmental Protection Federation's report of 2010. And this was a blueprint of the Environmental Protection Union's report, said environmental responsibility in Marine Harvest.

This in turn led to the Parliament Coordination and Constitutional Committee having a hearing in the Parliament on the environmental problems in Norwegian farming. The conclusion of this consultation was:

»The aquaculture industry has faced significant environmental challenges through, among other things, high escapes, salmon lice and extensive losses as a result of illness ».

7.0. The WFD core

7.1. The Water Framework Directive 2000/60/EC

The Water Framework Directive 2000/60/EC (WFD) is setting objectives in terms of water protection for surface water and groundwater. Surface water include rivers, lakes, transitional and coastal waters. In order to achieve those objectives, it is made a common framework for Member States to assess pressures and impacts of all anthropogenic activities on aquatic ecosystem, including aquaculture, and to put in place the appropriate measures to achieve the environmental objectives. For coastal water, the WFD is complementary to the Marine Strategic Framework Directive (MSFD), which also sets objectives and requirements in terms of ecosystem protection.
The WFD and the MSFD do not contain explicit obligations for aquaculture. However, the national state that foster the aquaculture industry has to comply with the requirements of the WFD and MSFD. In particular, if the analysis performed shows that new or existing aquaculture facilities may affect the status of aquatic ecosystem, then appropriate measures have to be put in place to suppress or reduce those impacts. These two Directives cover in particular all relevant pressures that can be associated with aquaculture, including pollution, habitat alteration or introduction of non-indigenous species.
When it comes to mining waste, the same preventive measures must be taken to preserve and protect the ecosystem in the fjords.

7.2. Norway and EU

The EU must ensure safe and healthy water environments and aquaculture is committed to the same. WFD, year 2000 and the Marine Strategy Framework Directive (MSFD, in 2008) form

the framework for the EU's environmental policy that Norway is obliged to fulfill. MSFD aims to achieve good environmental status (GES-MSFD) in marine waters by 2020. The focus area is: biodiversity, eutrophication, seabed integrity, biodiversity of bottom animals, hydrographic conditions, pollution and contaminants in fish and seafood.

Member States are required to prepare the River Basin Management Plan (RBMP) covering all river basins. The EFTA Surveillance Authority (ESA) is obligated to ensure that the EFTA States Iceland, Liechtenstein and Norway comply with their obligations under the EEA Agreement. ESA may now, in the exercise of its supervisory authority, initiate a breach procedure against the EFTA State concerned and may bring the matter before the EFTA Court with the requirement that disputed rules or practices be amended.

7.3. Violations of the WFD

WFD is now part of Norwegian formal law, which happened on 14th December, 2018. Norway has a moral responsibility and has failed, which is explained by the fact that The Water Regulation fail to transform the WFD Norwegian law in a satisfactory manner. Norway is obligated, materially spoken, to, comply with the WFD. Norway's only freedom of action is to be able to determine the form and means of implementation (Article 7b) of the EEA Agreement).

EEA Agreement Article 7

Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows:

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;

(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.
Source:
https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf

EØS-avtalen artikkel 7 (nasjonal gjennomføring).

Artikkel 7

Rettsakter som er omhandlet i eller inntatt i vedlegg til denne avtale eller i EØS-komiteens vedtak, skal være bindende for avtalepartene og skal være eller gjøres til del av deres interne rettsorden som følger:

a) en rettsakt som tilsvarer en EØF-forordning skal som sådan gjøres til del av avtalepartenes interne rettsorden;

b) en rettsakt som tilsvarer et EØF-direktiv skal overlate til avtalepartenes myndigheter å bestemme formen og midlene for gjennomføringen.
Source:

https://www.europalov.no/eos-artikkel/eos-avtalen-artikkel-7-nasjonal-gjennomforing/id-6873

NMF comments: This means that the WFD is binding upon Norway, the text of which should be part of Norwegian law, and which was done on 14th December, 2018.
Only the Nature Diversity Act section 26 (adopted by the Parliament on 20th November, 2018, in force 14.12.2018), is the first and only act that specifically refers to the Water Directive. Before this date, no Act referred the WFD in the Norwegian law.

Naturmangfoldloven § 26a

Kongen kan fastsette de forskrifter som er nødvendige for å gjennomføre Europaparlaments- og rådsdirektiv 2000/60/EF av 23. oktober 2000 om fastsettelse av rammer for fellesskapstiltak for vannpolitikk (vanndirektivet) i norsk rett.
Source:
https://lovdata.no/lov/2009-06-19-100/§26a

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Nature Diversity Act Section 26a

The King may determine the rules necessary for the implementation of Directive 2000/60/EC of the European Parliament and of the Council of 23th October 2000 establishing a framework for Community action in the field of water policy (Water Directive) in Norwegian legislation.
Source:
https://lovdata.no/lov/2009-06-19-100/§26a

8.0. Compilation of legislation

The Water Regulations of Norway should – according to the EEA Agreement Article 7b comply with to the WFD, namely to promote the same purposes and motives that follow from the EEA Agreement. The fact that the contracting party can determine the form and method for the implementation means that the WFD is mandatory in Norway, and it must be part of national law. Neither the purpose of the water regulations nor several of the specific provisions match the WFD. By compiling these we see where Norway fails.
As an introduction, we refer to the EU's environmental foundation.

NMF comment: Bold text and italics added.

8.1. THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

CONSOLIDATED VERSIONS OF THE TREATY ON EUROPEAN UNION AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION
Source:
https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html#new-2-51

Article 191

(ex. Article 174 TEC)

1 Union policy on the environment shall contribute to pursuit of the following objectives:

- ***preserving, protecting and improving the quality of the environment***.

- protecting human health.

- prudent and rational utilization of natural resources.

- promoting measures at international level to ***deal with regional or worldwide environmental problems and combating climate change***.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonization measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,

- environmental conditions in the various regions of the Union,

- the potential benefits and costs of action or lack of action,

- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organizations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

8.2. DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000

DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23th October 2000.
Source:
https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF

(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of **preserving**, **protecting** and **improving** the quality of the environment, imprudent and rational utilization of natural resources, and to be based on

the **precautionary principle and on the principles that preventive action** should be taken, environmental damage **should, as a priority, be rectified at source** and that the polluter should pay.

(22) This Directive is to contribute to the **progressive reduction** of emissions of hazardous substances to water.

(25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that **good** status of surface water and groundwater is achieved throughout the Community and that **deterioration** in the status of waters is prevented at Community level.

(26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programs of measures, taking in to account existing Community requirements. **Where good water status already exists, it should be maintained.** For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

(27) The ultimate aim of this Directive is to achieve the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances.

NMF comments: While – as documented – the main rule and basis for justification is to "eliminate", "maintain", "deterioration … prevented, "reduction of emission", "preserving, protecting and improving the quality of the environment" etc. only the **Water-Directive Article 4 no. 6** entail national states to ignore Temporary deterioration" if resulting from "natural cause or force majeure…, which could not reasonably have been foreseen":

DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000

Article 4 Environmental objectives.

Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:
Source:
https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF

NMF comments: General consideration of EU environmental foundation:

1. EU Directive is based first and foremost on a one-way clause, namely **"reduction", "cessation", "phasing out", "avoiding deterioration"**.
2. Principle of **"polluter pays"**.
3. Principle of source control.
4. Principle that no surface water should have a state of summer is inferior to **"good"**.

Government measures and/or permits can only result in improved water quality, and **not aggravate it with the one exception as entitled in WFD 4 no 6.** Article 1 sets out the scope of action of the national state when it is to take decisions affecting water treatment and quality nationally. The WFD - when adopted nationally - sets the line in that all **degradation and aggravation** that have been found up to and including 2000 **should gradually cease**. This means that measures that are initiated hereafter and which directly or indirectly infuse the coastal water **shall only improve** the aquatic environment. Emissions in progress shall cease or be phased out. **Work, conditions or measures that aggravate the aquatic environment should not be able to continue, much less be initiated.**

The Water Regulation do not reflect WFD, on the contrary, because, the mismatch between conditions for allowing worsening conditions to develop in the directive Article 4 no. 6 and the regulation (Section 12) that have no similar wording that prohibits the authorities from approving, initiating or implementing new instruments that **exacerbate** the quality of the coastal water.

8.3. Norway`s water regulations compared with the EU water directive

Regulations on the framework for water management (The Water Regulation) of 15 December 2006
Section 1. Purpose

Vannforskriften § 1. Formål

Formålet med denne forskriften er å gi rammer for fastsettelse av miljømål som skal sikre en mest mulig helhetlig beskyttelse og bærekraftig bruk av vannforekomstene.

Forskriften skal sikre at godkjente vannforvaltningsplaner med tilhørende tiltaksprogrammer revurderes og oppdateres hvert sjette år.
Source:
https://lovdata.no/forskrift/2006-12-15-1446/§1

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

NMF comments: Bold text added.

The Water Regulation Section 1. Purpose

The purpose of these regulations is to **provide a framework** for setting environmental goals that will ensure the most comprehensive protection and sustainable use of water bodies.

The Regulations shall ensure that approved water management plans with associated action programs are reassessed and updated every six years
Source:
https://lovdata.no/forskrift/2006-12-15-1446/§1

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2000/60/EC of 23 October 2000:

Article 1

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) **prevents further deterioration** and **protects** and **enhances** the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems.

Source:
http://www.vannportalen.no/globalassets/nasjonalt/dokumenter/regelverk/vanndirektivet.pdf

NMF comments: The comparison between The Water Regulation and WFD (2000) entails the following observation:
While the water directive main purpose is to promote better quality to inferior waters and which accept deteriorated waters in two instances only – i.e. natural cause or force majeure – the water regulation of Norway entitles public agencies to make waters turn from excellent or good to bad and worse. This is contradictory to law by the following reasons:

The degradation from **"very good condition"** to "**good condition"** which results from new installations or industrial establishments is valid according to the The Water Regulation of 2006, section 12 «Ny aktivitet eller nye inngrep»/New activity or new intervention.

Vannforskriften § 12 Ny aktivitet eller nye inngrep

Ny aktivitet eller nye inngrep i en vannforekomst kan gjennomføres selv om dette medfører at miljømålene i § 4–§ 7 ikke nås eller at tilstanden forringes, dersom dette skyldes: …

b) ny bærekraftig aktivitet som medfører forringelse i miljøtilstanden i en vannforekomst fra svært god tilstand til god tilstand».
Source:
https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Water Regulation Section 12 New activity or new intervention.

New activity or new intervention in a water body can be carried out even if this means that the environmental goals in section 4 - section 7 are not achieved or that the condition deteriorates if this is due to: ...

b) new sustainable activity leading to deterioration of the state of the environment in a water body from **very good** to **good condition**".
Source:
https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446

NMF comments: The Water Regulation is however invalid in case of further deterioration; i.e. from good to ***bad*** conditions. No one know when, or if, this is going to happen. In such a situation the precautionary principle of Nature Diversity Act Section 9 is not only applicable, but rather ***compulsory***, as seen in the legislation text, ***"shall" ("skal")***.

Naturmangfoldloven § 9 Føre-var-prinsippet

Når det treffes en beslutning uten at det foreligger tilstrekkelig kunnskap om hvilke virkninger den kan ha for naturmiljøet, skal det tas sikte på å unngå mulig vesentlig skade på naturmangfoldet. Foreligger en risiko for alvorlig eller irreversibel skade på naturmangfoldet, skal ikke mangel på kunnskap brukes som begrunnelse for å utsette eller unnlate å treffe forvaltningstiltak.
Source:
https://lovdata.no/dokument/NL/lov/2009-06-19-100

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Nature Diversity Act Section 9 Precautionary principle.

When a decision is made without sufficient knowledge of the effects it may have on the natural environment, the aim shall be to avoid possible significantly damage to the natural diversity. If there is a risk of serious or irreversible damage to natural diversity, a lack of knowledge should not be used as a reason for postponing or failing to take management measures.
Source:
https://lovdata.no/dokument/NL/lov/2009-06-19-100

NMF comments: The NMF position is that this "risk" (risiko) is not only a far-off probability, but under a strong likelihood to materialize. The failing implementation of the precautionary principle is breaching the Nature Diversity Act Section 9.

As already indicated the transformation of WFD is inadequate. The WFD does simply not allow Norway to craft The Water Regulation Section 12 on new activity or intervention. The WFD is binding upon Norway, EEA Agreement Article 7 b) as shown p. 5.

The EU/EEA national states are exempt from the obligation of taking action if degradation is coming from a "natural cause or force majeure". These are events out of reach for the responsibility of national states in casu Norway. (WFD Article 4 nr. 6, citation on p. 4).

This entitlement is limited: It is only in the case of "Temporary deterioration" and in case that the upcoming disaster "could not reasonably have been foreseen" in addition to a wide range of conditions listed in WFD Article 4 No 6. We do not need to dig deep into the text to conclude that The Water Regulation is far beyond this WFD exemption.

8.4. Deviation

The Water Regulation do not correspond to the WFD, on the contrary, because, in the same way as the WFD, The Water Regulation has no wording that prohibits the authorities from approving or implementing measures that exacerbate the quality of the coastal water.
The Water Regulation, does not match the water directive, The Water Regulation Section 1, lay down environmental targets without stipulating that all deterioration is prohibited. For example, as the mission statement text disclose, may peak so as to accept the worst sewer can find acceptance and thus be approved as legal.

The secret then is to find a recipient that is 100% pure. When, after a few years, when the recipient is heavily deteriorated, the trick is to make environmental authorities licensing polluter to continue in an unspoiled and 100% pure fjord, which then subverts the fjord into poor or very bad condition. The reason is then simple that the water regulations oblige Norway to subscribe to the most comprehensive protection possible even though it contributes to reduce quality ranking from good to bad. It is enough that the coastal water has good enough ecological and good chemical status. As Norway practices it, it then proves that pollutants cannot afford to take care of garbage, sewage, waste etc., so it is also not possible to claim that «polluter pay».

The state of surface water **must be protected from deterioration**, **improved** and **restored** with a view to water bodies having at least **good** ecological and **good** chemical status ....

NMF comments: Bold text and italics added:

Vannforskriften § 4 Miljømål for overflatevann

Tilstanden i overflatevann skal ***beskyttes*** mot forringelse, forbedres og gjenopprettes med sikte på at vannforekomstene skal ha minst god økologisk og god kjemisk tilstand, i samsvar med klassifiseringen i vedlegg V og miljøkvalitetsstandardene i vedlegg VIII.
Source:
https://lovdata.no/forskrift/2006-12-15-1446/§4

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

The Water Regulation Section 4 Environmental targets for surface water

The condition of surface water ***must be protected from deterioration***, ***improved*** and ***restored*** with objective to ensuring that the water bodies have at least ***good*** ecological and ***good*** chemical status, in accordance with the classification in Annex V and the environmental quality standards in Annex VIII
Source:
https://lovdata.no/forskrift/2006-12-15-1446/§4

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

Vannforskriften

Vedlegg V. Klassifisering og overvåking
1.2 Normative definisjoner for klassifisering av økologisk tilstand

Vann som viser tegn på ***omfattende endringer*** av verdiene for biologiske kvalitetselementer for den aktuelle typen overflatevannforekomst, og der relevante biologiske samfunn avviker vesentlig fra det som normalt forbindes med typen overflatevannforekomst under ***uberørte forhold,*** klassifiseres ***som dårlig***.

This is an unofficial translation of the Norwegian version of the Act. Legal authenticity remains with the Norwegian version. In the event of any inconsistency, the Norwegian version shall prevail:

The Water Regulation

Appendix V. Classification and monitoring
1.2 Normative definitions for classification of ecological state

Water showing signs of ***extensive changes*** in the values of biological quality elements for the type of surface water body in question, and where relevant biological communities differ significantly from what is normally associated with the type of surface water body under ***untouched conditions***, is classified ***as poor***.

Water that shows ***signs of serious changes*** in the values of biological quality elements for the particular type of surface water body, and where large parts of relevant biological communities normally associated with the type of surface water body under undisturbed conditions are absent, are classified as ***very poor***.
Source:
https://lovdata.no/dokument/SF/forskrift/2006-12-15-1446/KAPITTEL_12-1-2#KAPITTEL_12-1-2

9.0. Conclusion

These words are powerful and binding (italics added):
Treaty on European Union (Consolidated version 2016)
Article 191 (ex. Article 174 TEC): ***Preserving, protecting and improving the quality of the environment.***

Based on legislation and practice, it is established that Norway does not comply with Article 7 of the EEA Agreement. Directives shall be transformed and incorporated into Norwegian law with a substantial content that is identical to the relevant directive. The only discretion left open for Norway is to decide on the form and means of implementation (Article 7b) of the EEA. Norwegian water provision prohibits that the water quality turns from good to bad. No rule or practice entitles the polluter to pushing the cost of the pollution over to the community. The principle that ***"polluter pays"*** does not exist. The Water Regulation ignore the fact that the WFD contains a basic principle of ***"source control".*** Furthermore, no result of the ***"precautionary principle"*** is seen. Comparing the total environmental impacts of mining waste and the aquaculture industry, it is extensive and devastating.

By 14th December, 2018, the WFD became statutory in Norway. The Water Regulation of 15th December, 2006, have failed to fully transform WFD. It is only the Naturmangfoldloven (Nature Diversity Act) Section 26a, which was adopted by the Norwegian Government on 20th November, 2018, which specifically refers to the WFD. The Water Regulation do not fully incorporate the WFD to Norwegian law. The Water Regulation does not prevent Norwegian coastal waters and fjords from continuous environmental degradation.

The Water Regulation Section 1. Purpose does not correspond to the **WFD Article 1**.

Meld. St. 16 (2014-2015) Forutsigbar og miljømessig bærekraftig vekst i norsk lakse- og ørretoppdrett. Report to the Norwegian government (White paper) 16 (2014-2015).
This White paper is not according to WFD or EEA Agreement Article 7 litra b).

The aquaculture industry is a large and complex factory on the sea that poses a serious threat to life in the cages, in coastal waters, fjords and in watercourses. This is the last heavy industry in Norway that is not required to clean its emissions. Wild salmon, sea trout and sea lion are endangered in many fjords, rivers and watercourses. Genetic integrity is important and is strongly threatened.

Fish farming in open cages represent a multi-threat with a magnitude of damage that is large and growing. Uncertainty, lack of knowledge, desire for more research and calculated risk characterize both politicians, the aquaculture industry and some key research environments. NMF has listed the extent of the damage in the discussion, but the extent of the damage is not limited to the discussion, there is more.

Indigenous people: The Lappekodisil has been in a special position as a treaty of international law in the Sami context right up to our time and still has legal significance. There are many cultural and traditional carriers along Norway's extensive coast. What about their common law, customary law and the right to live by what nature provides?

With the aquaculture industry's entry, politicians turned to their own coastal fishermen and helped to push them away from their traditional fishing grounds. Fishing grounds are seized or rather expropriated. Ecology and "fishing loop" are damaged in a way that should not be accepted.

The coastal cod disappears from its spawning grounds. Shrimp fields are affected by chemicals. Waste from the cages destroys the seabed. The «fishing loop» ceases and the coastal fisherman is displaced with their families. Fishing traditions and experience-based knowledge gained through generations disappear from different areas.
The young boy and the girl lose interest in fishing in the wild.

Nature is linked locally and globally. We all have a responsibility to protect, preserve and improve our living conditions. Using uncertainty, lack of knowledge, profit and labor as a break rod to continue a degrading practice is not sustainable.

NMF has intentionally not chosen to discuss closed containment system in detail in this complaint. That's because NMF wants to open up for the politicians, along with industry and locals, to realise that onshore CCS near the market is the only viable road. It is a fact that CCS near the market will also reduce CO2 emissions.

NMF has focused on actual deviations between Norwegian law and WFD. NMF has proved through this complaint that Norway is conducting a number of offenses. NMF is aware that if Norway had fully incorporated the WFD to Norwegian law then the open cage practice had not existed in the present form.

NMF claims that it is contradictory to the WFD to dump waste in the in Norwegian coastal waters and fjords.

NMF claims that it is contrary to WFD that the aquaculture industry seizes fishing grounds and destroys ecology at the coast, in the fjords, in the rivers and in watercourses.

Best regards,

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and

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