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## **Complaint: Norway violates the EEA Agreement Article 61. Related to mining.**

### **Table of contents**

1.0.	Background.....	2
1.1.	Seafill as a result of mining .....	2
2.0.	This complaint .....	3
3.0.	Article 61 of the European Economic Area (EEA Agreement) .....	3
4.0.	Discussion .....	4
4.1.	Those who live by and with nature.....	5
	Indigenous people .....	5
	«Fiskesløyfen» (“Fishing loop”) and customs .....	5
4.2.	Proposition to the parliament.....	6
4.3.	Circular Economy.....	7
4.4.	Repparfjord.....	9
4.5.	Førdefjord.....	12
	Consultation statement given by IMR in 2019.....	13
5.0.	Conclusion .....	14

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## 1.0. Background

The Green Warriors of Norway (NMF) submitted a comprehensive and thorough complaint to the EFTA Surveillance Authority (ESA) in May 2019 and April 2020. The complaint dealt with the obvious breach of the Directive 2000/60/EC of the European Parliament and of the Council of 23rd October establishing a framework for Community action in the field of water policy (WFD).

The complaints also dealt with the mining industry's practice of dumping mine tailings/waste into so-called seafill. Directives that regulate land-based operations cannot be directly transferred to a seafill. Landfill is strictly regulated by the following directives, but not limited by: 1999/31/EC, 2006/21/EC, 2008/98/EC, 2006/118/EC and 2010/75/EC. According to NMF, seafill is mainly regulated by 2000/60/EC.

The preamble to 2000/60/EC (WFD) states:

*11) "As described in Article 174 of the Treaty, the Community's environmental policy is to contribute to the objectives of preserving, protecting and improving the quality of the environment, **the prudent and rational use of natural resources**, and to be based on the **precautionary principle** and the precautionary measures, as a priority, is remedied at the source, and that **the polluter should pay**".*

### 1.1. Seafill as a result of mining

Seafill is practically impossible to handle properly. No one can guarantee that the state of the aquatic environment goes from "good" to "bad". Life in the aquatic environment is very complex, dynamic and is balanced. In northern areas, the vulnerability is great and wounds heal very slowly. Thus, there is a great deal of uncertainty and knowledge gaps in how a seafill will contribute to damage in the ecological system.

Experience from the 1970s mining operations in the Repparfjord indicates that the seabed is partly lifeless over 40 years after the test period. Imagine the natural balance in terms of current, temperatures, salinity and seabed terrain in narrow fjords. Changes affect migratory paths for salmon, local sea trout needs, coastal cod spawning grounds, shrimp fields, benthos, shellfish, the habitat of traditional fishing with its fishing loop.

As an extra burden, NMF knows that many of the Norwegian fjords are loaded with escaped farmed salmon and blacklisted rainbow trout.

**The ocean is our common food dish, a food dish that is our heritage and which is a long-term basis of living.**

Millions of tonnes of tailings consisting of small particles of crushed rock, heavy metals and residues of organic chemicals bound to the particles are supplied to the aquatic environment. An irreversible process of lasting intervention and damage. We should also not forget that mining and landfill have challenges related to the leakage of hazardous waste to groundwater and seawater. **Nevertheless, a landfill can be regulated, reused and disposed of in a controllable way.**

NMF asks the reader the following introductory question: Is it right to allow the mining companies to dump mixed mining waste in Norwegian fjords? And is the practice in line with the "polluter pays principle" and Article 61 of the EEA Agreement?

## 2.0. This complaint

This complaint points to a new factor where the NMF has determined that Norway violates Article 61 of the EFTA Agreement. Article 61 affects ESA's core economic area and mandate.

## 3.0. Article 61 of the European Economic Area (EEA Agreement)

**NMF comment:** Added bold in italics.

### **EØS-avtalen artikkel 61 (statsstøtte) - TEUV artikkel 107**

#### *Artikkel 61*

***1. Med de unntak som er fastsatt i denne avtale, skal støtte gitt av EFs medlemsstater eller EFTA-statene eller støtte gitt av statsmidler i enhver form, som vrir eller truer med å vri konkurransen ved å begunstige enkelte foretak eller produksjonen av enkelte varer, være uforenlig med denne avtales funksjon i den utstrekning støtten påvirker samhandelen mellom avtalepartene.***

2. Forenlig med denne avtales funksjon skal være:

a) støtte av sosial karakter som gis de enkelte forbrukere, forutsatt at den ytes uten forskjellsbehandling på grunnlag av varenes opprinnelse,

***b) støtte som har til formål å bøte på skader som skyldes naturkatastrofer eller andre eksepsjonelle hendelser,***

c) støtte til økonomien i visse områder i Forbundsrepublikken Tyskland som er påvirket av Tysklands deling, i den utstrekning støtten er nødvendig for å oppveie de økonomiske ulemper forårsaket av delingen.

3. Som forenlig med denne avtales funksjon kan anses:

a) støtte som har til formål å fremme den økonomiske utvikling i områder der levestandarden er unormalt lav, eller der det er alvorlig underbeskjeftigelse,

b) støtte som har til formål å sikre at et viktig prosjekt av felles europeisk betydning kan realiseres, eller å bøte på en alvorlig forstyrrelse av økonomien i en av EFs medlemsstater eller en EFTA-stat,

c) støtte som har til formål å lette utviklingen av enkelte næringsgrener eller på enkelte økonomiske områder, forutsatt at støtten ikke endrer vilkårene for samhandelen i et omfang som strider mot felles interesser,

d) andre former for støtte angitt av EØS-komiteen i samsvar med del VII.

<https://www.europalov.no/eos-artikkel/eos-avtalen-artikkel-61-statsstotte-teuv-artikkel-107/id-6926>

### **Agreement on the European Economic Area (EEA Agreement)**

#### *Article 61*

***1. Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.***

2. The following shall be compatible with the functioning of this Agreement:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) *aid to make good the damage caused by natural disasters or exceptional occurrences;*
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the functioning of this Agreement:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of an EC Member State or an EFTA State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) such other categories of aid as may be specified by the EEA Joint Committee in accordance with Part VII.

<https://www.europalov.no/eos-artikkel/eos-avtalen-artikkel-61-statsstotte-teuv-artikkel-107/id-6926>

#### 4.0. Discussion

Why is EEA Article 61 relevant? **Distort competition by favouring certain undertakings.**

**Example: At the Follo tunnel (“Bane Nord”) there were masses to be dumped. It was just an opportunity and it was on land. “Bane Nor” had to pay NOK 50.5 million for the landfill. Here, everyone understands that the Mining Companies in Førde and in Repparfjord are subsidized with huge amounts when they get the green light for a seafill - without paying a penny to the community. In comparison to other mining companies that are prohibited to use seafills and has to use more costly landfills. This is in clear violation of the EEA agreement article 61.**

The Government of Norway has granted Nordic Mining an operating license to extract rutile from Engebøfjellet (Engbø-mountain) in the "Førdefjord". The company "Nussir ASA" has received an operating license for a copper mine by the Repparfjord in Finnmark. Both companies have received permission from the Norwegian Government to dump millions of tonnes of mining waste in these national salmon fjords. For its part, ESA has granted Norway exemptions to dump mining waste, anchored in WFD Article 4.7.

NMF has complained about the exception twice. Article 4.7 cannot be applied because the effects are too large and extensive and no one can guarantee the environmental effects. Large and extensive seafill leads to a deterioration of the status of the current aquatic environment and the likelihood of putting good surface water status at risk is very high. NMF has not yet received a final response from ESA to the complaints.

This complaint points to a new factor where the NMF has determined that Norway violates Article 61 of the EFTA Agreement. Article 61 affects ESA's core economic area and mandate. By supporting the mining companies in dumping mining waste in the Norwegian fjords, the

mining companies are favoured. NMF believes that state aid is only intended to compensate for damage caused by natural disasters or other exceptional events. Business-based mining activities that receive support from the Norwegian state to dump mining waste in Norwegian fjords are in breach of Article 61. WFD is clear on the "Polluter pay principle". The mining companies' expense of dumping mining waste in Norwegian fjords has been eased on the indigenous population, the coastal fisherman and nature itself. This is a clear violation of WFD.

NMF sees that the indigenous population and coastal fishermen are losing their livelihood and nature. The coastal people are deprived of their right and remain victims of mining. It is not at all the practice of the polluter pay principle. The whole bill is passed on to the people and nature itself.

#### 4.1. 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. Reindeer husbandry is also an essential part of the indigenous people's lifestyle.

***What about their common law, customary law and the right to live by what nature provides?***

***What about polluter pays principle?***

##### «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 favor.

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.

***It is not right to displace the fishermen with their traditions and way of life!***

##### 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.

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.

On this basis, NMF requests that ESA notify the Norwegian authorities that dumping of mining waste in Norwegian fjords must cease. Norway violates Article 61 of the EFTA Agreement and the WFD. Only landfills can meet the principles and objectives of the circular economy laid down in 1999/31/EC Landfill of waste and 2008/98/EC Waste.

WFD is clear, as demonstrated by these examples:

1. 2000/60/EC 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 surface water should not have a worse environmental condition than **“good”**.

#### 4.2. Proposition to the parliament

NMF recommends ESA to note the proposal to be considered by the parliament (proposal for a legislative resolution). The proposition deals with compensation for pollution and littering:

**Prop. 87 L (2020–2021) Proposition to the parliament “The Storting” (proposal for a legislative resolution) Amendments to the Pollution Control Act (legal authority for demands for deprivation interest), of 19th February 2021.**

*"The Pollution Control Act is based on the internationally recognized principle that polluters must pay. This means that whoever is responsible for pollution or littering must bear the costs of the pollution, and not society. The pollution authority can therefore demand reimbursement of costs and losses that have been incurred in connection with the implementation of measures on behalf of the person responsible. The legal basis for claiming reimbursement is given in the Pollution Control Act § 76" (p.5).*

*"According to Norwegian law and international law, it is as a general rule that the person responsible for illegal pollution or illegal littering is to bear the financial responsibility for the costs that arise. It is also a basic principle in Norwegian tort law that the injured party must have full compensation" (p.7).*

*«Depreciation interest is an interest subsidy that is based on tort law principles, and is intended to cover the loss that the creditor has had by not being able to dispose of money he is entitled to. In the legal literature, deprivation interest is explained as «interest compensation in cases of unintentional credit where the conditions for default interest are not met» (Trygve Bergsåker, Money Claims Court, 3rd edition (2015) pp. 56–57). Depreciation interest accrues from the time a claim arises, and until the default interest begins to run" (p.5).*

<https://www.regjeringen.no/contentassets/47ccfac75c5a4778a4055b74c5e316a1/no/pdfs/prp202020210087000dddpdfs.pdf>

### 4.3. Circular Economy

Directive (EU) of the European Parliament and of the Council 2018/850. European Parliament and Council Directive 2018/850 of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste. The act was adopted on 30th May 2018, and is part of the follow-up to the EU's circular economy action plan of 2015. The work will contribute to conversion to a circular economy, where the value of products and materials is preserved for as long as possible, by using them for the longest time, possible, upgraded/repaired, and re-used products and materials. Through this, large positive effects on climate, environment and economy are achieved.

Changes in the European waste regulations will, among other things, *contribute to better design of products, reduced waste volumes, reduced waste, increased reuse and material recycling, reduced landfill* and a well-functioning internal market with fewer trade barriers. The acts are to ensure to a greater extent that all member states reach the obligations, implement the regulations and that reports are better and more comparable.

#### NMF comment:

Consumption, emissions, pollution, recycling, circular economy and sustainability are linked. NMF sees that beautiful words and promises are not followed up with action. Action is something that is required in a time of global warming.

The same applies to the strict criteria for ensuring that waste is handled in a way that does not expose human, animal, groundwater, surface water and the environment as a whole. Post-work and controlled closure of the industry are important factors, factors that cannot be followed up with regard to seafills. Monitoring and inspections shall be carried out regularly in order to detect non-conformities. seafill cannot be followed up in the same way as a landfill. NMF thus asks the question: Can seafill be allowed? The NMF believes that the seafill cannot be approved because there is no directive regulating the type of “dynamic landfill” in the sea.

Nor does this directive refer to seafill: Directive 2006/21/EC of the European Parliament and of the Council of 15th March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC.



According to the waste management hierarchy, landfilling is the least preferable option and should be limited to the necessary minimum. Where waste needs to be landfilled, it must be sent to landfills which comply with the requirements of Directive 1999/31/EC on the landfill of waste. The objective of the Directive is to prevent or reduce as far as possible negative effects on the environment, in particular on surface water, groundwater, soil, air, and on

human health from the landfilling of waste by introducing stringent technical requirements for waste and landfills.

This complaint can demonstrate a number of breaches of the directives. Seafill is virtually impossible to follow up and the negative effects are great. Why is it okay to dump waste in the sea? The landfill directive defines the different categories of waste (municipal waste, hazardous waste, non-hazardous waste and inert waste) and applies to all landfills, defined as waste disposal sites for the deposit of waste onto or into land. Landfills are divided into three classes:

- landfills for hazardous waste;
- landfills for non-hazardous waste;
- landfills for inert waste.

**The Directive 1999/31/EC does not apply to:**

- the spreading on the soil of sludges (including sewage sludges and sludges resulting from dredging operations);
- the use in landfills of inert waste for redevelopment or restoration work;
- the deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment and storage of mineral resources as well as from the operation of quarries;
- the deposit of non-hazardous dredging sludges alongside small waterways from which they have been dredged and of non-hazardous sludges in surface water, including the bed and its subsoil.

**A standard procedure for the acceptance of waste in a landfill is laid down so as to avoid any risks, including:**

- waste must be treated before being landfilled;
- hazardous waste within the meaning of the directive must be assigned to a hazardous waste landfill;
- landfills for non-hazardous waste must be used for municipal waste and for other non-hazardous waste;
- landfill sites for inert waste must be used only for inert waste;
- criteria for the acceptance of waste at each landfill class must be adopted by the Commission in accordance with the general principles of Annex II.

**The following wastes may not be accepted in a landfill:**

- liquid waste;
- flammable waste;
- explosive or oxidising waste;
- hospital and other clinical waste which is infectious;
- used tyres, with certain exceptions;
- any other type of waste which does not meet the acceptance criteria laid down in Annex II.

**The directive sets up a system of operating permits for landfill sites. Applications for permits must contain the following information:**

- the identity of the applicant and, in some cases, of the operator;
- a description of the types and total quantity of waste to be deposited;
- the capacity of the disposal site;
- a description of the site;

- the proposed methods for pollution prevention and abatement;
- the proposed operation, monitoring and control plan;
- the plan for closure and aftercare procedures;
- the applicant's financial security;

An impact assessment study, where required under Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

#### NMF comment:

Provenly the landfill is very strictly regulated, which abruptly ceases in the sea! *Seafill cannot be regulated, reversed or cleaned up (aftercare) and shut down*, an irreversible process, no way back. Thus, we come to the next chapter where the NMF presents a selection of examples that show damage to the aquatic environment related to seafill. The examples are related to each other with special regard to the status of “National salmon fjord”.

#### 4.4. Repparfjord



Figure: Repparfjord

**Repparfjord is a national Salmon fjord.** On February 14th 2019, the Ministry of Trade and Fisheries granted Nussir ASA an operating license for mining and establish seafill. Nussir ASA is a mining company, established in 2005, which controls the rights to extract copper both at Nussir and Ulveryggen in Kvalsund municipality.

Nussir has applied to deposit between 1 and 2 million tonnes of mine tailings annually, for a mining period of between 20 and 30 years. Assuming 2 million tonnes of departure each year for 30 years, this resulting in a total of 60 million tonnes of tailings dumped into the sea.

**Dumping such large amounts of tailings into the sea is certainly problematic, as history shows:**

Repparfjord a biotope that previously supported a diverse life and untouched life before 1971, after 9 years of mining, the seafill area extinguished all kind of life. **Here the condition is nothing but “very poor”.**

The deposit of mine tailings in the Repparfjord can still be chemically traced in the surface sediments in the inner part of the Repparfjord. **It is more than 40 years since the mine**

**operations ceased, and at that time less than a tenth of what can be deposited with today's permit was dumped.**

Fishing resources in the Repparfjord have been greatly reduced compared to the 1950s and 1960s, but there is nothing in the way for them to rebuild. In the aftermath, several fish stocks have been at a low target for various reasons, including Norwegian spring spawning herring and North Sea herring. These stocks have come back strongly and today generate large revenues - thanks to good management, which is based on solid marine research, among other things. The less the environment in the Repparfjord changes, the greater the chances of fish stocks picking up again.

Surveys in the Repparfjord show that the cod have been spawn since 2015 both at the border of the seafill, in the seafill itself and also within the seafill area. Where spawning occurs exactly in the fjord varies slightly from year to year. **How the discharges of mine tailings ten times as large as the emissions in the 1970s will affect cod spawning, eggs and larvae is currently unknown. But in the impact assessment, there is stated “medium/large negative” consequence for the spawning area and “medium negative” consequence for the breeding area for fish in the Repparfjord.**

<sup>1</sup>Dispersion of historically deposited copper-mine tailings in Repparfjord was shown to be limited. Despite this, there are strong indications that approx. 2-10 tonnes of copper has been dispersed from the mine tailing deposit to other parts of the fjord. These indications are based on geochemical analysis of sediment in the deposit as well as in other parts of the fjord, and on difference in how copper is bound to the mine tailing sediments and the natural sediments in the fjord. By applying an electric field to newly processed copper mine tailings from the Nussir/Ulveryggen ores, thereby extracting and separating metals and mine tailings, it was shown that up to 70 % of copper in the mine tailings could be extracted. By using this method, an additional 1000 tonnes of copper per year could be extracted compared to the existing extraction method to be applied when the mine re-opens.

<https://www.hi.no/hi/nyheter/2019/april/innlegg-konsekvenser-av-gruvedeponi>

**Today; 40 years later, one of the mining company's marine biological experts triumphed when discovered some very few hints for life in an area that was experimentally built seafill.**

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<sup>1</sup> 195160\_EWMA\_Endreport



Figure: Planned affected area

**NMF comment:**

Permission has been granted for the extraction of copper concentrate with silver and gold as by-products in Nussir and Ulveryggen in Kvalsund municipality. This will produce two million tonnes of heavy metal-containing mining tailing annually. Because the mine is to be operated as an underground operation, it would have been entirely possible to fill about half of the tailings back into the mine, but still the mining company Nussir has been allowed to dump everything in Repparfjord.

The tailings that Nussir ASA will dump in the fjord consists of finely ground stone dust with high levels of the heavy metals **copper, nickel and chromium, as well as added chemicals**. The content of heavy metals in the mining industry is so high that it will exceed established limit values and be acutely toxic to many marine organisms. **The concentration of copper is far above the limit for condition class “very poor”**. The fish's sense of smell is inhibited, which will particularly affect the salmon during the vulnerable migration period from river to sea.

About 0.15 % of the mine tailings, equivalent to 3000 tonnes per year, will be nanoparticles. There will be around 1500 tonnes of silica (SiO<sub>2</sub>) nanoparticles, 290 tonnes of alumina (Al<sub>2</sub>O<sub>3</sub>) nanoparticles and 70 tonnes of iron oxide (Fe<sub>2</sub>O<sub>3</sub>) nanoparticles each year. These are types that are known to have toxic properties in the marine environment and can be accumulated through the food chain.

The discharge will affect the fjord's good stocks of cod, saithe, herring, haddock, halibut and flounder. The Sami Parliament has argued that it would be irresponsible to allow mining based on the environmental consequences the dumping of mine tailings in Repparfjord would have for Sami culture, reindeer herding, indigenous sea fishing, exploitation and community life.

In December 2015, there was a report showing that even very small concentrations of particles can have a strong negative impact on fish, especially fish eggs and larvae, which could have a negative impact on spawning and growing up far beyond the seafill site itself.

In the interests of society's best interests and for socio-economic reasons, it is important to facilitate good growing conditions for the wild fish stocks. Life in the sea, coast, rivers and waterways is our eternal basis of life. Seafill is a short-term gain that results in degradation of the aquatic environment.

#### 4.5. Førdefjord



Figure: Førdefjord

**Førdefjord is a national Salmon fjord.** In 2016, the mining company Nordic Mining ASA received a clear signal from the Government to start extraction of rutile (titanium dioxide) from Engebøfjellet (Engebø-mountain) in Naustdal municipality. The company was also allowed to deposit masses from operations in the outer part of Førdefjord.

The company applies<sup>2</sup>, among other things, for permission to establish a seafill for departure masses in Førdefjorden in Naustdal and Askvoll municipalities within a restricted area regulated for seafill. An application is made to deposit a total of 250 million tonnes of mining waste corresponding to about 140 million m<sup>3</sup> in the seafill. This entails a refill from approx. -320 meters and up to -150 meters. The area that is regulated for seafill has an area of 4.4 km<sup>2</sup>. Permission is also sought to establish a seafill for debris in Engjabødalen, to operate processing plants at Engebø, and to carry out blasting and other activities in the mining area that may cause dust emissions, noise and vibration.

<sup>2</sup> Nordic mining\_engebofjellet\_anbefaling130215

On Friday, October 4th 2019, the Institute of Marine Research (IMR) sent a consultation statement to the Directorate for Mineral Management regarding an application for an operating license for the extraction of rutile in Engebø-mountain near Førdefjord. The conclusion from the researchers is clear: IMR considers that the knowledge base laid down in the operating license for extraction has clear academic deficiencies. **Seafill in Førdefjord does not represent a sustainable use of the fjord.** This is based on an overall assessment of the expected effects on the ecosystem, says Terje van der Meeren, the HI researcher who has led the work on the consultation opinion.

<https://www.hi.no/hi/nyheter/2019/oktober/hi-om-gruvedrift-i-fordefjorden-ikke-berekraftig>

### Consultation statement given by IMR in 2019

#### Overall assessment:

*IMR considers that the knowledge base laid down for the production license for extraction has obvious technical shortcomings. Recent surveys of mining deposits from other fjords have shown that it takes many decades for the fjord ecosystem to return to normal. Mine tailings deposited in Førdefjord, as proposed, will lead to very long-term and significant ecosystem degradation and, in our opinion, does not represent a sustainable use of the fjord.*

Our view is based on an overall assessment of possible effects on the ecosystem in the fjord, and that the measure will affect a significant area of the deep parts of the water body “outer Førdefjord”. Our assessment is based on uncertainty related to the dispersion of fine particulate matter and nanoparticles, effects of emissions and recovery on spawning and rearing area for coastal cod, loss of habitat for vulnerable red-listed species, effects on benthic and plankton, release of chemicals, and time for restoration of a species diversity corresponding to what is expected without the seafill. New surveys from the Jøssingfjord south of Rogaland show that it is taking very long before nature manages to take back the fjord. Although it is now more than 30 years since the emissions from Titania ceased in parts of the fjord, the ecosystem there still remains as strongly influenced by the mine emissions.

The sea and coast are under increasing pressure with regard to climate change and pollution, while these areas will be important for future seafood production and value creation based on renewable resources. In this context, it is important that productive fjord and coastal ecosystems are used in a sustainable way. HI is also of the clear opinion that there should be a monitoring program before the DMF processes the application for an operating permit. Below we discuss in more detail the various elements of the application.

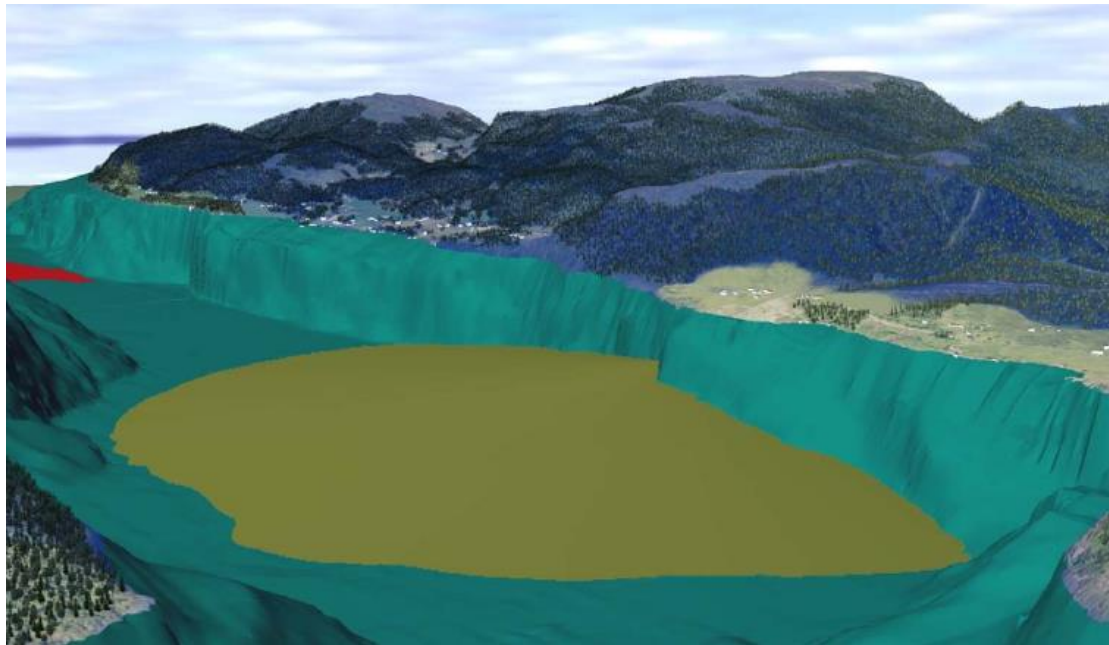


Figure: Seafill illustration

## 5.0. Conclusion

NMF does not oppose the industry, but the industry should not pollute its surroundings. The mining history in Norway is full of illegality and pollution, nor have the Norwegian authorities behaved properly. It is therefore strange that the Norwegian authorities invoke the use of 2000/60/EC Article 4(7) as it turns out that the Norwegian authorities do not act lawfully.

This complaint proves that dumping of mining waste in Norwegian fjords leads to poor condition. Examples of this are historical dumping in Repparfjord and assessment of Førdefjorden where the Institute of Marine Research (IMR) is clear that dumping must not be practiced.

***This complaint points to a new factor where the NMF has determined that Norway violates Article 61 of the EFTA Agreement.*** Article 61 affects ESA's core economic area and mandate. By supporting the mining companies in dumping mining waste in the Norwegian fjords, the mining companies are favoured. NMF believes that state aid is only intended to compensate for damage caused by natural disasters or other exceptional events. Business-based mining activities that receive support from the Norwegian state to dump mining waste in Norwegian fjords are in breach of Article 61.

WFD is clear on the "Polluter pay principle". The mining companies' expense of dumping mining waste in Norwegian fjords has been eased on the indigenous population, the coastal fisherman and nature itself.

Through this complaint, NMF has shown how strictly 1999/31/EC Landfill of waste and 2008/98/EC Waste regulate landfills. Why should it be allowed to dump mixed waste directly into vulnerable Norwegian salmon fjords?

Norwegian researchers can point to very poor conditions in areas that have historically been affected by mining. Dumping of mining waste has resulted in the sediments being supplied with copper, nickel and chromium, as well as added chemicals. Repparfjord a biotope that previously supported a diverse life and untouched life before 1971, after 9 years of mining, the landfill area wiped out all kinds of life. Here the condition today is "very bad".

Prop. 87 L (2020–2021 shows a good choice of direction if the consideration of polluters pays the principle. NMF asks ESA to take this into account, even if the proposition has not been considered.

Seafill is not the same as landfill. It is impossible to regulate seafill in the same way as for landfill. Tailings/waste that is deposited directly into the sea is impossible to regulate. On the latitudes that Repparfjord is located, nature is even more sensitive to changes. Seafill pose too much damage to the aquatic environment. No one can guarantee good environmental condition.

Norway must abandon the role of front figure for the three nations in the world (Papua New Guinea and Turkey as with Norway) that do not practice a national total ban on dumping of mine tailings in coastal waters and fjords.

Polluter pays principle must apply and it is not right the bill is eased on coastal fishermen, reindeer owners, neighbors and indigenous people.

**ESA must ask Norway to stop subsidizing the mining companies with huge amounts when they get the green light for a landfill - without paying a penny to the community. This is in clear violation of the EEA agreement art. 61.**

**Only landfill ensures good enough control. The polluter pays principle should apply in full.**

Best regards,



Ruben Oddekalv  
(leader)



Rune Birger Nilsen  
(caseworker)