

Ministry of Employment and Innovation

Fjarðalax hf
Strandgata 43
460 Tálknafjörður

Objection

On the day of October 26, 2018, the Ministry of Employment and Innovation has received objections from supreme court attorney Óttar Yngvason on behalf of his representees on review of temporary operating licence for Fjarðalax hf., where the possible issuance of the temporary operating licence from the Ministry is completely protested. The review was submitted on behalf of The Icelandic Nature Conservation Association (Náttúruverndarsamtök Íslands), Nature Conservation Group LAXINN LIFI, Akurholt ehf. and Geiteyrar ehf., owners of Haffjarðarár in Hnappadalur, Ari P. Wendel, owner of Kirkjuból in Arnarfjörður and fishing rights holder in Fífustaðadalur, Víðir Hólm Guðbjartsson, owner of Grænuhlíður in Arnarfjörður and fishing right holder in Bakkadulur, Atli Árdal Ólafsson, partial owner of fishing rights in Hvannadalsá, Langadalsá and Þverá on the inner Ísafjarðardjúp and Varplands ehf., partial owner of fishing rights in Langadalsá and Hvannadalsá on the inner Ísafjarðardjúp and Fishing Group Veiðifélag Laxár in Ásar. A claim was made to reject the issuance of the temporary operating licence for the abovementioned salmon farming operations in open sea pens in Patreksfjörður and Tálknafjörður. Following comments and objections were made to the review regarding the possible issuance of a temporary operating licence.

A. Reference is made to the clause of the law no. 108/2018, on the amendment of the Act on Fish Farming, with subsequent changes violates two international agreements, firstly Aarhus Agreement and secondly the EEA agreement of the provisions of directive 2011/92/EU and law no. 106/2000 and Act no. 130/2011. The Aarhus Agreement was violated when the bill on the law amendment was submitted to Alþingi at noon on October 9, 2018, and processed with variants of the parliament on the same day, without the appearance of commentary of the abovementioned opponents nor commentary of the public. The bill has also not been submitted for review to the Environment and Transport Committee of Alþingi. Moreover, the legislation violated the Aarhus Agreement, as certain rulings of the Environmental and Natural Resources Board of Appeals were not adherent to the legislation and the application of the provisions of the law. The rulings were invalidated once the law had been enforced. Environmental protection organisations in Iceland were unable to address the matter of the temporary operating license before the courts due to the non-submission of the license for review by the Environmental and Natural Resources Board of Appeal, as stipulated in the final clause of Article 1 of the Amendment Act. As a result, *"legitimate rulings of an independent and unassociated adjudication board established in Iceland for the specific purpose of providing fair proceedings in certain environmental matters in accordance with international agreements, would be nullified and environmental matters would be deprived of rightful proceedings"* as stated by supreme court attorney Óttar Yngvarson on behalf of his representees. The objections state that the above mentioned is a serious violation of the third pillar of the Aarhus Agreement, as there is a right to submit the decisions, actions and inaction of the government to an independent and impartial

adjudicator especially in the context of projects with significant environmental ramifications, i.e., 9. cf. 6. art. of the agreement. Furthermore, objections state that the legislation goes against the provisions of Directive 2011/92/EU. It is pointed out that in accordance with Article 11 that directive stipulates that decisions granting licence for projects or operations which have significant environmental impact must be available to be brought before court or other independent and impartial adjudicator by parties with legally protected interests, i.e., environmental protection organisations. The law and its intended implementation aim to make it practically difficult or impossible for the aforementioned objectors to seek their rights before independent and impartial adjudicators. Moreover, the legislation establishes a rule that deviates from the usual practice in Iceland, where administrative decisions are typically directed to the highest-level administrative bodies. Consequently, the fundamental principles of EEA law regarding efficiency and equality are being violated. The requirement for a licence of this nature, specifically a temporary operating licence, lacks a foundation in the rules of EEA law governing the issuance of permits for assessable operations. It is argued that the aforementioned provisions of the two international agreements, of which Iceland is a signatory, are commonly acknowledged as equitable procedures regarding environmental matters.

B. It is referred to that the Ministry is obliged to carry out the duty of investigation according to the administrative law when issuing a temporary operating licence. The licensing process proceeds in accordance with various regulations, including the Fish Farming Act, ensuring precise adherence to all requirements outlined in Section III of said legislation, particularly emphasising compliance with Article 8. Specifically, attention is drawn to the requirement for the operator to present a sea-use authorization certificate. Additionally, the application must demonstrate confirmation of at least 30% self-financing for the fish farm.

C. It is further emphasised that, in accordance with paragraph 2 of Article 7 in the Fish Farming Act, the applicant is obligated to comply with the regulations pertaining to health standards for farmed animals and their products, as well as the prevention and control of particular diseases in farm animals.

D. Reference is made to the requirement for a copy of the decision issued by the National Planning Agency, indicating the exemption of the project from evaluation or consideration by the institution responsible for environmental impact assessments, as stipulated in the Environmental Impact Assessment Act no. 106/2000. It is emphasised that environmental assessment is mandatory for specific projects under this legislation, and in the case of the salmon farm Fjarðalax hf., such an assessment is mandatory. This obligation remains unchanged by the enactment of a law that issues a temporary licence, as opposed to a licence issued under Article 13 of the Act, which was deemed invalid due to a significant deficiency. It is emphasised that a comprehensive assessment is essential to determine whether the company should be permitted to engage in aquaculture operations, considering various legal infringements.

E. Reference is made to Fjarðalax hf. 's assertion in its application that the company's right to appeal to the courts must be genuine and effective. Opponents argue that the operating party lacks justification to engage in unlawful operations, which they undertake at their own risk despite numerous warnings and objections, particularly regarding the absence of alternative analyses since 2015 when opponents initially raised this issue in the environmental assessment. The principle that parties cannot circumvent government decisions by resorting to legal action

and suspending the decisions' legal effects in the interim applies in this instance, as it does in all similar cases. Based on the case data, the only conclusion that can be drawn is that the company has taken it upon itself to enhance its preparation and conduct it in compliance with laws and regulations.

F. It is noted that the interests of Fjarðalax hf. seem to be restricted in this instance, given that the fish fry were only released approximately four months ago and are still small, potentially allowing for their relocation to other fish farming areas.

G. It is referenced in the submitted documents from Fjarðalax hf. that no remarks were provided concerning alternative analyses during the licensing process. Opponents believe this statement to be false. Comments to this effect were made in the opponent's letter submitted to the National Planning Agency in December 2015 regarding the preliminary assessment report. That issue has not been addressed at the time, but that does not alter the fact that the comment was certainly made as soon as the objectors had the opportunity to do so. The procedure is part of the licensing process according to law no. 106/2000. The objectors also refer to the fact that a similar comment was made in letters to the Environment Agency of Iceland on May 15, 2017, and August 21, 2017, in connection with the proposed operating licence issuance in accordance to law no. 7/1998. Therefore, it is apparent that comments were made at all stages of the licensing process. Therefore, Fjarðalax hf. had no legitimate expectations, and it is implausible that the company acted in good faith, given that art. 9 of Act no. 106/2000 mandates the presentation and evaluation of alternatives.

H. The objections raised against Fjarðalax hf. 's application emphasise that the concerns of opponents, the general public, and the environment, which represent broader societal interests, are significant factors in this matter. Environmental assessment is unlikely to occur in isolation from these broader considerations. As of now, the interests of Fjarðalax hf. seem to be considerably restricted, given that no fish farming is scheduled until mid-2019. There are objections regarding the company's unusual multiplier figures concerning future production value. Discussions about widespread layoffs, bankruptcy, and the collapse of the company's operational assumptions are deemed inappropriate and appear to be fear mongering, as these claims lack factual basis, especially considering there are currently no full-time employment positions established for the upcoming fish farm in Patreksfjörður.

I. Opponents protest the claims that salmon farming has reversed negative population trends in the region and point to Statistics Iceland's figures on population trends in Vesturbyggð and Tálknafjörður in 2015-2017. The population of Tálknafjörður has decreased by 59 in these three years, while the number of people living in Vesturbyggð has increased by a total of 16 in the same three years.

J. There has been no thorough evaluation of interests conducted, partly due to proposed fish farming projects in Patreksfjörður and Tálknafjörður, and partly due to the concerns of over 1,800 farmsteads reliant on income from salmon and trout fishing benefits. There are about 5,000 registered farmstead owners. According to estimates by the Economics Department of the University of Iceland, the economic revenue generated from these natural resources amounts to approximately 15-20 billion per year, as well as creating around 1,200 jobs annually, primarily in vulnerable rural communities across the country. The sanctity of property rights is

paramount, and there exists a genuine threat that the implementation of the fish farmers' proposals could severely disrupt fishing benefits in Iceland, leading to substantial damages. The opponents are deeply concerned about preserving the habitats of numerous salmon and trout fishing rivers, safeguarding them from the risks posed by lice infestation and pollution stemming from foreign-bred farmed salmon. There is apprehension that such salmon, which may inevitably escape from the proposed sea pen farms in Patreksfjörður and Tálknafjörður, will pose threats to the local ecosystems. It is certain that the farmed fish will spread into the fishing rivers across the whole country and as the recent experience demonstrated, together with transmission of lice and disease, as well as significant faecal and feed residue contamination in the vicinity of the fish farming pens. Farmed salmon have already become present in various fishing rivers in the country, and without any escape damages being announced as reported by the media. Based on reports from the Icelandic Marine and Freshwater Research Institute, both domestic and international experiences indicate that all fishing rivers in the country are at risk, regardless of the location of fish farms.

K. The objections emphasise that 100 primary salmon fishing rivers listed by the National Fishing Association account for approximately 400 salmon fishing licences and yield a combined catch of 40,000 to 50,000 salmon. The average value of each fishing rod is calculated to be at least 500 million ISK. The total value of these 100 salmon fishing rivers is then estimated to amount to about 200 billion ISK. These natural resources are all in greater or lesser danger due to the threat of the Norwegian bred fish escaping from sea pens. These immediate interests are considerably more significant than the aquaculture endeavours of Norwegian moguls and large-scale fish farming corporations seeking unauthorised and cost-free utilisation of Icelandic fjords- not to mention the destruction of the country's unspoiled nature, which cannot be measured in monetary values. Therefore, there are no less rural considerations behind the objections and complaints that are pending in this case. Revenue generated from the utilisation of Icelandic watercourses containing salmon stocks plays a vital role in sustaining settlements within communities that face challenges stemming from the decline of traditional agricultural industries. It is therefore in the public interest that salmon farming in open sea pens does not take further root. The value of Icelandic nature cannot be calculated; however, it is clearly put in jeopardy in this case.

L. It is pointed out that according to the responses of Fjarðalax hf. dated October 16, 2018, the biomass of exposed fish fry in August 2019, which is the maximum period of validity of the temporary operating licence, if the Ministry imposes its illegal issuance, will amount to 3,050 tons. This represents the highest allowable quantity under such a temporary operating licence. In this regard, attention is drawn to the fact that the estimated releases of fish fry in Tálknafjörður in June and July 2019 will only amount to a few tons.

M. There is no available information regarding the number of employees specifically at the recently initiated Fjarðalax hf. facility in Patreksfjörður under the invalidate permits. Instead, only data on the overall workforce of the entire Arnarlax hf. group is provided.

N. Óttar Yngvason, on behalf of his representees, considers both the The Icelandic Food and Veterinary Authority and National Planning Agency to be unqualified to provide a correct

review according to the request of the Ministry of Employment and Innovation regarding the application of Fjarðalax hf., according to Paragraph 2 Article 21 c. Act no. 71/2008 on operating licences for salmon farming in open sea pens in Patreksfjörður and Tálknafjörður. The ineligibility is grounded in the principles of administrative law, wherein an administrative body is requested to review a decision it has previously made, which has subsequently been deemed invalid by a higher administrative authority (Environmental and Natural Resources Board of Appeal). The review provided by The Icelandic Food and Veterinary Authority on October 22, 2018, is protested in its entirety due to the institution's unqualification. Review of the National Planning Agency from October 22, 2018 is also opposed in its entirety due to the institution's disqualification, as the institution has previously publicly stated that it no more agrees than the Environment Agency of Iceland and the The Icelandic Food and Veterinary Authority with the final decision of the higher authority (Environmental and Natural Resources Board of Appeal), which gave the National Planning Agency's opinion on the matter in 2016 failing grade in their rulings in the matter.

O. It is pointed out that the National Planning Agency underscores the absence of provisions in the new amendment Act no. 108/2018 regarding the oversight of temporarily issued operating licences. This supports the opponents' argument that such licences, contravening general legal norms, lack a legitimate foundation on the legal field.

P. Reference is made to the review of the Icelandic Marine and Freshwater Research Institute on November 27, 2017, where it is stated, among other things, that the scale of the project is unprecedented in Iceland and poses a high risk, particularly concerning issues such as salmon lice. The review also states that in the fall of 2017, farm salmon were caught in Arnarfjörður and Laugardalsá in Ísafjarðardjúp, but no accidental release has been reported. In summary, almost a year ago, the Icelandic Marine and Freshwater Research Institute pointed out that the situation had significantly evolved from when the assessment report was compiled between 2014 and 2016, a factor upon which the National Planning Agency's opinion from 2016 was based. In the opinion of The National Planning Agency, it is stated "that the establishment of hybrids within the relevant salmon population would result in permanent and irreversible effects." The Icelandic Marine and Freshwater Research Institute is in agreement with this assessment. It is stated that the The Icelandic Marine and Freshwater Research Institute provided feedback on the calculations presented in the assessment report of Fjarðalax hf. and Arctic Sea Farm hf. regarding the estimated number of farmed salmon likely to escape from the fish farms and enter the rivers.

Q. In the objections, it is rejected that there is only one formal defect in the issuance of the revoked operating licence. There were numerous deficiencies of various types, encompassing both formal and substantive shortcomings. Opponents emphasise the decision of the environmental and natural resources committee in case no. 5/2018 was primarily influenced by one of the complaints. Specifically, that no efforts were made at any stage of the procedure to explore alternative options beyond those chosen by the licence holder. Therefore, there was no reason on the part of the board to separately discuss the other grounds of the complaint. Opponents believe that the ministry is obliged, as the authority issuing licences, to consider all the same points and suggestions regarding the decision on the possible issuance of a temporary

operating licence as discussed in the complaint case. In this context, opponents refer to various factors, including but not limited to, the objective clause of Article 1 of the Fish Farming Act no. 71/2008, statements found in the developer's assessment report, the licensing process of The Icelandic Food and Veterinary Authority, legal authorizations for the use of marine areas, comments from the Icelandic Marine and Freshwater Research Institute regarding the size of the fish farms, distance restrictions between sea pens, property rights of other stakeholders, waste management considerations, potential violations of certain provisions of the law on nature conservation, the opinion of the Heritage Committee for Agriculture dated June 6, 2017, and lastly, the risk assessment of genetic mixing published by the Icelandic Marine and Freshwater Research Institute dated July 14, 2017, among others. In this context the opponents refer to, among other factors, the objective clause 1. art. Fish Farming Act no. 71/2008, various statements in the developer's assessment report, The Icelandic Food and Veterinary Authority's licensing process, legal authorizations for the use of marine areas, the Icelandic Marine and Freshwater Research Institute comments on the size of the fish farm, distance limits for sea pens, the property rights of other interested parties, the amount of waste, whether the sea pen farm is contrary to certain provisions of the law on nature conservation, the opinion of the The Icelandic Genetic Resource Council dated June 6, 2017 and finally the risk assessment of genetic mixing published by the Icelandic Marine and Freshwater Research Institute dated July 14, 2017, taken for example.

R. Finally, it is pointed out in objections that in the environmental assessment there is a comment from a veterinarian of fish diseases at the The Icelandic Food and Veterinary Authority, dated October 26, 2015 to the National Planning Agency regarding the initial assessment report of the project operator, where it is stated: "After reading the report, the conclusion is that no substantial comments are made in terms of the health area, and it seems that the most important aspects are all in place." Similar results are presented in several reviews of the mentioned party about salmon farming in sea pens. Given the media reports last year concerning the private business dealings of this expert, who is also a public sector employee selling vaccines to salmon farming companies, one may be led to question the impartiality of his opinion as an expert and employee of The Icelandic Food and Veterinary Authority, the entity responsible for issuing the operating licence for the project. This raises concerns that his involvement may compromise the integrity of the entire case treatment, particularly if his impartiality is deemed questionable, constituting a significant breach of the provisions outlined in Administrative Law no. 37/1993 and other relevant laws.

Conclusions

General

In the application for the temporary operating licence, reference is made that on September 27, 2018, in case number 5/2018, the Environmental and Natural Resources Board of Appeal revoked the approval granted by The Icelandic Food and Veterinary Authority from December 22, 2017, for an operating licence allowing 10,700 tonnes of annual salmon production in sea pens in Patreksfjörður and Tálknafjörður. Furthermore, the Environmental and Natural Resources Board of Appeal additionally rejected request of Fjarðalax hf. to temporarily halt the legal consequences of the aforementioned decision until a court ruling on its legality is

rendered. In view of this, Fjarðalax hf. applies for issuance of a temporary operating licence for the annual production of 10,700 tons of salmon in sea pens in Patreksfjörður and Tálknafjörður with a validity period of 10 months according to Paragraph 2 Article 21 c. Act no. 71/2008, on fish farming.

The Environmental and Natural Resources Board of Appeal concluded that an environmental assessment report from Fjarðalax hf. and the opinion of the National Planning Agency on the report cannot serve as a valid foundation for decisions regarding the issuance of operating licences. The board believes that The Icelandic Food and Veterinary Authority should have ensured that the matter was sufficiently informed, i.e., by making sure that the statutory opinion of the National Planning Agency was based on a sufficiently solid basis for licence issuance. The board determined that this requirement was not fulfilled in instances where multiple alternatives needed to be presented during the environmental impact assessment. It was essential to obtain a comparison of the environmental impacts of various alternatives as mandated by law. This was crucial to enable the licensee to make a sufficiently informed decision and thoroughly investigate the case to assess whether, and in what manner, the licence could be granted in compliance with legal requirements.

Article 21 c. of Act no. 71/2008, on fish farming, deals with activities that are run without an operating licence, but the provision states that if a fish farm is operated without a valid operating licence, the The Icelandic Food and Veterinary Authority must stop its operations. If the need arises, the police must provide the The Icelandic Food and Veterinary Authority with assistance for that purpose. The Icelandic Food and Veterinary Authority is authorised to slaughter or dispose of aquaculture animals, dismantle equipment used in the operations, and undertake any other necessary measures. These actions are to be carried out at the expense of the party who has conducted fish farming operations without the required licence. Aquaculture animals which may be suitable for human consumption must be sold and the proceeds must go to the national treasury, excluding the costs incurred by the The Icelandic Food and Veterinary Authority in the sale procedure, must go to the treasury. The legal consequence of the aforementioned decisions by the Environmental and Natural Resources Board of Appeal is that the Icelandic Food and Veterinary Authority is obliged, in accordance with Article 21 c. in Act no. 71/2008 on fish farming, to cease the operations governed by the operating licences subject to the rulings.

The aforementioned application of Fjarðalax hf. on the request for a temporary operating licence for fish farming in Patreksfjörður and Tálknafjörður is presented on the basis of paragraph 2. Article 21 c. Act no. 71/2008 on Fish Farming. As per the regulation, if there are deficiencies in licensing, and upon receiving the opinion of the Icelandic Food and Veterinary Authority, the minister can, under compelling circumstances, grant a temporary operating licence for a duration of up to ten months. This can be done if an application for such a licence is submitted by the holder of the revoked licence within three weeks following the revocation.

General conditions of paragraph 2. Article 21 c. Act no. 71/2008

The revocation of the operating licence for Fjarðalax hf. was a result of deficiencies in licensing, placing the company's application for a temporary operating licence within the purview of paragraph 2. Article 21 c. Act no. 71/2008 on fish farming.

In paragraph 2 Article 21 c. Act no. 71/2008 on fish farming includes a provision specifying that the application for a temporary operating licence must clearly articulate the purpose of the licence, the rationale behind it, and the proposed operations during its validity period. Based on the presented application and the additional documents submitted, Fjarðalax hf. has indicated its intention to challenge the decisions of the Environmental and Natural Resources Board of Appeal in a court of law. Temporary operating licence is therefore intended to bridge the gap until the final decision of the courts is acquired. Additionally, it is stated that concurrently with the legal proceedings, Fjarðalax hf. is actively seeking avenues to address the purported deficiencies in the environmental assessment of the project. This collaborative effort involves consultations with the National Planning Agency, the Icelandic Food and Veterinary Authority, and the Environment Agency of Iceland. The application outlines the legal arguments and bases upon which Fjarðalax hf. grounds its application. The Ministry deems application of Fjarðalax hf. satisfactory regarding compliance with legal conditions, as it enables the minister to evaluate the relevant interests and determine if conditioning such a licence is necessary to accomplish its objectives.

On the data obtained as a result of the operating licence revocation

It is stated in paragraph 2. Article 21 c. Act no. 71/2008 on fish farming, that a decision regarding a temporary operating licence may rely on documents acquired during the preparation of the revoked licence. In this case, the examination will focus on determining whether there are any deficiencies in the relevant data. Additionally, a separate matter of address is whether these deficiencies are substantial enough to legally preclude reliance on the available data.

In the objections of Óttar Yngvason, on behalf of his representees, there are comments on the use of the data that formed the basis of the revoked operating licence. The objections state *“It is the belief of my representees, that it is clear that the Environmental and Natural Resources Board of Appeal views that the environmental assessment was adherent to a single straightforward form flaw. On the contrary, it was held to have one fundamental form flaw, and the licence on that basis was therefore revoked. No other position was taken on other matters that could lead to the licence revocation.”* In this context, the ministry emphasises that there are no administrative or court decisions validating additional deficiencies in the existing data beyond those outlined in the aforementioned ruling by the Environmental and Natural Resources Board of Appeal in case number 5/2018. Despite this fact, the ministry deems it correct to respond to certain statements in the objections submitted by supreme court attorney Óttar Yngvason on behalf of his representees, where this aspect of the matter is concerned.

A. The objections submitted stated the obligation for the government to adhere to the principles outlined in the Nature Conservation Act no. 60/2013. This legislation mandates that government decisions impacting nature must be grounded in scientific evidence, and the comprehensive impact on nature must be thoroughly evaluated. The objections cite specific articles from the Nature Conservation Act, such as Articles 1 and 2, emphasising the significant precautionary principle outlined in Article 9. Additionally, reference is made to Article 63 of the Act on the Importation and Distribution of Living Alien Organisms. Furthermore, it is noted that

The Icelandic Food and Veterinary Authority, in its capacity as the licensing authority, must take into account Article 1 of the Act on Fish Farming. This article stipulates, among other things, the necessity to safeguard wild commercial stocks, prevent potential harm to them and their habitats, and ensure the interests of those who rely on such stocks. Moreover, it is underscored that during the execution of the Fish Farming Act, utmost care must be taken to minimise disruptions to the ecosystem of wild fish stocks, ensuring that their sustainable utilisation is not endangered. The objection asserts that the practice of salmon fish farming with Norwegian-origin stock along the country's coastlines contradicts the aforementioned laws and results in detrimental genetic contamination of wild populations. Thus, i.a. confirmed in supreme court attorney Óttar Yngvason's statement on behalf of his representees: *"Fish farming of millions of fish from foreign and alien Norwegian crossbred salmon stocks will, in the view of the opponents, cause significant and irreversible damage to all wild salmon and trout populations in all rivers of Vestfjörður in a short period of time, as well as endanger all wild salmon and trout populations in the country within a few years. Reference is made here to the number of rainbow trout, which were caught in the summer and autumn of 2016, notably in rivers nationwide but predominantly in those within the Vestfjörður. The operation therefore violates Articles 1, 2 and 9. Nature Conservation Act no. 60/2013. The operation endangers the future diversity of Icelandic nature, and the independent development of Icelandic nature is no longer assured if the operation continues activity, thus constituting a breach of Article 1, Paragraph 1 of the law."* In this context, the objectors specifically cite the opinion of the Icelandic Marine and Freshwater Research Institute dated November 27, 2017 concerning the operating licence for the expanded production of Fjarðalax hf. and Arctic Sea Farm hf. in Patreks- and Tálknafjörður, in support of their argument. Taking these factors into account, the ministry wishes to emphasise that under the current law, as per the second paragraph of Article 1 of Act no. 71/2008 on fish farming, it is presumed that fish farming in the sea can be conducted without causing harm to other ecosystems. This is particularly applicable to the preservation of natural wild populations. Thus, various conditions are stipulated for fish farming activities in laws and governmental regulations. These material provisions aim to mitigate potential adverse environmental impacts and guarantee the health and welfare of farmed fish, among other objectives. Simultaneously, various conditions and requirements for countermeasures are set in the government's comments during the licensing procedure as well as in the licences themselves. This applies for example to the National Planning Agencies statements on an environmental assessment reports as well as in the licences from the Environment Agency of Iceland and the Icelandic Food and Veterinary Authority. Subsequently, the Environment Agency of Iceland and the Icelandic Food and Veterinary Authority are tasked with monitoring the adherence to these legal requirements, government directives, and licence provisions in the operations of aquaculture companies.

Apart from the overarching government stipulations concerning sea-based fish farming, the ministry leads the preparation of a genetic mixing risk assessment, which was published by the Icelandic Marine and Freshwater Research Institute on July 14, 2017. The risk assessment encompasses an evaluation of the likelihood of genetic mixing between farmed salmon and wild salmon populations, quantified as a percentage relative to the extent of sea pen farming in a specific location. Therefore, the risk assessment operates under the assumption that if the number of farmed salmon in salmon fishing rivers surpasses specific thresholds, the wild stock population will suffer irreversible damage, or the sustainable utilisation of the wild stock will be endangered. According to the scientific criteria established by the Icelandic Marine and Freshwater Research Institute, genetic admixture was only estimated to exceed the threshold in

specific rivers within Ísafjarðardjúp and Breiðdalsá. In accordance with these findings, the institute proposed restrictions on the fish farming of spawning salmon in the fjords of the Austfjörður based on the published carrying capacity as well as in Ísafjörðurdjúp. The conclusion drawn by the Icelandic Marine and Freshwater Research Institute, coupled with the consideration given to the risk assessment of genetic mixing by both the Icelandic Food and Veterinary Authority and the National Planning Agency during the processing of operating licences and environmental impact assessment procedures, emphasises the validity of objections that *“Fish farming of millions of fish from foreign and alien Norwegian crossbred salmon stocks will, in the view of the opponents, cause significant and irreversible damage to all wild salmon and trout populations in all rivers of Vestfjörður in a short period of time, as well as endanger all wild salmon and trout populations in the country within a few years.”* must be approached with caution, as the objectors have not demonstrated sufficient arguments to support their claim of irreversible damage. Therefore, the Ministry disagrees with the assertions of the opponents regarding the conflict between farming foreign-bred farmed salmon in sea pens and the cited legal provisions, as the purpose of the risk assessment was to exercise utmost caution in fish farming development and to ground governmental decisions on scientific guidance, as stipulated by the aforementioned legal provisions. In this context, it is also pertinent to note that the revoked operating licence for Fjarðalax hf. does not contradict the risk assessment published in July 2017.

B. The objections emphasise the significance of considering the opinion of the The Icelandic Genetic Resource Council from June 6, 2017, which provides the following recommendations to the government: *„According to the Icelandic Genetic Resource Council opinion, the continued issuance of licences for farming fertile salmon of foreign origin in sea pens is unjustifiable due to the state of licensing and the insufficient information regarding the impact of fish farming on wild salmon populations in Icelandic rivers. The council recommends that the government halt any additional issuance of licences for sea-based salmon farming, including those applications totalling tens of thousands of tons that have entered the formal application process.”* The ministry emphasises that the council's opinion does not directly impact fish farming licences according to existing laws and regulations. However, the government oversees specialised research institutions such as the Icelandic Marine and Freshwater Research Institute, which conducts various assessments, including bearing capacity and risk evaluations, to address potential genetic mixing concerns.

C. Opponents believe that in the case process The Icelandic Food and Veterinary Authority has *“legally protected property rights of parties, both near and far, have been entirely neglected, despite the existence of scientific evidence, particularly from Norway, highlighting significant damage caused by the operations here discussed”*. The objections state *“that The Icelandic Food and Veterinary Authority completely ignores these considerations in the operating licence. As previously stated, it is widely recognized that even a small number of farmed fish of an alien and foreign species, found in a salmon or trout fishing rivers, can rapidly tarnish the perception of pristine and unpolluted nature, as well as the reputation of the fishing rivers, thereby infringing upon the property rights of others.”*

The ministry notes that representees of supreme court attorney Óttar Yngvason's principals have not demonstrated any damage due to the operation of Fjarðalax hf., since the revoked operating licence was based on a scientific assessment which concluded that no harm would

ensue as a result. In this context, the ministry also points out that specific and objective provisions regarding compensation for damages inflicted on fishing rights holders by fish farming are outlined in paragraphs 2 and 3 of Article 18 of Act no. 71/2008. Moreover, the principle of tort law, which necessitates the injured party to demonstrate and prove their losses, is applicable in these cases.

D. Opponents claim that no interest assessment has been carried out with regard to the interests of fish farming operations on the one hand and the interests of fishing rights holders on the other. In the objection it is stated that *“In financial context, opponents claim that the 100 primary salmon fishing rivers registered in the National Fishing Association collectively possess around 400 salmon fishing licences and yield a combined catch of 40,000 to 50,000 salmon. The opponents claim that the total value of these 100 salmon fishing rivers is then estimated to amount to about 200 billion ISK. Opponents point out that natural resources are all in greater or lesser danger due to the threat of the Norwegian bred fish escaping from sea pens. These immediate interests are considerably more significant than the aquaculture endeavours of Norwegian moguls and large-scale fish farming corporations seeking unauthorised and cost-free utilisation of Icelandic fjords- not to mention the destruction of the country's unspoiled nature, which cannot be measured in monetary values.”*

The ministry reiterates the assertion that there is strong contention suggesting that the operations of Fjarðalax hf. and other sea pen farming companies will likely cause lasting harm to the benefits derived from salmon and trout fishing, as well as to the benefits associated with their utilisation. The issue lies in choosing between sea pen farming, as pursued by Fjarðalax hf., or preserving the interests of fishing rights owners in Icelandic fishing rivers. This perspective cannot be accepted. In this context, and as a reinforcement of its argument, the ministry cites its stance made in point A above.

In this context the Ministry wishes to note that objections refer to foreign academic writings in various ways. The ministry maintains that the foreign academic writings referenced do not specifically address conditions in the Vestfjörð nor Iceland as a whole. Furthermore, objectors have not demonstrated the extent to which these writings are applicable or valid in the local domestic context.

E. Representees of the supreme court attorney Óttar Yngvason note that the ministry is required, while issuing a temporary operating licence, to ensure compliance with all conditions outlined in Chapter III of Law no. 71/2008 regarding aquaculture, particularly emphasising the fulfilment of Article 8 of the law. In this context, objectors note that the operator must fulfil the condition of presenting proof of authorization for sea utilisation. It is emphasised that according to Article 40, paragraph 2, of the Icelandic constitution, the government cannot transfer the ownership or usage rights of an ocean area adjacent to the country without specific legal authorization for the particular disposition of the ocean area. Furthermore, the objectors contend that there should be a provisional confirmation of at least 30% of the fish farm's own financing in accordance with Article 8 of Act no. 71/2008.

Regarding the initial point, the ministry restates that under Law no. 41/1979 concerning territorial waters, contiguous to the territorial belt, the exclusive economic zone, and the continental shelf, the Icelandic state holds sovereign rights concerning research, utilisation,

protection, and management of resources, both organic and inorganic, on and beneath the seabed, as well as operations pertaining to economic exploitation and research within the area, as detailed in Article 4. The government has made this decision in alignment with its sovereign rights, exemplified by delineating conservation zones where salmon farming in sea pens is prohibited, as indicated in advertisement no. 460/2004. By inference, it can be concluded that the government has made the decision to allow fish farming in specific ocean areas. Under its sovereign right, the legislature can also enact regulations governing the exploitation of marine cultures, thereby potentially excluding or limiting the rights of the public. Laws such as no. 71/2008, on aquaculture, serve as examples of such restrictive legislation. It is stipulated in the 2 paragraph of Act no. 71/2008 that it encompasses the farming of aquatic fish and use of sea on "Icelandic territory". Therefore, the requirement stated in Article 8 of Act no. 71/2008, that an application for fish farming as per Paragraph 1 must be accompanied by a certificate authorising the use of land, water, and sea, takes on significance. Individuals or legal entities are unable to procure certificates for sea usage themselves; rather, they can only obtain the right to allocate sea areas for fish farming through the Icelandic state, specifically designated authorities as stipulated by law.

Regarding the latter point, Article 8 of Act no. 71/2008 on fish farming stipulates that the application for an operating licence must comprise a financing plan for structures and other equipment, accompanied by confirmation demonstrating at least 30% of the fish farm's own financing. Based on the auditor's confirmation of Fjarðalax hf. dated October 31, 2018, it is evident that the equity ratio, as per the audited financial statements of 2017 and the interim results of September 30, 2018, exceeded 30%. Furthermore, it is affirmed that considering the company's financial standing and outlined investment and financing strategies, Fjarðalax hf.'s equity is projected to remain above 30% of the investment obligation throughout the anticipated duration of the development process.

F. The objections also cite reports from the media last year regarding the business activities of a fish disease veterinarian, whom the objectors allege sold vaccines directly to salmon farming companies. Therefore the objectors believe that the review of the fish disease veterinarian in the initial assessment report, as well as being an employee of The Icelandic Food and Veterinary Authority, invalidate the entire treatment of the case after the detailed review was submitted, since the review cannot be considered impartial and the conduct is a serious violation of the provisions of Administrative Law no. 37/1993 as well as other laws.

In response to the ministry's inquiry, The Icelandic Food and Veterinary Authority clarified that all projects connected to issuance of the operating licences are managed distinctly within the organisational structure. They emphasised that these responsibilities are not assigned to a fish disease veterinarian, who has had no involvement in the case since providing health-related assessments to the National Planning Agency. The veterinarian's initial involvement in the matter began with a request for a review from the National Planning Agency concerning a proposal for an assessment plan, which had been commissioned by a surveying company. In this review, only the environmental and disease factors proposed to be examined in Verkís' evaluation plan have been assessed. The veterinarian's subsequent involvement in the matter involved a similar request for review by the National Planning Agency regarding the initial assessment report itself, which had already been submitted by that time. This report outlined the planned operations and designated operating areas. In conducting the review, the

veterinarian evaluated whether the initial assessment report adequately addressed the various aspects pertaining to health concerns in general. The employee had no other involvement in the case. The Icelandic Food and Veterinary Authority further states that the fish disease veterinarian has never maintained a direct financial connection with Arnarlax hf..

The ministry asserts that the contacts between the fish disease veterinarian from The Icelandic Food and Veterinary Authority and Arnarlax hf. did not lead to the invalidation of the revoked operating licence, nor did it impede the possibility of utilising the data that formed the basis for the operating licence issuance in order to grant a temporary operating licence.

G. Furthermore supreme court attorney Óttar Yngvason, claims on behalf of their representees that both The Icelandic Food and Veterinary Authority and the National Planning Agency are ineligible to provide a review regarding the application of Fjarðalax hf., according to Paragraph 2 21. art. c. Act no. 71/2008 on temporary operating licence. The ineligibility is based on the principles of administrative law, specifically the circumstance where an administrative authority is requested to deliberate on a decision it had previously made, which a higher administrative authority has deemed invalid.

The Ministry finds the argument presented by the objectors unclear. There are no legal provisions regarding the special qualification of legal entities. In one respect, the eligibility rules apply to employees and the government. According to Article 3, Paragraph 1, Clause 5 of Administrative Law Act no. 37/1993, a conflict of interest arises when the director of an organisation possesses a personal or significant interest in resolving a case. Additionally, all subordinates within the same organisation are subject to the provisions outlined in Article 3, Paragraph 1, Clause 5 of the aforementioned law. These clauses do not apply here. Possibly it is alleged that the employee has previously expressed a stance on the issue in question during their work. In that instance, the employee has not been deemed unqualified. In accordance with the above, the Ministry does not agree that the The Icelandic Food and Veterinary Authority or the National Planning Agency are unqualified to provide a review on the application of Fjarðalax hf.

H. Opponents state that according to information from the operating parties about the location of the farming pens, Fjarðalax hf. and Arctic Sea Farm hf. in Patreksfjörður as well as in Tálknafjörður, the distance between the pens is less than 5 km, which is the minimum distance between the breeding areas of unrelated parties, which is stipulated in Article 4. Law no. 1170/2015, on fish farming.

The Ministry emphasises that as per Article 4 of Law no. 1170/2015 on fish farming, The Icelandic Food and Veterinary Authority has the ability, following consultation with the Icelandic Marine and Freshwater Research Institute, and upon receiving a review from the local government, to permit shorter or longer distances between fish farming locations. As stated in the objections, The Icelandic Food and Veterinary Authority consulted the Icelandic Marine and Freshwater Research Institute as well as the municipalities of Tálknafjörður and Vesturbyggð regarding the distance limits. In case review of the municipalities, no comments were made on the shorter distance than stipulated in the regulation. In the review Icelandic Marine and Freshwater Research Institute stated: *“At this point the Icelandic Marine and Freshwater*

Research Institute has no additional criteria for assessing the distance between breeding areas aside from those outlined in the regulation.”

The ministry emphasises that during the issuance of the operating licence, consultation was made with the Icelandic Marine and Freshwater Research Institute, and the case reviews of the municipalities were requested, as required by the regulatory provision. The main aim of the regulations of distance between fish farming areas is to primarily mitigate the risk of infectious diseases, an area in which is in The Icelandic Food and Veterinary Authority expertise. The Icelandic Food and Veterinary Authority did not find any substantial grounds warranting a greater distance between the pens of Arctic Sea Farm hf. and Fjarðalax hf. as it happened. Therefore, the Ministry deems the procedure in accordance with the regulation mentioned above and emphasises that the opponents have not presented any substantial arguments as to why the designated farming areas cannot be utilised when issuing a temporary operating licence with consideration of the distance limits.

In light of the above-mentioned arguments of the objectors, the Ministry does not find any legal deficiency in the available data or the procedure. Consequently, it is feasible to rely on the existing data when making a decision regarding the issuance of a temporary operating licence.

The existing report on the project's environmental impact assessment and the opinion of the National Planning Agency

A separate issue to address in this case is whether it is appropriate to rely on the environmental impact assessment report submitted by Fjarðalax hf. and the case review provided by the Planning Authority regarding the report when issuing a temporary operating licence. This is especially pertinent given that the Environmental and Natural Resources Board of Appeal did not view this data as a valid basis for the decision on granting temporary operating licences.

In the objection submitted by supreme court attorney Óttar Yngvason on behalf of his representees it is stated that an environmental assessment is a legal requirement under Act no. 106/2000 for specific projects. In the case of the salmon farm Fjarðalax hf., it is emphasised that an environmental assessment is mandatory and that this obligation cannot be waived by the enactment of a temporary licence issuance law. The objection asserts that the environmental assessment in this instance was predominantly conducted between 2014 and 2016 and therefore cannot be regarded as fully effective according to the provisions of directive 2014/52/EU. Consequently, it contends that the assessment did not serve as the foundation for a new decision pursuant to Article 13 of Act no. 106/2000. Since then, a number of reports on risk assessment and the risk of genetic mixing have been published.

In this case, there is a position from the National Planning Agency regarding the issuance of a temporary operating licence for Fjarðalax hf.'s application, as per the agency's review dated October 22, 2018. The National Planning Agency's review indicates that the agency perceives the circumstances in the case to be analogous to situations where the National Planning Agency has opted to partially revise the environmental impact assessment, in accordance with Article 12 of Act no. 106/2000 on environmental impact assessments. In such instances, the procedure outlined in Articles 8 to 11 of the law applies. Additionally, the agency emphasises that in this case, it is evident which areas require further reporting, mainly focusing on specific options.

Consequently, the National Planning Agency does not deem it necessary to initiate proceedings under Article 8 of Act no. 106/2000, which pertains to the establishment of an assessment plan. Therefore, it is deemed sufficient to submit a preliminary assessment report, which will undergo a procedure as outlined in Articles 9 to 11 of the law. The National Planning Agency's review provides further elaboration on this matter:” *Regarding the report's content, the revised environmental assessment will concentrate solely on the aspects delineated in the decisions of the governing body, specifically certain alternatives. Consequently, the new initial assessment or evaluation report will exclusively address these factors, along with any additional issues that the project operators deem essential to address, contingent on the circumstances. The same principle applies to the opinion issued by the National Planning Agency at the conclusion of this process. Furthermore, the project operator's assessment report from May 6, 2016, and the National Planning Authority's opinion from September 23, 2016, remain valid in all other regards.”*

In this case, it is evident that the reason for the invalidation of the operating licence was an inadequate assessment of alternatives to the implementation, which did not comply with the law. Consequently, the operating licence for Fjarðalax hf. was revoked due to procedural flaws in the issuance process, rather than material deficiencies affecting environmental or operational aspects of Fjarðalax hf.'s operations. Therefore, formal defects in the procedure for issuing the revoked business licence do not necessitate alterations in Fjarðalax hf.'s fish farming operations.

Considering the deficiencies which resulted in the revocation of the operating licence by the Environmental and Natural Resources Board of Appeal, and the determination of the National Planning Agency that the environmental assessment can be reviewed solely concerning the deficiencies outlined in the board's decision, the ministry believes it is feasible to rely on the existing environmental impact assessment report of Fjarðalax hf. and the National Planning Agency's opinion on the report when evaluating the suitability of issuing a temporary operating licence.

Farmed fish relocation

According to the operating licence revoked by the Environmental and Natural Resources Board of Appeal, Fjarðalax hf. was authorised to engage in intergenerational fish farming, allowing for the production of 10,700 tons of salmon, with a maximum biomass limit of 12,200 tons. The licence was constrained to two specific sea fish farming zones: Area P (Patreksfjörður) encompassing the breeding areas of Hlaðseyri, Sandoddi, and Þúfneyri, and Area T (Tálknafjörður) covering the fish farming territories of Sveinseyri, Suðureyri, and Laugardal. Within each of these sea pen farming areas, Fjarðalaxi hf. was permitted to produce 5,350 tons.

According to the case documents, Fjarðalaxi hf. released 1,176,000 fish fry into sea pens between June and August 2018 at the breeding area Þúfneyri in Patreksfjörður. The company's projections suggest that the maximum biomass resulting from this placement will be reached by May 2020, totaling 5,928,000 kg, with slaughtering expected to commence in March of the same year. Estimates indicate that approximately 5,505,000 kg will be slaughtered from the fish farming area at Þúfneyri in 2020.

According to the company's plans, Fjarðalax hf. intends to release 1,750,000 fry in Laugardal, Tálknafjörður, during June and July 2019. Representatives of Fjarðalax state that the farming

process for this fry has already commenced at the company's fry stations in both Tálknafjörður and Þorlákshöfn. It is estimated that the biomass in both fish farming areas i.e., Þúfneyri and Laugardal, will reach a maximum biomass of 8,461,000 kg in February 2021.

Supreme court attorney Óttar Yngvason, on behalf of his representees, refers to the interests of Fjarðalax hf. being limited since the fry were first released into the mentioned sea pens only about four months ago, therefore still being small in size. In this way, it is still possible to relocate the fry to other farming areas by the same operator.

According to information provided by The Icelandic Food and Veterinary Authority dated October 4, 2018, it is deemed that the suggestions regarding the relocation of farmed fish from Patreks- and Tálknafjörður to nearby fish farming areas as wholly impractical and inconsistent with concerns for the welfare of the fish. The farmed fish in the fjord pens have grown to a size where they are experiencing scale loosening, rendering them susceptible to transportation. It's emphasised that given the current month is October, with temperatures starting to decrease and anticipated further drops in the coming weeks, the vulnerability of the fish increases. Additionally, it's noted that the fish are partially afflicted with kidney disease, making it infeasible to relocate them to unaffected areas. Consequently, the organisation opposes such transfers, foreseeing significant and unnecessary losses if carried out. Moreover, companies have already commenced the collection of fry for stocking in the operating licence areas of Patreks- and Tálknafjörður. This fry will not fit into the companies' other licences, which permit intergenerational sea pen farming and encompass the fry destined for those specific areas.

Based on the aforementioned concerns, the ministry finds it impractical to transport farmed fish from pens in Patreksfjörður or to rear fry for stocking in locations other than Tálknafjörður.

Criteria for substantial grounds for the issuance of a temporary operating licence

A criteria for granting a temporary operating licence is the presence of substantial grounds warranting its issuance. It is evident that without such a licence, the operations of the sea pen farm Fjarðalax hf. in Patreks- and Tálknafjörður would have to cease. Relocating the fish farm, currently situated in sea pens within these fjords, to alternative locations is unfeasible. Consequently, Fjarðalax hf. is confronted with the dilemma of either slaughtering the farmed fish currently housed in sea pens or finding alternative methods to dispose of them. Additionally, there is the challenge of dealing with the fry currently held in the company's fry farms, originally intended for rearing in sea pens in Tálknafjörður.

Therefore, the company is compelled to slaughter the farmed fish and dispose of it, rendering it unsuitable for sale as a marketable product. It is evident that these measures will incur expenses and lead to income loss for Fjarðalax hf.. Representatives of the company describe the situation as follows "*... it is clear that large-scale savings and optimization measures must be taken in order to save the company from bankruptcy, incl. mass layoffs. In fact, there is a high probability that if operations will be stopped based on the lack of a long-term operating licence, bankruptcy would be inevitable.*"

The Ministry states that Fjarðalax hf. 's activities commenced based on the now revoked operating licence, with the company having made substantial investments aligned with the operating licences issued by The Icelandic Food and Veterinary Authority. It is evident that Fjarðalax hf. will incur considerable costs and endure significant income loss in the future if

operations are halted due to revoked licences. It is not clear what the consequences will be in the short or long term, as it depends on various uncertain factors, but it is foreseen that the company will have to streamline its operations and reduce operating costs, with the associated employee layoffs in order to ensure sustainable operations. Therefore, not only will the company incur financial losses, but the repercussions of disruptions in Fjarðalax hf.'s operations will also impact the local communities where the company conducts its operations. In this context, the Ministry refers to the opinion expressed by the Icelandic Regional Development Institute dated October 15, 2018, regarding regional development in the Vestfjörðs. The institute acknowledges the significant employment impact of the Arnarlax Group within the company's operational area and emphasises the positive development resulting from the growth and activities of fish farming in the Vestfjörðs, contrasting with the negative trends in employment and population witnessed in previous decades. Given this perspective, the Ministry cannot endorse the assertions made by Óttar Yngvason's representees that salmon farming has failed to reverse the adverse regional development in the Vestfjörðs.

Supreme Court attorney Óttar Yngvason, on behalf of his representees, contends that Fjarðalax hf. did not possess legitimate expectations, and it is improbable that the company acted in good faith. This stance is based on Article 9 of Act no. 106/2000, which mandates the presentation and assessment of options. The objections raised emphasise discrepancies in Fjarðalax hf.'s assertion that no comments regarding alternative analysis were made during the licence issuance process. Opponents argue that this claim is inaccurate, leading to objections due to the absence of alternative analysis in the National Planning Agency's procedure.

In this context, the ministry wishes to emphasise that the operating party holds authority over determining which options align with the project's objectives. The National Planning Agency retains the right to request that the initial assessment report of the operating parties includes certain options. Additionally, stakeholders and the public reserve the right to request deliberation on particular alternatives, to which the operating party must respond transparently. The National Planning Agency is responsible for overseeing the developer's compliance with these obligations. Because of these statements by supreme court attorney Óttar Yngvason, on behalf of his representees, concerns were raised regarding the absence of alternative analysis in the National Planning Agency's proceedings, the Ministry sought the National Planning Agency's perspective on the case. The response from the National Planning Agency, dated November 5, 2018, indicated that *"Throughout the assessment procedure, no commenter, including agencies and licensees, requested further deliberation on alternative options. Regarding other stakeholders, various parties, including Óttar Yngvason, made comments that broadly referenced paragraph 2 of Article 9 of the Environmental Impact Assessment Act, without explicitly mentioning comparisons between alternatives. Therefore, the National Planning Agency concludes that the suggestions put forth during the evaluation process concerning alternative analysis in public comments were of a general nature and did not specifically indicate a necessity to discuss particular alternatives. Furthermore, the letters mentioned and written by Óttar, addressed to the Environment Agency of Iceland, were written subsequent to the completion of the evaluation process."*

The Ministry holds the view that considering the responses provided by the National Planning Agency dated November 5, 2018, and the agency's supervisory responsibility in conjunction with the operator's duty to explore alternatives, as well as the National Planning Agencies

stance on Fjarðalax hf.'s environmental impact assessment report, Fjarðalax hf. had reasonable expectations that the agency's assessment of the report's environmental impact and the procedural aspects adhered to legal requirements. However, in the concluding section of the opinion, it stated, among other points: "*In accordance with the Article 11 of the Act and Article 24 of the environmental impact assessment regulations, the Planning Agency has examined the assessment report submitted by the developer in accordance with Article 10 of the aforementioned law. The National Planning Agency is of the opinion that the assessment report satisfies the legal and regulatory prerequisites for environmental impact assessment.*". Same conditions apply to the issuance of the operating licence, wherein the Icelandic Food and Veterinary Authority assesses the application and accompanying data provided by the applicant. The Icelandic Food and Veterinary Authority is authorised to grant an operating licence only if the application meets the criteria outlined in Act no. 71/2008, regarding fish farming, as per Paragraph 1, Article 10 of the law. Consequently, the ministry asserts that Fjarðalax hf. also had justifiable expectations that the granted operating licence adhered to legal requirements.

Based on the aforementioned considerations, the ministry concludes that the suspension of Fjarðalax hf.'s fish farming operations will entail significant financial ramifications for the company, ultimately impacting employment growth within its operational region. The Ministry believes that these consequences, along with the inevitable and avoidable loss of value resulting from the operational suspension, can be mitigated by granting the company the authority to address any procedural deficiencies noted in the issuance process of the operating licence. This may involve seeking remedies from the relevant authorities or pursuing legal recourse through the courts. In light of these repercussions and the legitimate expectations held by the company's management regarding the legality of the National Planning Agency's opinion on Fjarðalax hf.'s environmental impact assessment report, as well as the legality of the operating licence issued by the Icelandic Food and Veterinary Authority upon which the activity is reliant, the ministry deems it excessively punitive, pursuant to Article 12 of administrative law no. 37/1993 on proportionality, to halt Fjarðalax hf.'s operations in Patreksfjörður and the planned operations in Tálknafjörður under these circumstances. In light of these factors, the ministry concludes that there are compelling reasons to recommend the issuance of a temporary operating licence for Fjarðalax hf.'s aforementioned farming activity.

International obligations

Supreme court attorney Óttar Yngvason, on behalf of his representees, considers the issuance of temporary operating licences according to law no. 108/20018 on amendments to the Act on Fish Farming, no. 71/2008, violate The Aarhus Agreement, that is "*the right to submit the decisions, actions and inaction of the government to an independent and impartial adjudicator especially in the context of projects with significant environmental ramifications, i.e., 9. cf. 6. art. of the agreement.*" Furthermore, the opponents believe that the law infringes in the same way against the provisions of Directive 2011/92/EU and Law no. 106/2000 and Act no. 130/2011.

In this regard, the ministry refers to the report with the draft law no. 108/20018 on amendments to the Act on Fish Farming, no. 71/2008, with subsequent amendments. The report refers "*Upon the ratification of the Aarhus Agreement in this country, as stipulated in law*

no. 130/2011 concerning the ruling of the Environmental and Natural Resources Board of Appeal, it's affirmed that the proposed bill, no. 108/2018, does not contravene the provisions of either the aforementioned law or the Aarhus Agreement. Consequently, the validity of the board's decisions remains unaffected by this bill, and they retain their status as final decisions at the administrative level. The bill entails that the minister will be responsible for rendering a decision regarding the issuance of a temporary permit, thereby completing the resolution at the administrative level. Therefore, such a decision by the Environmental and Natural Resources Board of Appeal cannot be subjected to appeal, as the bill does not allow for it. Furthermore, according to the bill, this decision does not fall under the category of a "decision, action, or inaction" as outlined in the Aarhus Agreement, in accordance with Directive 2011/92/EU of the European Parliament and of the Council dated December 13, 2011, regarding the assessment of the environmental impact of certain public or private projects. Instead, it constitutes an urgent interim measure aimed at preventing irreversible and potentially unnecessary waste of valuable resources."

In the opinion of supreme court attorney Óttar Yngvason, on behalf of his representees regarding Fjarðalax hf.'s application, it is contended that the Aarhus Convention has been breached. This assertion stems from a bill proposing amendments to the law being submitted to Alþingi and processed on the same day without the expression of his clients' or the public's views. Additionally, the bill was not forwarded to the Environment and Transport Committee of Alþingi for review. The ministry reaffirms that the law was passed in accordance with law no. 71/1991 on parliamentary acts on October 9, 2018, published in Section A of the Government Gazette on October 11, and came into effect the subsequent day, October 12, 2018, as per Article 8 of Act no. 15/2005 concerning the government gazette. Consequently, the ministry does not perceive any deficiencies in Alþingi's legislative process warranting the annulment of the law due to this grievance.

The Ministry therefore does not agree with the above-mentioned position of supreme court attorney Óttar Yngvason, on behalf of his representees, that the law violates international agreements to which Iceland is a party.

Decision on issuance of a temporary operating licence

Based on the aforementioned points, the Ministry concludes that the conditions outlined in paragraph 2, Article 21c of Act no. 71/2008 on fish farming are met, thus granting the ministry legal authority to issue the following temporary operating licence.

The temporary operating licence is intended to provide Fjarðalax hf. with the opportunity to address the deficiencies identified by the Environmental and Natural Resources Board of Appeal in the operating licence issuance process. Additionally, it aims to enable the company to challenge the legality of the revoked operating licence through legal proceedings.

The Ministry holds the belief that considering Fjarðalax hf.'s intention to initiate legal proceedings to contest the decision made by the Environmental and Natural Resources Board of Appeal and acknowledging that such litigation may extend over a significant duration, a reasonable validity period for the temporary operating licence would be 10 months from its date of issuance.

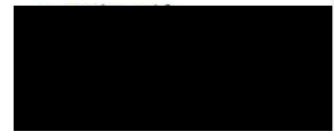
The Ministry reiterates, in response to the objections submitted by supreme court attorney Óttar Yngvason on behalf of his representees, that The Icelandic Food and Veterinary Authority oversees operations conducted under a temporary operating licence. Within the objections, it is stated that *"It is pointed out that the National Planning Agency underscores the absence of provisions in the new amendment Act no. 108/2018 regarding the oversight of temporarily issued operating licences. This supports the opponents' argument that such licences, contravening general legal norms, lack a legitimate foundation on the legal field."* The Ministry emphasises that according to Article 4 of Act no. 71/2008, which pertains to the administration of fish farming, it explicitly states that the minister is responsible for matters as stipulated by the law, however *"the implementation of administration is otherwise under the jurisdiction of The Icelandic Food and Veterinary Authority which oversees the enforcement of the provisions outlined in the law."*

The Ministry of Employment and Innovation, November 5, 2018.

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