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Addressing Social and Environmental Issues in the Salmon Farming Industry

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Addressing Social and Environmental Issues in the Salmon Farming Industry

Kate Kopischke

In August 2011, the Norwegian company Cermaq and two Norwegian NGOs signed a joint statement involving a series of statements by the company reiterating its commitment to environmental, labor and community engagement practices that comply with Norwegian and international standards. The joint statement concluded a two-year mediated process that stemmed from a complaint filed by the NGOs, who alleged the company was in breach of Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on responsible business practices. While the joint statement initially was viewed as a successful outcome of the mediation, the parties since have been unable to engage effectively – in keeping with the spirit of the statement – on issues related to the complaint. This case study underscores the importance of developing robust agreements with clearly stated follow-up and monitoring, as well as the crucial role of direct and consistent communication between disputants.

Introduction

ForUM and Friends of the Earth Norway – two Norwegian non-governmental organizations (NGOs) – filed a joint complaint to the Norwegian National Contact Point (NCP) in May 2009 about the fish farming group Cermaq. NCPs are mechanisms within each member country of the Organisation for Economic Cooperation and Development (OECD) mandated to “further the effectiveness of the [Guidelines for Multinational Enterprises](#),” a set of principles and standards for responsible business involving global corporations in or from OECD countries. Among their several responsibilities, NCPs are required to address complaints, or “specific instances,” regarding alleged breaches of the Guidelines.

In the specific instance of the Chilean salmon-farm complaint, the NGOs alleged that Cermaq ASA and its subsidiary Mainstream Chile SA were in breach of various articles in the Guidelines. The complaint charged Cermaq with failing to adequately consider indigenous people’s rights in both Canada and Chile. It said that Mainstream Chile was attempting to prevent employees from joining labour unions; operated unsafe working conditions; ignored environmental conservation guidelines (as evidenced by the company’s alleged lack of preparedness against salmon escaping, and the spread of lice and the ISA virus); and failed to consult communities directly affected by Cermaq’s environmental policy.

Over the course of two years, the Norwegian NCP facilitated a process between the NGOs and the company – which strongly denied the allegations – that resulted in a Joint Statement signed by the parties in August 2011. The statement included acknowledgement by Cermaq of specific environmental conditions. It included commitments to comply with its standards on environmental, labour and Indigenous Peoples practices. It contained a commitment by both parties to base future cooperation and contact on mutual trust and clarification of facts. Following public release of the Joint Statement, the Norwegian NCP closed the file.

Just over a year later, however, the complainants began alleging that Cermaq was failing to adhere to its commitments as spelled out in the Joint Statement. Cermaq strongly rejected these claims, arguing that the NGOs had failed to gather facts or request Cermaq’s input, and failed to honor the “future cooperation” commitment as stipulated in the joint statement.

The complaint, the NCP process, and the lack of a mutually agreeable solution between Cermaq and the NGOs offer lessons and insights into the range of challenges that must be considered in cooperative processes aimed at resolving company-community grievances. These include the value of written provisions to clarify expectations and assurances that commitments are understood and met, and the importance of directly impacted communities having a seat at the negotiating table.

The Parties

Cermaq ASA, headquartered in Oslo and listed on the Oslo Stock Exchange, is one of the largest fish farming companies in the world, and was also a producer of fish feed.¹ The Norwegian Ministry of Trade is its principal investor, now with nearly 60 percent of shares. Cermaq produces and ships salmon and trout from Norway, Scotland, Canada and Chile to markets in Europe, Japan and the United States. Its salmon farms are run by subsidiaries Mainstream Chile, Mainstream Norway and Mainstream Canada.² The Mainstream group produces Atlantic salmon, large trout and Coho, and has a total licensed capacity for salmon

¹ The company has sold its feed business since closure of the NCP complaint, and is now a pure farming company.

² Mainstream has recently changed its name to Cermaq.

farming of 200,000 tons. In 2012, Mainstream sold 120,000 tons (gutted weight) of salmon globally, about 6% of the world's market. Mainstream/Cermaq employs more than 4,500 people worldwide, with total operating revenue of NOK 3.3 billion in 2012.³

ForUM is a Norway based umbrella organization representing 51 NGOs throughout the country. It serves as a contact point for coordination of policy initiatives and recommendations focusing on international development and environmental policy. It advocates and lobbies in a range of thematic areas, including climate and energy, finance reform, corporate social responsibility, peace and human security, food security, and fresh water sanitation. ForUM also is a member of OECD Watch, an international network of civil society organizations that promotes corporate accountability and information sharing about the policies and activities of the OECD's Investment Committee and the effectiveness of its Guidelines for Multinational Enterprises.

The Norwegian Society for the Conservation of Nature, also known as Friends of the Earth Norway, was established in 1914 as an advocate for responsible management of natural resources in Norway and internationally. It is among the 30 national organizations that constitute Friends of the Earth Europe. It is a member of ForUM, the umbrella NGO that spearheaded the complaint against Cermaq.

Perspectives on the Complaint

In the mid-1980s, when companies began breeding non-native Atlantic salmon in southern Chile, aquaculture was viewed by many as an economic lifesaver in a region with high unemployment and few other prospects for meaningful development. Over the next 20 years, the salmon farming industry grew exponentially. Chile became the second largest producer of farmed salmon after Norway.

By 1990, Chilean farms were shipping nearly \$100 million worth of salmon to the US, Japan, and Europe. A decade later exports had risen to \$1 billion, and by 2006 sales had grown to more than \$2 billion annually.⁴ But in 2007 a virus called infectious salmon anemia (ISA)

³ [Cermaq website](#) (Oct. 2013)

⁴ [Food Safety News](#), April 30, 2012

swept through the region and infected the farms, decimating local stocks and leading to the layoff of thousands of workers.

The ISA outbreak was no surprise to biologists and environmentalists, who for many years have warned of risks associated with farming salmon and other fish species in crowded underwater pens. Among these risks are contamination of previously pristine waters, the spread of disease resulting in unhealthy fish, and a host of other negative environmental and social impacts.

The NGOs

Concerned by the impact of the 2008 financial crisis on the global sustainability agenda, as well as the extent to which people and property in poor countries would be affected, ForUM began increasing its focus on Norway's overseas investments and the behavior of multi-national companies. Its mission in this area, according to a 2009 ForUM report, is to highlight the role of the public sector in ensuring that minimum standards of accountability and corporate social responsibility are adhered to by the business community, "no matter where your business takes place."⁵

In ForUM's view, Cermaq was among several Norwegian enterprises that represented the government's "passive ethical ownership" in companies owned wholly or in part by the state, especially those operating in developing countries. Many such companies, ForUM maintained, had "little conscious awareness of corporate social responsibility, in spite of the Government's assumption that companies with state ownership would be leaders in taking responsibility."⁶ ForUM said that Friends of the Earth Norway had been voicing concerns over the course of several years about working and environmental conditions at Cermaq's overseas facilities, but alleged that neither the government nor the company had acted to address them.

These factors, coupled with the 2007 outbreak of the ISA virus that caused widespread devastation to Chilean salmon farms and to the local economy, prompted the two NGOs to jointly file a "specific instance" complaint to the Norwegian NCP.

⁵ [Analyse: Næringslivet har fått mer makt](#) ["Analysis: the business world has been given more power"] (July 2008)

⁶ [Statlig uansvarlighet](#) ['Government Irresponsibility'] (March 2011)

The written complaint did not request specific actions or outcomes the NGOs wished to see as a result of the filing. Rather, it states that the range of issues “have taken place over a (long) period of time and are still occurring, and have been pointed out to Cermaq from various quarters earlier. The lack of resolve from Cermaq to get to grips with these questionable conditions is the reason that we now request an independent assessment of these breaches.”

The Company

Cermaq strongly refuted the allegations in the complaint, insisting that ForUM had never contacted the company, and that neither of the NGOs had requested information about the specific issues prior to filing the complaint. The NCP request thus came as a surprise to Cermaq. A Cermaq representative said the complaint was “difficult to relate to” because the allegations were broad and general, and most of the purported non-compliances with the OECD Guidelines did not point to clear breaches or examples of wrong-doing.

The company nevertheless viewed the complaint as an opportunity to better document its processes and operations abroad, demonstrate that the allegations were untrue, discuss areas for improvement, and tell its story about Cermaq’s approach to protecting people and the environment. When the company first contacted ForUM to invite an initial conversation, the Cermaq representative said, the NGOs responded they did not wish to meet, given the NCP’s formal registering of the complaint.

Frustrated by the NGOs’ refusal to discuss the complaint in person, and by what it saw as false claims that the NGOs had first tried to resolve the issues directly, Cermaq began preparing a “big and formal” response to the complaint. In retrospect, Cermaq said its lengthy reply could have been shorter and less legalistic, but given the seriousness of the allegations, as well as its strongly held view that the NGOs were “simply wrong,” the company felt it was important to be formal and thorough in documenting its defense and refutation of the charges.

Perspectives on the Process

Although the complaint centered on Cermaq's operations in both Chile and Canada, the NGOs opted to file the request to the Norwegian NCP rather than to the Chilean or Canadian NCPs. They believed any potential corporate policy changes should originate from Cermaq's headquarters, which could then compel operational changes at its subsidiaries abroad. Despite initial objections by the company, which argued that the local NCPs would be better positioned to assess the complaint, the Norwegian NCP ultimately agreed with the NGOs. According to the NCP's final report, both the Chilean and Canadian NCPs were consulted throughout the Norwegian NCP's complaint-handling process, but neither played a key decision-making or problem-solving role.

Mid-way through the Norwegian NCP's involvement in the Cermaq specific instance case, the office underwent an organizational change that altered the course and outcome of complaint handling process.

The NCP Process (2009 to March 2011)

Prior to March 2011, the Norwegian NCP secretariat was administered by the Office of Economic and Commercial Affairs – housed within the Ministry of Foreign Affairs – and included representatives from the Norwegian Confederation of Trade Unions and the Confederation of Norwegian Enterprise. Then, following a government-issued report to parliament on corporate social responsibility, and a subsequent stakeholder consultation process involving businesses, civil society, trade unions and others, the NCP appointed an independent panel of experts and restructured its reporting line directly to the Minister of Foreign Affairs.

The complainants and others welcomed this organizational change. In their view, the office as originally structured was too closely aligned with the country's investment strategy for state-owned companies, raising concerns and some confusion about its independence and impartiality when reviewing specific instances.

Prior to the reorganization, progress in the case was slow-moving and – in the view of the parties – frustrating. In response to the NGOs' various appeals for independent reviews of

Cermaq policies, the first NCP gathered an array of data from the parties, which elicited more questions and additional requests for information. As the second NCP's final report later explained: "A series of meetings in the NCP with both the complainants and the company during 2010 and January 2011 resulted in three separate requests from the NCP [to Cermaq] for additional documentation. The company responded to all three requests with extensive documentation. The documentation was shared with the complainants, who did not consider that all questions had been answered by the company."⁷

A New NCP Approach (Post-March 2011)

With the new NCP on board, another round of requests for information began. Despite the "extensive additional documentation" that had been obtained to that point, the complainants continued to request further independent reviews. In mid-April 2011, the new NCP called a meeting of the NGOs and the company, and informed them that the most substantive aspects of the case, particularly those pertaining to environmental issues, had been sufficiently examined. After two years and significant expense, the NCP said, it would not initiate further investigations and document reviews. Instead, the NCP proposed a mediated approach.

With that proposal, the NCP later reported, the new NCP made "a renewed offer of good offices to all parties, with the goal of achieving a joint statement."⁸ The NCP committed to clarifying several outstanding questions prior to the proposed mediation. The complainants agreed to wait for and review Cermaq's (then upcoming) Sustainability Report, and to attempt mediation before filing more requests for information and review.

The parties were given several weeks to evaluate documents and prepare for the mediation, which took place over a week-long period in late June 2011. To avoid additional expense to the parties, the NCP offered to conduct the process itself. It enlisted the services of a mediator from the Norwegian Institute for Labour and Social Research. The mediator held one-on-one telephone meetings with all three parties, as well as with the NCP secretariat.

⁷ [Final statement by the Norwegian NCP](#) (August 2011)

⁸ *ibid*

The mediator, according to the NCP, was “extremely helpful in navigating the last stage of the specific instance and the mediation.”

After several days of dialogue and negotiation, the parties agreed on a final draft of a “Joint Statement” outlining their areas of common ground and acknowledging some of the causal factors leading to the complaint. It included recognition by NGOs of positive steps being taken by the company, and commitments by the company regarding its own standards regarding the social and environmental impacts of its operations.⁹

Following the parties’ signing of the Joint Statement, on July 1, 2011, the Norwegian NCP formally closed the complaint. The final report stated, “No further examination of the allegations in the complaint will be made by the Norwegian NCP.” The report also thanked and congratulated the parties on “reaching a mutually acceptable outcome, and for constructively engaging in discussions to reach this agreement.” It acknowledged the involvement of the respective parties’ boards and CEOs as “positive for the process.”

With an outcome acceptable to both parties, the process appeared to be a successful first case for the newly organized Norwegian NCP.

ForUM and Friends of the Earth Norway

In June of 2013, nearly two years after the Norwegian NCP closed the Cermaq case, ForUM published an on-line handbook (in Norwegian) offering guidance to others who may be considering filing NCP complaints about Norwegian companies.¹⁰ The guidebook lists a range of challenges, lessons and perspectives drawn from the NGOs’ experience with the Cermaq case. In their preface, the authors note the guidebook left some readers feeling daunted by the NCP process, in terms of scope and resource requirements before and during the intervention. “They are right in the fact that most cases are resource- and time-consuming,” they wrote. This is primarily because the cases are “being taken seriously by all market participants, and are subject to a thorough treatment.” Still, the authors asserted that most NCP complaints are “far less extensive and complicated” than the Cermaq case.

⁹ [Joint Statement](#) by Cermaq ASA, Norwegian Society for the Conservation of Nature/Friends of the Earth Norway1 and Forum for Environment and Development (ForUM). August 10, 2011.

¹⁰ [“Håndbok for OECD-klagesaker”](#) (“Handbook for OECD Complaints”), June 2013

In a separate evaluation report commissioned by ForUM in 2012 to assess the effectiveness and outcomes of the NCP process, the NGOs described the process as an important “learning opportunity for all involved.”¹¹ At the time of the signing of the statement, the report says, the NGOs expressed hope that the process would establish a wider precedent for change in Norwegian companies’ approach to sustainability, and lead to more inclusive and open communication with Cermaq. Through the joint statement, they wrote, Cermaq had committed to aligning its global standards with those practiced in Norway, which would mean “going substantially beyond what is required by Chilean regulations.” Such a change promised moving “a step beyond traditional corporate social responsibility ... and creating fundamental changes at various levels.”

Prior to the restructuring of the Norwegian NCP, ForUM had not attended any of the meetings convened by the NCP, nor agreed to meet Cermaq independently outside of the NCP. Friends of the Earth Norway, which did attend meetings, recalled being summoned at various stages by the first NCP to meetings with the company. In the NGOs’ view, these meetings were primarily aimed at “testing the durability of the complaint and the replies from the company,” so that the NCP could determine whether conditions existed for more direct and constructive dialogue between the parties. The NGOs conceded in later reports that Cermaq took the meetings seriously, but also said that the company frequently used those meetings to “undermine the credibility of the request and technical points of the complaint.” The NGOs would then respond by defending the complaint “when it came under attack from the company.” From that perspective, they said, the meetings seldom felt constructive.

Things changed with the arrival of the new NCP. “We saw that the new contact point was working to create a better balance of power between us and the company,” they said. When the NCP announced it would not request or review more independent information, the NGOs carefully considered their alternatives. “Our option was to refuse negotiation and ask for a final declaration from the contact point, but we risked that the case would not be further elucidated.”

¹¹ “Mainstream / Cermaq’s progress in contributing to sustainable salmon aquaculture in Chile,” November 2012; in [Undercurrent News](#)

Understanding that “negotiation means both parties must agree to give something,” the NGOs said they withdrew some of their “weaker documented points” to get concessions on other more pressing points. Moreover, they said, the process to that point had drawn on for so long and been so resource intensive that both parties were eager to try a different approach.

Overall, the NGOs describe the first two years of the NCP process as a time-consuming volley between the two sides; Cermaq working hard to demonstrate its innocence, and the NGOs working hard to “ensure the complaint would be dealt with.” It was only after a new point of contact was established, and the Secretariat was moved out of the Ministry of Foreign Affairs in March 2011, they said, “that the basis for real negotiations commenced.”

Cermaq ASA

Like the NGOs, Cermaq representatives found the NCP process frustrating in the months prior to the office’s reorganization. “There was no clear framing of the issues,” said Cermaq, and this resulted in back-and-forth accusations and efforts to refute them between the parties. “It was like we were discussing what is good and what is bad about the industry generally, rather than looking at specific issues and saying: are there breaches of the OECD guidelines?” In Cermaq’s view, the conversations seemed broadly focused on “what people think ought to be different about an entire industry,” instead of specific policies or outcomes of Cermaq’s operations.

To Cermaq, this approach was unproductive. Rather than engaging in dialogue about areas of common ground and opportunities for improvement, Cermaq felt the meetings focused instead on false allegations that challenged the company’s core values. Cermaq is built on a vision of sustainable aquaculture, said the company representative, and at the time the complaint was filed it had significantly stepped up its corporate social responsibility program. Cermaq negotiators “did not recognize the type of company being described by the NGOs,” said the representative. In Cermaq’s view, this dynamic prevented the parties from being able to discuss concrete issues, agree on the real problems, and find solutions.

Cermaq was also discouraged by ForUM’s decision not to attend NCP meetings prior to the reorganization, or meet directly with the company to exchange perspectives and identify solutions.

The new NCP’s clearer and more productive approach, which began “moving the parties toward conclusion,” was welcomed by Cermaq. With more resources and a new chair, the process became more efficient and focused, the Cermaq representative said, adding: “the personal skills of the new chair helped make mediation possible.” Cermaq said it was a constructive step when the NCP announced certain issues would be set aside, given that they had been well documented and verified, and that certain other issues should be examined jointly by the parties in more detail.

Among those issues was the ISA virus. “The ISA crisis was an eye-opening experience for the whole industry,” said Cermaq. “We saw that things had not been handled as they should have been, by Cermaq or by the industry, and we were now able to discuss that openly with the NGOs.” To Cermaq, those conversations represented a turning point in the process. “It was very important for [the NGOs] to see some concessions from us, to see that we are open to criticism. When we acknowledged that some things should have been handled differently, we were able to begin discussing what could be done to improve.”

In drafting the Joint Statement, Cermaq sought to acknowledge not only “that we had not acted the way we should have, but also to note that there were issues in the complaint which, going forward, the parties would work together to address before first publicly criticizing one another.”

Impacted Communities

The NGOs’ complaint argued that the primary communities impacted by Mainstream Chile’s operations were indigenous Mapuche groups who have fished and farmed in the region for centuries, employees and union workers. They also cite “other interested parties” as directly impacted by the company’s environmental policies, including non-indigenous communities and environmental groups, whom the NGOs believe had not been adequately engaged or consulted about the company’s activities.

According to the complaint, Mapuche representatives had “repeatedly pointed out that fish farming threatens their very existence,” and that the Mapuche people had made requests to Cermaq to change its production methods and “stop exploiting the sea in such a destructive manner.” Regarding local workers, the complaint alleged that Cermaq had attempted “to prevent free organizing of employees to join labor unions,” and that workers were sometimes subject to inadequate or unsafe working conditions and to various forms of discrimination against women.

The perspectives of these impacted community members on the NCP process itself is difficult to ascertain, however, because none were directly involved in the negotiations or in the signing of the Joint Statement. This was a point of contention for the company, which had from the beginning questioned the extent to which the NGOs truly represented the communities. In addition, Cermaq said it had never been contacted by any Mapuche people, nor asked by the NGOs for examples of how Mapuche, who Cermaq said live generally outside the company’s area of impact, are affected by its operations.

The NGOs maintained that those communities had supported the filing of the complaint, and that the specific allegations of OECD breaches, as described in the complaint, were based on interviews conducted by partner NGOs in Chile with Mapuche people and with workers.

Perceptions and On-going Tensions Post-NCP Closure

A sticking point among the parties in drafting the June 2011 Joint Statement was the issue of a monitoring plan to track whether agreements set forth in the statement were being met. The NGOs argued for a provision giving them a role in monitoring Cermaq’s progress. Cermaq argued that the statement was meant to be conclusive, and that the Norwegian-based NGOs were neither impartial nor qualified to audit environmental and social conditions in Chile.

Although the NCP recommended the parties “continue the dialogue established during the mediation process,” the final Joint Statement included no commitments regarding monitoring or ongoing dialogue. Both sides now say, in retrospect, that this issue should have been more carefully considered, and a provision should have been included in the

statement. The only agreed follow-up was an invitation to meet with the NCP one year later, to share experiences and provide updates on implementation of the Joint Statement.¹²

Omission of mutually agreed expectations to monitoring and follow-up, in the view of both parties, has resulted in on-going tension between the parties and, in some ways, has served to undermine the outcome of the mediation that the parties celebrated in July 2011.

In various reports reflecting on the Cermaq process since the signing of the Joint Statement, the NGOs have described the NCP process as a “partial victory” and a significant learning experience. While getting some of what they wanted, the NGOs wrote in their 2012 report, Cermaq nonetheless has a “long way to get better.” In their view, the company has yet to live up to its commitments.

Cermaq adamantly refutes these charges and points to its dedication to sustainable aquaculture and transparent sustainability reporting. The company is disappointed, it says, that the NGOs reached their conclusions having never engaged in meaningful dialogue with Mainstream Chile and Cermaq.

NGO Perspective (August 2011 to Present)

ForUM holds that, throughout the negotiations, it insisted that the value of the Joint Statement was dependent upon concrete improvements in the company's corporate social responsibility. In the absence of a monitoring provision in the statement, ForUM said it decided to hire consultants to conduct its own evaluation of Cermaq's response. In November 2012, ForUM released the evaluation, titled “Mainstream / Cermaq's progress in contributing to sustainable salmon aquaculture in Chile.”

The idea to commission this study, ForUM said, followed an invitation to participate in a panel discussion in Chile convened by the Chilean NCP. To prepare for that discussion, “ForUM decided to examine the extent to which the joint statement had led to a change in conditions on the ground that led to the original complaint.” Its aim, ForUM said, was to examine whether resources spent in preparing, filing and engaging in the mediation was worthwhile, and could be recommended to other “watchdogs.”

¹² [Final statement by the Norwegian NCP](#) (August 2011)

The publicly available evaluation states that Cermaq made some progress toward commitments pertaining to environmental conditions, labor issues, the rights of indigenous peoples, and communication and dialogue with local communities. But its overall conclusion is that Mainstream Chile had generally not met the commitments. It also concludes that employees continue to experience “deficient working conditions and low wages....” It states that “a number of activities along the entire production chain, including land-based hatcheries and smolt production, sanitation control procedures ... and the company’s expansion strategy, are activities that imply significant impacts on the environment that could threaten marine life and the harvesting of local natural resources by other stakeholders.”¹³

For the study, ForUM said its consultants met with employees, trade union representatives, environmental groups, and indigenous leaders, but were “unable to secure an interview with Cermaq’s subsidiary, Mainstream, during the two weeks the consultants had available for their work.” A draft of the report was finalized prior to the November 2102 panel discussion in Chile, during which their critique was presented. The presentation was supported by several local union and NGOs, they said. “We took the opportunity to gather the relevant trade unions and civil society organizations, in order to capture experiences and feedback that could be included in the company’s future work.”

In response to Cermaq’s frustration that its views had not been included in the evaluation – and that the report contained inaccurate information and unfair conclusions – ForUM insisted it had tried to schedule a conversation, to no avail, but that the consultants were “operating under a tight timeframe” in order to finish the report prior to the panel discussion in Chile. ForUM ultimately offered Cermaq a separate annexure in the final report, where the company could respond and express its views. According to the report, some of Cermaq’s comments “are disputed by the authors.” The NGO concluded that it “doubts their concerns about the company’s social and environmental responsibilities are over.”

¹³ “Mainstream / Cermaq’s progress in contributing to sustainable salmon aquaculture in Chile,” November 2012; in [Undercurrent News](#)

Company Perspective (August 2011 to Present)

In Cermaq's view, ForUM's evaluation report is one-sided and lacks credibility, having used what they believe is questionable methodology and failing to include Cermaq's input. To the company, this constituted a breach of the NGOs committed in the joint statement to not draw conclusions without allowing the company to comment on facts. Cermaq said the consultants did request an interview with Mainstream Chile's managing director just prior to the presentation in Chile, but at a specific time when the director was abroad and unavailable. He requested an alternate time, said Cermaq, expressing his eagerness to participate in the evaluation, but an interview was never conducted. According to the company, there was ample opportunity to reschedule the interview with Mainstream Chile between November and the time the final evaluation was published six months later.

"It is impossible to understand why ForUM was not interested in information from Mainstream Chile about its operations, standards, and practices," Cermaq said.

Cermaq says it remains focused on high corporate responsibility standards, including those set out in the Joint Statement. Immediately upon signing the statement, the company said it began reviewing the commitments, one by one, to determine where changes were necessary. Many of the commitments already were integrated into its CSR and sustainability policies, Cermaq said, while others required revisions to existing policies. Cermaq says it presented the Joint Statement to staff and management teams so that its global companies and top-level employees would be familiar with it and prepared to follow up where necessary.

"Internally, we saw it as important to emphasize why corporate responsibility and sustainability is important," the Cermaq representative said. "We knew the way to ensure promises were met was to go to our companies and emphasize how these standards are an integral part of our operations," Cermaq said, and to focus on the importance of protecting people and environments, because that is a core value."

At the NCP follow-up meeting, Cermaq said it presented progress on the commitments and on issues still to be addressed. It then proposed a second follow-up meeting, at which

additional questions and concerns from the NGOs could be addressed. Cermaq said it never received a reply to that invitation.

The NCP panel discussion in Chile, Cermaq recalls, was the start of things “going badly after the mediation.” The company said it had readily agreed to participate in the discussion, to share experiences about the case, and to share Cermaq’s views on the value of the mediated process. It was therefore a surprise to see that “the NGOs had gathered representatives from the unions, communities, and others, who began making accusations that simply were not true.”

In Cermaq’s view, the 2012 ForUM evaluation report and the “strange experience” of the meeting in Chile undermined any trust the NCP process had built between the parties. “We know we need to improve things in Chile, and we are committed to that,” said the Cermaq representative. But, “While there may have been some accurate points in the [2012 evaluation] report, the findings were mostly false.” According to the Cermaq representative, the company “certainly would like to have seen a more credible and accurate report – something we could use to improve our operations. Instead, trust is broken, and we are disappointed that the NGOs do not want our comments before drawing conclusions about Cermaq.”

Lessons and Prospects for Improvement

The complaint to the Norwegian NCP highlights a number of significant challenges facing the farmed salmon industry. Evidence shows that disease can multiply quickly in crowded cages and can spread to wild salmon. To treat sick fish, industry must rely on pesticides and antibiotics which penetrate into other ocean environments. These impact other species in the area. Research also indicates that fish feces and uneaten food pellets pass through cage nets and can suffocate marine life on the ocean floor.

Yet worldwide demand for farmed salmon continues to grow. As a low-fat source of high quality protein, rich in vitamins and minerals, farmed salmon is less expensive and more widely available to consumers than wild salmon. Proponents argue that the industry is increasingly regulated and responsible, and that compliant companies are producing farmed salmon sustainably and with minimal environmental and social impact.

For institutional grievance mechanisms like the NCPs and others, resolving disputes amid such complexity is a daunting assignment. Many NGOs and others who are critical of these mechanisms argue that they generally lack the teeth necessary to identify non-compliance and enforce remedial action. Those that offer dialogue based approaches, like the NCPs, are often criticized for lacking sophisticated or consistent methods for resolving disputes across member countries, and for failing to trigger investigations or audits when dialogue is unsuccessful.

The re-organization of the Norwegian NCP mid-way through the Cermaq case did offer a more independent and trusted dialogue process. But the outcome of the mediation was nonetheless unsuccessful in delivering a durable solution. To be sure, even the most professionally mediated agreements can suffer a similar fate. But reflecting on the experiences of the Cermaq parties and on other mediated cases involving similar dynamics, there are several lessons or considerations that may offer guidance for future complaint-handling processes:

- Including mutually decided monitoring and follow-up provisions in agreements or joint statements is key to a durable outcome. As both parties in the Cermaq case noted, this would have helped establish a clear understanding of their roles and responsibilities in ensuring commitments were understood and met.
- The participation of directly impacted communities in the complaint handling process is crucial. In this case, their absence at the negotiating table was a clear shortcoming. While the NGOs maintained that the complaint and the issues it raised were supported by affected communities and workers, there was no indication whether they also supported the process to resolve it, or the provisions in the Joint Statement. A basic tenant of mediation – and indeed of successful grievance mechanism design – is that all stakeholders with an interest in a problem must be given a voice in resolving it.
- Had the Chilean NCP played a stronger role, or partnered equally with the Norwegian NCP in managing the complaint, the voices and interests of local communities may well have been represented. OECD Watch and others have pointed out that the NCP process

would be strengthened if “host” NCPs involved home country NCPs in specific instances involving both a parent company and a subsidiary.

It is unclear whether applying these lessons on the Cermaq case would have altered the outcome of the process. And it is important to note that despite Cermaq’s frustration with what it sees as the NGOs’ continued adversarial approach, and the NGOs’ view that Cermaq did not meet its commitments, the company has launched several initiatives directly related to issues raised in the complaint. In late 2012, before ForUM undertook its evaluation, Cermaq retained an independent consultant to conduct an assessment of community perceptions and community-company relations. In early 2013 it contracted with an independent organization to conduct a human rights assessment.

In addition, Cermaq created a permanent position for a Corporate Social Responsibility Director at Mainstream Chile, whose tasks include improving communication with employees, unions and local communities, as well as developing a more systematic approach to community grievances.

Whether it was the complaint to the Norwegian NCP that compelled the company to undertake these initiatives, or industry’s increasing awareness of the social and environmental realities of salmon farming, or both, it will be up to locally impacted communities to determine whether Cermaq’s efforts embrace the spirit and commitments of the original Joint Statement and the broader OECD guidelines.

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