

REPORT OF THE NATIONAL CONTACT POINT OF CHILE ON THE CASE OF THE MULTINATIONAL COMPANY MARINE HARVEST CHILE S.A.

Introduction

This Report corresponds to the outcomes about the discussion of the case related to Marine Harvest Chile S. A. (hereinafter MH) that was questioned by two Non-governmental Organizations: Milieudefensie of the Netherlands and Ecocéanos of Chile (hereinafter the NGOs), in the framework of the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD)

This Report consists of three chapters and 24 annexes.

Chapter I deals with general topics to contextualize the problems approached, it informs on the character of the National Contact Point (NCP), the policy developed to implement the Guidelines, as well as the discussion of specific cases. It also informs about the stated complaint, the procedure followed and the proceedings practiced to analyze this case.

Chapter II exposes the backgrounds on the various aspects outlined in this case. Thus it informs briefly on the positions of the parties, the backgrounds and conclusions of the NCP on each topic, based on documents of competent public agencies as well as on Chileans' laws, regulations and on the Guidelines.

Chapter III gives some Recommendations tending to suggest solutions to the outlined problems.

At the end of the Report there are annexes with the complete texts exchanged by the Parties through the NCP, as well as other important documents.

Finally we should specify that this report refers only to the topics discussed in the first letter of the NGOs dated August 20, 2002 in Amsterdam. This clarification is necessary since in the course of this procedure, opinions were exchanged on other related topics. However, both Parties have suggested that the report should strictly limit to the topics outlined in said document. The NCP shares this option.

Chapter I

The Marine Harvest case in the context of the OECD Guidelines

1.The Character of the OECD Guidelines

Chile, as observer member of the Organization for Economic Cooperation and Development, OECD, adhered to the Declaration and Decision of the Council of OECD Ministers, of June 27, 2000, which contains a new revised text of the OECD Guidelines for Multinational Enterprises (hereinafter the Guidelines), the establishment and procedures for National Contact Points and their supervision by the Committee of International Investments and Multinational Enterprises (CIME).

These adhesions presume the country's commitment to make the Guidelines known to all the social and institutional actors involved and, at the same time, the Government commits to enforce the contents hereof. This is a political commitment of looking for the formulas to apply these contents in the country. The Guidelines contain some general principles and recommend objectives in matters like: general policies, transparency, employment and labor relations, environment, fight against corruption, consumers' interests, science and technology, competition and tax-related issues.

The Guidelines are Recommendations which application is voluntary regarding the companies. It is deduced that it is also necessary that the national norms of the underwriting countries become similar to the requirements contained in the Guidelines.

On the other hand, its content and scope are included in three main concepts: Sustainable Development, Social Enterprise Responsibility, and Social Dialogue with social actors and local communities. Concepts that are promoted and are part of a global conception of the OECD.

In that framework the Guidelines may become a useful instrument to enhance several standards of the national social-economic activity.

The mechanism established to promote those objectives in the subscribing countries is the National Contact Point (NCP).

2. Character of the National Contact Point of Chile

The National Contact Point is a Government's instance which is located at the OECD Department of the General Directorate of International Economic Affairs (DIRECON) of the Ministry of Foreign Affairs.

The NCP has to carry out important functions, such as informing and promoting the Guidelines, and handling specific cases. In this sense, the NCP can be the articulator of sector meetings in which agreements are signed between social parties involved and local communities on specific topics covered in the Guidelines.

In the capacity of Advisory Committee of the NCP there is a group formed by representatives of: one national entrepreneurial's association, the national organization of trade unions, one consumer association, two public entities, and some NGOs.

In regards to the treatment of specific cases submitted to the knowledge of the NCP, which is one of its functions, this Committee fulfills an advisory function. That is to say, it is informed on the content of the case, and the NCP receives their opinions or suggestions. The NCP thanks the suggestions proposed by the members of the committee during the study of this case.

In the treatment of cases, the NCP is called to offer good offices to help the parties to resolve the issues, formulating recommendations to overcome conflicts or specifying the scope of the norms contained in the Guidelines. In its proposals, however, the NCP cannot substitute other government agencies with competence to acknowledge the subjects submitted to its information. Its opinions should rather be founded on the certificates, background information or options of said instances and, from thereon formulate suggestions or recommendations based on this background information and on the Guidelines. The NCP shall then act in this context trying to solve all or part of the problems outlined.

3. The Case of the Multinational Company Marine Harvest S.A.

Within the aforesaid framework, the NCP received in September 2002 a complaint of the NGOs, Milieudefensie from the Netherlands, and Centro Ecoceanos of Chile. This complaint¹ referred to some aspects of the activities of the salmon company Marine Harvest Chile S.A, subsidiary of Nutreco, a multinational company of Dutch origin.

¹The complete texts as well as the NGOs' complaint and the answer of MH are attached at the end of this NCP Report. Refer to annexes 1,2,3 and 4.

The NGO's complaint refers to three aspects:

- 1) The labor relations within Marine Harvest.
- 2) The character of the 5 miles reserve of the national coast in benefit of the artisan fishery, and its relation with the aquaculture concessions of Marine Harvest.
- 3) Some environmental impacts generated by the aquaculture activity of Marine Harvest.

The informing NGOs are organizations recognized in their respective countries and internationally for their activities linked to the topics here treated.

One of the main objectives of Milieudefensie, with headquarters in the Netherlands, is contributing to solve environmental problems and preserve the cultural heritage.

On the other hand, Centro Ecoceanos of Chile is characterized mainly by promoting civil participation, protecting coastals, ocean ecosystems and marine resources.

Marine Harvest Chile SA is a subsidiary of the multinational company NUTRECO from the Netherlands, leader in salmonide exports from Chile, especially towards the American market. Its activities in Chile are mainly located in the Regions X and XI. It is part of a very dynamic economic sector of the Chilean economy, to the point that last months' salmon and trout exports to the United States of North America have exceeded in value the copper exports. In the first semester of this year, 45% of the salmon and trout exports were sent to the United States, 38% to Japan, and 6% to the European Union, amounting to U\$675 millions.

4. Procedure Adopted

For the treatment of this case, the procedure adopted has two phases: one called "Initial Assessment", which consists of a preliminary analysis of the complaint with respect to the content of the Guidelines and to the experience and seriousness of the accusing party; the other phase is called "Further Examination".

This last phase consists in receiving the arguments of the Parties, requesting advisory services or technical reports or verifications to public or private specialized organizations, and also requesting information from NCPs of other

countries, offering good offices in order to look for an agreement on all or some of the controversial issues, and finally, to issue a report with the conclusions of the NCP on the controversial points. If there are partial or complete agreements between the Parties, it will be informed in the Final Report. Eventually, the NCP can make recommendations as appropriate on the implementation of the Guidelines.

To analyze the Marine Harvest case, the NCP has followed the procedural guidance stated in the Guidelines.

The NCP received the written arguments of the parties: the NGOs complaint letter, the reply from Marine Harvest Chile, the NGOs counterclaim to Marine Harvest's reply, and finally MH's comments to the NGOs counterclaim.

In turn, the NCP requested and obtained written reports, on the various aspects of this case, from the following competent government agencies: National Directorate of Labor, Fisheries Under-Secretariat, Regional Environment Commission of the 10th Region; National Directorate of the National Fisheries Service, National Environmental Commission, Regional Directorate (10th Region) of the National Fisheries Service, 10th Region Maritime Governor's Office of Puerto Montt, DIRECTEMAR; of the Health Service of Regions X and XI, of the Directorate of the Livestock Protection Department, of the Agricultural and Livestock Service, and of the Superintendency of Sanitary Services.

In addition, information was received from the National Contact Points of Norway and the Netherlands.

To obtain more accurate information on the opinions of the Parties and to explore possibilities of agreement, the NCP has met with the parties whenever deemed advisable and each time these one requested it.

To have its own information elements, the NCP visited some facilities of the company in Puerto Montt, interviewed Marine Harvest trade union leaders, and met with representatives of some of the associations of Puerto Montt. The objective of this visit was to have a field assessment of one OECD Department official in order to have a more direct reference, without any mediation.

While this report was being prepared, the NPC received technical assistance of an expert on environmental issues related with fisherie and aquaculture.

It is put on records that the Parties had a fluent communication by e-mail with NCP's representatives and have set sufficient and flexible terms to transmit their arguments. The parties involved have acknowledged an Executive Summary of this report and made some comments that the NCP also tried to include in this document.

Finally, the NPC highlights and thanks the fact that the two parties involved in the treatment of this case have provided broad collaboration for its

development and accomplishment. In fact, they recognized the role of the NCP and provided all the information required, and they formulated proposals to overcome the problems raised.

Chapter II

Complaint and Background Considered by the National Contact Point

1. On Labor Aspects

1a. Synthesis of NGOs' Complaint.

That Marine Harvest's workers do not have enough freedom to unionize.

That some workers had to sign contracts stating that they will not join the trade union.

That Marine Harvest does not allow all unions of the company to bargain collectively.

That during the October 2001 negotiations that ended with a strike, the company carried out arbitrary dismissals, and did not provide the trade union with the economic information needed to formulate its claims.

Marine Harvest Chile does not fulfill the recommendations of the OECD Guidelines in order to encourage its suppliers and subcontractors to fulfill their labor obligations. They estimate that MH must do a major effort in this respect.

According to the National Labor Directorate Report, this government agency has carried out controls and detected some breaches.

It is important to note the different characters and roles of the trade union and "the workers group", that get together only for collective bargaining purposes.

They expressed their surprise on the unexpected drop in the trade union's representation since the October 2001 strike.

1b. Synthesis of MH's Reply

That workers have complete freedom to affiliate or not to the respective trade union.

That workers that affiliated for collective bargaining independently from the trade union, exert a right set forth in the Chilean legislation.

The company does not manipulate the collective bargaining processes nor carries out anti-trade union practices.

Dismissals after the October 2001 strike were justified due to security reasons, as a consequence of various activities that arose during the October 2001 strike. The Labor Inspectorate of Puerto Montt controlled the dismissals and the corresponding severance payments.

That the enforcing agent, the Provincial Labor Inspectorate of Puerto Montt, has no record of the NGO's complaints.

The company does not understand which is the problem claimed by the NGOs.

It argues that 24 controls of the enforcing agency have been recorded in more than three years; the company was sanctioned only in some of the cases. That there were no further breaches, that the company fulfills the observations formulated by the enforcing agency to solve situations.

That there are three trade unions in the company with which "MH's management has a normal relation".

That in 2002 the company had to make some dismissals, (different situation to October 2001 as a result of the strike) due to economic conditions, and there was no discrimination towards unionized workers. That the effective legislation was respected and that the corresponding severance payments were paid.

That the company "has a Regulation for suppliers and subcontractors activities, and that it requests the corresponding labor and social security information before contracting them, and even during their performance".

1c. Background Information Considered by the National Contact Point

From the National Labor Directorate Report², it is deduced that:

With respect to complaints, i.e. actions carried out by third Parties that inform the enforcing agency of potential labor infringements happened between November 1999 and January 2003: there are six cases of inspections; two based on infringement.

In the same period, with respect to the inspections made by the Labor Inspectorate, by officio or programmed, four were registered, all with infringements.

According to the definition of the Labor Code, Article 289, the infringements registered in the two aforesaid paragraphs do not refer to disloyal or anti-trade union practices of the Employer.

With regards to the presentation of claims, in the case of workers which labor relation is finished with the Employer: fourteen are registered, all of them without infringements or already settled.

Regarding the fact that the Company does not allow workers to exercise their collective bargaining right or free trade union affiliation, the regional inspection entity (Labor Inspectorate) does not have any antecedents that support such complaints.

² The National Labor Directorate Report requested by the NCP is in the annexe number 5. On accusations: there are 2 infringements, one for the non-payment of training to union leaders, the other for not respecting Sunday leave of 14 workers. On the programmed inspection, there are 4 infringements, all related to order, hygiene and safety matters, and one due to lack of documentation at the work site. The Report of the National Labor Directorate does not report any other infringements, from the year 2000 to January 17, 2003. This NCP report is based in that information.

The October 2001 strike, affecting the trade union of the Processing Plant El Teniente of Puerto Montt, in the terms of the aforesaid Report, "was very conflictive" on account of a lack of negotiating capacity of the parties".

Others backgrounds information gathered by the NCP indicate that:

As a consequence of the unfortunate end of said bargaining process with a strike, the relation between the Processing Plant trade union and the company was deteriorated. This situation extended throughout the first semester of 2002, until both parties resumed the dialogue at the end of June of the same year,³ and culminated with the subscription of a document called "Attachment to the Collective Work Contract" dated December 17, 2002.

As a matter of fact, a bargaining process was started during the second semester of 2002, which ended with the renegotiation of important clauses of the pre-existing contract. The salary structure was changed, increasing the flat guaranteed salary (Basic Salary), in detriment of the percentage of the variable component. The Parties agreed to establish only one bonus, called "production bonus", instead of several bonuses previously existing, in addition to establishing some new labor clauses. This verification derives of the comparison of both documents (the 2001 Collective Contract and the attachment to said contract signed in December 2002).

Since this new negotiation starts a normalization process of the relations between this trade union and the company. That was the situation present on January 2003⁴.

On the other hand, and referring to a wider context than Marine Harvest, the leaders of the Provincial Workers Federation of the Fishery Industry of Puerto Montt generally and persistently stated that the subcontractors of multinational enterprises of the aquaculture-fisherie sector do not comply with the labor legislation⁵.

³ Letter of the Processing Plant Trade Union of Puerto Montt to Marine Harvest dated June 25, 2002. Refer to Annex 6.

⁴ The President of the Trade Union and the Public Relations Manager stated so to the OECD official who interviewed them on January 2003.

⁵ Same source as in Note 4.

2. Five (5) miles reserve for artisan fishing and its relation with the concessions for the aquaculture industry and other related issues

2a.- Synthesis of the NGOs complaint

Respect to the location of the farming centers

Unfortunately, the company avoids providing the NGOs with the exact geographic location of its more than 30 Farming Centers. This objection could be solved immediately if the company provides information directly as offered on some other occasions.

Respect to 5 miles reserve

Marine Harvest Chile does not respect the 5-mile zone reserved for artisans fisheries. This circumstance infringes Art. 47 of the General Law on Fisherie and Aquaculture. They state that South of parallel 41° South Latitude of the national territory, "it has always been considered as an artisan-exclusive fisherie zone, specially in the inland waters, where the salmon farming centers are located ". They added that under the Chilean legislation, the declaration of Adequate Areas for Aquaculture (AAA) have "a notorious juridical precariousness" as it is a "simple decree of the administrative authority".

Respect to the fact that some concessions are detrimental to other users

Some Marine Harvest farming centers are very likely located in areas of traditional fishing grounds, shell deposits or natural seaweed habitats.

Respect to the concession boundaries

They pointed out the case of a concession called Domeyco that is located in the Llanquihue lake, where the company does not respect the concession boundaries. They assure that amateur fishermen organizations⁷ consider that in the practice the company does not respect the concession boundaries in this Lake.

Respect to the relationship with the community

That the company, within the framework of its activities and, particularly on the aforesaid points, does not consider the opinion of other

⁷ In January 2003, the Hunting and Fisherie Association of Puerto Montt stated similar concern with respect to this concession during the interview held with the representative of the OECD Department. At the same time, they stated their willingness to have a dialogue, and to subscribe agreements with the salmon's companies.

stakeholders. One of the OECD Guidelines Recommendations established in Chapter II of the General Policies is infringed in this manner.

Proposals

To solve these contradictory points, the NGOs propose:

- That Marine Harvest Chile S.A. "starts a public and transparent dialogue process with the regional organizations of artisan fishermen and with the coast communities located in the areas of its intensive industrial operations";
- That Marine Harvest informs the various productive and social sectors interested on the exact location of its cultivation centers in the 10th and 11th regions;
- "To verify the actual location and effective extension of these concessions and to establish a real contact with the neighbors of Lake Llanquihue ".

2b. Synthesis of MH's reply

Respect to the location of the Farming Centers

The information on the location of the Farming Centers is public and can be obtained in any of the entities stated. Though this information is public, the company will deliver to the NGOs a map with the location of these centers.

Respect to the reserve of 5 miles

The reserve within 5 miles of the national coast up to parallel 41° is a measure of protection for artisan fishing versus industrial fishing but not with respect to other activities allowed such as aquaculture. Thus, there is no transgression to article 47 of the General Fisheries Law . In addition, Marine Harvest does not have concessions at north of that parallel. Consequently ,MH does not infringe any regulation, and it has never been sustained that the "AAA" are exclusive for aquaculture.

That without any prejudice to the aforesaid, MH is willing to initiate a formal dialogue on this issue with several stakeholders.

Respect to the fact that its concessions are detrimental for other users.

Most concessions to Marine Harvest have been granted during the effective period of the regulation that establishes that they must be located within the limits of the so-called adequate areas for practicing Aquaculture (AAA). Which were granted before (the minority of them) the enforcement of said regulation, were assimilated by the authority as validly granted. The aforesaid supposes that the authority evaluated the site of the AAA and of each concession according to the parameters set forth by that regulation. Within said parameters, the authority must consider the interest of other users. In addition, the company sustains that all of its concessions are located more than 25 m deep where "it is improbable to find mollusk banks and it is impossible that there are algae's prairies".

Besides the company is willing to start a formal dialogue between the interested parties on this point.

Respect to the respect of concession boundaries

The company disregards the complaint of not respecting its concession boundaries. It provides the area of the two concessions it has in the Llanquihue lake, and identifies the Decrees whereby those concessions were granted. It also sustains that the inspection authority has not made any objections to such respect. That for settling the issue it has requested DIRECTEMAR (Directorate of the Maritime Territory) to provide an official measurement and location survey of said concession. As soon as MH receives it, this information will be sent to the NCP.

2c. Background information considered by the NCP.

Respect to the exact geographic location of the Farming Centers.

The procedure to grant aquaculture concessions is public, since it ends with a Decree of the Ministry of National Defense or a Resolution that, as such, must be published in the Official Gazette (Art. 80 of the General Law of Fisheries and Aquaculture).

Nevertheless, if there is no precise data available of the Supreme Decree or of the Resolution and publication dates, there are restrictions to obtain

information on each concession. In fact, Art. 13 of the Regulation of the National Registry of Aquaculture establishes that the "Registry is public as regards to the individualization of the agents that participate in aquaculture activities. The holder of a concession may authorize third parties by means of an instrument granted before a Public Notary to access registrations under their name." The National Fisheries Service must attain to this restriction. There only remains the entity INTESAL, which charge to deliver such information.

Respect to the 5 miles reserved for artisan fishermen

According to the NGOs' reply of July 2003, there is no difference with respect to the protection character in benefit of artisan fishing with respect to industrial fishing, in the 5-mile strip in the coast of the country from the Northern limit to 41° Latitude South.

Nevertheless, the NGOs insist that "to the South of parallel 41° Latitude South has always been considered as an exclusive zone for artisan fishing, specially in the inland waters, precisely where the intensive salmon farming activity is located".

This interpretation of the norm is equivalent to stating that not only Marine Harvest Chile S.A., but also most of the intensive salmon farming companies are located in improper places.

In addition, this implies that the administrative authority in charge of determining the place where concessions or authorizations for aquaculture practices can be granted, is not complying with the law. This is so since most of the areas declared as appropriated for aquaculture practices are located in places that according to the interpretation of the NGOs "have always been considered as an exclusive zone for artisan fishing". State agencies in charge of regulating these subject matters do not share the interpretation of the NGOs.

The Under-Secretariat of Fisheries establishes⁸ : "The Chilean regulation, as that of the European Union (EU), does not consider a coastal strip for exclusive use of artisan fishermen. But, at difference of the EU, it does consider an exclusive fishery right in the first five miles (from the Northern limit to parallel 41° 28' South). In this coastal strip, the industrial fishing activity is forbidden, but not other productive activities such as aquaculture".

⁸ Reply Letter (D.Ac) N° 1702 of the Under-Secretariat of Fisheries, Mr. Felipe Sandoval addressed to Mr. Andrés Johnson, General Manager of MH. Refer to annexe 7.

Other documents⁹ referring to the relation of aquaculture with the artisan fishermen declare: "For that purpose there is an exclusive right zone in the first 5 miles from the coast border, but it does not exclude any other type of activity with the exception of the industrial fishing activity, for which reason the averment is not sustainable from the legal point of view". And the National Fisheries Service repeats: "Finally, it seems suitable to clarify that the areas reserved for artisan fishing (five miles and inland waters) referred only to the practice of extractive fishing activities, and in consequence, there are no scopes with respect to other types of activities such as aquaculture".

3. Some environmental issues related to the aquaculture activity.

3a. Synthesis of the NGOs complaint.

That Marine Harvest must respect the denominated precautionary principle established in point V, N° 4 of the OECD Guidelines. (Refer to annexe 14).

That Marine Harvest does not apply said principle respect to the excessive flourishing of algae's (some of them toxic) that contaminate the waters producing some negative environmental impacts¹². That these excessive flourishing of algae's in seabed's is produced by surplus of nutrients contributed by external agents. These nutrients are linked to the food not consumed by the fishes and with their faecal, circumstances related with the farming aquaculture centers.

That Marine Harvest does not carry out an adequate evaluation of the environmental impact as established by point V, N° 3 of the Guidelines. That it only carries out an environmental impact study, as it is requested by the Government and that this study is not strong enough .

In the Region X and XI, information is provided with respect to the environmental and human health impact produced by the denominated "red tide". These situations happened in the firsts months of year 2002. A report on the actions adopted by the regional authorities to prevent the effects of red tide was given.

⁹ Reply Letter N° 000152 from Mr. Patricio Vallespín L. President of the Regional Environmental Commission of the X Region, addressed to Mr. A. Johnson. General Manager of MH and letter of the National Director of Fisheries (S) to the Head of the OECD Department. Refer to annexes 8 and 9.

¹² The NGOs state as: the muddiness of waters, which prevent the growth of some types of plants(non toxic and toxic algae) and upsette the natural balance among the native species. In addition, it result that shellfish become unfit for human consumption. Refer to annexes 1 and 2.

The NGOs referred to the authors that link the proliferation of toxic algae's (such as red tide) to the existence of aquaculture farming centers and urge the company to orient towards a more preventive position with respect to the red tide.

3b. Synthesis of MH's reply

There is increasing scientific evidence that the "algae blooms" have various origins not related to aquaculture. This affirmation is supported by studies and articles published, which source is identified.

That the company, being aware of its impact on the environment, develops a permanent monitoring of waters and sea beds of its concessions in order to take safeguards and mitigation actions. It assures that the water concessions are part of its most valued assets because salmon farms are located in these waters. That the quality and environmental unit of the company is oriented to obtain a sound and efficient cultivation of salmon; that the actions taken in this respect are preventive and proactive,¹³ tending to maintain water concessions in a good sanitary and environmental status.

That with respect to the supply system of fish feed, the company has a feeding chamber system that is part of their growth control ¹⁴, which system is needed to optimize its production costs.

With respect to the denominated "red tide", it affirms that it appeared before the existence of the aquaculture industry. That MH participates in the companies commitment of collaborating in activities to prevent this phenomenon. That it has to investigate all the causes that provoke this phenomenon and not to focus on stating aquaculture as the only cause .

That MH is available to incorporate this issue in the agenda of the Preliminary environmental impact evaluation draft that is attached.

¹³ In that context, to have obtained ISO 9001, Version 2000 is also registered. It supposes that the company certifies its cultivation and processing operations of salmons under international standards. At the same time, the company that provides fish feed (Trouw Chile) has obtained ISO 9001 and 14001 certifications.Refer to annexes 3 and 4.

¹⁴ The operation of these feeding chambers was exhibited, as punctual information in one of the farming centers, Huelmo, to the official of the OECD Department that visited some facilities of the company in January 2002.

Finally the document refers to "the remaining subjects" (refer to attachment 4), which as it was stated in the Introduction, are not included in the considerations of this Final Report.

3c. Backgrounds considered by the NCP

This section of the report referred to the accusation of some environmental aspects related to the aquaculture activity, is included in the following parameters:

The Chilean State, according to the Political Constitution, provides for the Nation's duty to protect the preservation of nature.¹⁵

As per the General Law of Fisheries and Aquaculture, the concessionaire of the bestowed zone for the aquaculture activity, has the responsibility of the cleanness and ecological balance in accordance to the prescribed regulations¹⁶.

This law sets forth that environmental measures shall be regulated with the aim that aquaculture industry operates within adequate levels.¹⁷

In response to said demands, the Chilean State has provided a regulation that rules aquaculture and fishing activities, from which the most outstanding are: the Environmental Regulation for Aquaculture¹⁸ ; Resolution 404, that accompanies said Regulation; the General Law on General Environmental Terms, the Regulation of the Environmental Impact Assessment System¹⁹ , the General Law on Fisheries and Aquaculture, and the Regulation on Concessions and Aquaculture Authorizations.

Part of this policy is effective since 1991, another is of recent application, and a third part will be effective as of December of this year.

¹⁵ Art. 19, N° 8, paragraph 1, of the Political Constitution of Chile, so establishes. Refer to annexe 11.

¹⁶ It also establishes Art. 74, paragraph 3° of the General Law of Fisheries and Aquaculture. Refer to annexe 11.

¹⁷ It also determines Art. 87 of the same law stated in the above note . refer to annexe 11.

¹⁸ Contained in Supreme Decree N° 320 from the Ministry of Economy, Development and Reconstruction of December 17, 2001. Refer to annexe 12.

¹⁹ Law 19.300 and Decree N° 95/01 of the Ministry Secretariat General of the Presidency of the Republic published on December 7, 2002 that contains said Regulation. Refer to annexe 24.

The Environmental Regulation for Aquaculture and the corresponding Resolution define and measure the level of non-acceptability of common environmental impacts for all the activities of aquaculture. It means that its compliance assures the mitigation of the negative externalities produced by the culture of any hydro-biological specie, and therefore the activities of the Chilean aquaculture industry²⁰.

The same abovementioned Technical Report on these environmental aspects, states that the Regulation:

- Incorporates the necessary tools for environmental analysis for the adequate compliance of the obligations; these are the "Preliminary Site Description and Environmental Information".
- It establishes the limit of non-acceptability of environmental impacts, defined by the presence of anaerobic conditions or the absence of dissolved oxygen in the surface of the sediments of the sedimentation area.
- It states which shall be the mitigation actions to which the fisherie authority will oblige in case of detecting non-compliance to environmental requirements .
- It makes reference to the Resolution attached that sets forth the methodologies for sampling, analysis and information delivery.

Negative environmental interactions

On the other part, with respect to negative environmental interactions of the aquaculture centers using intensive production systems, the same Technical Report N° 62 states that the Regulation avails operation conditions, prevention actions, and prohibitions aiming to mitigate negative environmental interactions.

In the specific aspect of our concern, it states as a negative environmental interaction the presence of anaerobic conditions in the settling areas of farming centers located in bodies of water.

²⁰ Likewise it is established in the Introduction of the Technical Report N° 62, prepared by Dr. Alex W. Brown, expert on Environment and Aquaculture, Advisor of the Under-Secretariat of Fisheries in these matters. This Report sets the grounds for the Environmental Regulation for Aquaculture. Refer to annexe 23.

It also states that the environmental effects originated by the nutrient wastes and organic matters dissolved or particulate matters deriving from non consumed feed and faecal are evident. These effects are different in farms located in inland waters, which are more vulnerable than those located in marine waters, which present large extension of tides, and therefore strong water currents, that allow to disperse efficiently all sorts of particles.

Is necessary to point out that given the greater vulnerability of inland waters, the competent authority has not granted any aquaculture concessions or authorizations since 1991 in those places. (Refer to Annexe 16).

Mitigation Actions

With the purpose of overcoming situations defined as non-acceptable, the basic requirement for all aquaculture activities located in bodies of water includes the obligation of maintaining aerobic conditions in the surface of the sedimentation area at all times.²¹

The aforesaid supposes the control of sedimentation suspended from the aquaculture operations, including the maintenance of environmental conditions that assure the rapid recovery of the sediments and the biological activity in bio-disturbance.

To achieve the aforesaid objective, some operation conditions applicable to all farming centers are established.²²

On the other hand, some other conditions for intensive production systems such as minimum distance between each other, and with respect to

²¹ It is so established in Art. 17, paragraph 2 of the Environmental Regulation for Aquaculture. By **aerobic conditions** it is understood as a condition that indicates the presence of dissolved oxygen in interstitial water found in the first 3 cm. of sediment. **Sedimentation area** is understood as the bed or zone directly under farming modules. Refer to annexe 12.

²² Art. 4 of the Regulation establishes 6 types of conditions: cleanness of the area and adjacent lands, dispose of solid and liquid residues waste deposits, none degrading supports withdrawn at the end of the activities , avoid contact between nets and other implements from floating structures and the bottom.. In addition, in each farming site shall be a contingency plan that considere risk of environmental damage. Refer to annexe 12.

extensive cultivation centers. Besides it imposes more demanding operation conditions for the centers located in water portions and bottom in inland water bodies²³.

The Environmental Regulation for Aquaculture establishes also a figure called Preliminary Site Description for the centers project that should be submitted to the Environmental Evaluation System and the Environmental Information for all the centers.

If in the farm's sedimentation area anaerobic conditions are detected, a significant decrease of the biomass of samples or algae's to cultivate is considered, until the aerobic conditions are re-established²⁴. In effect, the Regulation establishes a 30% reduction of the number of samples to cultivate in the farming center sanctioned, which reduction will be applied successively as long as the aerobic conditions are not re-established. Besides, Articles 87 and 118 of the General Law of Fisheries and Aquaculture establish sanctions for the concession holder or authorizations that do not comply with the environmental norms. These sanctions are finances that range between 3 and 300 Tax Units per month. In cases of reoffend, the Judge may increase four times the amount.

On the other side, Resolution 404²⁵ establishes exhaustive conditions with respect to the contents and methodologies to elaborate the Preliminary Site Description(PSD), as well as for the Environmental Information.

Respect to the PSD, the most important specifications include: the classification of the centers by categories, and for each category, differentiated components are established: Barometric, grading analysis of the sediment, bentonic macro-fauna organic matters, pH and Redox potential in the sediment, euleriane current metrics up to oxygen profile dissolved in water column are included.

With respect to Environmental Information, it is stipulated that this document should refer to all the elements contained in the PSD; indicating rules on the location and number of sampling stations, indicating the methodology to be applied to measure each of the indicators that must be included in the information.²⁶

²³ Art. 14 of the Regulation establishes some requirements to the farms located in inland portions of water: salmonids may only be maintained in these farms until they have reached *smoltification stage*, the use of anti-foulings which contain non degradable active toxic elements or bio-accumulative is strictly forbidden, food supplied in farms located in lakes shall not contain a digestibility level under 80% of dry material, and these farms sites must installate non ingested food detection systems or, optionally, food and feaces collection systems. Refer to annexe 12.

²⁴ On biomass reduction, see Art 20 of the Environmental Regulation for Aquaculture and on the sanctions of concession holders , please refer to articles 87 and 118 of the General Law of Fisheries and Aquaculture in annexe 11.

²⁵ Resolution 404 of the Under-Secretariat of Fisheries. Refer to annexe 15.

²⁶ Art. 4 of Resolution 404 of the Under-secretariat of Fishing.Refer to annexe 15.

The information on the environmental status of the farming centers is based on the measurement done on water conditions, the sedimentation area, and its adjacent area . It shall also consider the production system and the annual projections in the highest biomass season of the year in cultivation.

Chapter III

Recommendations

1. Respect to labor issues.

Whereas,

That the NCP verifies that the renegotiation and the modification of the 2001 collective contract , subscribed on December 2002, between the company and the Processing Plant trade union constituted a change with respect to the aforesaid situation. The attitude of the parties to renegotiate and try to overcome the sequels of the conflict of October 2001 is evaluated as favorable. That in terms of the content, the modifications established a Welfare Fund (with contribution of the company and of the workers) that is a complementary health insurance and a Life Insurance completely financed by the company.

That the relations between the trade union and the company is outstanding as it repositions the trade union as legitimate partner and the renegotiation takes into consideration some of the priorities of the Processing Plant trade union.²⁷

Consequently, the following is recommended to consolidate the normal relationship between the Trade Union and the Company:

To bear in mind:

a. The binding force of the legislation set forth in the Labor Code that dedicates all Volume III to the trade union organization, and Volume IV to the collective bargaining. Policy-setting that must be associated to the ILO Agreements, specifically Agreements 87 and 98, subscribed by Chile, and with the clauses of the OECD Guidelines related to this topic, specifically point IV, numbers 1 and 2 hereof , also subscribed by our country.

²⁷ Same source as note 3.

b. That the Chilean and international legislation stipulate that the trade union must play a permanent and irreplaceable role in the defense of workers' rights . That this role must be recognized and respected by the authorities and by the companies. Free trade union association and collective bargaining are included among the basic rights of workers.

c. That the legal figure of "worker groups" united only for collective bargaining purposes have a legal recognition, specifically in articles 303, 314 y 314 bis of the Labor Code. That it refers, nevertheless, to the recognition of an instance of partial and limited representation to this unique purpose. Because in the text and spirit of the Chilean legislator, there is no willingness to substitute the trade union organization which role is permanent and covers all the scope of the labor relationships. Furthermore, article 323 of the Labor Code opens the alternative that the Trade Union during a collective bargaining, also may represent those workers not affiliated to the trade union, if they request so.

d. That the aforesaid is very pertinent, since there are always risks to consolidate healthy and cooperative relations between the trade union and the company. In this case, one of the risks is that the trade union organization perceives that, voluntarily or involuntarily, it has been pretended to decrease its influence when granting a protagonist role, that goes beyond the strictness established due, to the entity of non-unionized workers.

e. That another risk could be the concern that trade union organizations may have with respect to the criteria adopted by the company in the event of downsizing: that it should not be negatively discriminating with respect to persons affiliated to the trade union. In addition, the concerns perceived by trade union leaders about their labor stability when they cease in their union functions, is also a risk.

f. That, finally, these conflict risks can be overcome by means of the permanent interaction between the company and the trade union (establishing for example, periodical meetings, with information in company's and trade union's publications), so nobody doubts that the company recognizes and respects the trade union's activities. And that the fact of affiliating to the trade union or becoming elected as leader of this one implies the exercise of a right widely recognized and legitimate. That the affiliation to the trade union does not generate any risk of being negatively discriminated.

2. Respect to subcontractors and suppliers companies stimuli to comply with the labor regulations.

Whereas,

That within the Aquaculture Industry there are some subcontractors and suppliers companies that in some cases do not comply with the labor legislation.

It is recommended that the contract clauses between these subcontractors and Marine Harvest Chile S.A. include the peremptory obligation to fully comply with the labor legislation. That Marine Harvest established some sanctions such as contract termination or suspension or elimination as subcontractors in the case of companies that infringe the labor legislation. That, in addition, MH express a countervailing and active attitude with respect to the principle of subsidiary responsibility established in the Labor Code, articles 64 and 64 bis.

In turn, the National Contact Point shall inform the National Directorate of Labor about the complaint manifested by the Provincial Trade Union Federation aforementioned, relative to reiterated non-fulfillment actions to the labor regulation from the subcontractor companies of multinational companies of the aquaculture and fisherie sector.

3.- Respect to the exact geographic location of cultivation centers

Whereas,

The backgrounds mentioned on this point, and in order to make the information on the company activities more transparent as requested in point III, number 3 of the Guidelines.

It is recommended that MH delivers information with the pertinent geographical coordinates on the location of its concessions, or communicates the data on the Resolutions or Decrees related to those concessions and their publication date in the Official Gazette.

Note: It is noted that MH, in its communication dated August 22, enclosed a map showing all farming center locations. Nevertheless, this map only allows to determine the approximate location of the centers. Finally, in order to overcome definitively this situation, on September 24th, the company MH informed the NCP about the complete list of Resolutions and Decrees that authorize its concessions. The necessary geographical coordinates, to locate these centers in a precise manner, are in these documents. (Refer to annexes 20 and 21).

4. Respect to the 5 miles reserved for artisan fishing

Whereas,

That the NCP must adjust to the position adopted by the State Services in charge of enforcing the norms with respect to the concessions and authorizations for the aquaculture activity.

It is necessary to consider that are other competent instances for interpreting the spirit and scope of the law.

The NCP recommends: to attain to the interpretation adopted on this point by the Under-Secretariat of Fisheries and Sernapesca (National Fisheries Service), as it is stated in annexes 7, 8, and 9.

5. Respect to the farming centers located in areas that are detrimental for other users

Whereas,

That, about the declaration of appropriate aquaculture areas, there are enough legal and regulatory safeguards which have been previously stated.

If in spite of the afore mentioned safeguards, there are Farming Centers cases, which have been specifically identified as located outside of the appropriate areas, the NCP deems that persons or associations damaged, have the right to address before the competent authorities.

6.- Respect to the non-respect of the concession boundaries of Marine Harvest in the Llanquihue lake

Whereas,

That the company MH, in its last communication dated on August 22, announces that it requested DIRECTEMAR to provide an official measurement of its concessions in the Llanquihue lake.

That the certificate granted by DIRECTEMAR on 04/09/03 establishes that: the barges are located within the boundaries of the concessions, that the area occupied corresponds to the space granted, but that the lines of protection of the concessions are outside the space limits granted. This certificate explains that these

lines have been installed to protect the center from illicit actions carried out by third parties.

The NCP recommends:

- a) That the interested or eventually damaged parties to consult DIRECTEMAR, which is the enforcing entity, with respect to the nature of the afore mentioned specific situation, in order that this organism takes the actions deemed pertinent.
- b) That MH adopts, in agreement with DIRECTEMAR, the pertinent actions with respect to the location of the protection lines.
- c) That the location issue of the protection lines of the farming centers of the aquaculture industry, in general, be incorporated as a subject to be analyzed in the Dialogue Process that is further proposed.

7. Respect of some of the environmental impacts linked to the aquaculture activity.

Whereas,

- a) The important set of environmental norms, now available, to regulate the subjects analyzed herein.
- b) That the Under-Secretariat of Fisheries:
 - Recognizes that there are environmental interactions, produced for the use of chemical products and for physiologic wastes of organisms in aquatic cultivations, which could affect natural resources.
 - It reports various initiatives tending to minimize the negative environmental impacts caused by the aquaculture activity.

- It states that the Chilean State policy to reach a sustainable development of this activity is in full development²⁷. And, therefore, the public policies are implementing the precautionary principle. That it shall provide, probably during the course of this year, of a Norm on Water Quality, which will allow to regulate all activities (not only aquaculture) that generate organic loads.²⁸
- c) That this national regulation is binding and exhaustive, and that, there are competent State agencies to proceed to the pertinent controls and regulations.
- d) That the actions to mitigate environmental impacts stated here, apply whichever they are to any of the opinions that the agents have on whether there is or not a scientifically proven correlation between the emission produced by aquaculture farming centers and algae's flourishing. In Chile, during the coming months, when all regulations are enforced, it will probably not be strictly necessary to invoke the precautionary principle of the OECD Guidelines to request certain actions to mitigate environmental negative impacts.²⁹
- e) That in the NGOs claims related to some environmental issues, linked to the aquaculture activity, there is a difficulty: lack of precision. This is the case of determined environmental impacts attributed to aquaculture in general that are specifically blamed to the company Marine Harvest, without being able to precise the sites neither the magnitude of the impact denounced.
- f) That the sustainable development of this important industrial sector will depend of the social responsibility of the related companies, in order to produce quality goods, protect the environment, establish friendly relationships with other local stakeholders, and consolidate high quality labor relations. This implies that multinational companies must be prone to progressively assimilate headquarters standards with their affiliate companies. It will depend as well on the State's capacity to implement a demanding and efficient regulation, which will suppose that the regulating entities shall have financing, skill and provide sufficient

²⁷ (D.Ac) N° 1702 of September 12, 2002 of the Under Secretary of Fishing, Mr. Felipe Sandoval addressed to Mr. Andrés Johnson, General Manager of Harvest Chile S.A. Refer to Annex 7.

²⁸ Information provided to the NCP by Dr. Alex W. Brown.

²⁹ This means that in Chile, the current regulation to mitigate negative environmental impacts of the aquaculture industry will be more demanding than invoking the precautionary principle based on the established by the OECD Guidelines, since the Chilean regulation is binding, and the Guidelines are only recommendations for the companies.

human resources, as well as the necessary equipment. Finally, on this matter, the social, local and environmental organizations could play a significant role to propose initiatives, to alert and inform the entire society on situations that affect the environment.

- g) That the reports of several government agencies, enclosed as annexes, do not report non-compliances with the regulation enforced by MH, with respect to these environmental issues mentioned in the complaint. That the company affirms having taken measures to mitigate negative environmental impacts.
- h) Overall that in the next months, the enforcing agencies, such as SERNAPESCA and others, will be able to control, measure with precision, individualize specific farming centers, and eventually sanction whom do not comply with the new regulation. These agencies shall issue a judgment after the controls. For this reason, the NCP states that it is necessary to allow that the competent entities act, apply the regulation and evaluate by themselves or under the petition of the interested parties.

Consequently

The National Contact Point deems necessary that the system, of national environmental norms, reach all its effectiveness and application in the next months, so it can be possible to have a complete view on the evolution of the subjects analyzed in this point.

8. Finally, in consideration of the various issues addressed in this report, NCP proposes:

That the different economic sectors, associations and government, directly or indirectly linked to the aquaculture industry, start a dialogue process with the objectives, subjects and matters proposed as follows.

For such effect, the NCP has decided:

- To welcome the initiative of MH expressed in letter of August 22, 2003, and in the document denominated "Preliminary Draft on Salmon Cultivation: Impact Evaluation of the Activity in Chile"
- To accept the NGOs' petition expressed in letter dated July 7th, 2003.
- To propose in consequence, that the dialogue process be institutionalized and developed in two phases:

Phase 1: to be initiated within the next 2 months tending to establish a formal relation and discuss the most urgent subjects of common interest with the representatives of amateur fishermen, of aquaculture workers, of artisan fishermen, and of the tourist sector of the Regions X and XI.

Phase 2: to be initiated immediately after finishing Phase 1, that includes other sectors such as those stated in the MH preliminary draft (representative institutions, NGOs, suppliers, academics, and scientists), and that could deal topics like research on environmental issues and others.

It is proposed to design the dialogue process, i.e. to adjust the agenda, to define the objectives, to set the calendar, to establish a methodology, and to identify the participants, in order to constitute a **Coordinator Committee**, integrated by the following entities³⁰:

- Marine Harvest;
- The amateur fishing federation of the X Region;
- Milieudéfense;
- Ecocéanos;
- World Wildlife Fund;
- Universidad de los Lagos;
- Sernatur, X Region;
- A representative of the Regional Labor Directorate of the X Region;
- A representative of the Fishery and Aquaculture Industry Trade Union Federation of the X Region;
- The X Regional COREMA's Director; and
- The X Regional SERNAPESCA's Director

The NCP has demanded to the National Fisheries Service that the Regional Director of SERNAPESCA X Region acts as coordinator in both phases of this dialogue round. This Service has accepted this petition.

In this manner the entrepreneurial sector, the Government, and the civil society associations would be represented, among them some NGOs involved in these matters.

The MH Preliminary draft and this Report could be the basic documents, and the subjects included therein should be considered in the agenda.

³⁰ It is put on the records that Salmon Chile, association that represents salmon industry entrepreneurs of Chile supports the dialogue initiative set forth in this reports, and at the same time the association proposes to foster a similar initiative covering all industry entrepreneurs, wide sectors of the community and Government authorities.

The Coordinating Committee when programming the meetings according to various subjects, will invite the corresponding regional authority to participate. If the case is on labor issues, the active participation of the Regional Directorate of Labor will be requested, and so on. There will be different types of meetings with various participants and agendas.

Likewise, it is not necessary to emphasize that the success of this initiative is on the interest of all parties involved in the dialogue, as well as for the country itself, which could be enriched with the accomplishment of this initiative.

The NCP values positively the fact that the parties are willing to participate in the dialogue process proposed for dealing with this case. This reason is more than enough for the NCP to be ready to collaborate both in the constitution of the Coordinator Committee as well as in the development of the process.

National Contact Point

Santiago, October 15th , 2003.