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| <b>Document title</b>  | Court decision in Sweden with relevance for BAT in aquaculture |
| <b>Code</b>            | 5-2  |
| <b>Category</b>        | INF  |
| <b>Agenda Item</b>     | 5 – BAT/BEP for sustainable aquaculture                        |
| <b>Submission date</b> | 11.05.2017   |
| <b>Submitted by</b>    | CCB  |
| <b>Reference</b>       |  |

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### Background

This is a short information note about a recent court case settled in Sweden that has implications for interpretation of BAT for aquaculture. The case has relevance for the HELCOM contracting parties because of the links to the Weser case and the work to develop a joint BAT for aquaculture in HELCOM.

### Action requested

The Meeting is invited to take note of this case and consider the implications for the work to develop BAT and BEP for aquaculture.

## Swedish court ruling closing down open cage fish farms on Baltic coast

On March 13<sup>th</sup> the Swedish Supreme Environmental Court (final) has decided to ban and stop all current fish farming in open cages in Baltic coastal waters in three different locations, Omnefjärden, Mjältösundet and Nätrafjärden in Örnsköldsviks municipality. This is a result partly because of the so called Weser-judgement (see from page 28 in the Decision) from the Court of Justice of the European Union ([C-461/13](#)) in combination with new Environmental Quality Standards in Sweden. *[In short, the ECJ establishes in the above case judgement that permits cannot be given to any project that jeopardize the possibility to reach good status or degrades the current status even if the overall status of the water body is unchanged.]* The possibility to reach or maintain the status of the water is also a key part of the Swedish Supreme Environmental courts argumentation.

It is likely that permits for also other fish farms in open water will be questioned and new permits unlikely. This gives case further underlines the need for an agreed BAT and that for example land based systems has a clear advantage. The ruling of the Swedish Court contains many elements of great interest, e.g. that theoretical calculations are flawed and that the open cage system cannot be seen as BAT.

To clarify, there are already fish farms in this area that has been in operation several years. The process started with the operator asking to renew the permits and in some cases increase production. Now the farms must be phased out instead.

The Court has given a three year closure period that includes a demand to establish a clean up plan within one year for the sites used. The call for a clean up plan is important since its sets a president as well regarding the responsibility of the producer, basically underlining the polluters pays principle.

All details of the cases can be found on below links but are only available in Swedish

### The court documents:

Main decision of importance is case number M 8882-15:

<http://www.markochmiljooverdomstolen.se/Domstolar/markochmiljooverdomstolen/Hela%20avv%20M%208882-15.pdf>

All other cases about aquaculture can be found here:

<http://www.markochmiljooverdomstolen.se/Avgoranden-fran-Mark--och-miljooverdomstolen/2017/>

Press release from the Court:

<http://www.markochmiljooverdomstolen.se/Nyheter--pressmeddelanden/Fiskodling-i-oppna-kassar-ar-inte-tillatlig/>

This case can and should be used as a reference in other countries besides Sweden since the linkage is made to EU law and not just based on Swedish circumstances.