

Brussels, 29.11.2024

Aquaculture Stewardship Council  
Daalseplein 101, 3511 SX Utrecht  
Netherlands  
Att: Chris Nannes, CEO

## REGARDING ASC CERTIFICATIONS OF COMPANIES IN OCCUPIED WESTERN SAHARA

Dear Mr. Nannes

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about certificates of ASC in relation to companies in occupied Western Sahara or sourcing fish products from the territory.

The background for our request is that we are publishing a report on the certification schemes involved in the problematic trade of fisheries products from Western Sahara on our websites [www.vest-sahara.no](http://www.vest-sahara.no) and [www.wsrw.org](http://www.wsrw.org) in approximately a month from now, and we are going to include references to ASC in the report.

Specifically, we are reaching out in relation to the following cases:

- Azura Aquaculture (ASC02202) which has an ASC Bivalve Standard (version 1.1), awarded in March 2019 after assessment by Global Trust Certification.
- Turkish group Gümüşdoğa Su Ürünleri which has obtained several ASC certificates (ASC02524). The group imports FMFO products from occupied Western Sahara.

We fail to understand how ASC came to the conclusion that the establishment Azura Aquaculture in the occupied territory of Western Sahara could go through a certification procedure. Furthermore, we are surprised to see the company – which is located in the city of Dakhla – is referred to as being located in «Morocco» on your website.

The geographical error, failing to relate to the UN maps and rulings of international courts on the matter of Western Sahara, as we see it, could constitute an act of gross negligence.

We have several questions in relation to the certification of these particular companies, outlined further below, that we hope you will have a chance to respond to, **prior to 15 December 2024**.

Allow us to first contextualise our query. The United Nations consider Western Sahara to be a non-self-governing territory without an administering power in place. The International Court of Justice has confirmed that Morocco has no sovereignty over the territory, and that the people of Western Sahara have a right to self-determination – the right to determine the future status of the territory.<sup>1</sup> In 1988, the UN was able to broker a ceasefire arrangement between Morocco and the Western Sahara liberation movement, Polisario, in which both parties agreed to hold a referendum on self-determination.<sup>2</sup> To that goal, a UN mission (MINURSO) has been deployed to the territory, but it has not been able to organise a referendum as Morocco continues to block any effort that

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<sup>1</sup> International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

<sup>2</sup> The “settlement proposals” are included in the Report of the UN Secretary General on Western Sahara of June 1990, available here: [https://minurso.unmissions.org/sites/default/files/unsg\\_report\\_18\\_june\\_1990.pdf](https://minurso.unmissions.org/sites/default/files/unsg_report_18_june_1990.pdf)

offers a choice beyond integration. In November 2020, the ceasefire collapsed after the Moroccan army seized a section of the UN buffer zone to break up a Saharawi protest.<sup>3</sup>

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice<sup>4</sup> and the African Court on Human and People's Rights<sup>5</sup>, all underline that Morocco has no sovereignty or administering mandate over Western Sahara, Morocco continues to militarily control about three-quarters of the territory. Incentivized by its exploitation of the territory's resources, Morocco has little interest to genuinely take part in the UN-mediated peace process. Meanwhile, the lingering conflict continues to have a high human and humanitarian cost: over 170,000 Saharawis are stuck in refugee camps in neighbouring Algeria, surviving in harsh desert conditions and dwindling humanitarian aid. Saharawis who live under the yoke of Morocco's occupation are victims of serious human rights violations that have been reported by the UN Human Rights Committee, UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Human Rights Defenders, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others. In 2023, the UN High Commissioner for Human Rights lamented the fact that his Office has not been allowed to visit Western Sahara for the last eight years.<sup>6</sup> Year after year, Western Sahara is ranked among the worst countries and territories in terms of political rights and civil liberties, on par with countries and territories like North Korea, Syria, Afghanistan and Crimea.<sup>7</sup>

The status of the territory comes with repercussions for business activities. As established in 2002 by the UN Legal Counsel at the request of the Security Council, any economic activity in the territory would be in violation of international law if not undertaken in accordance with the wishes and the interests of the people of the territory.<sup>8</sup> We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights<sup>9</sup> and of the UN Human Rights Committee<sup>10</sup>, which have both emphasized the need of obtaining the Saharawi people's "consent to the realization of developmental projects and [resource] extraction operations". In this context, it is important to stress that the rights of the people of Western Sahara should not be viewed through the concept of FPIC, as they are not an indigenous people with a certain rights to a part of a territory in a state that they recognise as such - the people of Western Sahara are the holders of the sovereign rights to Western Sahara as a whole. Their homeland is in part under foreign occupation, but the right to self-determination - the right to decide the status of the territory as a whole, and of the resources harboured therein - lies with the Saharawi people. The UN treats the unresolved conflict in Western Sahara through the right to self-determination as the cornerstone principle, and does not regard this as an indigenous peoples issue.

Recent years have witnessed an emerging body of law pertaining to Morocco's claim to the territory. Since 2015, in ten (!) consecutive rulings, the Court of Justice of the European Union has concluded on the following points as settled:

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.<sup>11</sup>
- Morocco has no sovereignty<sup>12</sup> or administering mandate<sup>13</sup> over Western Sahara.

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<sup>3</sup> WSRW, 19.11.2020, Saharawi gov calls for halt of all activity in Western Sahara over war, <https://wsrw.org/en/news/saharawi-gov-calls-for-halt-of-all-activity-in-western-sahara-over-war>

<sup>4</sup> The Rulings for cases T-512/12, T-180/14, C-266/16, T-275/18 and combined cases T-344/19, T-356/19 and T-279/19 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

<sup>5</sup> African Court on Human and People's Rights, 22.09.2022, Ruling on Application N° 028/2018 <https://www.african-court.org/cpmt/storage/app/uploads/public/632e0f3ad632e0f3ad580e748464681.pdf>

<sup>6</sup> OHCHR, 07.03.2023, Global update: High Commissioner outlines concerns in over 40 countries, <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries>

<sup>7</sup> <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

<sup>8</sup> UN Security Council, 12.02.2002, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, <https://undocs.org/S/2002/161>

<sup>9</sup> UN Economic and Social Council, 22.10.2015, Concluding Observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4\*, §6, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en)

<sup>10</sup> UN Human Rights Committee, 01.12.2016, Concluding Observations on the sixth periodic report of Morocco, §10, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=en)

<sup>11</sup> Judgment of 21 December 2016, EU:C:2016:973, §92, and reiterated in the Judgment of 27 February 2018, EU:C:2018:118, §62, Judgment of 4 October 2024, EU:C:2024:833, §163, Judgment of 4 October 2024, EU:C:2024:839, §85 and Judgment of 4 October, EU:C:2024:835, §134.

<sup>12</sup> Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

<sup>13</sup> "Account must also be taken of the fact that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of that territory, and it is common ground that it does not transmit to the UN information relating to that territory, such as those provided for by Article 73(e) of the UN Charter." Judgment of 10 December 2015, EU:T:2015:953, §233. Considered a settled matter in subsequent rulings.

- Consequently, the waters adjacent to Western Sahara cannot be regarded as part of the Moroccan fishing zone, territorial waters, exclusive economic zone, or any other notion used to describe Morocco's role vis-à-vis the waters off Western Sahara.<sup>14</sup>
- The people of Western Sahara are to be regarded as a third party to the EU's agreements with Morocco, and that as such, no agreement can affect their territory without their consent, as a corollary of the right to self-determination.<sup>15</sup>
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.<sup>16</sup> The Court stipulates that "a majority of the population of Western Sahara is not part of the people holding the right to self-determination, namely the people of Western Sahara. That people, which for the most part has been displaced, is the sole holder of the right to self-determination with regard to the territory of Western Sahara."<sup>17</sup> The Court adds that "there is a difference in that regard between the concept of the 'population' of a non-self-governing territory and of the 'people' of that territory. The latter refers to a political unit which holds the right to self-determination, whereas the concept of 'population' refers to the inhabitants of a territory."<sup>18</sup>
- The Court has firmly established the position of Front Polisario, the UN-recognised representation of the people of Western Sahara to be able to bring cases before EU Courts on behalf of the Saharawi people, and that it has access to the Court to defend their right to self-determination.<sup>19</sup>
- In Case C-399/22, which specifically dealt with the labelling of products from Western Sahara, the Court again emphasised the separate and distinct status of the territory in relation to Morocco, and concluded that at the stages of import and sale to the consumer, the labelling of the goods from Western Sahara must indicate Western Sahara alone as the country of origin of those goods.<sup>20</sup>

We note your company has issued a statement on Ukraine.<sup>21</sup> It reads that ASC supports ASI's stance, in that certification companies will not be able to conduct any new certification activities in this country. Further, ASI will not accept any new oversight work in Russia.

Against that backdrop, we have several questions about the decision to certify companies active in or importing from the territory.

*Regarding ASC and international law:*

1. Does ASC agree with the ICJ, CJEU, UN, African Court on Peoples' and Human Rights that Western Sahara is not part of Morocco?
2. Does ASC agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco's EEZ?<sup>22</sup>
3. Does ASC agree with the ICJ<sup>23</sup> that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?
4. Does ASC have any policy in place in relation to companies operating in occupied territories?

*Regarding the certification:*

5. Has Global Trust ever informed ASC that the physical address of the above-mentioned establishments is incorrect, through placing the city of Dakhla within the country of "Morocco"?
6. Which countries' laws regulate the contract between Global Trust and Azura Aquaculture in relation to the certification in question?
7. Did Global Trust physically travel into the occupied territory as part of the ASC certification?

<sup>14</sup> Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

<sup>15</sup> Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

<sup>16</sup> Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

<sup>17</sup> Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

<sup>18</sup> Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

<sup>19</sup> Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

<sup>20</sup> Judgment of 4 October 2024, EU:C:2024:839, §89.

<sup>21</sup> <https://asc-aqua.org/news/asc-statement-on-ukraine/>

<sup>22</sup> Judgment of the Court (Grand Chamber) of 27 February 2018, ECLI:EU:C:2018:118, §67-69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

<sup>23</sup> <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

8. In the cases when certification bodies issue certifications for ASC, but place the certified entity in the wrong country or territory, without taking into account the United Nations maps, does ASC consider this an act of proven negligence committed by the certification body?

*Regarding the standard:*

9. Azura Aquaculture has been certified for the ASC Bivalve Standard (version 1.1). The very first principle of that Standards expects certificate holders to “obey the law and comply with all applicable legal requirements and regulations where farming is located”. In the rationale of the principle, it is explained that it “must be in compliance with the legal obligations of the producing country”.
  - a. Which is considered the producing country in the case of the Azura operation in Dakhla?
  - b. Which country’s laws does ASC consider to be applicable in Western Sahara? Any other?
  - c. Does ASC have any measures in place to assess whether the conformity assessment body (CAB) has accurately evaluated a farm against the ASC principles?
10. According to ASC, what country’s legislation applies in the shallow waters in which the Azura production takes place, right off land near Dakhla in Western Sahara?
11. ASC’s supplementary checklist<sup>24</sup> for the Chain of Custody certification also requires certificate holders to have an effective process in place to inform CAB within two days, if a “court case or other legal action related to the scope of the CoC Standard arises” or on “becoming aware that the organisation, or their products, are not in compliance/conformance with any relevant applicable laws, regulations, ASC standards and/ or requirements”.
  - a. Has Azura Aquaculture informed CAB about the now ten CJEU rulings that draw strong conclusions about the territory in which Azura Aquaculture operates, and even have repercussions to the labelling of Azura Aquaculture's products upon import into the EU?
  - b. Has Azura Aquaculture informed CAB about the CJEU ruling with direct implications with regard to country of origin indications, both at the stage of import and sale to consumers in the European Union?
12. In terms of Chain of Custody certification, ASC’s supplementary checklist highlights that all certificate holders are to have a Food Fraud Vulnerability Assessment (FVA) in place to mitigate fraud risk. Misrepresenting the country of origin is a clear case of food fraud. The ruling in Case C-399/22, of the EU Court of Justice of 4 October 2024, which had immediate effect, concluded that “at the stages of import and sale to the consumer, the labelling of the goods at issue in the main proceedings must indicate Western Sahara alone as the country of origin of those goods.”<sup>25</sup>
  - a. Does Azura Aquaculture have FVA in place?
  - b. If yes to 4.a, how does ASC assess Azura Aquaculture to comply with its FVA in Western Sahara?
  - c. Would ASC qualify the labelling of products of Azura Aquaculture as from Morocco to be a case of food fraud?
13. Consider a situation where a company based in Western Sahara claims to be obliged to follow Moroccan regulations and thus labels the product as only from “Morocco”, but where ASC requires the product to be labelled only from “Western Sahara”, per CJEU ruling in Case C-399/22, of 4 October 2024.<sup>26</sup> Is there an opening within the standards, according to ASC, whereby the certified company and ASC can disagree on what country’s laws and regulations to abide by?
14. The Turkish group Gümüşdoğa Su Ürünleri has obtained several ASC certificates, including in conformity with ASC Seabass, Seabream and Meagre Standard v1.1 <sup>27</sup> The company bases its operations on massive

<sup>24</sup> <https://asc-aqua.org/wp-content/uploads/2023/05/ASC-Chain-of-Custody-Checklist-Guide-May-2023.pdf>

<sup>25</sup> <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290679&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106575>

<sup>26</sup> Judgment of the Court (Grand Chamber), Request for a preliminary ruling under Article 267 TFEU from the Conseil d’État France), ECLI:EU:C:2024:839, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290679&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106575>

<sup>27</sup> <https://asc-aqua.org/find-a-farm/ASC02524/>

[https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1996/67406cf5dbcc0\\_ASC\\_Certif\\_Gumusdoga2024.pdf](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1996/67406cf5dbcc0_ASC_Certif_Gumusdoga2024.pdf)

imports of fishmeal from occupied Western Sahara.<sup>28</sup> The mentioned standard notes that in Principle 1 that "It is important that aquaculture operations demonstrate a traceable pattern of legal and responsible behavior."

- a. Does ASC consider that it is relevant whether the imported FMFO has been purchased in a legal way from an authorised seller?
- b. Which countries' laws apply in terms of exports of FMFO from occupied Western Sahara into Turkey?
- c. Which set of laws constitute the basis on which the Western Sahara fisheries take place, through which the FMFO has been produced?
- d. The standard notes in its introduction that ASC's Mission is "To transform aquaculture towards environmental sustainability and social responsibility...". How can the Gümüşdoğa production be considered socially responsible if it is based on imports from Moroccan settler companies in Western Sahara that operate without the consent of the Saharawi people?

*Regarding credibility of the standard:*

15. Does ASC consider it relevant to correctly reflect the country in which the certified establishments are located on its website?
16. European consumers have the right to know the origin of the products that they purchase. The exporters in Western Sahara are falsely labelling the products with the wrong country origin. What reputational risks does ASC consider it might have for the standard that the website of Azura and the mentioned certificate itself - is misleading the consumer about the country of origin of the products that are being marketed?
17. We notice that Bureau Veritas is among the certification bodies that are, in general, approved to do checks in accordance with the ASC standard. Bureau Veritas has a highly political position on the conflict, recognising Western Sahara as part of Morocco.<sup>29</sup> This is not in line with the international courts or the UN. The company refers to Western Sahara as Morocco's "Southern Provinces". We cannot see whether it has similar positions on the occupations of other territories or countries.
  - a. Taking into account that Bureau Veritas through its political or financial positioning fails to relate to basic principles of international law, how can Bureau Veritas be trusted in terms of certifications in general, if they are to assess aspects of legal compliance?
  - b. Will ASC suspend accepting further certifications issued by Bureau Veritas until they have positions that align with international law and court rulings?

*Regarding your role:*

18. On its website, ASC's search function to "find a farm", includes Western Sahara as an option under the 'country/territory' filter. (<https://asc-aqua.org/find-a-farm/>) This search yields no results. The Azura Aquaculture farm is to be found through filtering for farms in Morocco. What are ASC's reasons for categorising a farm in Western Sahara as in Morocco?
19. ASC's website has a segment on human rights in aquaculture. Here, it states that "It is our mission to protect the human rights of those who work in aquaculture, or live in surrounding communities, and improve their wellbeing. We also aim to act as a catalyst for broader industry-wide change."
  - a. How does ASC regard the certification of a farm operating on occupied land - operating on the back of approvals granted by an occupying regime with no legal claim to the land - in the framework of its mission to protect human rights?
  - b. Would ASC consider the rights of the people of Western Sahara to be of relevance when certifying farms in Western Sahara?

<sup>28</sup> WSRW.org, 10.11.2019, Turkey's conflict aquaculture exposed, <https://wsrw.org/en/archive/4567>

<sup>29</sup> <https://www.bureauveritas.ma/newsroom/bureau-veritas-morocco-africa-business-days> and <https://en.yabiladi.com/articles/details/156253/french-business-delegation-visits-dakhla.html>

- c. How would ASC define the “surrounding communities” in Dakhla? Would it consider the rights of these communities - in majority Moroccan settlers as established by the highest Court of the EU - to take precedence over the rights of the people of the territory?
  - a. Is ASC of the view that human rights, in general, can be compromised, including the right-to self-determination?
  - b. To what extent does ASC believe that its certification of businesses on occupied land, on licences given by the Moroccan government, risks undermining the Saharawi people’s right to self-determination?
  - c. To what extent does ASC believe that it, itself, is acting in violation of the Saharawi people’s rights through certifying business operations on occupied land that do not have the consent of the people of the territory?
- 20. Has ASC ever sought to find out whether the issuing of certificates to Moroccan companies in occupied Western Sahara is something that the Saharawi people have consented to?
- 21. As companies on the European market are now obliged to label goods from Western Sahara as from “Western Sahara”, and specifically not from “Morocco”, is there a risk that the application of this ruling in Europe is undermined by the issuing of ASC certificates claiming that geographical locations in Western Sahara are in fact located in Morocco?
- 22. What is the risk that the certification of Azura Aquaculture - a company that operates within the strategies of the Moroccan government, that claims on its website that Western Sahara is part of Morocco - could cause damage to the Saharawi people who are the legitimate owners of the territory and resources?
- 23. Which steps will you take vis-à-vis the certificate, NSF/Global Trust and the certified establishments and your website as a consequence of our request to you and as a consequence of the 4 October 2024 CJEU rulings?

We’d be grateful for your response. Any answer from your company will be included in the report. We’d appreciate answers prior to 15 December.

Looking forward to hearing from you,

Sincerely,

**Erik Hagen**

**Western Sahara Resource Watch**

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