ANNEX O

SUMMARY OF SUBMISSION REGARDING INSTANCES OF SPECIFIC AND GENERAL NON-COMPLIANCE WITH ARTICLES 4 AND 9 OF THE AARHUS CONVENTION

A request for access to environmental information was sent by e-mail to the Norwegian Ministry of the Environment 12 January 2011. The request concerned a legal assessment referred to in the preparatory works for the Nature Diversity Act, which was adopted by the Parliament in 2009 (Act no. 100). The preparatory works (Ot.prp. no. 52 (2008-2009), section 7.2.4.3) stated that: "An assessment of the relationship of the provisions to international law has been carried out, which has shown the necessity for amendments and adjustments of the provisions if they are to be applied outside of 12 nautical miles." The request was based on the Environmental Information Act (no. 31, 2003).

The Ministry declined the request by e-mail 19 January 2011. The decision was based on the Freedom of Information Act (no. 16, 2006) and found the request to fall outside the scope of the Environmental Information Act.

A complaint regarding the denial of access to the information was filed to the Parliament's Ombudsman for Public Administration 20 January 2011. The case was finalized almost two and a half years later, on 10 June 2013, when the Ombudsman provided his final views on the case. The request of access to information was unsuccessful on all accounts, but the Ombudsman had, during the case (statement of 17 November 2011) and in his final views, criticized the Ministry's handling of the case.

The undersigned claims that the following issues in the case represent specific and general instances of non-compliance with the Aarhus Convention:

1) The denial of access to a legal assessment regarding the limits that public international law implies for the Parliament in a case concerning its decision regarding the geographical scope of the Nature Diversity Act (non-compliance with Art. 4). It should be noted that the request for information was made two years after the adoption of the Act, and was made for the purpose of writing an academic article concerning the geographical scope of the Nature Diversity Act and the establishment of marine protected areas. The Ministry has consistently failed to consider and specify how it has taken into account the "public interest served by disclosure". It is not sufficient that the Ministry merely states that it has considered the issue.

2) The failure of the Ministry to consider whether parts of the information can be subject to disclosure (non-compliance with Art. 4). The documents of the case indicate that the Ministry has not conducted any real assessment of whether parts of the information can be made available. In any case, the documents provide no reasons for why disclosure of parts of the documents is rejected.

3) The time spent by the Ministry to reconsider the request for information (non-compliance with Art. 4 and 9). The Ministry spent approximately eleven months to reconsider the request, despite a reminder sent from the undersigned. The Ministry also stated explicitly that it considered itself not to be bound by any deadline when reconsidering the request. It is

the view of the undersigned that the request from the Ombudsman to reconsider the initial decision must be regarded as a request for information. Regardless of this, the reminder sent by the undersigned January 26, 2012 should in any case be regarded as a request for information.

4) The failure of the Ministry to provide sufficiently reasons for its decisions (non-compliance with Art. 4). The initial decision of the Ministry failed to provide sufficient reasons for the refusal since it merely stated that "The Ministry has considered the question of providing access to the information under section 11 of the Freedom of Information Act, but has concluded that the interest in safeguarding internal decision making procedures in the Government is most important." This statement does not indicate whether and how the Ministry has considered the interests in providing access to the information. This reflects the general attitude of the Ministry throughout the procedures; it has limited its reasons to explain why it is important to keep the information confidential, and has failed to explain which aspects of the interest in providing access to the information it has taken into account, how it has considered such interests, and how it has weighed these interests against the interest in keeping the documents confidential.

5) The failure of the Ombudsman to effectively follow up the case (non-compliance with Art. 9). The undersigned claims that the procedure of the Ombudsman was in non-compliance in the following respects: a) the time it took to provide the first formal statement (ten months), b) the failure to follow up the case while the Ministry reconsidered its decision, c) the time it took for the Ombudsman to provide the final statement (seven months), and d) the failure of the Ombudsman to address properly the issues raised in the initial complaint (annex g) and the subsequent comments from the undersigned (annexes i and n). As regards the latter, the major issue of non-compliance in this regard is the omission of the Ombudsman to address complaints regarding the use of time in the case. In addition, the failure of the Ombudsman to address in more detail the claim under section 11(3) of the Environmental Information Act to be provided access to parts of the information represents in my view a denial of justice in non-compliance with the Convention, when he, after almost two and a half year of proceedings where this had been a core claim by the undersigned only addressed this issue by stating: "The Ministry could, with advantage, have justified its decision on access to parts of the documents under to the Environmental Information Act more concretely and in greater depth, but I have also on this point concluded not to pursue the matter further."

6) The failure of the Ministry of the Environment to effectively implement the Environmental Information Act (non-compliance with Art. 4). The Ministry of the Environment and other public authorities have failed to effectively implement the Environmental Information Act in three main respects: a) There is no procedure for determining whether information is to be regarded as "environmental information", and thereby is covered by the Act, when public authorities make their initial decisions to categorize the information as publicly available or confidential. The administrative procedures in this regard are only based on the Freedom of Information Act. This can easily be confirmed by using the electronic service for seeking access to information – all references to legal basis for confidentiality refer to the Freedom of Information Act (see http://www.oep.no/nettsted/fad?lang=en). b) When seeking access to information that has been classified as confidential, public authorities, including the

Ministry of the Environment, have failed to implement procedures that automatically consider whether the Environmental Information Act is applicable and whether access to information shall be provided in accordance with the Act. Even in cases where the requester invokes the Act, there seem systematically to be omissions, even with the Ministry of the Environment, to consider the requests under the Environmental Information Act. c) There seems to be no effective procedure within the Ministry of the Environment, and perhaps more broadly within Norwegian public authorities, to effectively address requests regarding those parts of the information that can be exempted from confidentiality.