

FRANCE. – Decree No. 85-1400 prescribing the forms and conditions relative to fish farming concessions and authorizations and to the formalities attaching to declarations of existing bodies of waters as contemplated in article 433 of the Rural Code. – 27 December 1985. – *Journal officiel de la République française* No. 302, 29 December 1985, p. 15372. [Extracts.]

Division I – General

1. In order to install and work in any of the waters contemplated in article 402 of the Rural Code, a fish farming establishment as defined by article 432 of that Code, an authorization or a concession shall be required in the form, and subject to conditions, described hereafter.

2. No fish farming authorization or concession may be granted if it appears that any adverse situation is likely to supervene for the fish living in any waters connecting with the fish farming establishment in question, *inter alia*, if the installation were to lead to an interruption in the unrestricted circulation of the fish in the watercourse, to an insufficient flowrate, or to an impairment in the quality of the water such as to place the lives of such fish in danger.

Furthermore no authorization or concession may be granted unless the proposed fish harvesting procedure excludes line fishing.

3. No authorization or concession shall be issued unless the interested party can show that he has signed the declaration or filed the application required, as the case may be, for the purpose of installing a fish farm, by other statutes or regulatory enactments, *inter alia*, those concerning waters, classified installations and domain property.

4. No fish may be introduced into a fish farm save in compliance with article 413 of the Rural Code and with any decree issued for its enforcement.

Division II – Application for fish farming authorizations

5. Applications for authorizations to convert any reach of watercourse or canal or any portion of a body of water where fishing rights are held by a riparian may be filed by either:

- (a) a riparian enjoying, as such, fishing rights over the reach of watercourse or canal or portion of water in question;
- (b) a holder of concession under whatever title for such fishing rights who is at the same time in possession of an express authorization from the riparian to install a fish farm.

6. Applications for fish farming authorizations shall be filed with the Commissioner of the Republic.

7. Applications shall consist of the following documents and items of information:

1. the name or style and address of the applicant;
2. the name and fish farming category of the watercourse, canal or body of water where it is proposed to install the fish farm together with a site map on a 1:25 000 scale;
3. evidence of the titles of the applicant where these are required by article 5, and, where appropriate, a copy of the deed, conferring water rights or authorization issued to him pursuant to the water laws;
4. a 1:2 500-scale plan of the fish farm and its surroundings accompanied by a note indicating the surface area, limits, cadastral designation of the land in question, the proposed conversion, inlets and outlets, the volume of the flowrate, or the manner in which water is supplied, and the position and nature of the standing closure devices;
5. the nature of the fish farm;
6. a report describing the nature and proposed methods of fish rearing, the fish species, the production target or purpose of the experiment and the method of harvesting the fish;
7. the arrangements proposed in order to ensure that in the bed of the watercourse or canal...

maintained as well as the free circulation of the fish, and any measures planned, in particular for maintaining the quality of the water, in such a way that no adverse effects shall be produced on other fish stocks;

8. the emptying schedule;
9. the period for which the authorization is requested, the period foreseen for completing any arrangements, and a note indicating the financial capacity of the applicant in relation to the planned undertaking.

8. Within a month following the registration of the application, the Commissioner of the Republic shall acknowledge receipt and, as appropriate, call for any additional information that appears to him to be necessary.

9. Within two months following the definitive receipt of the application, the Commissioner of the Republic shall either:

1. notify the applicant that the application is refused if it does not answer to the purposes required by law or to the conditions laid down in article 2 of this Decree, or
2. call upon the applicant to carry out, as required by article 10 and within not more than two years, under penalty of being deemed to have withdrawn from the undertaking, an impact assessment or an impact statement within the meaning of Decree No. 77-1141 of 12 October 1977 as cited in the preamble hereto.¹

10. The following shall be matter for an impact assessment: new trout farming installations and fish rearing plant for experiment purposes; and fish farms where production and marketing amounts to two tons or more, or where the surface area under water is of three hectares or more, as well as any extension of fish farms where the effect is to bring their annual production and marketing or their surface area under water to a figure equal to or in excess of the limits here laid down.

An impact statement shall be required for any newly installed fish farm other than those defined in the previous paragraph.

11. Where an impact assessment is required, and within one month of receipt the Commissioner of the Republic shall order a public hearing

¹ *Ed. Note:* Preamble omitted. Decree No. 77-1141 enforces section 2 of Act No. 76-629 of 10 July 1976: The Nature Protection Act.

as prescribed by Chapter II of Decree No. 85-453 of 23 April 1985², as cited in the preamble hereto. The application referred to in article 6 II (1) of that Decree shall include the documentary items referred to in article 7 of the present Decree, the impact assessment and the report drawn up by the official service organizing the hearing.

The hearing shall concern itself with the physical installation of the fish farm and its appurtenances and the proposed fish rearing methods.

12. Whenever, because a body of water and a fish farm are being installed at the same time, a public hearing pursuant to the water regulations and a public hearing on the fishery regulations are required, a single hearing shall be held as provided by article 4 I of the aforementioned Decree of 23 April 1985².

13. Immediately upon the completion of the hearing or upon the impact statement being produced, the Commissioner of the Republic shall consult the departmental federation of officially recognized fishing and fish farming associations and the departmental commission on sites, prospects and landscapes (meeting as a unit referred to as a nature protection unit). If the bodies here referred to have not made known their recommendations within two months they shall be deemed to have given their approval.

The Commissioner of the Republic shall rule on the application and, within four months of the conclusion of the hearings of the impact statement being produced, shall notify the applicant and the mayors of the communes concerned of his decision; and the said mayors shall within forty-eight hours of being so notified cause the decision to be posted for one month.

14. Authorizations issued by the Commissioner of the Republic shall specify:

1. the person in whose name the authorization is issued, the purpose, the site and boundaries of the fish farm, the nature of the permanent closure devices designed to prevent the circulation of fish in both directions, the fish species, the fish rearing methods and the harvesting procedures;
2. where the water is obtained from a watercourse or a canal, the minimum flowrate to be maintained in order to safeguard uninterruptedly, in such canal or watercourse, the life and reproduction of the fish, the schedule of emptyings and the conditions

² *Ed. Note:* A translation of this Decree appears at page 94 of this issue.

governing prior notice thereof, devices securing the free circulation of the wild fish stock and measures necessary for the protection of the aquatic milieu;

3. the duration of the authorization, which may not exceed 30 years, and the date by which conversion operations are to be completed.

15. The person so obtaining an authorization shall inform the Commissioner of the Republic of the completion of the conversion operations. The Commissioner of the Republic shall order an inspection to be carried out on such operations within one month and shall within fifteen days thereafter transmit the inspection report to the person obtaining the authorization. No working of the fish farm may commence before the report has been so transmitted.

If the operations are not carried out within the prescribed time limit or do not conform to the conditions laid down in their regard, the Commissioner of the Republic shall issue a formal warning to the person who has obtained the authorization to comply with the conditions attaching to the authorization within a given time limit under penalty of that authorization being cancelled.

16. Upon receipt of the observations of the person who has obtained the authorization, the Commissioner of the Republic may cancel the authorization:

1. where the applicant has not within the period granted acted upon the formal warning requiring him to comply with the prescribed conditions;
2. at any time, if it appears that the fish farm is giving rise to any nuisance for other fish stock or any aquatic milieu.

17. Any change in the nature of the fish farm, in the fish species raised there or in the fish farming methods carried on as specified in the authorization shall be notified to the Commissioner of the Republic, who shall make known his objections, if any, within two months.

18. Authorizations shall be eligible for renewal for not more than 30 years. Applications therefor shall be filed with the Commissioner of the Republic not later than two years prior to the expiry of the authorization. Decisions regarding such applications shall be taken not later than six months prior to the expiry of the authorization.

The Commissioner of the Republic shall decide on applications for renewal as provided in articles 5 to 15. However, the formalities called

for under articles 9 (2), 10 and 11 shall not apply where no changes are contemplated in the general conditions of the fish farm, unless the Commissioner of the Republic is of the opinion that any renewal of the authorization may give problems for other fish.

Where an application for the renewal of the authorization is not filed within the prescribed time limit, the person concerned shall be deemed to have renounced the benefit of that authorization.

19. During the period of validity of an authorization a change of beneficiary may be authorized by the Commissioner of the Republic upon application by the person holding the authorization and the intending holder, both of whom shall be required to supply the documents and other elements of identification referred to in article 7 (1) and (3).

20. If at any time an authorization is cancelled or has not been renewed upon expiry, the holder shall be required to restore the site to its original condition.

Division III – Application for fish farming concessions

21. Applications for a fish farming concession for a reach of watercourse or canal or a portion of a body of water coming within the purview of article 419 of the Rural Code or forming part of the private domain of the State shall be filed with the Commissioner of the Republic.

22. The application shall contain the items of information called for under article 7 save that as regards the titles required under article 5. Article 8 of this Decree shall apply to concessions.

23. Within two months of the definitive receipt of the application, the Commissioner of the Republic, having sought the views of the official services responsible for law enforcement where fisheries are concerned and, as appropriate, the official services responsible for the management of the public fluvial domain and the revenue authorities, shall either:

1. refuse the application if the project does not conform to the conditions laid down under article 9 (1), if it is likely to compromise the fishery element of the watercourse or canal or the area under the water or, again, if it is deemed not to be compatible with the management of the public or private domain in question; or
2. require the applicant to carry out an impact assessment or submit an impact statement as required by articles 9 (2) and 10

of this Decree. Upon receipt of the impact assessment, where this is required, the hearing shall be held in the form and subject to conditions prescribed by articles 11 and 12.

24. Immediately upon completion of the hearing or upon the impact statement being produced, the Commissioner of the Republic shall consult the departmental federation of officially recognized fishing and fish farming associations and departmental commission on sites, prospects and landscapes (meeting as a unit referred to as a nature protection unit). If the bodies here referred to have not made known their recommendations within two months they shall be deemed to have given their approval.

The Commissioner of the Republic shall submit a copy of the application for the concession and the draft deed of concession to the director of the revenue authorities for the purpose of determining dues payable on the concession for fishing rights and, as appropriate, for the occupation of the public or private domain concerned and for the use of the water.

The Commissioner of the Republic shall rule on the application and, within four months of the conclusion of the hearings of the impact statement being produced, shall notify the applicant and the mayors of the communes concerned of his decision; and the said mayors shall within forty-eight hours of being so notified cause the decision to be posted for one month.

25. The deed of concession shall specify:

1. the conditions set forth in article 14;
2. the nature of the right held on concession by the State and the amount of the dues payable by the concession holder.

Any grant of concession titles shall be subject to the acceptance by the applicant of the financial conditions attaching to the concession. No operation of a fish farming concession may be put in hand until the first instalment of such dues has been paid.

26. The operations in question shall be inspected in the form and subject to the conditions prescribed by article 15. The working of the concession may not commence before the inspection report has been made known.

27. With due regard to the special provision applying to the public domain, any concession so granted may be modified, suspended or cancelled by the Commissioner of the Republic at any time, in the form and subject to the conditions prescribed by article 15, second paragraph,

and article 16. It may also be withdrawn in the event of default of payment of dues by the person holding the concession.

28. Articles 17 to 20 of this Decree shall apply to concessions.

Division IV – Transitional provisions

29. The statement called for under article 7 of Act No. 84-512 of 29 June 1984³ as cited in the preamble hereto, whereby the person concerned may avail himself of the benefits provided for under article 433 of the Rural Code, shall be forwarded, by persons holding rights, concessions or authorizations for fish farming enclosures in being at the date on which the Act was published, to the Commissioner of the Republic for the department within one year from the entry into force of the said Act. The statement shall indicate:

1. the name or style and address of the title holder;
2. the name of the watercourse, a 1:2 500-scale plan of the enclosure and its surroundings, indicating the surface area, the cadastral designation of the land in question, the boundaries and the position of the permanent enclosure devices; and
3. either: a deed creating an entitlement to enclose drawn up before 15 April 1829; or evidence, however corroborated, as to the enclosure having been set up for fish farming purposes by means of a dam installed before 15 April 1829 on a watercourse not of the domain and not subsequently classified under the rules governing fish ladders; or the deed of authorizations or the deed of concession;
4. the nature of the fish rearing and the harvesting methods.

30. The Commissioner of the Republic shall, having within two months acknowledged the aforesaid statement, either:

- (a) issue a certificate attesting the validity of the said rights or make an order formalizing the change in the holder of the authorization or concession; or
- (b) where it has not been possible to establish the validity of such rights, concession or authorization, invite the person making the said statement to file an application for an authorization or a concession as required by this Decree.

³ *Ed. Note:* Act No. 84-512 relative to freshwater fisheries and to the management of fishery resources. The section 7 here referred to was amended by Act No. 85-452 of 22 May 1985.

31. A notice specifying this obligation and the time limit for making the statement, and the consequences of any failure to make such a statement, shall within two months of the entry into force of the Act of 29 June 1984 as cited in the preamble hereto⁴ be:

1. published in the regional newspapers by the Commissioner of the Republic for the region; and
2. notified by the Commissioner of the Republic for the department to the mayors, who shall within 48 hours cause the notice to be posted for a period of one year.

Division V – Miscellaneous

32 to 38. [*Omitted.*]

39. The Decree of 24 October 1985 enforcing section 1 of the Act of 18 June 1923 on reaches of watercourses or canals under enclosure management is hereby repealed save as regards renewal of authorizations or concessions. The provisions of that Decree shall continue to apply to the bodies of water contemplated in article 433 of the Rural Code.

40. [*Omitted.*]
