

L.N. 157 of 2017

**FISHERIES CONSERVATION AND MANAGEMENT ACT
(CAP. 425)**

Aquaculture Operations Regulations, 2017

IN EXERCISE of the powers conferred granted by article 38 of the Fisheries Conservation and Management Act, the Minister for Sustainable Development, the Environment and Climate Change, in conjunction with the Parliamentary Secretary for Agriculture, Fisheries and Animal Rights, has made the following regulations:-

1. The title of these regulations is the Aquaculture Operations Regulations, 2017. Citation.

2. (1) In these regulations, unless the context otherwise requires: Definitions.

"Act" means the Fisheries Conservation and Management Act; Cap. 425.

"aquaculture operation" means the farming, rearing, keeping or cultivation of aquatic organisms using techniques designed to increase production of the organisms in question in any manner whatsoever, including mariculture;

"concession" means any area in the fishing waters of Malta as allocated by the Director in accordance with an aquaculture permit as issued according to articles 26 and 27 of the Act and particularly of article 27(2) thereof;

"Director" means the Director of Aquaculture delegated under article 4(2) of the Act for the purpose of administering and enforcing these regulations;

"land base" means the part of the aquaculture establishment that is located on land and includes any areas designated as dry stores, feed stores, refrigeration units, packaging plants, processing plants and, or other premises and appurtenancies thereto as may be related to such aquaculture operation;

"operator" means any natural or legal person that owns, holds on lease, manages or in any other manner operates an aquaculture operation or any part thereof and is recognized as such by the Director under regulation 5(1);

"sea installation" means the part of the aquaculture establishment that is located in the fishing waters.

(2) Save as otherwise provided in these regulations, the definitions provided for in the Act shall also apply to these regulations.

Permit.

3. (1) Without prejudice to the provisions of any other law, all aquaculture operations shall be subject to a permit in accordance with articles 26 and 27 of the Act and these regulations.

(2) Any permit referred or issued under these regulations shall be construed as a permit issued under articles 26 and 27 of the Act and a permit so issued shall be issued in accordance with articles 26 and 27 of the Act.

Application
process.

4. (1) Without prejudice to regulation 3(1), and except for existing operations according to regulation 9, an operator shall, prior to commencing his operation, apply with the Director for a permit to carry out aquaculture operations.

(2) The operator shall use the latest application form as the Director may publish by notice in the Gazette and he shall submit such documents as may be specified in said notice.

(3) The application shall be accompanied by all the necessary documentation in compliance with sub-regulation (2), and as may from time to time be stipulated by the Director, and shall also include the following:

(a) an authenticated copy of a valid identification document of the applicant;

(b) an authenticated copy of the current constitutional documents of the legal person, with a legalized translation, where applicable, in English;

(c) in the case of an aquaculture establishment consisting of or inclusive of a land base, proof of entitlement to use the area delimiting the land base;

(d) an operation plan, which shall as a minimum describe how the aquaculture establishment will be operated and including the planned maximum capacity of fish, the modelling of the carrying capacity of the site and the fish species involved;

(e) authenticated copies of all relevant licences, permits, certificates or other documents as may be specified in the notice referred under sub-regulation (2), including but not limited to valid permissions issued in terms of the Environment Protection Act and the Development Planning Act, as applicable;

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(f) plans of the aquaculture site and sea installation for which the aquaculture operations permit is being applied for, which plans shall also include the global positioning system co-ordinates of the prospective site;

(g) a signed declaration by the applicant stating his commitment to abide by the Code of Good Practice for Sustainable Aquaculture issued under regulation 8.

(4) Receipt of applications shall be subject to the payment of a fee of thirty-five thousand euro (€35,000.00):

Provided that, if an application under this regulation is rejected, the applicant shall be entitled to a refund equivalent to thirty-one thousand and five hundred euro (€31,500.00). Payments shall be made to the Environment Promotion and Protection Fund.

5. (1) The Director may issue a permit to an operator when a complete and correct application is submitted together with the applicable fee under regulation 4(4):

Issue, refusal,
suspension or
termination of a
permit.

Provided that, for the purposes of these regulations, the operator alone shall be responsible for all aspects of the aquaculture establishment and its aquaculture operations and this shall be so for any act or omission as may be committed or omitted by himself or by any other persons under his direction or not:

Provided further that the Director may refuse to issue a permit if there exist good and compelling reasons for such a refusal. The Director shall always give reasons for refusing a permit.

(2) Prior to issuing a permit the Director shall consult with any relevant competent authority that has a direct interest in the permitting of the Aquaculture operation

(3) When taking his decision, the Director shall consider the financial viability of the operation, its environmental impact, all relevant information and authorisations, Government policy and strategy on aquaculture and the availability of an adequate site for a concession that can be allocated to the applicant in accordance with the Act and these regulations.

(4) Without prejudice to articles 26 and 27 of the Act, the Director may prescribe such conditions as he deems fit for the issue and validity of a permit issued under these regulations.

(5) The permit document shall include those conditions required by the Director for its validity and for conformity thereto.

(6) The permit shall be valid for a period of twenty-five years and may be renewed for further periods of five years or for such longer term as determined at the discretion of the Director following his consideration of each particular case:

Provided that the continuation of the permit is subject to compliance by the operator with all of the conditions referred under sub-regulation (4) and (5).

Provided further that an Operator shall, at all times, be in possession of valid permits as required by Environment and Resources Authority, in accordance with the Environment Protection Act.

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(7) Without prejudice to any other applicable law, no changes to the aquaculture establishment and its aquaculture operations may be made unless previously authorised in writing by the Director.

(8) Upon issuing a permit, the Director shall include the location and the relevant geographical co-ordinates of the aquaculture establishment in the Aquaculture Operations Register established under regulation 6.

(9) The issue of a permit according to these regulations shall not exempt the holder of such permit from the obligation of obtaining any other permit or licence which may be required under any other law.

(10) The Director may revise the conditions laid down in the permit in order to address any undesirable impacts emanating from the operation of the aquaculture establishment that were not adequately addressed through the permitting process.

(11) The permit for aquaculture establishments farming the species *Thunnus thynnus* shall be subject to a yearly fee of ten thousand euro (€10,000.00) which shall be payable to the Environment Promotion and Protection Fund.

The permit for aquaculture establishments farming exclusively species other than *Thunnus thynnus* shall be subject to a yearly fee of five thousand euro (€5,000) which shall be payable to the

Environment Promotion and Protection Fund.

(12) In the case of a failure to abide with any of the conditions of a permit issued under this regulation, the Director shall notify the operator and specify a time-frame during which corrective action should be taken.

(13) The Director may suspend or terminate a permit if the aquaculture operator does not comply with the time-frame established under regulation 5 (12).

(14) All complete permit applications, once submitted, shall be processed within 12 months from submission of application, unless further information is requested.

6. (1) There shall be established an electronically available Aquaculture Operations Register under the responsibility of the Director.

Aquaculture
Operations
Register.

(2) The register shall identify the locations of the aquaculture establishments and shall also include any conditions required by the Director for each particular permit under the Act and, or these regulations. The register shall also include the following specific information:

- (a) particulars of the permit holder;
- (b) expiry date of the permit issued, without prejudice to renewals;
- (c) transfers of permit;
- (d) biomass maintained;
- (e) species or class of species that can be cultivated at the site;
- (f) changes in cultivated species or class of species over time;
- (g) records of incidents involving loss of fish or damage to installations at each site;
- (h) any special circumstances to be included at the discretion of the Director.

(3) The Aquaculture Operations Register shall be made available to the public.

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Revocation of permit.

7. The Director may revoke any permit issued under these regulations should an aquaculture establishment fail to be used for aquaculture operations for four (4) or more consecutive years.

Code of Good Practice for Sustainable Aquaculture.

8. (1) The Code of Good Practice for Sustainable Aquaculture shall be that listed in the Schedule to these regulations.

(2) From time to time, the Director shall publish changes to the Code of Good Practice for Sustainable Aquaculture:

Provided that if such changes involve new requirements, the Director shall indicate any applicable transitional periods for such requirements.

(3) The Code of Good Practice for Sustainable Aquaculture may, *inter alia*, establish principles of good practice for every aquaculture operation so as to provide assurance that aquaculture establishments operate within a highly responsible sector.

(4) Operators of aquaculture establishments shall comply with all of the requirements laid down in the Code of Good Practice for Sustainable Aquaculture as may be published from time to time.

Transitory provisions.

9. (1) The Director shall endeavour to include in the Aquaculture Operations Register all aquaculture establishments which upon the date of coming into force of these regulations were already operative.

(2) Prior to inclusion in the Aquaculture Operations Register as referred under sub-regulation (1), the Director shall ensure that duly competent representatives of the aquaculture establishments referred under sub-regulation (1) sign a declaration that their aquaculture operations comply and shall comply with these regulations and the Act.

(3) Without prejudice to any of the provisions of these regulations, the aquaculture establishments referred under sub-regulation (1) shall be registered subject to the payment of the fee mentioned in regulation 5(11).

(4) Subject to fulfilling all requirements under these regulations to the satisfaction of the Director, the Director shall issue a permit for the aquaculture establishments referred in sub-regulation (1) and in such permit he shall list all conditions and transitional measures applicable to the operator:

Provided that such permit shall include all applicable mitigation measures necessary to safeguard against any

environmental contamination arising from the aquaculture operations.

(5) All aquaculture establishments operating before or during the coming into force of these regulations shall have to be registered in accordance with these regulations within one hundred and eighty (180) days from the coming into force of these regulations:

Provided that those aquaculture establishments which fail to be registered within the stipulated term shall be treated as new applicants for the purposes of the Act and these regulations.

(6) Failure to implement any of the conditions listed in the permit issued according to this regulation within such time as determined by the Director shall *ipso facto* result in the termination of the said permit.

10. (1) Without prejudice to the obligations of any other competent authority on alien and locally absent species, the Director shall be the competent authority for the purposes of Article 5 of Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture as in force from time to time.

Alien and locally absent species.

(2) In the case of an application for a non-routine movement as outlined in Article 9 of Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture, the operator shall be responsible to perform the environmental risk assessment referred to therein and shall bear all the applicable costs related thereto.

(3) The Director shall be responsible for ensuring that all obligations within Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture, as in force from time to time, are adequately implemented and respected.

(4) For the purposes of sub-regulation 3, the Director may issue binding instructions to operators:

Provided that such instructions shall be reasonable, proportionate and effective.

11. Any person who contravenes these regulations shall be guilty of an offence against the Act.

Offences and penalties.

12. Regulation 46 of the Fishery Regulations is hereby repealed.

Repeal.
S.L. 425.01

Schedule

Code of Good Practice for Sustainable Aquaculture

The document "A Code of Conduct for European Aquaculture" published by the Federation of European Aquaculture Producers and dated 2008 is hereby adopted as the Code of Good Practice for Sustainable Aquaculture in terms of regulation 8(1).

