

# Act of 17 June 2005 no. 79 relating to aquaculture (Aquaculture Act)

## Chapter I Purpose and scope

### § 1 Purpose

The purpose of this Act is to promote the profitability and competitiveness of the aquaculture industry within the framework of a sustainable development and contribute to the creation of value on the coast.

### § 2 Subject scope

The Act applies to the production of aquatic organisms (aquaculture). Aquatic organisms are defined as animals and plants that live in, on, or near water. Any measures to influence the weight, size, number, characteristics or quality of living aquatic organisms are regarded as production. In cases of doubt, the Ministry may determine what is to be regarded as aquaculture by an administrative decision or regulations.

Section 12 and Chapters VI to VIII of this Act also apply to the production of goods and services for the aquaculture industry.

The Ministry may determine, by regulations, that the activities mentioned in the first and second paragraphs shall not be encompassed by all or parts of this Act.

The production of anadromous salmonids and fresh-water fish for cultivation purposes is regulated by the Act of 15 May 1992 no. 47 relating to salmonids and fresh-water fish etc.

### § 3 Geographic scope

This Act applies:

- a) on land territory and in territorial waters,
- b) in jurisdiction areas established pursuant to the Act of 17 December 1976 no. 91 relating to Norway's economic zone, and
- c) on the continental shelf.

This Act does not apply to Svalbard and Jan Mayen. The King may prescribe regulations stipulating that this Act shall apply, in full or in part, to Svalbard and Jan Mayen, and lay down detailed provisions out of consideration for the local conditions, including provisions that depart from the provisions in this Act.

## Chapter II Aquaculture licences

### § 4 Aquaculture licence requirement

The Ministry may grant a licence to engage in aquaculture activities (aquaculture licence) pursuant to Sections 6 and 7. Such licences may also be acquired by transfer pursuant to Section 19.

No person may engage in aquaculture activities without registration as the holder of an aquaculture licence in the aquaculture register, cf. Section 18, first paragraph.

### § 5 Content of the aquaculture licence

The aquaculture licence permits the production of specific species in limited geographic areas (sites) subject to the prescribed restrictions on the scope of the licence that apply at any given time.

The Ministry may prescribe detailed provisions relating to the content of the aquaculture licences, including the scope, time limitations, etc., by administrative decision or regulations.

### § 6 General conditions for the allocation of aquaculture licences

The Ministry may grant an aquaculture licence by application, if:

- a) it is environmentally responsible,
- b) the requirements in Section 15 concerning land use plans and conservation measures have been met,
- c) the land use interests have been weighed in accordance with Section 16, and
- d) any licences required pursuant to the following acts have been granted:
  - Act of 19 December 2003 no. 124 relating to food production, food safety, etc.,
  - Act of 13 March 1981 no. 6 relating to protection against pollution and relating to waste,
  - Act of 8 June 1984 no. 51 relating to harbours, fairways, etc., and
  - Act of 24 November 2000 no. 82 relating to watercourses and ground water.

The Ministry may prescribe, by regulations, detailed provisions relating to the allocation of aquaculture licences, including requirements for applications and criteria for granting applications.

### § 7 Aquaculture licences for salmon, trout and rainbow trout in particular

For the allocation of licences for the production of salmon, trout and rainbow trout, the Ministry may prescribe regulations relating to:

- a) the number of licences to be allocated,
- b) geographic distribution of licenses,
- c) prioritisation criteria,
- d) selection of qualified applications in accordance with the prioritisation criteria in letter c, including the drawing of lots etc., and
- e) payment for the allocation of licences.

The King may prescribe, by regulations, provisions relating to the adaptation of the production of salmon, trout and rainbow trout.

#### **§ 8 Coordination of matters related to the establishment of aquaculture**

The authorities pursuant to this Act, the acts listed in Section 6, first paragraph, letter d, and the municipality, as the planning and building authority here, are obligated to undertake an efficient and coordinated processing of applications.

The Ministry may prescribe, by regulations, detailed provisions relating to the coordination of application processing, including the stipulation of time limits for the processing of applications.

#### **§ 9 Amendment and revocation of aquaculture licences**

The Ministry may amend or revoke aquaculture licences:

- a) if such actions are necessary due to environmental considerations,
- b) if there are changes in any material assumptions underlying the licence,
- c) in the event of gross or repeated contravention of the provisions prescribed in or pursuant to this Act,
- d) if the licence is not used, or only used to a limited extent, or
- e) if one or more of the licences required pursuant to the acts listed in Section 6, first paragraph, letter d, has lapsed.

The amendment or revocation of licences pursuant to the first paragraph may be time-limited. A time-limited amendment or revocation may be made contingent on the improvement or amendment of specific circumstances.

The Ministry may prescribe, by regulations, detailed provisions relating to the amendment and revocation of aquaculture licences.

### **Chapter III Environmental considerations**

#### **§ 10 Environmental standard**

Aquaculture facilities shall be established, operated and abandoned in an environmentally responsible manner.

The Ministry may prescribe, by administrative decision or regulations, detailed provisions to ensure environmentally responsible aquaculture, including banning the release of foreign organisms.

#### **§ 11 Environmental monitoring**

The Ministry may require, by administrative decision or regulations, that any person who holds or applies for an aquaculture licence shall conduct the necessary environmental surveys and document the environmental condition of the site at the time of the establishment, operation and abandonment of aquaculture facilities.

#### **§ 12 Requirements for installations, equipment, etc.**

Installations and equipment that are used for activities encompassed by this Act shall be properly designed, have the proper characteristics, and be used with the necessary caution.

The Ministry may prescribe, by regulations, requirements for the manufacture, use and characteristics of the installations mentioned in the first paragraph, including the establishment of approval and certification schemes.

#### **§ 13 Restoration and recapture obligations**

Any person who engages in aquaculture activities shall restore the site and adjoining areas if the production is discontinued in full or in part, including the removal of organisms, installations, equipment, etc.

The Ministry may prescribe, by administrative decision or regulations, provisions requiring that any person who engages in aquaculture activities recapture any released species.

The Ministry may prescribe regulations requiring that security be pledged for the restoration and recapture obligation pursuant to the first and second paragraphs.

The Ministry may prescribe regulations relating to a taxation scheme to ensure satisfaction of the restoration and recapture obligation. The prescribed tax may be recovered by execution proceedings.

#### **§ 14 Protection of specific areas**

The Ministry may establish a ban, order relocation or place other conditions on aquaculture activities if such actions are necessary to protect areas of special value to aquatic organisms.

### **Chapter IV Land utilisation**

#### **§ 15 Relationship to land use plans and conservation measures**

Aquaculture licences may not be granted in contravention of:

- a) adopted land use plans pursuant to the Planning and Building Act of 14 June 1985 no. 77,
- b) adopted conservation measures pursuant to the Act of 19 June 1970 no. 63 relating to nature conservation, or
- b) adopted conservation measures pursuant to the Act of 9 June 1978 no. 50 relating to cultural heritage.

An aquaculture licence may nevertheless be granted if the relevant planning or conservation authority gives its consent.

## **§ 16 Weighing of land use interests with respect to aquaculture**

The Ministry shall weigh the land use interests in determining sites for aquaculture. Particular importance shall be attached to:

- a) applicant's land use requirements for the planned aquaculture production,
- b) alternative use of the area for other aquaculture,
- c) other use of the area, and
- d) conservation interests that are not encompassed by Section 15, letters b and c.

The Ministry may prescribe, by regulations, detailed provisions relating to the use and localisation of aquaculture activities.

## **§ 17 Utilisation of sites etc.**

A person who holds an aquaculture licence has exclusive rights to the withdrawal and recapture of the released species at the site.

The Ministry may, by administrative decision or regulations, regulate the withdrawal and recapture of the individual species at the site, regardless of the provisions in the Act of 3 June 1983 no. 40 relating to saltwater fisheries.

The Ministry may limit or ban, by regulations, any traffic on or other use of the sites and adjoining areas, including fishing for species other than the released species, if this is necessary due to aquaculture production considerations.

## **Chapter V Registration, transfer and mortgaging of aquaculture licences**

### **§ 18 Registration of aquaculture licences**

A register shall be kept of the aquaculture licences (the aquaculture register). The individual licences shall have a separate record in the register.

A journal shall be kept of all the legal rights that are to be registered.

The Ministry may prescribe regulations relating to the registration scheme, including the registration authority, compensation scheme, journal keeping, etc.

The rules in the Act of 7 June 1935 no. 2 relating to property rights registration, Chapters 2 and 3 and Section 35, apply correspondingly as long as they are appropriate and the provisions prescribed in or pursuant to this Act do not state otherwise.

### **§ 19 Transfer of aquaculture licences**

The aquaculture licences may be transferred.

The transfer of aquaculture licences is not of any significance to the authorities' use of measures pursuant to this Act.

The leasing of aquaculture licences is not permitted. In exceptional cases the Ministry may grant exemptions from the ban of leasing.

The Ministry may prescribe, by regulations, detailed provisions relating to the transfer of aquaculture licences.

### **§ 20 Mortgaging of aquaculture licences**

Aquaculture licences may be mortgaged.

The mortgage will be afforded legal protection when it is registered on the licence's record in the aquaculture register.

The mortgaging of aquaculture licences is not of any significance to the authorities' use of measures pursuant to this Act.

The State's mortgage takes precedence over any other encumbrances on licences for claims for enforcement damages pursuant to Section 28, claims for the reimbursement of execution expenses pursuant to Section 29, and for violation fines pursuant to Section 30.

The Ministry may prescribe, by regulations, detailed provisions relating to the mortgaging of aquaculture licences, including limitation of the amount of the State's mortgage pursuant to the fourth paragraph.

## **Chapter VI General requirements and obligations**

### **§ 21 Supervision**

The Ministry determines who the supervisory authorities shall be pursuant to this Act. The supervisory authorities shall supervise that the provisions prescribed in and pursuant to this Act are observed.

#### *§ 22 Professional competence*

Any person who participates in the activities encompassed by this Act shall have the necessary professional competence to carry out such activities.

The Ministry may prescribe, by regulations, detailed provisions relating to the professional competence requirements for activities encompassed by this Act.

### **§ 23 Systematic control measures**

To ensure that the requirements in or pursuant to this Act are observed, the Ministry may determine by regulations that any person who engages in the activities encompassed by this Act are obligated to establish and implement systematic control measures.

### **§ 24 Duty of disclosure and investigation**

At the order of the supervisory authorities, any person who engages in the activities encompassed by

this Act has a duty to disclose information, documents, test samples or other materials that are necessary so that the supervisory authorities can perform their duties pursuant to this Act. At the order of the supervisory authorities, any person who engages in the activities encompassed by this Act has a duty to conduct any investigations that are necessary so that the supervisory authorities can perform their duties pursuant to this Act.

The Ministry may prescribe, by regulations, detailed provisions relating to the duty of disclosure and investigation in the first and second paragraphs, including whether these duties shall be performed regularly.

#### **§ 25 Duty to assist**

Any person who engages in the activities encompassed by this Act has a duty to grant the supervisory authorities access to areas, installations and equipment associated with the activities, so that the supervisory authorities can perform their duties pursuant to this Act.

Any person who engages in the activities encompassed by this Act shall provide the necessary premises, materials, organisms and assistance for the performance of the supervision and otherwise provide assistance for the performance of supervisory work.

#### **§ 26 Fees**

The Ministry may prescribe regulations relating to fees for the processing of applications and the performance of supervisory work in accordance with the provisions in or pursuant to this Act.

Any fees owed may be recovered by execution proceedings.

### **Chapter VII Sanctions for contravention**

#### **§ 27 Orders to execute measures**

If the provisions prescribed in or pursuant to this Act are contravened, the supervisory authorities may order the execution of measures to remedy the illegal situation and bring it to an end. A time limit may be stipulated for the performance of such measures.

#### **§ 28 Enforcement damages**

To ensure implementation of the provisions prescribed in or pursuant to this Act, the supervisory authorities may impose running enforcement damages on the responsible party. Enforcement damages that fall due for each contravention may also be adopted. Enforcement damages may also be adopted at the same time as an order to execute measures pursuant to Section 27, or at a later date.

The enforcement damages will take effect when the responsible party exceeds the deadline for remedying the situation stipulated by the supervisory authorities in the enforcement damages decision, and they will remain in effect for the duration of the situation. They will, however, not take effect as long as compliance is impossible due to circumstances beyond the control of the responsible party.

If there are several responsible parties in accordance with the enforcement damages decision, the responsible parties are jointly liable for payment of the enforcement damages. The enforcement damages may be recovered by execution proceedings. The Ministry may waive the accrued damages. The Ministry may prescribe, by regulations, detailed provisions relating to enforcement damages, including the amount and duration of the enforcement damages, stipulation of enforcement damages and waiving the accrued enforcement damages.

#### **§ 29 Execution of measures at the expense of the responsible party**

If the deadline for the performance of orders pursuant to Section 27 has expired, the supervisory authorities may take steps to ensure that the measures are executed.

Even if an order has not been made pursuant to Section 27, the supervisory authorities may, if it is necessary to execute the measure immediately or other special reasons exist, take steps to ensure the execution of measures to bring the illegal situation to an end.

The reimbursement of the expenses associated with the execution pursuant to the first and second paragraphs may be claimed from the responsible party. If there are several responsible parties, they are jointly and severally liable for the expenses. Claims for the reimbursement of execution expenses may be recovered by execution proceedings.

The Ministry may prescribe, by regulations, detailed provisions relating to the execution of measures, including the recovery of the execution expenses.

#### **§ 30 Violation fines**

Violation fines may be imposed on any person who contravenes with the provisions prescribed in or pursuant to this Act by the supervisory authorities. The fines shall be commensurate with any gain obtained by the responsible party as a result of the contravention. The supervisory authorities' expenses associated with control measures and work on the case may also be taken into account.

Final violation fine decisions may be recovered by execution proceedings.

The Ministry may prescribe, by regulations, detailed provisions relating to violation fines, including provisions relating to interest and additional fees if the violation fine is not paid when due.

#### **§ 31 Criminal liability**

Any person who contravenes the provisions prescribed in or pursuant to this Act with wilful intent or

gross negligence may be punished by fines or imprisonment for a maximum of one year, or both, provided the offence is not subject to more severe penal provisions.

In particularly aggravating circumstances, imprisonment for a maximum of two years may be applied, unless the offence is subject to more severe penal provisions.

Aiding and abetting and attempts are subject to the same punishment.

Regulations prescribed pursuant to this Act may stipulate that contravention of the regulations is not punishable.

#### **Chapter VIII Concluding provisions**

##### **§ 32 Entry into force**

This Act enters into force on 1 January 2006.

##### **§ 33 Transitional provisions**

Administrative decisions and regulations issued pursuant to the Act of 14 June 1985 no. 68 relating to the farming of fish, shellfish, etc., and the Act of 21 December 2000 no. 118 relating to sea ranching will continue.

##### **§ 34 Continuation of the regulations relating to the supervision of ownership in table fish farming**

The Regulations of 22 December 2004 no. 1800 relating to the regulation of ownership in companies etc. licensed to operate seawater rearing units for salmon and trout will be continued, even though the legal authority pursuant to the Act of 14 June 1985 no. 68 relating to the farming of fish, shellfish, etc., is repealed.

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