Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture

COUNCIL REGULATION (EC) No 708/2007

of 11 June 2007

concerning use of alien and locally absent species in aquaculture

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 and Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee[(1)]

Whereas:

(1) In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities, in particular with a view to promoting sustainable development.

(2) Aquaculture is a fast-growing sector where innovation and new outlets are being explored. In order to adapt the production to the conditions of the market, it is important for the aquaculture industry to diversify the species reared.

(3) Aquaculture has benefited economically from the introduction of alien species and translocation of locally absent species in the past (for example rainbow trout, Pacific oyster and salmon) and the policy objective for the future is to optimise benefits associated with introductions and translocations while at the same time avoiding alterations to ecosystems, preventing negative biological interaction, including genetic change, with indigenous populations and restricting the spread of non-target species and detrimental impacts on natural habitats.

(4) Invasive alien species have been identified as one of the key causes of loss of native species and harm to bio-diversity. Under Article 8(h) of the Convention on Biological Diversity (CBD), to which the Community is a Party, each Contracting Party is required, as far as possible and as appropriate, to prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species. In particular, the Conference of the Parties to the CBD has adopted Decision VI/23 on alien species that threaten ecosystems, habitats or species, the annex to which sets out Guiding Principles for the prevention, introduction and mitigation of impacts of such alien species.

(5) The translocation of species within their natural range to areas where they are locally absent for specific bio-geographical reasons may also present risks for ecosystems in these areas and should also be covered by this Regulation.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 708/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The Community should therefore develop its own framework to ensure adequate protection of aquatic habitats from the risks associated with the use of non-native species in aquaculture. This framework should include procedures for the analysis of the potential risks, the taking of measures based on the prevention and precautionary principles and the adoption of contingency plans where necessary. These procedures should build on experience gained through the existing voluntary frameworks, and notably the International Council for the Exploration of the Sea (ICES) Code of Practice on the Introductions and Transfers of Marine Organisms and the European Inland Fisheries Advisory Commission (EIFAC) Code of Practice and Manual of Procedures for consideration of introduction and transfer of marine and freshwater organisms.

(7) The measures provided for in this Regulation should be without prejudice to Council Directive 85/337/EEC of 27 June 1985 on environmental impact assessment[(2)], Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[(3)], Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy[(4)] and Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals[(5)].

(8) The potential risks, which may in some cases be far reaching, are initially more evident locally. The characteristics of local aquatic environments throughout the Community are very diverse and Member States have the appropriate knowledge and expertise to evaluate and manage the risks to the aquatic environments falling within their sovereignty or jurisdiction. It is therefore appropriate that the implementation of the measures provided for in this Regulation falls primarily under the responsibility of Member States.

(9) It should be taken into account that movements of alien or locally absent species to be held in closed aquaculture facilities which are secure and which present a very low risk of escape should not be subject to prior environmental risk assessment.

(10) However, in cases where risks are not negligible and may affect other Member States there should be a Community system for consultation of interested parties and validation of permits prior to their granting by Member States. The Scientific, Technical and Economic Committee for Fisheries (STECF) established under Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy[(6)] should provide the scientific advice in this consultation and the Advisory Committee for Fisheries and Aquaculture set up by Commission Decision 1999/478/EC[(7)] should give the advice of stakeholders in the field of aquaculture and environmental protection.

(11) Some alien species have commonly been used in aquaculture for a long time in certain parts of the Community. The activities connected therewith should therefore benefit from a differential treatment facilitating their development without any additional administrative burden on condition that the source can provide stock that is free of non target species. Member States who wish to restrict the use of such long-used species in their territory should be permitted to do so.

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 708/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(12) Nothing in this Regulation shall prevent Member States from regulating the keeping of alien or locally absent species in private aquaria and garden ponds through national regulations.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(8)].

(14) For the sake of efficiency, the procedure for the amendments to Annexes I, II, III and IV of this Regulation, necessary to adapt them to technical and scientific progress, should be the management procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes a framework governing aquaculture practices in relation to alien and locally absent species to assess and minimise the possible impact of these and any associated non-target species on aquatic habitats and in this manner contribute to the sustainable development of the sector.

Article 2

Scope

1 This Regulation shall apply to the introduction of alien species and translocation of locally absent species for their use in aquaculture in the **[**[F1]Union**]** taking place after the date this Regulation becomes applicable by virtue of Article 25(1).

2 This Regulation shall not apply to translocations of locally absent species within Member States, except for cases where, on the basis of scientific advice, there are grounds for foreseeing environmental threats due to the translocation. In the case that an advisory committee has been appointed under Article 5 it will be responsible for assessing the risks.

3 This Regulation shall cover all aquaculture activities located within the jurisdiction of Member States irrespective of their size or characteristics. It shall cover all alien and locally absent aquatic organisms farmed. It shall cover aquaculture using any form of aquatic medium.

4 This Regulation shall not apply to the keeping of ornamental aquatic animals or plants in pet-shops, garden centres, contained garden ponds or aquaria which comply with Article 6 of Commission Decision 2006/656/EC of 20 September 2006 laying down the animal health conditions and certification requirements for imports of fish for ornamental purpose[(9)] or in facilities which are equipped with effluent treatment systems which fulfil the aims set out in Article 1.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 708/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[[F1]5. This Regulation, except for Article 3, Article 4(1) and Article 4(2)(a), shall not apply to the species listed in Annex IV. The risk assessment in Article 9 shall not apply to species listed in Annex IV except in cases where Member States wish to take measures to restrict the use of the species concerned in their territory.**]**

6 Movements of alien or locally absent species to be held in closed aquaculture facilities shall not be subject to prior environmental risk assessment except in cases where Member States wish to take appropriate measures.

[[F1]7 Chapters III to VI shall not apply to movements of alien or locally absent species to be held in closed aquaculture facilities, provided that the transport is carried out under conditions that prevent the escape of those species and of the non-target species.

Member States shall draw up a list of closed aquaculture facilities in their territory that comply with the definition in Article 3(3) and update that list regularly. By 25 October 2011, the list shall be published on the website set up in accordance with Article 4(2) of Commission Regulation (EC) No 535/2008[10] which lays down detailed rules for the implementation of this Regulation.**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 304/2011 of the European Parliament and of the Council of 9 March 2011 amending Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.

Article 3

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. ‘aquaculture’ means the activity defined in Article 3, paragraph (d) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[11];

2. ‘open aquaculture facility’ means a facility where aquaculture is conducted in an aquatic medium not separated from the wild aquatic medium by barriers preventing the escape of reared specimens or biological material that might survive and subsequently reproduce;

3. **[**[F1]‘Closed aquaculture facility’ means a land-based facility:

   (a) where:

      (i) aquaculture is conducted in an aquatic medium which involves recirculation of water; and

      (ii) discharges do not connect in any way to open waters before screening and filtering or percolation and treatment to prevent the release of solid waste into the aquatic environment and the escape from the facility of farmed species and non-target species that might survive and subsequently reproduce;

   (b) and which:

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 708/2007. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(i) prevents losses of reared specimens or non-target species and other biological material, including pathogens, due to factors such as predators (e.g. birds) and flooding (e.g. the facility must be situated at a safe distance from open waters following a proper assessment made by the competent authorities);

(ii) prevents, in a reasonable way, losses of reared specimens or non-target species and other biological material, including pathogens, due to theft and vandalism; and

(iii) ensures appropriate disposal of dead organisms;**]**

4. 'aquatic organisms' means any species living in water belonging to the animalia, plantae and protista kingdoms, including any part, gametes, seeds, eggs or propagules of their individuals that might survive and subsequently reproduce;

5. 'Polyploid organisms' means artificially induced tetraploid organisms (4N). These are aquatic organisms in which the number of chromosomes in the cells has been doubled through cell manipulation techniques;

6. 'alien species' means:

(a) a species or subspecies of an aquatic organism occurring outside its known natural range and the area of its natural dispersal potential;

(b) polyploid organisms, and fertile artificially hybridised species irrespective of their natural range or dispersal potential;

7. 'locally absent species' means a species or subspecies of an aquatic organism which is locally absent from a zone within its natural range of distribution for biogeographical reasons;

8. 'non-target species' means any species or subspecies of an aquatic organism likely to be detrimental to the aquatic environment that is moved accidentally together with an aquatic organism that is being introduced or translocated not including disease-causing organisms which are covered by Directive 2006/88/EC;

9. 'movement' means introduction and/or translocation;

10. 'introduction' means the process by which an alien species is intentionally moved to an environment outside its natural range for use in aquaculture;

11. 'translocation' means the process by which a locally absent species is intentionally moved within its natural range for its use in aquaculture to an area where it previously did not exist because of bio-geographical reasons;

12. 'pilot release' means the introduction of alien species or translocation of locally absent species on a limited scale to assess ecological interaction with native species and habitats in order to test the risk assessment assumptions;

13. 'applicant' means the natural or legal person or entity proposing to conduct the introduction or translocation of an aquatic organism;

14. 'quarantine' means a process by which aquatic organisms and any of their associated organisms can be maintained in complete isolation from the surrounding environment;