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EU requirements for aquaculture planning in the member states

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SUMMARY - No single master plan for aquaculture exists at EU level, rather the sector is supported in the context of the Common Fisheries Policy because of the positive contributions it makes in terms of stimulating economic development in coastal and rural areas where other opportunities are often limited and supplying fish and shellfish to a market which is increasingly dependent on imports. The Community has been financially committed to aquaculture since 1971, but this was limited to freshwater until 1977. Marine and brackish water has been eligible for financial assistance since 1978. The Community structural action in favour of the development of aquaculture has been very successful to the extent that production of farmed fish and shellfish was 1,088,209 tonnes in 1997, worth 1902 million Ecu. Apart from financial and strategic planning for aquaculture the physical planning and environmental aspects are very important. In particular, there is a commitment to integrating environmental concerns into all policy areas covered by the EC Treaty. In the siting of aquaculture activities, Member States are required to have regard to EC legal requirements governing the quality of the surrounding environment. Broadly speaking, such requirements can be divided into two categories: In the first category are nature conservation requirements. The second category of requirements relate to water quality standards.

Key words: Aquaculture legislation, planning, environment.

RESUME - "Conditions de l'UE pour la planification de l'aquaculture chez les états membres". Il n'existe pas de plan d'ensemble pour l'aquaculture au niveau de l'UE. Plutôt, le secteur est soutenu dans le contexte de la Politique Commune de Pêche en raison de ses contributions positives car il stimule le développement économique dans des zones rurales et côtières où d'autres opportunités sont souvent limitées, et également parce qu'il fournit des poissons et fruits de mer à un marché qui dépend de plus en plus des importations. La Communauté s'est engagée financièrement dans l'aquaculture depuis 1971, mais de façon limitée à l'eau douce jusqu'en 1977. L'eau saline et saumâtre a été éligible pour aide financière depuis 1978. L'action structurelle de la Communauté favorisant le développement de l'aquaculture a été très réussie, à tel point que la production de poissons et fruits de mer cultivés a été de 1.088.209 tonnes en 1997, correspondant à 1902 millions d'euro. A part la planification stratégique et financière de l'aquaculture, la planification physique et les aspects environnementaux sont très importants. En particulier, il existe une volonté d'intégrer les préoccupations environnementales dans toutes les politiques correspondant à domaines englobés dans le traité de la CE. En considérant les sites pour les activités d'aquaculture, les états membres doivent respecter les conditions légales de la CE concernant la qualité de l'environnement. En règle générale, ces conditions peuvent être divisées en deux catégories : conservation de la nature quant à la première catégorie et normes de qualité de l'eau pour la deuxième catégorie de conditions.

Mots-clés : Législation en aquaculture, planification, environnement.

Introduction

No single master plan for aquaculture exists at EU level, rather the sector is supported in the context of the Common Fisheries Policy because of the positive contributions it makes in terms of stimulating economic development in coastal and rural areas where other opportunities are often limited and supplying fish and shellfish to a market which is increasingly dependent on imports. The Community structural action in favour of the development of aquaculture has been very successful to the extent that production of farmed fish and shellfish was 1,088,209 tonnes in 1997, worth 1902 million Ecu.

Aquaculture is practised in all of the Member States and, for certain species, the EU is the world leader. The sector provides full-time equivalent employment for an estimated 47,235 people directly and an estimated total of 63,770 when upstream and downstream activity is included.

Strategic and financial planning

The Community has been financially committed to aquaculture since 1971, but this was limited to freshwater until 1977. Marine and brackish water has been eligible for financial assistance since 1978.

European public support for aquaculture has now entered a new phase in which attention has extended beyond mere increase in output at any price. From the beginning of 1994, support has been available under the Financial Instrument for Fisheries Guidance (FIFG), incorporated into the mechanism of the Structural Funds. National programmes become part of a Community programme which is integrated as a measure within the overall Operational Programme for Fisheries. This change has been introduced to bring about greater subsidiarity and partnership. A total of 273 million Ecu has been earmarked for aquaculture development in the period 1994-99, which is roughly ten percent of the overall structural funds for fisheries and aquaculture. This is for part-funding capital investment in construction, extension or modernisation of aquaculture units, including investments in the treatment of effluent in order to reduce environmental pollution. Projects are required to make a durable economic contribution and not contribute to over-production of a species.

Environmental legislation relevant to aquaculture in the EU

Environmental protection

Apart from financial and strategic planning for aquaculture the physical planning and environmental aspects are very important. Since the 1970s, an extensive body of environmental legislation has been adopted under the EC Treaty. Environmental protection has also assumed a central role in the objectives of the European Union. In particular, there is a commitment to integrating environmental concerns into all policy areas covered by the EC Treaty (this is a theme developed in some detail in the environmental action programme 'Towards sustainability').

While the environmental provisions contained in and adopted under the Treaty do not make up a complete environmental code (they are supplemented by a wide range of national laws), and while they do not create a specific framework for aquaculture, they have a considerable relevance for the sector. This can arise in at least three ways.

First, the Member States of the Community are required to ensure that all aquaculture enterprises operate within the rules and requirements set by the legislation. It should be noted that most of the legislation takes the form of directives, i.e. instruments adopted by the Community which need to be translated into detailed national rules and procedures. In practice, problems can sometimes arise where Member States fail to carry over directives into national law, or carry them over incorrectly or incompletely.

Second, when the European Union is shaping its approach to aquaculture, or when it is carrying out actions in relation to aquaculture (for example, approving aquaculture programmes in particular Member States under the Structural Funds), it is obliged under the terms of the EC Treaty to integrate environmental protection requirements into its work.

Third, aquaculture can benefit from Community environmental legislation. In particular, legislation aimed at protecting the aquatic environment can help to safeguard aquaculture activities from damage to their resource base, for example by providing for controls on polluting discharges from neighbouring activities.

Location and other environmental constraints for aquaculture in EU legislation

In the siting of aquaculture activities, Member States are required to have regard to EC legal requirements governing the quality of the surrounding environment. Broadly speaking, such requirements can be divided into two categories.

In the first category are nature conservation requirements. These are principally found in Directive 79/409/EEC¹ on the conservation of wild birds, which came into effect in 1981, and Directive 92/43/EEC² on the conservation of natural habitats and of wild fauna and flora, also known as the 'habitats' directive', which began to take effect from mid-1994. These directives, amongst other things, seek to establish a European network of protected habitats for vulnerable species of flora and fauna (to be known as Natura 2000). Activities capable of affecting such habitats are to be subject to various controls.

The second category of requirements relate to water quality standards. In the 1970s, a number of directives were adopted with a view to ensuring that, for various water bodies, water quality standards would be sufficient to guarantee certain beneficial uses of water. These instruments fix standards for popular bathing waters (Directive 76/160/EEC³ concerning the quality of bathing water), and for freshwater used for the abstraction of drinking water (Directive 75/440/EEC⁴ concerning the quality required of surface water intended for the abstraction of drinking water in the Member States).

Apart from the above, the significance of certain international wildlife conventions should also be noted. For example, the Community is a party to the Convention on the conservation of European wildlife and natural habitats and the Convention on biological diversity. These conventions commit parties to avoiding or minimising damage to wildlife sites, to protecting flora and fauna, to safeguarding biodiversity and integrating the principle of sustainable use into development policies. Such commitments may be relevant when examining whether the proposed use of Community finance for particular aquaculture proposals is compatible with Community environmental policy. The EU subscribes to the FAO Code of Conduct for Responsible Fisheries, and Article 9 on Aquaculture development is relevant in the context of this paper.

Procedural formalities and authorization requirements including Environmental Impact Assessment (EIA)

The relevance of EEC environmental legislation goes beyond setting standards and fixing requirements for the ambient environment. It also in some cases fixes procedural formalities which apply when aquaculture activities are first being established.

Directive 85/337/EEC⁵ on the assessment of the effects of certain public and private projects on the environment, also known as the "EIA directive" embodies the 'preventive approach' to environmental protection by requiring that, before a development consent is given, certain projects likely to have significant effects on the environment by virtue of their nature, size or location are subjected to an assessment of possible environmental impacts. One of the project classes covered by the original Directive is 'salmon breeding projects', but a recent amendment (Directive 97/11/EC⁶ of 3 March 1997) extends this to "intensive fish farming".

An EIA must be carried out for a project falling into this class where a Member State considers that the project's characteristics so require. In this regard, practice varies between the Member States as to when an assessment is deemed necessary. The impact assessment involves a number of stages: the developer must submit certain information, and the public concerned together with other consultees are then given an opportunity to express an opinion; all the information thus obtained must be taken into consideration in the development consent procedure.

It is important to note that the 'EIA directives' are now supplemented by a provision of the 'habitats directive' whereby plans or projects likely to have a significant effect on sites protected under it and the 'birds directive' are to be the subject of an assessment as to their implications for the sites concerned.

¹ Official Journal (OJ) L 103/1, 25/4/1979

² OJ L031/30, 6/2/1998

³ OJ L031/1, 5/2/1976

⁴ OJ L194/26, 25/7/1975

⁵ OJ L175/40, 5/7/1985

⁶ OJ L073/5, 14/3/1997

Directive 76/464/EEC⁷ on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community creates a framework for the control of the introduction of certain dangerous substances into the aquatic environment (including biocides and organic substances associated with aquaculture activities). This framework requires Member States to adopt *pollution reduction programmes* involving water quality objectives and discharge authorisations with emission standards based on the quality objectives. There is a stand-still provision under which Member States are obliged to ensure that the Directive is not applied in a way which results in a worsening of water quality.

Concluding remarks

Numerous differences exist in the EC and other European countries concerning the existence, contents and implementation of regulations with regards to aquaculture development and with regards to environmental control measures of existing aquaculture operations. Denmark is the only Member State that has introduced an actual law dealing specifically with aquaculture.

Over the last 25 years, the European Community has adopted a broad spectrum of legislation aimed at restoring and protecting the environment and requires national governments to collaborate in environmental protection plans.

How a national government achieves the standards set by the EC is, however, up to the Member State. So a Member State can both enforce generalised guidelines and legislation on its industries and it can introduce specific legislation for certain industries.

There are also other reasons why there are differences in the legislative approach between the Member States: for instance, the wide range of environmental conditions found both within and amongst the Member States. Also the diversity of regulations and environmental standards reflects differences in fish farming technology, the species farmed and the nature and quantity of wastes discharged. Another important factor is that fish farming in some countries in the EC is a relatively new and very visible and intensive industry and has been perceived as a new problem on top of existing environmental problems. In this context, also because there is a general awareness of the threats to our water resources, all new water users are challenged more than the existing established ones. As a result, especially in countries where aquaculture is a new activity its development has been often opposed and restricted by the existing users of the aquatic environment.

Examples of legislation and requirements concerning aquaculture in 11 of the 15 Member States can be found in Annex 3.2.1 of the European Commission's booklet "Aquaculture and the environment in the European Community"⁸.

⁷OJ L129/23, 18/5/1976

⁸EC Official Publications, L-2985 Luxembourg (1995)