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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0153 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 708/2007 concerning use of alien and locally absent
species in aquaculture**

{SEC(2009)1347}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture was adopted on 11 June 2007. It establishes a framework governing aquaculture practices in relation to alien and locally absent species to assess and minimise the possible impact of these species and any associated non-target species on aquatic habitats. The Regulation provides for a permit system to be established at national level.

According to its Article 2(7), introductions and translocations for use in 'closed aquaculture facilities' may at a future date be exempted from the permit requirement of Chapter III of the Regulation, based on new scientific information and advice.

Under the Sixth Framework Programme a concerted action was funded with the title "Environmental impacts of alien species in aquaculture" (the IMPASSE project). Its overall goal was to develop guidelines for environmentally sound practices for introductions and translocations in aquaculture. In addition, special attention would be given to assessing whether modern land-based closed aquaculture facilities could be considered biosecure and to what extent movements into these facilities can be differentiated from movements into open aquaculture facilities under Community rules.

The recently submitted final report on the IMPASSE project has delivered an operational definition of 'closed aquaculture facilities' for which the degree of risk associated with alien species could be reduced considerably, possibly to an acceptable level, if the potential for escape of target and non-target organisms is addressed during transportation and by well-defined protocols at the receiving facility. This means that introductions and translocations for use in such facilities could be exempted from the permit requirement under certain conditions. The definition of 'closed aquaculture facility' provided by IMPASSE is more detailed and stricter than the current definition given by Article 3(3) of Council Regulation 708/2007. The IMPASSE definition sets out the main characteristics that a 'closed aquaculture facility' should possess in order to ensure its biosecurity.

According to the IMPASSE results: *A "closed system" is an aquaculture facility with a discharge(s) that does not connect in any way to open waters prior to being screened, filtered or percolated and treated to prevent cultured stock or associated organisms from escaping.*

Closed containment systems involve a barrier technology that ensures no contact between wild and farmed aquatic organisms. Closed facilities are usually based on recirculation systems. These systems carry a very low risk of escape (Occhipinti et al. 2008), with the greatest problems arising when organisms are moved to or from the facility.

These systems eliminate: release of solid waste to the aquatic environment; escapes of target and non-target organisms from the facility; they are expected to eliminate: disease and parasite transfer between wild and farmed aquatic organisms; farm losses due to environmental factors, such as flooding, predators (e.g. birds), theft and vandalism.

The key elements are: a physical barrier between wild and farmed organisms; treatment of solid waste; appropriate disposal of dead organisms; monitoring and treatment of incoming and outgoing water.

In defining these systems, it should be recognised that water is not the only medium by which parasites, diseases and other species can be transferred. There are mechanisms of dispersal through, for example, transport systems or the inappropriate disposal of wastes.

Therefore, under certain conditions movements of alien or locally absent species for use in well-defined and biosecure closed aquaculture facilities can be considered of low and acceptable risk and can thus be exempted from the permit procedure. The objective of this proposal is to make the necessary technical changes to the definition of 'closed aquaculture facility' in order to exempt introductions and translocations for use in such facilities from the permit requirement of Chapter III of Council Regulation 708/2007. The aim is to remove red tape while ensuring adequate environmental protection in the use of alien and locally absent species in aquaculture.

- **General context**

The introduction of species beyond their natural range is expanding rapidly as a result of increased transport, trade, travel and tourism. Invasions by non-indigenous species are widely recognised as one of the main causes of global biodiversity loss. They can have adverse environmental, economic and social impacts. Alien species can act as vectors for novel diseases, alter ecosystems, compete with native species, etc.

Council Regulation 708/2007 addresses a limited part of the problem. In terms of the general context, the data arising from some recent Community projects (IMPASSE and DAISY) should be borne in mind. According to these data the main pathways likely to be responsible for the introduction of alien species in European coastal seas and inland waters are: "ships' ballast water and fouling" (30% of all introduction events); "via marine and inland canals" (24%); and "aquaculture and stocking practices", which represent 20%. Other pathways categorised as ornamental, research, etc. or unknown represent 26%. In December 2008 the Commission published the Communication "Towards an EU strategy on invasive species" with the aim of developing a global strategy at EU level to tackle the negative impacts of invasive species.

The Community "Strategy for the sustainable development of European aquaculture" (2002) had already identified the need to reduce the risks associated with the introduction of non-indigenous species in aquaculture. As a consequence Council Regulation 708/2007 concerning use of alien and locally absent species in aquaculture was adopted on 11 June 2007. However, at that time no decision was taken regarding the biosecurity of 'closed aquaculture facilities'. The Member States' views were divergent and no scientific advice was available to support a decision. For this reason the possible exemption of introductions and translocations for use in such facilities from the permit obligation was postponed.

- **Existing provisions in the area of the proposal**

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

- **Consistency with other policies and objectives of the Union**

The proposal is consistent with other policies and objectives of the Union seeking to ensure a high level of environmental protection as well as to simplify and reduce the administrative burden.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

• Collection and use of expertise

The results of the IMPASSE project have been used as the technical basis for drawing up the proposal. This concerted action was carried out by 14 partners coordinated by the University of Hull. The FEAP, Federation of European Aquaculture Producers, also participated in the project. Under IMPASSE two well-attended workshops (Hungary 2007 and Italy 2008) were held. The question of 'closed aquaculture facilities' was one of the subjects covered. The results of the reviews and discussions as summarised in section 1 led the consortium to draft a stricter definition of 'closed aquaculture facility'.

• Impact assessment and consultation of interested parties

Council Regulation 708/2007 applies to all aquaculture facilities. However, at the time of its adoption, no decision was taken regarding the biosecurity of 'closed aquaculture facilities'. Nevertheless, movements into these facilities are differentiated from movements into other kinds of facilities and, normally, are considered as 'routine movements' for which the requirement of a prior environmental assessment is not compulsory (Article 2(6)).

The IMPASSE project has delivered a definition of 'closed aquaculture facility' which includes the characteristics necessary to consider these facilities as biosecure. This definition is stricter and ensures better environmental protection. The modification of the current definition of 'closed aquaculture facility' given in Article 3(3) by establishing a new definition based on the IMPASSE results would make it possible to exempt introductions and translocations for use in such facilities from the permit requirement. However, this implies an amendment of Council Regulation 708/2007, which cannot be carried out by Comitology. Nevertheless, the results of the IMPASSE project regarding closed aquaculture facilities were presented within the Management Committee for Fisheries and Aquaculture and a large number of Member States were in favour of improving the current definition in order to allow the said exemption. Therefore, the present proposal amending Council Regulation 708/2007 was prepared. Its aim is to remove the red tape associated with the permit procedure for those 'closed aquaculture facilities' which can be considered as biosecure.

The proposed modification does not represent a major or substantial change to the Regulation. Technical adjustments need to be made to the definition of 'closed aquaculture facility' and related provisions to allow the envisaged exemption.

The proposal for Council Regulation 708/2007 was accompanied by its own Impact Assessment (SEC (2006)421). The IMPASSE concerted action already provides the technical basis to take the decision to exempt introductions and translocations for use in 'closed aquaculture facilities' from the permit obligation. Moreover, the consequences of the proposal will be very limited as it applies only to 'closed aquaculture facilities'. However, these facilities will benefit from the proposed simplification, as time-consuming permit procedures which tie up resources will be eliminated. This amendment will ensure that environmental protection is maintained and, at the same time, will help to produce positive social and

economic impacts since the facilities concerned can be freed from the costs associated with the permit procedures. A specific Impact Assessment addressing this limited modification of the Regulation would not therefore provide any added value as it represents just an executive decision on a technical issue with marginal consequences. It would not be proportionate to invest additional effort and time in carrying out a formal Impact Assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

According to Article 2(7) of Council Regulation 708/2007, introductions and translocations for use in 'closed aquaculture facilities' may at a future date be exempted from the permit requirement of Chapter III of the Regulation, based on new scientific information and advice.

The proposed action aims to exempt biosecure 'closed aquaculture facilities' from the permit requirement of Chapter III of the Regulation. Taking into account the scientific advice, the proposal includes modification of the current definition of 'closed aquaculture facility', adding the appropriate characteristics to guarantee that such facilities do not allow the escape of target and non-target organisms to the wild environment. In addition, a new provision regarding the transport of alien and locally absent species to 'closed aquaculture facilities' is included. Consequently, the Member States shall set up a list of closed aquaculture facilities. This list shall be published and regularly updated on a website which has been created under Commission Regulation (EC) No 535/2008. Some articles and Annex I are amended accordingly to reflect the new provisions.

- **Legal basis**

Articles 37 and 299(2) of the Treaty establishing the European Community provide the legal basis.

- **Subsidiarity principle**

This proposal falls within the ambit of the Common Fisheries Policy, which is the exclusive competence of the Community. Therefore, the subsidiarity principle does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle. The modification represents a good balance between environmental protection and the needs of the aquaculture industry. Movements into 'closed aquaculture facilities' which comply with the standards that ensure adequate environmental protection should be exempted from the administrative burden and costs associated with the permit procedure established by the Regulation. Simplification and reduction of red tape are important objectives.

- **Choice of instruments**

Article 2(7) of Council Regulation 708/2007 states that the relative decision on whether or not to exempt movements of alien and locally absent species into 'closed aquaculture facilities' from the permit obligation established by the Regulation would be taken following the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002 (Comitology). However, the possibility to exempt these movements from the permit obligation requires a

modification of the definition of 'closed aquaculture facility' and hence a modification of the Council Regulation, which cannot be carried out by Comitology. A Council Regulation can only be amended by another Regulation.

4. BUDGETARY IMPACT

The proposal has no implications for the Community budget.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 708/2007 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 Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) Regulation (EC) No 708/2007⁴ establishes a framework governing aquaculture practices in relation to alien and locally absent species to assess and minimise the possible impact of those species and of associated non-target species on aquatic habitats. It provides in its Article 2(7) that introductions and translocations for use in closed aquaculture facilities may at a future date be exempted from the permit requirement of Chapter III of that Regulation, based on new scientific information and advice.
- (2) The Community-funded concerted action, "Environmental impacts of alien species in aquaculture" (IMPASSE), has delivered a new operational definition of 'closed aquaculture facilities'. For such facilities the degree of risk associated with alien and locally absent species could be reduced to an acceptable level if the potential for escape of the organisms to be farmed and of non-target organisms is addressed during transportation and if well-defined protocols are applied at the receiving facility. Introductions and translocations for use in closed aquaculture facilities should only be exempted from the permit requirement if those conditions are met.
- (3) It is therefore necessary to amend the definition of 'closed aquaculture facility' in Article 3, paragraph 3, of Regulation (EC) No 708/2007 by adding specific features intended to ensure the biosecurity of those facilities.

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⁴ OJ L 168, 28.6.2007, p. 1.

- (4) Member States should set up a list of closed aquaculture facilities located in their territory. For reasons of transparency, that list should be published and regularly updated on a website created in accordance with Commission Regulation (EC) No 535/2008⁵.
- (5) Following these amendments certain other adaptations are needed to the Regulation.
- (6) The Council Regulation 708/2007 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 708/2007 is hereby amended as follows:

- (1) In Article 2, paragraph 7 is replaced by the following:

"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 set up a list of closed aquaculture facilities in their territory complying with the definition of the Article 3 (3) and update that list regularly. The list shall be published on the website set up in accordance with Article 4 (2) of the Commission Regulation (EC) No 535/2008."

- (2) Article 3 is amended as follows

- (a) point 3 is replaced by the following:

"3. 'Closed aquaculture facility' means a facility

- (a) where aquaculture is conducted in an aquatic medium, which involves recirculation of water and with a discharge(s) that does not connect in any way to open waters prior of being screened, filtered or percolated and treated to prevent the release of solid waste to the aquatic environment and the escape of the farmed species and of non-target species from the facility that might survive and subsequently reproduce;

and

- (b) which prevents farm losses due to environmental factors, such as flooding, predators (e.g. birds), theft and vandalism and ensures appropriate disposal of dead organisms;"

- (b) point 16 is replaced by the following:

⁵ OJ L 156, 14.6.2008, p. 6.

"16. 'routine movement' means the movement of aquatic organisms from a source which has a low risk of transferring non-target species and which, on account of the characteristics of the aquatic organisms and/or the method of aquaculture to be used, does not give rise to adverse ecological effects;"

(3) Article 14 is replaced by the following:

"Article 14

Release into aquaculture facilities in case of routine introductions

In the case of routine introductions, the release of aquatic organisms into aquaculture facilities shall be allowed without quarantine or pilot release, unless, in exceptional cases, the competent authority decides otherwise on the basis of specific advice given by the advisory committee. Movements from a closed aquaculture facility to an open aquaculture facility shall not be regarded as routine."

(4) Annex I is amended as follows:

(a) The text of the first paragraph is replaced by the following:

"Wherever possible, information is to be supported with references from the scientific literature, and notations to personal communications with scientific authorities and fisheries experts".

(b) Section D (Interaction with native species) is amended as follows:

- point 1 is replaced by the following:

"(1) What is the potential for survival and establishment of the introduced organism if it escapes?"

- point 6 is replaced by the following:

"(6) Will the introduced organisms survive and successfully reproduce in the proposed area of introduction or will annual stocking be required?"

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*