

CHAPTER III

Final provisions

Article 21

Personal Data

Personal data collected under Article 8 and 17 are subject to the provisions of Law Nr. 67/98 of October 26th.

Article 22

Entry into force

This regional legislative decree shall enter into force 30 days after the date of its publication.

Approved by the Legislative Assembly of the Azores Autonomous Region, in Horta, on May 17th, 2011.

The President of the Legislative Assembly, *Francisco Manuel Coelho Lopes Cabral*.

Signed in Angra do Heroísmo on June 14th 2011.

To be published.

The Representative of the Republic for the Azores Autonomous Region, *Pedro Manuel dos Reis Alves Catarino*.

Regional Legislative Decree nr. 22/2011/A

Legal framework for Azorean aquaculture

Of the unfounded certainty, over the past decades, that fish resources would not deplete, it was realized at present that although renewable, they may decrease drastically if subjected to intensive exploitation and that aquaculture could help meet the growing consumer demand for fish species, complementing the fishing activity with sea products that are typical of the Azorean waters in order to enhance and diversify a sustainable maritime economy that would bring wealth for the Region.

The self-run unit of aquaculture can also contribute to the creation of new market niches of aquaculture products, providing opportunities for social development and employment while increasing regional productivity without increasing the extractive pressure on fish resources.

However, the biological characteristics of Azorean waters advise the implementation of a system that takes into account its specificities, both in the installation and in the exploitation of aquaculture production units in the Region.

Therefore, the strategy for sustainable development of aquaculture should be based on an activity that offers quality products, in limited quantities and without degrading the environment of the Azores.

So, this Act is intended to establish procedures regarding the installation, exploitation and transfer of aquaculture facilities and such related, both on the territorial land and territorial waters of the Azores, in order to create conditions for the sustainable development of aquaculture species of salt, brackish or fresh water, appropriate to the existing natural conditions of the Region.

Is also important to identify and define locations in the waters of the Region that have features and capabilities appropriate to the installation and

development of facilities of marine aquaculture in order to sort this activity in Azores waters, so this Act also sets special rules for the installation of areas of aquaculture production at sea, thus delimiting maritime zones where various aquaculture facilities can be installed, as a group.

The need to develop aquaculture in the Region makes it equally advisable to define the conditions for the pursue of the activity, whether under experimental or scientific procedure, which not only allows for the installation of pilot facilities, on land or at sea, more riverlined and based on a marked simplification of the procedure for authorizing the installation and exploitation.

Thus, the Legislative Assembly of the Azores Autonomous Region decrees, pursuant to paragraph a) of nr. 1 of Article 227 of the Constitution of the Republic, of nr. 1 of Article 37 and paragraph d) of nr. 2 of Article 53 of the Political-Administrative Statute of the Autonomous Region of the Azores, the following:

CHAPTER I

General provisions

Article 1

Object

This Act aims at regulating the activity of aquaculture in the Region, so as to ensure the culture of aquatic species, in a sustainable manner appropriate to the specificities of the existing resources of fauna and flora in the territorial land and sea of the Azores.

Article 2

Scope

1 — This Act applies to all natural or legal persons exercising the activity of culture of aquatic species on territorial land or sea of the Azores.

2 — This Act establishes the requirements and conditions for the installation and exploitation of aquaculture facilities and such related, for commercial purposes, and the granting of permits for installation and exploitation licenses and the conditions of their transmission and termination in the territorial land or sea of the Azores.

3 — This Act also defines the conditions for the introduction of aquaculture facilities and such related, on an experimental basis or for scientific or technological development.

4 — This Act also creates the rules for the facility of aquaculture production areas in the Azores that allow for the installation, in a grouped form, in specific areas, of marine aquaculture facilities.

5 — This Act does not apply to:

- a) The maintenance of aquatic species in aquariums, tanks and other reservoirs for ornamental purposes;
- b) The maintenance of marine species in fishing ponds, except as referred to in nr. 7-9 of Article 4;

c) The repopulation of marine species anywhere, when executed by the Regional Government department responsible for aquaculture;

d) The populating of freshwater species in lakes, rivers and other reservoirs, when executed by the Regional Government department responsible for fisheries of freshwater species.

Article 3

Definitions

1 — For purposes of this Act, it is understood that:

a) «Finishing» means the storage of live freshwater species in areas of production, purification centres or dispatch centres in tanks or any other installation containing fresh water or clean sea water or in natural areas in order to remove sand, mud or silt, to preserve or enhance the organoleptic characteristics and ensure the good state of vitality before wrapping or packaging;

b) «Clean seawater» means seawater or brackish water, natural, artificial or purified, that does not contain micro-organisms, harmful substances or toxic marine plankton in quantities capable of a direct or indirect impact on the sanitary quality of foodstuffs;

c) «Clean fresh water» means fresh water that does not contain micro-organisms and objectionable substances in quantities which could have a direct or indirect impact on the sanitary quality of foodstuffs;

d) «Natural bank» means the place where, without human intervention, aquaculture specimens are concentrated;

e) «Animal load» means the number of fish per unit of surface or volume;

f) «Treatment centres» means the related facilities featuring tanks and other reservoirs fed by fresh water, seawater or brackish water naturally clean or cleaned by appropriate treatment, in which live specimens are placed for the time necessary for the reduction of microbiological contaminants, making them suitable for human consumption;

g) «Dispatch centre» means related facilities, on land or floating, reserved for the reception, conditioning, washing, cleaning, grading, packing and packaging of live aquaculture specimens fit for human consumption;

h) «Extensive culture» means production using exclusively natural feeding;

i) «Intensive culture» means production using exclusively artificial feeding;

j) «Semi-intensive culture» means production using artificial food supplement;

k) «Aquaculture» means the activities whose purpose is the reproduction and/or growth and/or fattening, and/or maintenance and/or improvement of aquaculture species;

l) «Freshwater cultures» means the activities whose purpose is the reproduction and/or growth and/or fattening, and/or maintenance and/or improvement of freshwater species;

m) «Mari-culture» means the activities whose purpose is the reproduction and/or growth and/or fattening, and/or maintenance and/or improvement of marine species;

n) «Deposits» means the facilities associated with facilities not integrated into the production complex, where indoors transient or storage and temporary handling take place, of aquaculture specimens awaiting entry into the commercial channels;

o) «Locally absent species» means any species or

subspecies of an aquatic organism that, for bio-geographical reasons, is not present locally in a certain zone within its natural distribution area;

p) «Genetically modified species» means any species or subspecies of an aquatic organism whose genetic material has been altered in a way that does not occur naturally;

q) «Non-native species or exotic species» means any species or subspecies of an aquatic organism that is outside its known natural distribution area, or its natural dispersal area;

r) «Aquatic Species» means the group of animals or plants whose specimens spend a significant part of their life cycle in fresh, brackish or salt water;

s) «Aquaculture species» means aquatic species from aquaculture;

t) «Marine species» means the group of animals or plants whose specimens spend a significant part of their life cycle in salt or brackish water;

u) «Freshwater species» means the group of animals or plants whose specimens spend a significant part of their life cycle in freshwater;

v) «Aquatic specimens» means specimens of aquatic species;

w) «Aquaculture specimens» means specimens of aquaculture species;

x) «Freshwater specimens» means specimens of freshwater species;

y) «Marine specimens» means specimens of marine species;

z) «Aquaculture facilities» means facilities whose purpose is the reproduction and/or growth and/or fattening of aquaculture species, whichever the type of structure they use and the location they occupy;

aa) «Related facilities» means the facilities for packaging and temporary maintaining life of aquaculture species or their hygiene and health treatment, such as deposits, purification centres, dispatch centres and tuning areas;

bb) «Facilities of freshwater cultures» means the facilities whose purpose is the reproduction and/or growth and/or fattening of freshwater species, whichever the type of structure they use and the location they occupy;

cc) «Facilities of marine aquaculture» means the facilities whose purpose is the reproduction and/or growth and/or fattening of marine species, whichever the type of structure they use and location they occupy;

dd) «Aquaculture facilities» means the aquaculture facilities whose purpose is the reproduction and/or growth and/or fattening or fish species;

ee) «Introduction of non-native species or introduction» means the liberation, for the first time, in a particular aquaculture facility or certain water space, of one or more specimens of a not-native species;

ff) «Juveniles» means specimens with the final morphology of the species, which have not yet reached sexual development;

gg) «Monoculture» means the system aimed at the culture of only one aquaculture species in a given space;

hh) «Polyculture» means the system aimed at the culture of more than one aquaculture species in the same physical space;

ii) «Populating» means the release, into a specific aquaculture facility or specific water space, of one or more specimens of aquatic species;

jj) «Repopulation» means the release, into a specific aquaculture facility or specific water space, of one or more specimens of an indigenous species, of a previously present but now locally absent species, or of a previously introduced non-native species;

kk) «Translocation» means the release, for the first time, into a particular aquaculture facility or specific water space, of one or more specimens of a locally absent species;

ll) «Units of reproduction» means the aquaculture facilities intended to produce, by artificial methods, the different stages of embryonic development of certain species - gametes, eggs, larvae, post-larvae, juveniles, and spores;

mm) «Fish nursery» means the floating structure, anchored or tied to a vessel, or aquarium, or tank, or reservoir on land, where the temporary maintenance of species from marine fisheries takes place;

nn) «Tuning area» means the related property comprising any part of territory, clearly marked by buoys, poles or other fixed means, and used exclusively for the natural purification of live aquaculture specimens.

2 — The member of the Regional Government responsible for aquaculture shall establish, by order or ordinance, other definitions related to the full applicability of this Act and its regulations.

Article 4

Arrangements applicable to the cultivation of aquatic species

1 — Under paragraph 2 of Article 28 of Law Nr. 54/2005 of the 15th of November, the jurisdiction of the maritime public domain with respect to licensing, installation and exploitation of the facilities of marine aquaculture and such related, is the jurisdiction of the Regional Government department responsible for aquaculture, except at the margins, of coastal waters and inland waters, subject to tidal influence, whose jurisdiction is of the Regional Government department responsible for water resources.

2 — The system of private use of non-seawater public areas, for the installation and exploitation of aquaculture facilities and such related, that are located on land, is governed by the provisions of Decree-Law Nr. 468/71 of November 5th, and the Laws Nrs. 54/2005 of November 15th, and 58/2005 of 29th of December, notwithstanding the provisions of this current Act.

3 — The animal health requirements for the cultivation of aquatic species are governed by Decree-Law Nr. 152/2009 of 2nd of July, notwithstanding the provisions of this current Act.

4 — It is up to the Regional Government department responsible for aquaculture to evaluate and decide on the socio-economic interest of each project to establish aquaculture cultures to be installed and explored in the region.

5 — It is up to the member of the Regional Government responsible for aquaculture to establish, by ordinance, the business constraints of aquaculture in the region and provide the criteria and conditions for their implementation to ensure the management of the sector.

6 - The regulations referred to in the preceding paragraph may establish, in particular, the following constraints, by providing the conditions and criteria for their application:

a) Classification and delimitation of areas for the cultivation of aquaculture species and definition of the conditions for aquaculture activity, as well as their requirements;

b) Prohibition or restriction of aquaculture operation in some areas or for certain periods or certain species;

c) Definition of the types, characteristics and settings of the instruments for catching and handling aquaculture species, as well as tanks and other reservoirs or cultivation structures;

d) Setting conditions for using the instruments for catching and handling aquaculture species, as well as tanks and other reservoirs on land or cultivation structures at sea;

e) Limitation of the quantity or weight of each species to be cultivated by facility of aquaculture, by type of facility, by zone, by island or in the Region;

f) Definition of the species that may be used for aquaculture cultures, by aquaculture facility, by type of facility, by zone, by island or in the Region;

g) Definition of labelling and traceability of aquaculture products.

7 — The installation and use of anchored fish nursery is subject only to authorization of the member of the Regional Government responsible for fisheries, on the advice of the local maritime authority and, where applicable, the port authority.

8 - The installation and use of fish nurseries on land is subject only to authorization of the member of the Regional Government responsible for fisheries.

9 - The use of fish nurseries tied to fishing vessels is exempt from any authorization.

Article 5

Rules applicable to the culture of aquatic species for scientific or technological development

1 - The culture of aquatic species for scientific or technological development can be carried out by the Regional Government department responsible for aquaculture or by a scientific body of recognized merit in the field of aquatic sciences.

2 - The culture of aquatic species for scientific or technological development is only subject to approval by the member of the Regional Government responsible for Aquaculture.

3 — The authorization for the installation of the aquaculture facility and such related, for scientific or technological development, issued by the Regional Government department responsible for aquaculture, dispenses all other proceedings under this current Act and entitles the entity to whom the authorization for installation was granted, to explore the facility.

4 — The authorization for installation in the preceding paragraph is preceded by a Legal Opinion by the following entities:

a) Regional Government Department responsible for the environment, if the facility is located in a protected area;

b) Regional Government Department responsible for freshwater fish species, if the facility is located in a pond or river;

c) Regional Government Department responsible for Fishing of marine species, if the facility is located in Azores waters;

d) Local body of maritime authority, if the facility is located in a whole or partial area of maritime jurisdiction.

5 - The opinion of each entity mentioned in the preceding paragraph is binding if based on the applicable legal texts and regulations within the jurisdiction of the concerned department or agency.

6 - The absence of a Legal Opinion within 30 days should be construed as favourable to the project.

7 - The products of the culture of aquaculture species for scientific or technological development cannot be released into the market.

Article 6

Regime applicable to the experimental culture of aquatic species

1 - The experimental culture of aquatic species can only be exercised by a natural person or legal entity in partnership with a scientific entity with recognized merit in the field of aquatic sciences.

2 - The experimental culture of aquatic species is only subject to approval by the member of the Regional Government responsible for Aquaculture.

3 - Authorization for the installation of experimental facility of aquaculture and such related cannot be longer than five years.

4 - Authorization for the installation of experimental facility of aquaculture and such related, issued by the Regional Government department responsible for aquaculture, dispenses all other proceedings under this Act and gives the right to explore the facility by the authority to whom permission for the installation for the defined period was granted, without prejudice to paragraph 8.

5 - The authorization for installation mentioned in the previous paragraph is preceded by a Legal Opinion by the following entities:

a) Regional Government Department responsible for the environment, if the facility is located in a protected area;

b) Regional Government Department responsible for freshwater fish species, if the facility is located in a pond or river;

c) Regional Government Department responsible for Fishing of marine species, if the facility is located in Azores waters;

d) Local body of maritime authority, if the facility is located in a whole or partial area of maritime jurisdiction.

6 - The legal opinion of each entity mentioned in the preceding paragraph is binding if based on the applicable

legal texts and regulations within the jurisdiction of the concerned department or agency.

7 - The absence of a Legal Opinion within 30 days should be construed as assent to the draft.

8 - The products of the experimental culture of aquatic species can only be launched into the market after approval by the Regional Government department responsible for animal health, in accordance with the provisions of Decree-Law Nr. 152/2009 of July 2nd and the other applicable regulations.

CHAPTER II

Aquaculture

Article 7

Installation Authorization

1 - The installation of aquaculture facilities and such related, and also any activity of culture of aquatic species practiced in those facilities, is subject to authorization granted by the Regional Government member responsible for aquaculture.

2 - The authorization for installation of the facility of aquaculture and such related, issued by the Regional Government department responsible for aquaculture, replaces the previous license of the private use of water resources of the public maritime domain referred to in Law Nr. 58/2005 of December 29th, as well as titles for the use of water resources of the public maritime domain referred to in Decree-Law Nr. 226 -A/2007 of May 31st, except on the margins, coastal waters and inland waters, subject to the influence of tides.

3 - Authorization for the installation of the aquaculture facility and such related, issued by the Regional Government department responsible for aquaculture, temporarily dispenses, up to the phase of licensing the exploitation, the authorization or registration provided for in Decree-Law Nr. 152/2009, of July 2nd.

4 - Authorization for the installation of the aquaculture facility and such related, issued by the Regional Government department responsible for aquaculture, incorporates and supersedes any authorization or license provided for in other specific regulations.

5 - Whenever appropriate, by joint order of the members of the Regional Government responsible for aquaculture and/or fishing of aquatic species and/or animal health, and/or environment, other conditions of the authorization process for installing aquaculture facilities and such related, may be established.

Article 8

Exploitation Licensing

1 - The exploitation of aquaculture facilities and such related must be licensed by the department of the regional government responsible for aquaculture.

2 - The licensed facility is given a unique identification number by the Regional Government department responsible for aquaculture, to be used by all departments of the Regional Government to register and identify the concerned facility.

3 - The set of identification referred to in the preceding

paragraph supersedes any other number or identification set provided for in specific legislation, with the exception of the veterinary control number to be issued by the Regional Government department responsible for animal health.

4 - Where appropriate, by joint order of the members of the Regional Government responsible for aquaculture, and/or fishing of aquatic species and/or animal health, or environment, other conditions of the authorization process for licensing of the exploitation of aquaculture facilities and such related, may be established.

Article 9

Activity Records

In addition to the records of the aquaculture activities provided for in the following Article and in the applicable European Union regulations, the member of the Regional Government responsible for aquaculture may establish, by ordinance, other required records and rules to be applied to aquaculture for purposes of information and control.

Article 10

Control of the Activity

1 - In order to control the activity of the aquaculture facilities and related services, a record containing the following elements is created in the Regional Government department responsible for aquaculture:

- a) The identity of the initial holder's authorization for installation and exploitation license, and those to whom they are transmitted, pursuant to this Act;
- b) The location and size of the facility, as well as the nature and legal status of the place that it occupies;
- c) The identification number assigned to it and, where applicable, the number of veterinary control;
- d) The authorized species and planned production capacity for each of them;
- e) Any specific conditions that the facility must comply with, namely exploitation regime and system.

2 - The holders of aquaculture facilities are required to submit to the Regional Government department responsible for aquaculture, up to the 1st working day of June of each year, the production maps relating to the previous year, using the form available at the Portal of the Regional Government on the Internet by the Department of the Regional Government responsible for aquaculture.

Article 11

Transfer of Specimens

1 - The transfer of live specimens among aquaculture facilities or for tuning areas is subject to the approval of the Regional Government department responsible for aquaculture, requiring:

- a) Legal Opinion of the Regional Government department responsible for the environment, in case any of the facilities or tuning areas are located in a protected area;
- b) Legal Opinion of the Regional Government department responsible for fisheries of freshwater species, in case the facility or tuning areas are located in a pond or river;
- c) Legal Opinion of the Regional Government department responsible for fisheries of marine species, in case the facility or tuning areas are located in Azores waters.

2 - The legal opinion of each entity mentioned in the preceding paragraph is binding if based on the legal texts and regulations within the jurisdiction of the concerned department or agency.

3 - The lack of legal opinion within 30 days should be construed as favourable.

4 - The decision on the request for authorization referred to in paragraph 1 is made within 60 days after the receipt of the request, considering it as tacitly approved in the absence of a decision, after this period.

5 - For the purpose of analysing the request for authorization or monitoring the operation referred to in paragraph 1, the Regional Government department responsible for aquaculture may use specialized external technical services or scientific entities of recognized merit in the field of aquatic sciences.

Article 12

Genetically modified or non-indigenous species

1 - The release of genetically modified aquatic species living in any type of aquaculture and such related is forbidden.

2 - Without prejudice to specific legislation, the release of non-indigenous live aquatic species in any type of aquaculture and such related, is forbidden unless otherwise authorized by the Regional Government department responsible for aquaculture, which for this purpose requires prior binding legal opinion by the following entities:

- a) Regional Government Department responsible for Environment;
- b) Regional Government Department responsible for animal health;
- c) Regional Government Department responsible for fisheries of freshwater species, in case the facility is located in a pond or river;
- d) Regional Government Department of Fisheries of marine species, in case the facility is located in Azores waters.

3 - In the process of authorization referred to in paragraph 2, the intervening parties shall observe the procedures laid down in Regulation (EC) Nr. 708/2007, of the Council, of June 11th.

4 - For the purpose of analysis of the application referred to in paragraph 2, the Regional Government department responsible for aquaculture may use external technical specialized services or consult scientific organizations of recognized merit in the field of aquatic sciences.

Article 13

Standards of quality, health and hygiene of the products

Products from aquaculture facilities and such related must comply with standards of quality, sanitation and hygiene applicable to fisheries.

Article 14

Size of specimens from aquaculture facilities

1 - Specimens from the aquaculture facilities may be traded with size or weight below those established for fishery products, whichever stage of their life cycle, without prejudice to the following paragraph.

2 - By Order of the members of the Regional Government responsible for aquaculture and fisheries of freshwater species, minimum sizes for the marketing of certain aquaculture species can be set.

3 - The products referred to in paragraph 1 must be accompanied by documentary evidence of the sale, displayed, whenever required, by any competent authority for its supervision.

Article 15

The populating of aquaculture facilities

1 - The populating of aquaculture facilities is carried out using juveniles produced in nurseries.

2 - The preceding paragraph shall not apply when, for economic or technical reasons, or for lack of installations in the region, the species are not yet viable for artificial reproduction locally.

3 - The capture of the species mentioned in the preceding paragraph is subject to the arrangements set in the legal framework for Azorean fishing and other applicable arrangements, without prejudice to the paragraphs following this Article.

4 - The operations mentioned above can be made only by boats and personnel at the service of the owners of the facilities, or by fishing vessels, catchers of marine resources or fishermen, who hold the respective professional title, up-to-date.

5 - Applications for permission to capture wild specimens for populating, to be formulated by the owners of the facilities, to the member of the Regional Government responsible for fisheries, should indicate the vessels or persons involved in the capture, as well as the quantities to be caught, by weight and number of specimens.

CHAPTER III

Installation of Facilities

Article 16

Requirements for local installation

The locations, on land or sea, for the installation of aquaculture facilities and such related, must meet the following requirements:

a) Have adequate health conditions for cultures being produced;

b) Not prejudice natural banks of species whose preservation is deemed necessary, with a view to their conservation and sustainable exploitation;

c) Comply with the regulation of the areas subject to territorial management tools and areas integrated in the regional network of protected areas;

d) Have conditions for the implementation of the physical structures appropriate for the type of facility to be installed;

e) Not impair navigation;

f) Not induce significant negative impacts on the fauna, flora and surrounding habitats and existing cultural heritage, buried or submerged;

g) Safeguard the good quality of the water;

h) That their use does not collide with the interests of other activities already authorized for such sites.

Article 17

Technical conditions of facilities

1 - The aquaculture facilities located on land observe the parameters of discharge provided for in the applicable legislation, using, if necessary, the proper means for waste treatment.

2 - The aquaculture facilities located at sea or in areas of official ownership in land, have passage lanes with a width to be defined case-by-case by the Regional Government department responsible for aquaculture, in order to safeguard access to other facilities.

3 - The deposits of aquatic species, as well as treatment and dispatch centres, satisfy the conditions set out in Annex II of Regulation (EC) Nr. 852/2004 of the European Parliament and of the Council, of April 29th, and Annexes I and III of Regulation (EC) Nr. 853/2004 of the European Parliament and of the Council, of April 29th.

4 - The tuning zones meet the conditions set out in Annexes I and III of Regulation (EC) Nr. 853/2004 of the European Parliament and of the Council, of April 29th.

Article 18

Request for authorization for installation

1 - The request for authorization for the installation of aquaculture facilities and such related is directed to the member of the Regional Government responsible for aquaculture.

2 - Requests for authorization must include:

a) The identification and address of the applicant, indicating his taxpayer number or the number of legal person;

b) The location, the facility's confrontations and its name, indicating the location, parish and county.

3 - The request for authorization must be accompanied by the following elements, where applicable:

a) Photocopy of the tax identification number and identity or citizen card of the applicant or, in the case of legal person, the certificate of registration;

b) Ownership of the land on which the facility is to be installed, in the case of private property or, if the applicant is not the owner, the title that gives him the right to use it for the purposes required;

c) Description and justification of the production process;

d) Plant of the facility on a scale not less than 1:5000, with vertices of the polygonal to determine the boundaries of the facility, numbered and referred to the geographical coordinates in the WGS84 reference;

e) Drawings of infrastructure on a scale not less than 1:200, indicating, namely: warehouses, outdoor circuits, sanitary facilities and temporary storage of solid waste;

f) Plant or drawings of the details of infrastructure, tanks and other reservoirs, cages and other equipment related to the culture of aquatic species, in appropriate scale;

g) Where applicable, the project for maritime signalling, to be prepared according to the type of facility.

4 - The title of the property referred to in paragraph b) of nr. 3 can be temporarily replaced by a contract of promise of buying and selling of the place where one wants to install the facility, but the deed must, however, be bestowed upon referral of the process, for the effects of the authorization order.

5 - The descriptive document referred to in subparagraph c) of nr. 3 shall include, where applicable, the following:

a) Detailed description of the activity to be developed, of the equipment and materials to be used, indicating the installations that they want to build, characteristics of the work to be done and interior finishes;

b) Description of the production process;

c) An indication of the culture system, the exploitation regulations with an indication of the species to be cultivated and origin of the juveniles for populating;

d) Indication of the biological products, chemicals and drugs to be used;

e) Description of the installations for the supply and storage of drinking water and water for life support of aquaculture, as well as the volume of water to be used;

f) Indication and description of the number of workers and the number of bathrooms, showers, toilets and changing rooms;

g) Indication of production capacity;

h) Indication of the circuit and operating conditions of the hydraulic system of the production areas;

i) Indication of the system of waste management, including registration, prevention, reuse, sorting, storage, collection, transport, valuation and disposal of waste;

j) Indication of management system of by-products, including registration, prevention, reuse, sorting, storage, collection, transport, valuation and disposal of by-products.

6 - The request for authorization must be submitted in digital format.

7 - The project referred to in paragraph g) of nr. 3 is submitted by the Regional Government department responsible for aquaculture, to the local maritime authority in whose jurisdiction the applicant intends to install the facility for the purpose of issuing a binding opinion, within 60 days.

8 - The lack of legal opinion within the period referred to in the preceding paragraph shall be construed as assent and the project tacitly approved.

Article 19

Instruction and assessment of the Process

1 - The statement of the authorization process for installation is of the competence of the Regional Government department responsible for aquaculture.

2 - When it is found that the process is not in accordance with the preceding Articles, the Regional Government department responsible for aquaculture will

notify the applicant within 30 days from the date of its entry, to gather the missing information or correct any anomalies.

3 - The evaluation of the process begins only after the full presentation of it all.

4 - The Regional Government department responsible for aquaculture sends a copy of the process to each of the entities represented in the commission for aquaculture referred to in Article 21, who emit a prior legal opinion on the merits of the project, within 30 days of its receipt.

5 - The preliminary reports referred to in the preceding paragraph are not binding at this stage and must be substantiated by the legislation and regulations applicable within the competence of each department or agency concerned, and the Regional Government department responsible for aquaculture must promote actions that are necessary to remedy any deficiencies in the project.

6 - Apart from the preliminary legal opinions referred to in the preceding paragraphs, the process continues its progress under the terms of the following Article.

Article 20

Subsequent Measures

1 - When the facility is located within an area under maritime jurisdiction, the Regional Government department responsible for aquaculture will, within 30 days after receipt of the full process, or its revision, promote the following steps:

a) Draw up a notice containing the request for authorization, which will be posted for a period of 30 days, in the building of the local body of maritime authority, at the fish market and in other public places traditionally used for display, so that any third party can infer written complaints which they deem appropriate, without prejudice to paragraph 2;

b) Have published, at least once, the notice referred to in the preceding paragraph in a newspaper, of the island or islands where the facilities will be installed, without prejudice to paragraph 2;

c) Call upon the commission for aquaculture, as provided in Article 22, for final considerations of the proposed project, including any complaints, and visits to the site, whenever this is justified.

2 - The procedures referred to in points a) and b) of paragraph 1 will not take place in the case of facilities to be located in previously approved production areas for aquaculture, as well as in processes already submitted for procedure of environmental impact assessment or if the facilities are under experimental or scientific regime.

Article 21

Composition of the aquaculture Commission

1 - The commission for aquaculture is made up of the following:

a) A representative of the Regional Government department responsible for aquaculture;

b) A representative of the Regional Government department responsible for environment;

c) A representative of the Regional Government department responsible for animal health;

d) A representative of the Regional Government

department responsible for fisheries of freshwater species, in case the facility is located in a pond or river;

e) A representative of the Regional Government department responsible for fisheries of marine species, in case the facility is located in Azores waters;

f) A representative of the Port Authority in case the facility is located in an area wholly or partly under port jurisdiction;

g) A representative of the local body of maritime authority, in case the facility is located in an area wholly or partly under maritime jurisdiction;

h) A representative from the local authority of the area of the facility, in case it is located on land.

2 - The Regional Government department responsible for aquaculture may invite a scientific body of recognized merit in the field of aquatic sciences, and other entities whose opinion is relevant, to join the committee of aquaculture in the assessment of any submitted project.

3 - The aquaculture committee is chaired by the representative of the Regional Government department responsible for aquaculture.

4 - The aquaculture committee operates when the majority of its members is present or when the number of members present, together with the number of written opinions under paragraph 5, provide an equal or greater number than the that of most members.

5 - Any department of the Regional Government, by issuing a written opinion in favour of the project, shall be relieved of nominating his representative to attend meetings and surveys undertaken by the commission of aquaculture.

Article 22

Meeting

1 - The aquaculture commission meets within 30 days after the expiry of the notice or posting, or in the absence of a notice, within 60 days of delivery of the project.

2 - The date of the meeting is communicated by the Regional Government department responsible for aquaculture to the aquaculture committee members, with at least 10 days prior notice.

3 - The applicant, or his representative, may accompany the visit to the site, in the cases where such takes place.

Article 23

Minutes of the meeting and committee's legal opinion

1 - The minutes of the meetings held are drafted by the representative of the Regional Government department responsible for aquaculture, signed by all stakeholders.

2 - The minutes include the legal opinion of the Commission and its conclusion must take the form of one of the following:

- a) *Favourable*;
- b) *Conditioned favourable*;
- c) *Unfavourable*.

3 - The committee's legal opinion is considered favourable whenever obtained at least by the consent of the majority of its present members and as long as there is no unfavourable legal opinion pursuant to paragraph 6.

4 - When the opinion is conditioned favourable, the minutes must include the elements that are missing, to be

corrected or reformulated, and whether they have to be returned to be reassessed by the aquaculture committee, or whether they can be reviewed only by the Regional Government Department responsible for aquaculture, in which case the minutes should include the delegation of authority to that effect.

5 - The application is refused when the committee's opinion is unfavourable or, in the case of conditioned favourable, the applicant has not submitted the missing elements referred to above within the period specified under paragraph 2 of the next article.

6 - The legal opinion of each entity that comprises the aquaculture committee is binding if based on statutes and regulations within the jurisdiction of the concerned department or agency.

7 - When one of the entities summoned to the meeting of the aquaculture committee does not give a legal opinion during the meeting or does not attend the meeting without being excused pursuant to paragraph 5 of Article 21, his opinion is considered tacitly favourable.

Article 24

Communication of the results of the committee meeting

1 - The Regional Government department responsible for aquaculture must notify the person concerned, within 30 days after the date of the meeting having taken place, its result, with delivery of a photocopy of the minutes.

2 - When the committee's legal opinion is favourable, the applicant is notified that he may, within the period prescribed by the commission, make its correction or reformulation, according to the recommendations made by the committee that assesses the project, sending, for that effect, the project's correction or reformulation.

Article 25

Decision on the request for installation

1 - Having been checked by the commission or department of the Regional Government responsible for aquaculture, in case the authority is delegated to him pursuant to paragraph 4 of Article 23, that the procedure referred to in the preceding paragraphs has been complied with and the conditions for approval have been met, the submitted case shall be subject to order of approval of the installation by the member of the Regional Government responsible for aquaculture.

2 - The applicant and the entities involved in the process are notified of the content of the order of the Regional Government department responsible for aquaculture.

Article 26

Order authorizing installation

The order authorizing for installation must comprise, *inter alia*, the following elements:

- a) The identity of the authorization holder;
- b) The name, location and area of the facility;
- c) The authorized species, the system of exploitation and the culture system, as well as the identification set assigned;
- d) Any specific conditions to be met by the facility and its exploitation.

Article 27

Communication of the start of the installation

1 - After the notification referred to in paragraph 2 of Article 25, the applicant shall notify the Regional Government department responsible for aquaculture of the start date and expected duration of the works on land, or for the installation of the structures at sea, which must be completed within 18 months from the date of notification of the authorization order.

2 - In exceptional cases, for reasons beyond the holder of the installation authorization, the Regional Government department responsible for aquaculture may extend the deadline prescribed in the preceding paragraph, for the period deemed necessary.

Article 28

Transmission of authorizations

The authorization to install aquaculture facilities and such related in areas or in private property is transferable to the new holders of the right to use and enjoy these areas as long as they so request to the department of the Regional Government responsible for aquaculture.

Article 29

Expiry of the authorization

1 - The authorization to install aquaculture facilities and such related expires in the following cases:

- a) Waiver of its holder;
- b) Death or extinction of the natural or legal person holding the facility, without prejudice to the preceding Article;

c) Failure to submit the application for exploitation permit within three months after completion of the works or installation procedures, pursuant to paragraph 1 of Article 27.

2 - The authorization for the installation of proprietary facilities in areas, also expire with the demise of its right of private use, except in case of their transfer under the terms of the previous Article.

Article 30

Repeal of authorization for installation

The following constitute grounds for repeal of the installation permits:

a) Failure to complete the works or the installation of the structures within the period specified in Article 27 from the date of notification of the order authorizing the installation;

b) The supervening occurrence of events that impair the checking of the requirements in Articles 16 and 17;

c) Termination of the right of use of public water.

Article 31

Delimitation and signalling of the facilities

1 - The aquaculture facilities are properly demarcated

and signposted.

2 - The delimitation and signalling of the facilities are made, as appropriate, with buoys or markers, placed in conspicuous places at the vertices of their polygonal boundary.

3 - The delimitation and signalling referred to in the preceding paragraph shall comply with the elements contained in the respective installation permits, being subject to checks and balances.

CHAPTER IV

Areas of aquaculture production in Azores waters

Article 32

Facility of aquaculture production areas

1 - The facility of aquaculture production area in Azores waters is made by resolution of the Regional Government, which sets out the respective geographical coordinates, the species authorized for cultivation, the production limits, the exploitation regime and its validity, as well as all elements referred to in paragraphs 5 and 6 and the following Article.

2 - The facility of aquaculture production area is proposed by a member of the Regional Government responsible for aquaculture, after obtaining a favourable legal opinion by the aquaculture committee.

3 - For the purposes of the preceding paragraph, the Regional Government department responsible for aquaculture promotes:

- a) The actions provided for in paragraphs 4, 5 and 6 of Article 19 with the necessary adaptations, so that the aquaculture commission may consider the proposal;
- b) The subsequent measures provided for in Article 20, with the necessary adaptations;
- c) The aquaculture committee's meeting under Articles 22 and 23, with the necessary adaptations.

4 - The facility of aquaculture production area is preceded by a study of environmental impact or a statement of environmental impact, if the species or the amounts provided for the set of their exploitations of marine cultures require - pursuant to Regional Legislative Decree Nr. 30/2010/A, of November 15th - an environmental impact study on the area intended for the facility of the aquaculture production.

5 - The facility of aquaculture production area must contain the environmental descriptors suitable for the characteristics of the areas for aquaculture production and their monitoring plan, according to that resulting from the application of the preceding paragraph.

6 - The aquaculture production areas referred to in the preceding paragraphs constitute a maritime space, suitably marked in accordance with the Rules of Maritime Way-markings in force, and the recommendations of the International Association of Aids to Navigation and Lighthouse Authority, divided into lots, so as to group, in its interior, a set of marine aquaculture facilities, properly individualized.

Article 33

Composition of the areas for aquaculture production

1 - The aquaculture production areas shall be divided, on the inside, into lots numbered with the delimitations in the resolution of the Regional Government that establishes them, each lot corresponding to the sum of the effective area to be occupied by floating structures associated with aquaculture production and their area of protection.

2 - In addition to the lots referred to above, the areas of aquaculture production are composed of collective use areas that include navigation corridors and their maritime signalling.

3 - For licensing purposes, the dimensions of the facilities must conform to the lots referred to in paragraph 1.

Article 34

Installation of facilities in areas of aquaculture production

1 - The procedure for authorizing the installation of marine aquaculture facilities in areas of aquaculture production begins with the request to the Regional Government department responsible for aquaculture under the terms of Article 18.

2 - To consider the request under the previous paragraph, the Regional Government department responsible for aquaculture may require the applicant to submit, within 30 days, additional evidential elements, and shall ensure that the project for maritime signalling of the lot or lots of the facility have been approved by the competent authority.

3 - The member of the Regional Government responsible for aquaculture is competent to authorize the installation of marine aquaculture facilities in areas of aquaculture production.

4 - After the Regional Government department responsible for aquaculture has verified that the case meets the conditions of approval, the case shall be submitted for order of approval for the installation by the member of the Regional Government responsible for Aquaculture.

5 - The applicant is notified of the order referred to above, pursuant to Article 26, by the Regional Government department responsible for aquaculture.

6 - The authorization for installation may be revoked by a member of the Regional Government responsible for aquaculture if six months elapse from the date of notification referred to in the preceding paragraph without the installation of the facility having started.

7 - Completion of the installation of the facilities in areas of aquaculture production must occur within 18 months from the date referred to in paragraph 5.

8 - In exceptional cases, for reasons beyond the holder of the installation, the Regional Government department responsible for aquaculture may extend the period prescribed in the preceding deadline for the period deemed necessary.

9 - After installation is complete, the applicant requests the Regional Government department responsible for

aquaculture the exploitation license for the facility, under Article 39 of the present Act, observing, for the exercise of exploitation, the provisions in Articles 40 *et seq* of this Act.

Article 35

Pre-emptive Rights

During the two years following the establishment of areas of aquaculture production, pre-emptive rights are given in the allocation of lots to individuals or legal persons engaged in fishing for at least three years and for ship-owners' associations or producer organizations, in the percentage of 20%, with a view to retraining or diversifying fishing activities.

Article 36

Obligations of license holders in areas of aquaculture production

1 - Holders of marine aquaculture facilities in areas of aquaculture production are required to participate in the share of investment costs with the installation, determined by the area of the lot or lots, as well as in the maintenance of the system for maritime signalling of aquaculture production areas in which they operate.

2 - The participation mentioned in the preceding paragraph may be subject to change, particularly in light of the granting of new licenses for that same area.

3 - Without prejudice to the obligation in paragraph 1, each holder of facilities for marine aquaculture is responsible for establishing and maintaining the maritime signalling of the lot or lots that have been assigned to them.

4 - The holders of marine aquaculture facilities in areas of aquaculture production must carry out and maintain a valid liability insurance to cover damage resulting from their activity, through action or omission, or that of their representatives or the people at their service for which they may be civilly liable, and whose capital and minimum conditions are set by the member of the Regional Government responsible for aquaculture.

Article 37

Expiration and repeal of authorization to install or permit to operate in areas of aquaculture production

Subject to the situations of expiration or repeal of the use of public water and situations of expiration and repeal of permits for installation and operating license under this law, the licenses for the exploitation of marine aquaculture facilities located in areas of aquaculture production can also be revoked by the Regional Government department responsible for aquaculture in the event of failure to comply with the preceding Article.

Article 38

Navigation restrictions in the areas of aquaculture production

1 - Navigation in the areas of aquaculture production is forbidden, as defined in this Act, except for vessels used by the holders of marine aquaculture facilities, inspection or investigation vessels or other duly authorized.

2 - Navigation within the areas of aquaculture production, by the vessels referred to in the preceding

paragraph, must respect, within the corridors of navigation, a distance of caution in respect to lots so as not to impair navigation and work taking place in the exploitations.

CHAPTER V

Exploitation of Facilities

Article 39

Exploitation Licensing

1 - Upon completion of the installation works, the applicant requests the Regional Government department responsible for aquaculture, within three months, the operating license of the establishment, without prejudice to paragraph 6.

2 - The license referred to above is issued after approval of the establishment, and should be preceded by an inspection to be conducted by a representative of the Regional Government department responsible for aquaculture, together with:

a) A representative of the Regional Government department responsible for animal health, in the case of deposits of aquaculture species, cleaning centres and dispatch centres of live aquaculture species and tuning areas;

b) A local representative body of the maritime authority, in the event that the establishment be located wholly or partly in an area of maritime jurisdiction.

3 - The inspection referred to above will also include:

a) A representative of the regional government department responsible for environment, if the establishment is located in a protected area;

b) A representative of the Regional Government department responsible for fisheries of freshwater species, if the establishment is located in a pond or river;

c) A representative of the Regional government department responsible for fisheries of marine species, if the establishment is located in Azores waters.

4 - After the inspection, a report is drawn up by the representative of the Regional Government department responsible for aquaculture, which must include:

a) A statement of approval of the establishment, consistent with the authorized project and any changes, as being viable to start exploitation, for which an operating license may be issued and, if appropriate, the respective number of veterinary control attributed;

b) Any conditions that the entities referred to in the preceding paragraph regard as necessary to impose, as well as the deadline for their compliance.

5 - For the purposes of the inspection referred to in paragraph 2, the Regional Government department responsible for aquaculture may use specialized external technical services or scientific organizations of recognized merit in the field of aquatic sciences.

6 - Whenever there is change in the operating system of establishments, as well as any change to their delineation, including the configuration of the tanks and other reservoirs or structures, in accordance with the provisions of Article 49, and respective holder, after the completion of the works, asks the Regional Government department responsible for

Aquaculture for an updated license, in accordance with the provisions of the preceding paragraphs.

Article 40

Requirements of the operation of establishments

1 - The exploitation of aquaculture facilities and such related must meet technical requirements to ensure the hygiene and sanitary conditions of the facilities, including that of the water, buildings, health and sanitation of the cultivated or temporarily housed species and products to market, according with the legislation.

2 - The use of non-living organisms, genetically modified, at any stage of the process, including food and drugs, is authorized only pursuant to Decree-Laws Nrs. 2/2001 of January 4th, and 72/2003 of April 10th.

3 - The use of medicines and veterinary products should be done by specialized monitoring, pursuant to Decree-Law Nr. 148/2008 of July 29th, with the wording of Decree-Law Nr. 314/2009 of October 28th.

4 - The rules of operation of exploitations, known as standards of husbandry, must comply with rules that minimize the trauma and suffering of the species in culture.

5 - Specimens from fishing stabled in deposits, cannot have sizes below the minimum set for the catch, unless duly authorized by the members of the regional government responsible for fisheries and aquaculture.

6 - Aquaculture products should be marketed in accordance with Annex III, Sections VII and VIII of Regulation (EC) Nr. 853/2004 of the European Parliament and the Council of April 29th.

Article 41

Verification of the operating conditions

1 - The aquaculture establishments and such related are subject to random visits to check compliance with the conditions of the license.

2 - The checks referred to in the preceding paragraph are promoted by the Regional Government department responsible for aquaculture, which may require monitoring by other entities.

Article 42

Deadline and renewal of licenses

1 - The operating license of aquaculture establishments and such related, located in domain areas, is valid for the duration of their respective licenses for private use, and are renewable for identical periods.

2 - In the case of establishments located on private land, the permit is valid for 15 years, and renewable for identical periods.

Article 43

Transferability of licenses

The licenses of exploitation of establishments are transferred by virtue of transfer of the establishments, through prior authorization of the Regional Government department responsible for Aquaculture.

Article 44

Suspension of the License

1 - The operating license can be suspended in the following cases:

a) Supervening lack of requirements set out in Articles 16, 17 and 40 that governed the authorization for the installation and licensing for exploitation;

b) Change of any operating conditions set by the Regional Government departments responsible for aquaculture or animal health.

2 - The conditions referred to in the preceding paragraphs should be restored within six months from the date of receipt of the notification.

Article 45

Expiration of License

The licenses for exploitation of aquaculture establishments and such related expire in the following cases:

a) Termination of the right to exclusive use of the dominial area where the establishment is located;

b) Expiration of the period for which the license was issued, with no renewal.

Article 46

Repeal of license

1 - The operating license for aquaculture and related establishments may be revoked on the following grounds:

a) Exploration of the establishment by someone other than the license holder;

b) Failure to fulfil obligations that affect the operation of the establishment;

c) Unjustified interruption of exploitation of the establishment for a period exceeding one year;

d) Change in the regime of the licensed operation without prior authorization.

2 - The license may also be revoked if, following its suspension for reasons attributable to its holder, he does not promote, within the period provided for in paragraph 2 of Article 44, the restoration of the requirements and conditions to which he is obligated.

Article 47

Auxiliary vessels of aquaculture establishments

1 - Holders of the exploitation of aquaculture establishments may be allowed to own or use boats for the purpose of supporting their activities, in the transport of products from cultures and also personnel, equipment and materials pertaining to the operation.

2 - The vessels referred to above will be registered in the class of local auxiliary vessels, subject to the following

paragraph.

3 - The members of the regional government responsible for fisheries and aquaculture may allow vessels registered for fishing or leisure to be used for supporting the aquaculture activities and transport of products from the cultures and also personnel, equipment and material related to the exploitation.

4 - The members of the regional government responsible for fisheries and aquaculture can, through the order of approval, set conditions for the use of vessels that carry products from cultures outside of the establishment.

5 - In addition to the crew needed to meet the safe manning of the vessels referred to in the preceding paragraph, other staff assigned to the exploitation of the aquaculture establishments may also embark in them, but may not exceed the maximum number established capacity.

Article 48

Traffic within the establishments

1 - It is forbidden to transit by any means, to moor, to anchor or to beach boats in aquaculture establishments without prior authorization of the respective holders of the exploitation license.

2 - The prohibition referred to in the preceding paragraph shall not apply to navigation when conditions allow trafficking without causing damage to the marine aquaculture establishments.

Article 49

Request for modifications

1 - The culture of different species than those for which the establishments were authorized, change to the system of exploitation, as well as any changes in the design of the establishment, including setting up tanks and other reservoirs, structures or equipment, are subject to prior authorization from the Regional Government's department responsible for aquaculture, through a:

a) Legal opinion of the Regional Government department responsible for animal health;

b) Legal opinion of the Regional Government department responsible for environment, if the establishment is located in a protected area;

c) Legal opinion of the Regional Government's department responsible for fisheries of freshwater species, if the establishment is located in a pond or river;

d) Legal opinion of the Regional Government department responsible for fisheries of marine species, if the establishment is located in Azores waters;

e) Legal opinion of the local body of the maritime authority, if the establishment is located in an area under its jurisdiction.

2 - The requests for authorization referred to in the preceding paragraph shall contain, where applicable, the following elements:

a) Full identification of the applicant and the establishment;

b) Species to be cultivated;

c) Regime to be introduced;

d) Type of food to be used;

e) Chemical, biological and pharmaceutical products for use in any of the operations of culture;

f) Source of juveniles;

g) Plant or drawings of the details of the infrastructure, tanks and other reservoirs, cages and other equipment related to the culture of aquatic species, in appropriate scale;

h) Description and justification of the changes to be made.

3 - The bodies consulted pursuant to paragraph 1 must take a position within 30 days of receipt of the request for a legal opinion, and the Regional Government department responsible for aquaculture must decide on it within 30 days of receipt of the legal opinions.

4 - The lack of legal opinion or decision within the time limits referred to in the preceding paragraph is understood as assent and the request tacitly approved.

5 - The legal opinion of each entity in the preceding paragraph is binding if it is founded on the statutes and regulations within the jurisdiction of the concerned department or agency.

6 - For the purpose of analysis of the request for authorization referred to in paragraph 1, the Regional Government department responsible for aquaculture may consult other bodies whose opinion is considered relevant to an examination of the changes requested.

Article 50

Taxes

The installation permit, the issuance of operating license, the use of water resources and operation of the aquaculture establishments may be subject to payment of fees or deposits by their respective owners, whose amounts, destination and forms of collection are established by resolution of the Council of the Regional Government.

CHAPTER VI

Supervision and responsibility for breach

Article 51

Supervision of Activities

1 - Monitoring, supervision and control of the activities under this Act and in the supplementary regulations, is up to the local bodies of the Maritime Authority, the National Republican Guard, the Forestry Police, the Regional Inspectorate of Fisheries and other agencies, bodies or regional services within the competences that are legally conferred to them on these issues.

2 - The bodies, agencies and services referred to above raise its official report, taking, in accordance with the law, the necessary precautionary measures when, during the exercise of their functions, they notice or personally and directly verify, even if not immediately, the commission of any offence under this statute, submitting them to the competent authorities for investigation and preparation of cases where such power is not attributed to them.

Article 52

Regional Inspection authorities in aquaculture

1 - Under the perspective of protection, conservation and management of aquatic resources, subject to the following paragraph, it is the responsibility of the Regional Inspectorate of Fisheries to plan, coordinate and implement, in collaboration with other agencies and institutions endowed with powers of inspection, supervision and control of aquaculture activities and such related, the inspection of aquaculture on land and sea territory of the Azores, preventing and sanctioning on non-compliance of regional, national and international community standards.

2 - Under the perspective of protection, conservation and management of aquatic resources, it is the responsibility of the regional directorate responsible for fishing freshwater species to plan, coordinate and implement, in collaboration with other agencies and institutions endowed with powers of inspection, supervision and control of aquaculture activities and such related, the inspection of aquaculture in ponds and rivers.

Article 53

Punishment for negligence and attempt

1 - Negligence is punishable.

2 - The attempt at the offences provided for in Article 57 is punishable, with the minimum and maximum limits provided for in the relevant legal type, halved.

Article 54

Responsibility for acting on behalf of others

1 - Whoever voluntarily acts as an organ, member or representative of a legal person or partnership, although improperly constituted, or mere association or even in legal or voluntary representation of others, will be punished even when the legal type of counter-ordinance requires:

a) Certain personal elements and these are only existent for the defendant;

c) That the agent practices the fact in his own interest and the representative acts in the interest of the defendant.

2 - The preceding paragraph applies even if the judicial act, source of the respective powers, is ineffective.

3 - Legal persons, companies and other entities referred to in paragraph 1 are jointly liable under civil law, for the payment of fines on officials who are convicted of offences under this statute, pursuant to the preceding paragraphs.

Article 55

Liability of legal persons and similar

1 - Legal persons, companies and mere associations are responsible for the offences when committed by its organs or representatives on their behalf or in their collective interest.

2 - Liability is excluded when the agent has acted against express orders or instructions of the persons entitled.

3 - Without prejudice to paragraph 3 of the previous

Article, the liability of the entities referred to in paragraph 1 does not exclude the individual responsibility of the respective agents.

Article 56

Distribution of proceeds of fines

1 - The proceeds of fines for administrative offences provided for in this Act and its supplementary regulations revert to:

- a) 20% to the body who wrote the official report;
- b) 20% to the body who dealt with the case;
- c) 60% to the Salary Compensation Fund of Fishermen of the Azores.

2 - When the entity that raised the official report or instructed the process is an agency or service of the autonomous regional administration, the amounts provided for in paragraphs a) and b) above shall constitute revenue for the region.

Article 57

Offences

1 - It is a very serious offence, punishable by a fine of € 750 to € 50 000, the:

- a) Introduction of living aquatic species, not indigenous, in aquaculture and such related establishments, without proper authorization;
- b) Introduction of live aquatic species, genetically modified, in aquaculture and such related establishments.

2 - It is a serious offence, punishable by a fine of € 600 to € 37 500, the:

- a) Non-compliance with the legal standards for the production and marketing of aquaculture species;
- b) Installation or operation of aquaculture establishments and such related without being, respectively, duly authorized or licensed.

3 - It is an offence, punishable by a moderate fine of € 250 to € 25 000, to:

- a) Not declare on time the production of the aquaculture establishments from the previous year;
- b) Culture or unauthorized transfer of species in aquaculture establishments;
- c) Use of boat without being duly authorized for supporting the aquaculture activities or to transport products, personnel, equipment or materials pertaining to the operation, from the culture.

4 - It is a minor offence, punishable by a fine of € 150 to € 5000, to:

- a) Not meet the legal standards relating to structures and equipment of aquaculture establishments and such related;
- b) Transmit aquaculture establishments or such related, without authority;
- c) Fail to communicate on time the initiation and completion of installation works in the aquaculture establishments and such related;
- d) The absence or poor delimitation and/or signalling of aquaculture establishments.

5 - In the case of legal persons, the maximum fines set out in

paragraphs 1 to 4 are raised, respectively, to the amounts of € 150 000, € 112 500, € 75 000 and € 15 000.

6 - If the same act constitutes both a crime and a misdemeanour, the agent will be punished for the crime, subject to the penalties provided for the offence.

Article 58

Determination of fine

The determination of the fine is done depending on the seriousness of the offence, the guilt, the economic situation of the agent and the economic benefit that he took from the offence, as well as the background of the offender in respect to non-compliance with the dispositions of this Act and its regulations.

Article 59

Voluntary Payment

1 - In the case of an offender without any history in his individual record, he may make the voluntary payment of the statutory minimum of the fine provided for his offence, up to the deadline that is fixed for the exercise of the right to a hearing and defence.

2 - The voluntary payment of the fine does not preclude the possibility of applying sanctions.

Article 60

Additional Sanctions

1 - Without prejudice to paragraph 4, one or more of the sanctions listed below may be implemented simultaneously with the fine, depending on the seriousness of the offence and the culpability of the offender:

- a) Loss of tools and equipment used in committing the offence;
- b) Loss of the products from the cultures resulting from the sanctioned activity, even though they have been alienated or, being in the possession of third parties, these knew or should reasonably know the circumstances determining the possibility of loss;
- c) Prohibition to exercise the occupation or activity related to the offence;
- d) Removal of subsidies, or other benefits or grant awarded by public bodies or services within the aquaculture activities;
- e) Closure of aquaculture establishments or such related;
- f) Return of cultures of specimens caught, captured, transported or traded to the site where they were obtained or to their legitimate holder.

2 - The sanctions referred to in paragraphs c) and e) above shall have a minimum duration of 15 days and maximum duration of two years.

3 - The sanctions provided for in paragraph d) of nr. 1 have a minimum duration of one year and a maximum duration of two years.

4 - The sanction provided for in paragraph a) of nr. 1 may only be imposed when the tools or equipment served, or were destined to serve, the practice of the

offence.

5 - When the final sentence given in proceedings for breaches declares the confiscating of goods in favour of the region, the competent authority for decision-making may decide to transfer them to other public or private social welfare institutions for reasons of public interest.

6 - When the goods seized are tools or equipment related to the sea, they might be allocated to scientific entities of recognized merit in the field of marine science, unless they are not interested, in which case the provisions of the following paragraph apply.

7 — Notwithstanding the preceding paragraphs, the property confiscated by way of sanction that is not in accordance with the legally established requirements or characteristics will be destroyed.

Article 61

Competent authority to apply fines and penalties

The application of fines and penalties provided in this Act, regardless of where the offences that determine them took place, is up to the regional fisheries inspector, with the exception of them occurring in lakes and rivers, whose jurisdiction is of the regional director responsible for fisheries of freshwater species.

Article 62

Official Report

1 - When any officer or agent of the authority, in the exercise of their duties of inspection and control of marine aquaculture activities, witnesses the commission of an offence, they must open or draw up a report, mentioning the facts constituting the offence, the date, time, place and circumstances in which it was committed, the name and capacity of the authority or police officer that witnessed it, and all they can find about the identification of the agents of the offence and, where possible, witnesses that can testify about the facts.

2 - When the offence reports to legal persons or similar, the head-office should be indicated, where possible, as well as the identification and residence of the managing partners.

3 - The official report is signed by the authority or law enforcement officer who reported or ordered the reporting, and by the offender, if he wants to sign it, and in case of refusal, such fact must be included in the report.

4 - A copy of the official report will be given to the offender.

5 - A single report may be open for a series of different offences that took place at the same time or in connection with each other, despite the existence of several agents.

6 - The report opened under the preceding paragraphs is authentic in court regarding the facts witnessed by the officer, until proven otherwise.

7 - The preceding paragraph applies to evidence obtained through devices, instruments or equipment used in legal terms.

Article 63

Denunciation

1 - The authority or law enforcement officer who has knowledge on the complaint, or the practice of an offence under this statute, must report or order its reporting.

2 - It is correspondingly applicable, *mutatis mutandis*, the provisions of the preceding Article.

Article 64

Competent authorities for investigation and prosecution

The investigation and prosecution of the offence cases provided for in this Act are the responsibility of the entities mentioned in paragraph 1 of Article 51 that write up the official report, within the powers legally entrusted to them regarding inspection, surveillance and police, without prejudice to paragraph 2 of this Article.

Article 65

Precautionary measures

1 - As a precautionary measure one may order the seizure of the vessel, vehicles, instruments, floating structures, tanks and other reservoirs of cultivation, equipment and products from the cultures, if these were used or were intended to be used for the practice of an infraction or an infraction resulted from them, as well as others that are likely to serve as evidence.

2 - While the goods remain seized, the owner is allowed to benefit them or keep them under the supervision of the concerned authority that seized them, although not responsible for losses that may result from the lack of convenient improvement or conservation.

3 - Legal business relating to goods seized are ineffective.

Article 66

Anticipated sale of seized assets

1 - The objects seized under the previous Article, as soon as they become unnecessary for investigation or prosecution, may be sold by order of the competent authority for it, observing the provisions of Articles 902 *et seq* of the Civil Code, provided that there is, regarding them:

- a) The risk of deterioration;
- b) Convenience of immediate use to supply the market;
- c) Request by the respective owner or holder for them to be alienated.

2 - Should any of the circumstances mentioned above happen, at any time of the process, the sales order is the responsibility of the competent entities for imposing fines, or up to the court.

3 - When, in accordance with paragraph 1, the sale of seized property takes place, the competent authority shall make appropriate arrangements to prevent that the sale or destination of these goods become susceptible to originate further infringements.

4 - The proceeds of the sale shall be deposited in a bank account, belonging to the entity that determined it, in order to be delivered, by determination in the records and without charge, to the person entitled to it, or to enter into the coffers of the Region, if the loss is decided in favour of the latter.

5 - The seized property will be made unusable if it is not possible to make use of them without violation of this Act.

6 - When reasons of the regional economy so justify without prejudice to consumer health, the member of the Regional Government responsible for aquaculture may determine that the goods seized be used for the purposes and under the conditions that it establishes.

Article 67

Payment of Bail

The property confiscated from the offenders or the corresponding amount constitute guarantee of payment of the fine, charges and other legal costs.

Article 68

Agents not domiciled in the Region

1 - If the person(s) responsible for the offence is not domiciled in the region and do(es) not plan to make the voluntary payment of the fine, when such is admissible, he(they) shall pay a guarantee in an amount equal to one third of the maximum fine provided for the offence imputed to him(them).

2 - The guarantee referred to above shall be paid to the acting entities and is intended to guarantee payment of the fine of which the offender might be convicted, as well as legal expenses that might come up.

3 - Failure to provide the guarantee referred to in paragraph 1 determines the seizure of the vessel or vehicle used in transporting the products from the cultures, which will be held until such fulfilment, to payment of the fine or acquittal.

4 - The property seized under the preceding paragraphs will answer to the same terms as the guarantee for the payment of amounts due.

Article 69

Abandonment

1 - Any goods and amounts seized in the process will be declared forfeited in favour of the Region if not claimed within two months of notification of the order or decision ordering their delivery.

2 - The notification referred to in paragraph 1 will contain a warning that, if there is no claim, the goods will be confiscated in favour of the Region.

Article 70

Notification of decisions and individual registration of defendants

1 - The administrative authority that applies the final decision and the courts that rule on the appeals against the decisions that impose fines shall submit, to the authority competent to apply fines and sanctions, a copy of the final decisions given in their cases.

2 - Notwithstanding the following paragraph, the Regional Inspectorate of Fisheries organizes the computerized individual record of each defendant, subject to confidentiality, in which all the sanctions, which are imposed for offences committed after the publication of this Ordinance, are released.

3 - In the case of processes related to aquaculture establishments in lakes and rivers, it is the responsibility of the regional directorate responsible for fishing of freshwater species to organize the computerized individual record of each defendant, subject to confidentiality, in which all the sanctions, which are imposed for offences committed after the publication of this Ordinance, are released.

4 - In cases in which the responsibility of any accused should be analysed, a copy of the records concerning him is always appended, and the concerned person can have access to the registry whenever they request it.

Article 71

Right of visit

During the exercise of their powers and in order to ensure compliance with the existing legislation in force, the entities with powers of inspection referred to in Article 51 can visit any vessels, locations or establishments, on land or at sea, which are deemed relevant so as to control compliance with the measures provided for in this Act.

CHAPTER VII

Final Provisions

Article 72

Prevalence

1 - The provisions of this Act prevail over any other existing ones on aquaculture taking place on territorial land or sea of the Azores.

2 - The provisions in this Act apply only to the establishments of marine cultures and such related, which are located in Azores waters.

Article 73

References to repealed legislation

All references of this Act for legal provisions and legal acts superveningly repealed shall be considered as having been made to the corresponding provisions in force.

Article 74

Secondary Regime

In all that is not specifically regulated in this Act, the relevant provisions of the legal systems of the exercise of aquaculture and, secondarily, the general regime of breaches are applied.

Article 75

Entry into force

This law shall come into force within 30 days from the date of its publication.

Approved by the Legislative Assembly of the Azores in Horta on May 18th, 2011.

The President of the Legislative Assembly, *Francisco Manuel Coelho Lopes Cabral*.

Signed in Angra do Heroism on June 8th, 2011. To be published.

The Representative of the Republic for the Azores,
Pedro Manuel Alves dos Reis Catarino.