

Legal aspects of aquaculture in Italy

Panunzio P., Iandoli C.

Aquaculture planning in Mediterranean countries

Zaragoza : CIHEAM

Cahiers Options Méditerranéennes; n. 43

1999

pages 63-67

Article available on line / Article disponible en ligne à l'adresse :

<http://om.ciheam.org/article.php?IDPDF=99600257>

To cite this article / Pour citer cet article

Panunzio P., Iandoli C. **Legal aspects of aquaculture in Italy**. *Aquaculture planning in Mediterranean countries*. Zaragoza : CIHEAM, 1999. p. 63-67 (Cahiers Options Méditerranéennes; n. 43)



<http://www.ciheam.org/>
<http://om.ciheam.org/>

Legal aspects of aquaculture in Italy

P. Panunzio and C. Iandoli

Istituto Centrale per la Ricerca Applicata al Mare (ICRAM),
Via Di Casalotti 300, 00166 Roma, Italy

SUMMARY - Aquaculture in Italy is not as important as it could be. The reasons have to be found in the several gaps and existing unsystematic legislation. In fact the rules and the relating applications of the competent authorities is one main problems of the aquaculture development in Italy. Only a specific normative and a reduction of bureaucracy will be able to increase the actual aquaculture production.

Key words: Aquaculture, normative, definition, funds, problems.

RESUME - "Aspects légaux de l'aquaculture en Italie". L'aquaculture en Italie n'est pas aussi importante qu'elle pourrait l'être. Il faut en chercher les raisons dans certaines lacunes et dans le manque de systématique de la législation existante. En fait les règles et les applications qu'en font les autorités compétentes sont l'un des grands problèmes du développement aquacole en Italie et ce n'est qu'en ayant des normes spécifiques et moins de bureaucratie que l'on pourra augmenter la production aquacole présente.

Mots-clés : Aquaculture, normes, définition, fonds, problèmes.

Aquaculture legislation

Aquaculture in Italy is both an old and a new phenomenon. It is old because it originated a long time ago; in fact, the pisciculture was already practised in the 1960s.

It is new because in the last ten years its production has grown considerably. Its real development has happened recently; due mainly to: (i) a higher consumption of noble proteins; and (ii) new and more advanced scientific, technical and industrial knowledge.

The extending of market niches for Aquaculture products, cost reduction and greater investments are all consequences of the former reasons.

At the same time, the latter reason is the cause for the locating and diffusion of species suitable for breeding, the best feeding and sanitary conditions etc.

It is for this reason that Aquaculture has been object of many legislative projects at community, national and regional levels.

From the by-normative point of view, aquaculture is considered as part of the field of fishing; consequently, in order to define the fundamental aspects of aquaculture, it is necessary to refer to the laws of fishing, which is an activity that includes not only the capture of aquatic animal species, but also breeding.

The definition of fishing according to the law is set under article 1 of the law No. 963 of 14 July 1965 (Regulation maritime fishing) "Fishing is every activity intended to catch animal species whose natural or habitual environment of life is water", but it also includes aquaculture activity in article 10 D.P.R. 1639/68 (Rules for the enforcement of the law 1965 No. 963). "Professional fishing is that practised by fixed or moving, temporary or permanent structures destined to pisciculture".

Although this normative was set a long time ago, Aquaculture in Italy has not had a specific law passed until 1992, Law 102 of 5 February 1992 "Rules regarding aquaculture activity".

This law calls Aquaculture an entrepreneurial agricultural activity under article 2.

According to this law, the definition of Aquaculture is: "all activities whose aim is the production of animal proteins in an aquatic environment through partial, total, direct or indirect control of the growth cycle of aquatic organisms".

Although this definition is too generic, it allows aquaculture activity to be set into a legal framework. Indeed, it has complicated the life of those who work in the field; in fact, they cannot take advantage of some of the factors that help agriculture, such as the use of agricultural diesel oil, cheaper electricity and more favourable water rates.

In spite of this, the legislation is a valid tool for setting down the main points of the regulation concerning Aquaculture; unfortunately, nowadays, the existing legislation has several gaps and is not systematic.

Apparently, the cause is the lack of co-ordination between the competent authorities. In fact, although General Management of Fisheries exists, it does not hold the necessary power to organize and govern this field of activity. The excessive bureaucracy that characterizes the field is another consequence of this.

Consequently, it is necessary to create an "ad-hoc" legislation and to facilitate the bureaucratic procedures in order to obtain the necessary licenses for building and managing the aquaculture facilities.

Over the past eighty years Aquaculture has obtained not only the means of exploitation of the sea, but also and foremost, has provided tools for the preservation and improvement of the marine ecosystems.

Aquaculture, because of the above-mentioned reasons and due to its natural location, requires legislation and general rules concerning the use and protection of water, preservation of landscape as well as a more efficient use of territory.

The legislation on the protection of the waters is based on the distinction between public or private water, according to its possible utilisation.

Public waters which belong to the government, can only be used if a licence is granted by the administrative authority. In order to obtain such a licence, it is necessary to pass an examination set by several local authorities.

When there are competing applications, preference is given to the one that respects the regulations of the "Galli law", No. 36 of 5 January 1994 "Regulations about water resources".

The protection of water resources is regulated by the "Merli law", No. 319 of 10 June 1976 "Regulation for the protection of waters from pollution", in conjunction with law No. 650 of 24 December 1979.

Every discharge water must receive prior authorisation from the responsible authorities.

Legislation in Italy targeting environmental conservation is ruled by the following laws:

- (i) No. 1089 of 1 June 1939 "Protection of artistic and historic sites";
- (ii) No. 1497 29 June 1939 "Protection of the natural beauty";
- (iii) No. 431 8 August 1985 "Urgent regulation for the protection of environmental interest areas";
- (iv) No. 349 July 1986 "Ministry of Environment".

These are laws that protect the aesthetic and historic value of the territory by requiring administrative authorisation in order to establish an Aquaculture activity on these sites.

The above mentioned-authorisation required for environmental protection is not enough to establish a fish farm. In fact, it is necessary to obtain licences for building, thereby controlling the enterprise's conformity to planning regulations.

The legislation in Italy is especially complex and the procedures and applications for installation of a new enterprise, or for the modification of an existing one, may last many years. In fact, the issuing of an administrative licence needs many permissions. Often, these are very difficult to obtain; if the new fish farm is located in areas subject to special protection laws, a "nulla-osta" is necessary from each public body entrusted with the protection of the area.

Here are some examples of the necessary authorisations:

- (i) The administrative licence for maritime state property from the local harbour office, which is obtainable after many authorisations (for example customs office);
- (ii) The municipal building commission;
- (iii) Permission from the local board of health;
- (iv) Permission from the provincial office for the protection of environmental resources;
- (v) Opinion of Chamber of commerce;
- (vi) "*nulla-osta*" from the regional division of forestry;
- (vii) "*nulla-osta*" from the Mountain Community (for the Alpine region).

The regulations regarding the above-mentioned administrative proceedings for maritime state property are those of the Navigation Law Royal ruled by decree 30 March 1942, No. 327 (under article 36 and following), and its Rules of enforcement issued by DPR 15 February 1952 No. 328 (under article 8 and following).

Financial instruments

As far as structural policy is concerned, next to EEC rule 2080/93 "Financial instrument guidance for fishing", there is the "Triennial plan for fishing and aquaculture" under the law No. 41 of 17 February 1982.

The plan in use at the moment (1997/99) is the fifth under the Ministerial Decree of 24 March 1997, Ministry of Agriculture. The objective of this plan is to promote a rational exploitation and development of the biological resources of the sea, through a well-balanced development of fishing and aquaculture.

In the new plan Aquaculture is connected to the environment and its preservation, since, in recent years, the experts realised, finally, that an aquaculture installation has considerable environmental impact. In fact, the waste of the fish farm is both organic and inorganic. So, it is mandatory to find technical and legal tools to control the impact on the environment.

In Italy the legislators are facing considerable difficulties in drawing up a law about environmental impact assessment, regarding pollution in all areas of production.

It would be necessary to find some solution to the questions raised, delegating the administrative and legislative competence concerning Aquaculture to Regional Authorities, as has happened with the tourist field under the law No. 494 of 4 December 1993. "Rules for determination of the rents as regards maritime state property licences". More recently law No. 143 of 4 June 1997, entitled "Attribution to the Region of administrative functions in Agriculture and fishing", shows that the above-mentioned policy of decentralisation has commenced.

In fact Regional Authorities are very well acquainted with the local situation, and, so, they can locate the means for development and reorganisation of Aquaculture through the elaboration and adoption of a fishing and aquaculture regional plan.

Besides, they can and must be the main interlocutors of the European Union to express the local interests; in fact Aquaculture concerns local realities that need a normative regulation which would protect the local interests.

Then, a financial planning at local level will surely cause a higher utilisation of the community funds.

Apart from the above-mentioned decentralisation, the community funds are actually underutilised in Italy, due both to a slow bureaucracy and a incongruent normative. For example, among the documents necessary to obtain loans for the establishment of an aquaculture plan, the EC foresees a state property licence which lasts 10 years; *vice versa* the actual Italian normative rules this licence lasting not more than 4 years.

Finally both the rules and the relating applications of the competent authorities is one of the main problems of the aquaculture development in Italy; only a specific normative and a reducing bureaucracy will be able to increase the actual aquaculture production.

References

Laws

Legge 1 giugno 1939, No. 1089. *Tutela delle cose di interesse artistico e storico.*

Legge 29 giugno 1939, No. 1497. *Protezione delle bellezze naturali.*

Legge 17 agosto 1942, No. 1 150. *Legge urbanistica.*

Legge 6 agosto 1967, No. 765 *Modifiche ed integrazioni alla legge urbanistica 17 agosto 1942, No. 1150.*

Legge 10 giugno 1976, No. 319. *Norme per la tutela delle acque dall'inquinamento.*

Legge 24 dicembre 1976, No. 898. *Nuova regolamentazione delle servitù militari.*

Legge 24 luglio 1977, No. 616. *Attuazione della delega di cui all'art. 1 della legge 22 luglio 1975, No. 382.*

Legge 24 dicembre 1979, No. 650. *Integrazioni e modifiche delle leggi 16 aprile 1973, No.171 e 10 maggio 1976, No. 319, in materia di tutela delle acque dall'inquinamento.*

Legge 8 agosto 1985, No. 431. *Conversione in legge, con modificazioni, del decreto-legge 27 giugno 1985, No. 312, recante disposizioni urgenti per la tutela delle zone di particolare interesse ambientale.*

Legge 20 novembre 1986 No. 778.

Decreto Legge 8 Novembre 1990, No. 374. *Riordinamento degli istituti doganali e revisione delle procedure di accertamento e controllo in attuazione delle direttiva No. 7916951CEE del 24 luglio 1979 e No. 821571CEE del 17 dicembre 1981, in tema di procedure di immissione in libera pratica delle merci, e delle direttiva No. 8111771CEE del 24 febbraio 1981 e No. 8213471CEE del 23 aprile 1982, in tema di procedure di esportazione delle merci comunitarie.*

Legge 5 febbraio 1992, No. 102 *Norme concernenti l'attività di acquacoltura.*

D. Lgs. 30 dicembre 1992 No. 530. *Attuazione della direttiva 9114921CEE che stabilisce le norme sanitarie applicabili alla produzione e commercializzazione dei molluschi bivalvi vivi.*

D.Lgs. 30 dicembre 1992 No. 531 *Attuazione della direttiva 9114931CEE che stabilisce le norme sanitarie applicabili alla produzione e commercializzazione dei prodotti della pesca.*

Legge 4 dicembre 1993, No. 494. *Disposizioni per la determinazione dei canoni relativi a concessioni demaniali marittime.*

Legge 5 gennaio 1994, No. 36. *Disposizioni in materia di risorse idriche.*

Circolare del Min. delle risorse agricole alimentari e forestali del 17 giugno 1994, No. 60470. *"Programma settoriale pesca - Reg. CEE No. 2080193 del Consiglio del 20 luglio 1993- Modalità di presentazione dei progetti".*

DPR 633/72 *Legge sull'IVA.*

DPR 1932/70 *Norme di esecuzione per il 2° censimento generale dell'agricoltura.*

Jurisprudence

Sentenza Corte di Cassazione No. 1366 del 10 maggio 1974, in Mass. No. 369445; 395247.

Sentenza Corte di Cassazione No. 1975 del 24 marzo 1980, in Mass. No. 369445; 395247.

Sentenza Corte di Cassazione No. 19183.

Doctrine

- Alesii, L. and Panunzio, P. (1995). *Disciplina giuridico-amministrativa inerente la realizzazione di impianti di acquacoltura - realtà e problematiche*. Quaderno ICRAM No.15.
- ALPA-PULITINI-RODOTA'-ROMANI (1982). *Interpretazione giuridica e analisi economica*. Giuffré, Milano.
- Angelone, C. (1983). *Il demanio marittimo e la sua funzione*. Porti, Mare, Territorio, III, 7.
- Benvenuti, F. (1965). *Il demanio trapassato e futuro*. Riv. del Diritto della Navigazione, 156.
- Caccin, R. (1990). *La tutela delle acque dall'inquinamento*. Maggioli, Rimini, 1990.
- Carrozza, A. (1992). *La partenza falsa delle leggi agrarie*. Rivista di diritto agrario, I, 308.
- Centini, N. (1990). *La concessione edilizia*. Urbino.
- D'Amico Cervetti, A. (1984). *Demanio marittimo e assetto del territorio*. Giuffré, Milano.
- Greco, N. and Murroni, B. (1980). *Demanio marittimo, zone costiere, assetto del territorio*. Mulino, Bologna.
- Ingle, E. and Saroglia, M. (1992). *Tecniche di acquacoltura*. Edagricole, Bologna.
- Mazzarelli, M. (1990). *Codice dell'urbanistica e della tutela del territorio*. Pirola, Milano.
- Panattoni, A. and Salvini, E. (1993). *Opportunità e linee programmatiche per lo sviluppo dell'acquacoltura in Toscana*. Firenze 1993.
- Saporito, G. (1994). *1 canoni demaniali*. Il Sole 24 ore, 28 settembre 1994, No. 264, 3.