

STATES OF JERSEY



DRAFT SEA FISHERIES (FISHERIES) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 25th February 2010
by the Minister for Economic Development**

STATES GREFFE



Jersey

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REPORT

The importance to the Island's economy of fish-farming and a growing interest in fish-farm concessions from parties based outside of the Island has led to a review of the administration and procedures associated with the issuing and maintaining of such concessions, both inter-tidally and below the low-water mark.

Following this review, the Department proposed some amendments to the legislation which is believed will be of benefit to all concerned. These proposals were presented to the Jersey Aquaculture Association, the industry body representing concession-holders. The JAA were supportive of all the changes proposed by the Department.

The previous legislation relied on all the licensing powers and powers of officers given in the enabling Law and so these powers have been omitted from the new Regulations. The new Regulations tie the applicant to having a close association with Jersey and give the Minister powers to determine that the application is in the best interest of Jersey.

The protection of the fishery is also increased by dropping the exemption of navigating in the area as a defence for a person causing damage to the fish-farm in any way.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations repeal the Sea Fisheries (Establishment and Regulation of Fisheries) (Jersey) Regulations 1998 and consolidate the provisions of those Regulations in a simpler way by taking advantage of general licensing provisions that now form part of the Sea Fisheries (Jersey) Law 1994.

No substantial amendments are made to the law.



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Arrangement

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 2 and 8 of the Sea Fisheries (Jersey) Law 1994¹, having consulted with the Secretary of State and obtained his concurrence, have made the following Regulations –

1 Restriction on the establishment of fisheries

A person must not establish or maintain a fishery in the sea landwards of the outer limit of the extended territorial sea adjacent to Jersey except with and in accordance with a licence granted by the Minister under these Regulations.

2 Application for licence

An application for a licence for a fishery must be made to the Minister on a form provided or approved for the purpose by the Minister and must be accompanied by –

- (a) sufficient information to enable the Minister to determine the application; and
- (b) any fee prescribed by the Minister by Order.

3 Application to be published

- (1) The Minister must publish a notice of an application for a licence for a fishery in a manner that is likely to bring the notice to the attention of those who would be affected by the fishery were the licence to be granted.
- (2) The notice must –
 - (a) contain details of the application; and
 - (b) seek comments from those who consider that they would be affected by the fishery were the licence to be granted.

4 Determination of application

- (1) The Minister shall not grant a licence for a fishery sooner than 28 days after the notice mentioned in Regulation 3 is first published.
- (2) If a person who the Minister considers would be affected by the fishery were the licence to be granted objects to the grant of the licence, the Minister must appoint a fishery officer to report to the Minister on the objection.
- (3) The Minister may request any person or body of persons the Minister considers represents the interests of persons operating fisheries to comment on an application for a licence for a fishery.
- (4) In considering an application for a licence for a fishery the Minister must take into account –
 - (a) any report mentioned in paragraph (2);
 - (b) any comment received as the result of a request made under paragraph (3);
 - (c) whether the applicant has a sufficiently close association with Jersey to be able to run and maintain the fishery in an efficient manner; and
 - (d) any other matters the Minister considers to be in the best interest of Jersey.
- (5) In paragraph (2), “fishery officer” means a person appointed under Article 15(1) of the Sea Fisheries (Jersey) Law 1994² as a fishery officer.

5 Licence

- (1) The Minister must specify in a licence granted in respect of a fishery –
 - (a) the term of the licence, being any period not exceeding 9 years;
 - (b) the area in which the fishery may be established and maintained;
 - (c) the kind of fish to which the fishery relates and the method of fishing that may be used; and
 - (d) any conditions, restrictions or exceptions applicable to the licence.
- (2) Those conditions may include conditions as to the payment of fees prescribed by the Minister by Order, whether –
 - (a) on or before the grant or renewal of the licence;
 - (b) on the submission of returns in relation to the activity of the fishery to which the licence relates; or
 - (c) on any other basis.
- (3) Those conditions may also include conditions designed to ensure that the holder of the licence must continue to retain a sufficiently close association with Jersey to be able to run and maintain the fishery in an efficient manner.

6 Effect of licence

- (1) Except as provided by any conditions, restrictions or exceptions specified in a licence granted under these Regulations, the holder of such a licence has within the area specified in the licence the exclusive right to deposit, propagate, dredge, fish for and take fish of the kind specified in the licence.
- (2) In the exercise of that right, the holder of the licence may –
 - (a) make and maintain beds for the fish;
 - (b) maintain cages, pontoons or other structures that are anchored or moored in the sea to propagate the fish;
 - (c) at any season collect the fish and remove them from place to place and deposit them as and where the holder thinks fit; and
 - (d) do anything else that the holder thinks proper to obtain, store or dispose of the produce of the fishery.
- (3) Except as provided by any arrangement made by the holder of the licence, the fish mentioned in paragraph (1) –
 - (a) are the property of the holder; and
 - (b) are to be taken to be in the actual possession of the holder.

7 Protection of fisheries

- (1) This Regulation applies in an area specified as a fishery in a licence granted under these Regulations.
- (2) A person must not use an implement to fish in the area other than –
 - (a) a line and hook; or
 - (b) a net that is used so as not to disturb or injure fish of the kind specified in the licence or any bed or cage or other structure of the fishery.
- (3) A person must not deposit ballast, rubbish or any other substance in the area.
- (4) A person must not –
 - (a) dredge for ballast or any other substance in the area;
 - (b) place any implement, apparatus or thing in the area that is prejudicial or likely to be prejudicial to the kind of fish specified in the licence or to any, bed, cage or structure that forms part of the fishery; or
 - (c) disturb or injure in the area fish of the kind specified in the licence or any bed, cage or structure that forms part of the fishery.
- (5) This Regulation does not apply to –
 - (a) the holder of the licence; or
 - (b) an employee or agent of the holder acting on the instructions of the holder.

8 Saving

A licence granted under these Regulations does not give its holder a right that overrides any right to which any other person may be entitled by virtue of any –

- (a) Charter;
- (b) Letters Patent;
- (c) Crown Grant; or
- (d) long usage.

9 Repeal

The Sea Fisheries (Establishment and Regulation of Fisheries) (Jersey) Regulations 1998³ are repealed.

10 Transitional provision

- (1) A licence issued under the Regulations repealed by Regulation 9 and in force immediately before the commencement of these Regulations shall be taken to have been granted under these Regulations.
- (2) It shall be taken to have been granted for a period expiring at the same time as it would have expired under the repealed Regulations.

11 Citation and commencement

- (1) These Regulations may be cited as the Sea Fisheries (Fisheries) (Jersey) Regulations 201-.
- (2) They shall come into force 7 days after they are made.

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- ¹ *chapter 14.825*
 - ² *chapter 14.825*
 - ³ *R&O.9210 (chapter 14.825.24)*