

STATES OF JERSEY



DRAFT COMMUNITY PROVISIONS (MORTALITY IN OYSTERS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 6th July 2010
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

DRAFT COMMUNITY PROVISIONS (MORTALITY IN OYSTERS) (JERSEY) REGULATIONS 201-

REPORT

Jersey is one of the largest producers of Pacific oysters, *Crassostrea gigas*, in the British Isles. In 2009, oyster production amounted to 903 tonnes with a value of £1.57 million.

Increased mortality in oysters of the species *Crassostrea gigas* was detected in several areas in France and in Ireland during the late spring and summer of 2008. It was attributed to a combination of adverse environmental factors, together with the presence of bacteria of the genus *Vibrio* and the presence of the Ostreid herpesvirus-1 (OsHV-1) including a newly described genotype of that virus named OsHV-1 μ var

In spring 2009, increased mortality, attributed to the same combination of factors, was again detected in France, Ireland and for the first time, in Jersey. While the causes of the mortalities still remain uncertain, the epidemiological investigations undertaken in 2009 suggest that OsHV-1 μ var plays a major role in the mortalities.

The competent authorities in those Member States and Jersey where the disease was identified implemented containment measures to control the emerging disease situation. These were mainly based on the restriction of movements of *Crassostrea gigas* oysters out of the areas affected by increased mortalities. In Jersey this was achieved by unanimous agreement between the oyster farmers and the Department for Planning and Environment.

In view of the recurrence of the emerging disease situation in 2009 and its possible repetition and risk for further spread in summer 2010, and on the basis of the experience gained, the EU Commission deemed it is appropriate and necessary to extend the measures already taken by the affected Member States and to ensure uniform conditions for the implementation of controls by Regulation which accords with the opinion of the Standing Committee on the Food Chain and Animal Health.

Commission Regulation 175/2010 implementing controls described above was made on 2nd March 2010. Outstanding matters on its application to Jersey were unresolved until 29th June. Work is underway to bring forward legislation to implement the primary EU legislation governing aquaculture, Council Directive 2006/88; however, the timescale for this does not accord with the need to have administration and enforcing legislation in place for Regulation 175/2010.

Members of Jersey Aquaculture Association are fully aware of the Regulation and its requirements and are supportive of implementation to ensure Jersey's continued reputation for integrity and compliance with relevant legislation for trade with the remainder of the British Isles and EU Member States.

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 are intended to facilitate the application and enforcement of Commission Regulation (EU) No 175/2010 implementing Council Directive 2006/88/EC as regards measures to control increased mortality in oysters of the species *Crassostrea gigas* in connection with the detection of Ostreid herpesvirus 1 μ var (OsHV-1 μ var). The Commission Regulation is assumed to be of direct application in Jersey.

Regulation 1 defines a number of terms.

Regulation 2 requires owners of *Crassostrea gigas* oysters to notify the Minister for Planning and Environment if increased mortality is observed in those oysters in Jersey.

Regulation 3 specifies that it is the Minister who has ultimate responsibility in Jersey for taking samples and declaring containment areas.

Regulation 4 makes it an offence to move *Crassostrea gigas* oysters from a containment area in breach of the Commission Regulation.

Regulation 5 specifies that it is the Minister who has ultimate responsibility in Jersey for ending the declaration of containment areas.

Regulation 6 makes it an offence to place on the market *Crassostrea gigas* oysters from a compartment subject to containment measures if to do so would be in breach of certain requirements (including that the oysters be accompanied by animal health certificates) of the Commission Regulation.

Regulation 7 confers on inspectors certain standard powers to ensure the enforcement of the Commission Regulation.

Regulation 8 prohibits the obstruction of inspectors who are exercising those powers.

Regulation 9 sets out penalties and other matters in relation to offences.

Regulation 10 sets out a number of defences to charges of contravening the Regulations.

Regulation 11 specifies the name of the Regulations and that they are to apply from when they are made until the end of the year.



Jersey

DRAFT COMMUNITY PROVISIONS (MORTALITY IN OYSTERS) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	9
2	Owner to give notice of increased mortality in <i>Crassostrea gigas</i> oysters	10
3	Sampling, testing and establishment of containment areas	10
4	Restriction on moving <i>Crassostrea gigas</i> from a containment area	10
5	Revocation of containment area	10
6	Animal health certificate needed for <i>Crassostrea gigas</i> oysters leaving former containment area	10
7	Powers of inspectors	11
8	Obstruction	12
9	Offences	12
10	Offences due to fault of another person and defence of due diligence	13
11	Citation, commencement and repeal	13



Jersey

DRAFT COMMUNITY PROVISIONS (MORTALITY IN OYSTERS) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996¹, have made the following Regulations –

1 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“Commission Regulation” means Commission Regulation (EU) No 175/2010 of 2 March 2010 implementing Council Directive 2006/88/EC as regards measures to control increased mortality in oysters of the species *Crassostrea gigas* in connection with the detection of Ostreid herpesvirus 1 μ var (OsHV-1 μ var) (OJ L 52, 3.3.2010, p.1)²;

“containment area” means an area established under Article 2 of the Commission Regulation;

“*Crassostrea gigas* oysters” means oysters of the species *Crassostrea gigas*;

“inspector” has the same meaning as in the Diseases of Animals (Jersey) Law 1956³;

“Member State” means a Member State of the European Community and includes another place in the British Islands;

“Minister” means the Minister for Planning and Environment.

(2) Subject to paragraph (1) and unless the context otherwise requires, expressions used in these Regulations have the same meaning as in the Commission Regulation.

2 Owner to give notice of increased mortality in *Crassostrea gigas* oysters

If a person who owns, or is in charge of, *Crassostrea gigas* oysters in Jersey or its territorial sea becomes aware of increased mortality in those oysters, the person shall notify the Minister of that fact.

3 Sampling, testing and establishment of containment areas

- (1) For the purposes of Article 2 of the Commission Regulation, the competent authority in respect of Jersey and its territorial sea shall be the Minister.
- (2) For the purposes of Article 2(2) of the Commission Regulation, a containment area in respect of Jersey or its territorial sea shall be established by notice published –
 - (a) in the Jersey Gazette; or
 - (b) in such other way or ways as the Minister considers likely to bring the establishment of the containment area to the attention of those persons who are affected by it.

4 Restriction on moving *Crassostrea gigas* from a containment area

A person who moves *Crassostrea gigas* oysters out of a containment area in contravention of Article 3 of the Commission Regulation shall be guilty of an offence.

5 Revocation of containment area

- (1) For the purposes of Article 4 of the Commission Regulation, the competent authority in respect of Jersey and its territorial sea shall be the Minister.
- (2) For the purposes of Article 4 of the Commission Regulation, the lifting of control measures, and of placing on the market restrictions, in respect of Jersey or its territorial sea shall be by notice published –
 - (a) in the Jersey Gazette; or
 - (b) in such other way or ways as the Minister considers likely to bring the lifting of those measures and restrictions to the attention of those persons who are affected by it.

6 Animal health certificate needed for *Crassostrea gigas* oysters leaving former containment area

A person who places on the market *Crassostrea gigas* oysters to which Article 5 of the Commission Regulation applies shall be guilty of an offence if the requirements of that Article are not met in relation to the oysters.

7 Powers of inspectors

- (1) An inspector may make such enquiries and carry out such investigations as the inspector considers necessary for any purpose connected with the administration or enforcement of the Commission Regulation.
- (2) For a purpose mentioned in paragraph (1) an inspector may, on producing, if required by the occupier to do so, proof of the inspector's appointment, enter any premises (excluding premises used only as a dwelling) at any reasonable time.
- (3) After entering premises in accordance with paragraph (2), an inspector may, for a purpose mentioned in paragraph (1) –
 - (a) ascertain whether any *Crassostrea gigas* oysters are or have been kept on the premises;
 - (b) inspect and examine any *Crassostrea gigas* oysters there;
 - (c) make such tests and take such samples from any *Crassostrea gigas* oysters there as the inspector considers necessary;
 - (d) mark any *Crassostrea gigas* oysters there for identification purposes;
 - (e) serve on a person a notice to restrict or prohibit the movement of any *Crassostrea gigas* oysters, where the person is the occupier of premises entered by an inspector under this Regulation, any of the occupier's employees or any person on the premises who is or has been in possession or charge of any *Crassostrea gigas* oysters that are or have been on the premises;
 - (f) seize any *Crassostrea gigas* oysters there;
 - (g) examine and take copies of any record, including any computer record, that the inspector finds there; or
 - (h) search for and seize anything there that may reasonably be suspected of being evidence of a contravention of these Regulations.
- (4) A person (being the occupier of premises entered by an inspector under this Regulation, any of the occupier's employees or any person on the premises who is or has been in possession or charge of any *Crassostrea gigas* oysters that are or have been on the premises) shall –
 - (a) provide on the premises such reasonable facilities and reasonable assistance to the inspector and comply with such reasonable requirements as the inspector considers necessary for any purpose connected with the administration or enforcement of the Commission Regulation; and
 - (b) if required by an inspector, give such information as he or she possesses as to –
 - (i) any *Crassostrea gigas* oysters that are or have been on the premises, or
 - (ii) the location, transport and movement of any *Crassostrea gigas* oysters that are or have been in his or her possession or charge.

-
- (5) Nothing in paragraph (4)(b) shall be construed as requiring a person to answer any question or give any information if to do so might incriminate the person.
 - (6) An inspector entering any premises by virtue of this Regulation may be accompanied by such other persons as the inspector considers necessary to give adequate assistance.
 - (7) If such premises are unoccupied the inspector shall leave them as effectively secured against unauthorized entry as they were immediately before to the inspector's entry.

8 Obstruction

A person shall not –

- (a) intentionally obstruct an inspector acting in the execution of these Regulations;
- (b) without reasonable cause, fail to comply with a notice served under Regulation 7(3)(e) on the person; or
- (c) furnish to an inspector acting in the execution of these Regulations any information that the person knows to be false or misleading in a material particular.

9 Offences

- (1) A person who contravenes Regulation 2, 7(4) or 8 shall be guilty of an offence and shall be liable to imprisonment for 2 years and to a fine.
- (2) A person who is guilty of an offence against Regulation 4 or 6 shall be liable to imprisonment for 2 years and to a fine.
- (3) Where an offence under these Regulations committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

10 Offences due to fault of another person and defence of due diligence

- (1) If the commission by any person of an offence under these Regulations is due to the act or default of some other person, the other person shall also be guilty of the offence.
- (2) A person may be charged with and convicted of the offence by virtue of paragraph (1) whether or not proceedings are taken against another person.
- (3) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (4), be a defence for the person charged with the offence to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence personally or by a person under his or her control.
- (4) If in any case the defence provided by paragraph (3) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless –
 - (a) at least 7 clear days before the hearing; and
 - (b) where he or she has previously appeared before a court in connection with the alleged offence, within one month of the first such appearance,

the person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.
- (5) In paragraph (4) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

11 Citation, commencement and repeal

- (1) These Regulations may be cited as the Community Provisions (Mortality in Oysters) (Jersey) Regulations 201-.
- (2) These Regulations shall come into force forthwith.
- (3) These Regulations shall expire on 1st January 2011.

-
- ¹ *chapter 17.245*
² [EUR-Lex - CELEX: 32010R0175 - EN](#)
³ *chapter 02.400*