

ENVIRONMENT

AMENDMENTS TO THE LEGAL FRAMEWORK FOR THE
INSTALLATION AND OPERATION OF AQUACULTURE
ESTABLISHMENTS IN MARINE WATERS

VdA EXPERTISE



December 2023

Decree-Law 83/2023 of 25 September 2023 amending the legal framework for the installation and operation of aquaculture establishments in marine waters came into force on 26 September 2023, as rectified by Declaration of Rectification 23/2023 of 24 November 2023.

The new act approves the first amendment to Decree-Law 40/2017 of 4 April 2017, which enacts the legal framework for the installation and operation of aquaculture establishments in marine waters, including transitional waters, and in inland waters.

Decree-Law 83/2023, of 25 September 2023:

Decree-Law 83/2023 of 25 September 2023 changed the **procedures for setting up aquaculture establishments** and clarified certain rules on the duration and renewal of **Aquaculture Activity Titles (TAAs)** to step up the administrative streamlining already recommended in the original version of Decree-Law 40/2017 of 4 April 2017. A **new procedure** was further introduced for cases where such licenses are awarded by tender.

Reference is also made to the **Balcão Eletrónico do Mar (Electronic Sea Shop) (BMar)** system, created by Decree-Law 43/2018 of 18 July 2018, which also foresees the **interoperability** between this system and the **Sistema Integrado de Licenciamento do Ambiente (Integrated Environmental Licensing System) (SILiAmb)**.

The scope of the Aquaculture Fee was extended and renamed as **Taxa Aquícola Única (Unified Aquaculture Fee) (TAQ)**, which encompasses all fees charged by the entities involved in these procedures, as well as the annual licencing fees.

1. Access to aquaculture

Applications for the installation and operation of aquaculture establishments in marine and inland waters located on **private property or in the private domain of the State** are no longer subject to **authorisation procedures**, but only to **notice with a deadline**. Note that:

- The interested party must submit a declaration on BMar, and the coordinating body (DGRM or ICNF, I.P., depending on whether it involves aquaculture in marine waters, including transitional waters, or in inland waters, respectively) and the public bodies with jurisdiction over the matter have 20 days to give their opinion.

- This declaration must be accompanied by supporting documents to be determined by order of the Government members responsible for administrative modernisation, the environment, and aquaculture.
- Absent an unfavourable decision from the above entities within the set deadline, the interested party is automatically authorised to carry out the activity.
- An unfavourable decision by any entity with jurisdiction over the matter no longer leads to the termination of the procedure, but is instead communicated to the interested party so that they can submit a new notice with a deadline, without being subject to the payment of a further TAQ.

When establishments are located in the **public domain of the State**, autonomous regions, and local government, including the public water domain and the national maritime space (subject to the blue licensing or general licensing frameworks) and, after the publication of a licence application, one or more identical applications for the same location are received, a **tender** is launched – governed by Articles 13-A to 13-C of the amended decree-law. Under this procedure:

- At a preliminary stage, the coordinating body must appoint a jury for the procedure, define the criteria for choosing applications and their evaluation, and notify interested parties to submit proposals containing the relevant operating conditions within 10 business days;
- This is followed by an evaluation phase of 10 business days, at the end of which the jury must draw up a preliminary report assessing the merit of the proposals evaluated and proposing their ranking, and send it to all interested parties for prior hearing purposes; and,

- iii. Once the jury has drawn up a duly substantiated final report weighing up the comments made by the interested parties at the prior hearing, the conclusions of which are notified to all interested parties, the deadline for setting up the establishment begins to run - subject to the first applicant's right of first offer, if they are a previous holder, provided that they submit to the conditions of the selected proposal.

2. Aquaculture Activity Title

Decree-Law 83/2023 of 25 September 2023 also modifies the **TAA renewal** system, which now operates, subject to the rules on the blue licencing procedure, as follows:

- TAAs for establishments located in the **private domain** are renewable for equal periods, taking into account the nature and size of the associated investments and their economic and environmental relevance, and provided that the operating conditions for which they are authorised remain met;
- TAAs for establishments located in the **public domain** are renewable once for an equal period, provided that the same conditions are met as for establishments located in the private domain;
- Renewal applications must be submitted on BMar no later than 6 months before the TAA expires, and the coordinating body must issue a decision within 10 days, after consulting the relevant water resource body, APA, I.P. and ICNF, I.P.

In addition, the new act introduces **new grounds for terminating TAAs**, namely:

- i. Operation of the establishment by a person other than the TAA holder;
- ii. Transfer of the TAA if the underlying requirements have not been met.

Lastly, as already mentioned, a **Unified Aquaculture Fee (TAQ)** will be payable for each procedure covered by this decree-law, which is set according to its complexity and includes all the fees charged by the entities involved in these procedures, as well as the annual licencing fees.

The TAQ calculation formula, amount, and exemptions will be set by order of the Government members responsible for finance, the environment, spatial planning, infrastructure, local government, and aquaculture, and published on BMar.

3. Aquaculture

As part of the pursuit of aquaculture activities, this decree-law introduces new rules on:

- **Support facilities for aquaculture establishments**, which are now expressly provided for in the new wording of Decree-Law 47/2017, of 4 April 2017 (Article 25-A), and the application for a TAA must identify the support facilities, which are covered by the accompanying supporting documents
- **Repopulation of establishments**, which, under Article 28-A, must be made using specimens produced in the establishment or acquired from authorised establishments, unless, for technical reasons, (i) the species cannot reproduce artificially, (ii) it is essential to catch them in the wild, or (iii) in the case of bivalves, they are available from reproduction units and exist in natural banks.

Production must now only be **recorded** electronically on BMar by 15 March of every year for the previous calendar year, and it is published on the website of the Instituto Nacional de Estatística, I. P. (National Statistics Institute).



The new act also stipulates that the obligation to register extends to the social and economic data of the owners of aquaculture establishments, and that this obligation remains in place even if, in the previous calendar year, the establishment did not produce or sell anything – in which case the relevant owner must report the reasons for the lack of production or sales.

4. Administrative offenses

It is also important to note the offences that have been added to the list of offences relating to the installation and operation of aquaculture establishments in marine waters, under Decree-Law 83/2023 of 25 September 2023, including

- Serious administrative offenses:
 - i. Breach of the obligation to register the establishment's production for the previous calendar year by 15 March each year;

- ii. Temporary disposal, without prior authorisation, of waste and materials used or to be used in aquaculture establishments or related establishments located in classified areas under the Sistema Nacional de Áreas Clasificadas (National System of Classified Areas);

- iii. Movement of machinery and equipment to carry out management or support operations for aquaculture establishments or related establishments located in classified areas without prior authorisation, on the bed and bank outside routes.

- The introduction of invasive exotic species into aquaculture or related establishments is a **very serious offence**.

TRANSITIONAL PROVISION

Decree-Law 83/2023 of 26 September 2023 establishes, in a transitional provision, a period necessary to ensure the interoperability of the BMar and SILiAmb platforms, within 1 year of its entry into force.

Contactos



ASSUNÇÃO CRISTAS
ACR@VDA.PT



JOÃO ALMEIDA FILIPE
JDAF@VDA.PT



CAROLINA VAZA
CVS@VDA.PT