

AQUACULTURE IN SPAIN: AN INTRODUCTION

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WFW Madrid has recently advised on various aquaculture related matters ranging from negotiating contracts for the construction of live fish carriers and their financing, to flagging issues for temporary stays of foreign vessels used to maintain and clean cages off Spain's east coast and analysing the regulatory framework for breeding salmon off its west coast.

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AQUACULTURE IN SPAIN: FACTS AND FIGURES

Between the peninsula, the Balearic and Canary Islands and the north African enclaves of Ceuta and Melilla, Spain has almost 8,000 km of coast spanning the Atlantic Ocean and the Mediterranean Sea. Better known in the aquaculture industry for its fishing fleet, Spain is also the EU Member State with the highest aquaculture harvest, ranking fourth in terms of value.

In terms of consumption, the EU is probably the largest world market for aquatic products, both harvested and fished. However, only about 25% of the production comes from within the EU, the rest being imported. In Spain, despite enduring consumer preference for wild fish, there is a trend towards the transfer of investment from the fisheries sector to aquaculture.

According to Apromar, the Business Association for Aquaculture in Spain:

- the national aquaculture harvest in 2020 totalled 307,168 tonnes with a value of €510.9m;
- there were 5,262 active aquaculture facilities across the country in 2019; and
- As a result of climate change and the impact of the worldwide Covid pandemic, production went from 53,915 tonnes in 2019 to 41,911 tonnes in 2020 – a 22.3% reduction in marine fish harvested.

The latest available data on marine and aquaculture production and value in Spain can be found [here](#). The information can be displayed by species or total value at national level, and the following additional criteria should be considered: life phase (hatchery or fattening), usage (commercial, ecological or restocking), type of aquaculture (marine or riverine/freshwater), and the Autonomous Community.

LEGAL AND REGULATORY FRAMEWORK

The organisation and management of the industry is the responsibility of the Autonomous Communities which have their own management and regulatory rules including requirements regarding the authorisation, monitoring and control of aquaculture establishments. Other requirements include the occupation and use of the public domain, marine spatial and hydrological planning, environmental assessment and monitoring, animal health and welfare, water capture and discharge, marketing and traceability of products, public health, collection of statistical data, etc.

The Spanish Constitution mentions “aquaculture” in article 148, stating that Autonomous Communities have jurisdiction over a number of matters including “*inland waters fishing, shellfish harvesting, aquaculture, hunting and river fishing*”. The structure of the legal system covering the industry is complicated given that distinct and separate authorities, notably regions and Autonomous Communities, have legislative authority over it.

In practical terms, therefore, any company seeking to invest in Spain will need to understand which authorities they will have to deal with. The Spanish political-administrative framework has quite strict divisions between state, Autonomous Communities and local authorities who often lack coordination between them, leading to a fragmentation of the national market, inefficiencies in implementation and the absence of a level playing field between Spanish operators depending on their geographical location due to divergent regulations.

All this complicates the work of companies with production farms in, for example, different Autonomous Communities. This occurs, for example, with environmental monitoring regulations, the requirements for the granting of authorisations, the mandatory labelling of product boxes, incompatibilities between professional qualifications (diving, for example), animal health requirements, fish seeding or sowing, authorisation for operating, marketing regulations, access to public aid, etc. This increases costs and hinders the free movement of companies and workers across Spain. All this results in a lack of a level playing field for companies’ domestic and international operations.

In terms of management and organisation, the main legal reference concerning marine aquaculture is Law 23/1984, of 25 June on Marine Fish Farming (*Ley 23/1984, de 25 de junio, de Cultivos Marinos*), whose object is “*the regulation and management of marine crops in the national territory, maritime-terrestrial zone, sea lochs, estuaries, lagoons and lagoons in permanent or temporary communication with the sea, territorial sea and exclusive economic zone, both in public domain and private property, without prejudice to the competences and powers assumed by the Autonomous Communities*”. However, this framework is often complemented, replaced, or amended by more than 20 Autonomous Communities’ laws, decrees and regional plans. After all, as the introductory part of the legal text states: “*This Law fully respects the competences assumed in this area by the Autonomous Communities*”.

Law 22/1988, of 28 July on the coastline, must also be taken into account as, in effect, marine aquaculture installations are located in the public domain. According to Article 1 of the law, its purpose is “*the determination, protection, use and control and surveillance of the maritime-terrestrial public domain and especially of the seashore*”.

In terms of riverine aquaculture, one must look to the Law of 20 February 1942 regulating the promotion and conservation of river fishing, which has largely been superseded by Autonomous Community legislation.

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At a national level, the Ministry of Agriculture, Fisheries and Food (*Ministerio de Agricultura, Pesca y Alimentación*) oversees government policies on agricultural, livestock and food. Within the Ministry and General Secretariat for Fisheries (*Secretaría General de Pesca*), there is a General Directorate for the Organisation of Fisheries and Aquaculture (*Dirección General de Ordenación Pesquera y Acuicultura*). At Autonomous Community level, there are different administrative authorities and regulations as well.

The Law on Marine Fish Farming created JACUMAR, the National Advisory Fish Farming Organisation (*Junta Nacional Asesora de Cultivos Marinos*) with the aim of

"facilitating the coordination of the activities of the various Autonomous Communities and be in charge of following up on the national plan...". Its main objectives are:

- maintaining permanent coordination and cooperation between the central administration and Autonomous Communities in the field of marine crops;
- drawing up, in agreement with Autonomous Communities, National Marine Farming Plans as proposed by the Ministry of Agriculture, Fisheries and Food for implementation by said Autonomous Communities;
- providing scientific advice;
- keeping a nationwide inventory of aquaculture facilities; and
- compiling nationwide production data.

As an EU Member State, Spain had a multiannual national plan for the development of sustainable aquaculture, the Spanish Aquaculture Multiannual Strategic Plan 2014-2020 ("the Plan"). In it, the country addressed the four priorities identified by the Commission in its 2013 Communication on Strategic Guidelines for the sustainable development of EU aquaculture. The Plan started with an analysis of the situation in 2013 describing Spain's contribution to EU aquaculture, total volume produced and value, including a description of the main species by volume and setting national growth objectives.

The Plan provided responses to the challenges identified by the EU Commission and discussed simplifying administrative procedures, coordinating spatial planning, enhancing competitiveness and establishing a level playing field at both the national and international levels. It also identified several examples of best practise covering different species, production systems and scales.

One of the main issues faced by the Plan was that several of the administrative bodies with jurisdiction over one or more aspects of the industry were not involved in its discussion and approval, for example, the General Directorate for Merchant Marine (*Dirección General de la Marina Mercante*). In that respect, last year WFW advised the foreign owner of a 15m vessel who was trying to temporarily deploy it to assist in cleaning cages off the Mediterranean coast. Due to the constraints imposed on flagging requirements, and despite the willingness of the General Directorate to help, the project had to be abandoned. A 15m vessel with two crew members should not be obliged to change flag or follow Spanish employment law, there should be greater flexibility.

Generally, despite different governments over the years, the Plan has shaped the national aquaculture policy. However, the optimistic growth envisaged by the Plan has unfortunately not been achieved. The public authorities overseeing aquaculture are currently focussed on implementing the European Commission's Strategic Guidelines for a more sustainable and competitive EU aquaculture for the period 2021-2030. In that regard, 2022 brought a new plan under the name of Spain's Contribution to the strategic guidelines for a more sustainable and competitive EU aquaculture 2021-2023. The contents can be found [here](#).

AUTHORISATION SYSTEM FOR AQUACULTURE ACTIVE

Law 23/1984 of 25 June on Marine Fish Farming states that only Spanish individuals or companies can hold marine aquaculture concessions or authorisations. A concession grants a temporary and exclusive right of use of the public domain for installing an establishment dedicated to the investigation or the exploitation of a marine farm. An authorisation is another form of permit granted for the same activities, normally less cumbersome to obtain. Concessions and authorisations are granted for a ten-year period which may be extended, at the request of the interested party, in ten-year instalments up to a maximum of 50 years.

Generally, the administrative procedures to be followed for the establishment and exploitation of an aquaculture facility differ depending on whether it is riverine or marine and is located in a public or private area.

The General Secretariat for Fisheries compiles information on the main procedures for the authorisation of aquaculture farming in different regions. One can access the individual procedures for each Autonomous Community [here](#).

CURRENT CHALLENGES

Storm Gloria led to high winds and heavy rainfall on Spain's Mediterranean coast in January 2020. South-eastern Spain and the Balearic Islands were particularly hard-hit by flooding caused by Gloria between 19 and 21 January. Wind speeds reached 120 km/h, sea levels rose over 80cm and record-breaking waves were recorded. In total, across Spain, 13 people were killed with four remain missing.

It is believed that Spanish aquaculture firms lost nearly half of their production thanks to Gloria, with many indemnity claims being pursued against insurance companies and the government. In terms of damages, many installations saw their nets breaking or lost their anchors resulting in a massive loss of fish.

Moving on to the Covid-19 pandemic, luckily food production, including aquaculture, was declared essential across the EU and continued during the lockdown period in Spain when the government declared a state of national emergency. Even so, farms and the servicing industry too faced restrictions on the movement of labour, additional costs to accommodate preventive measures and an avalanche of legal measures produced, daily, by authorities at all levels. One ongoing impact is a predicted price reduction for aquaculture product once markets have re-opened completely and fish consumption returns to normal. Excess fish, for example, could flood the market and drive prices down.

Given the issues discussed above, Spanish aquaculture clearly needs an overhaul of its administrative legal framework. Its expansion is being held back by complex, opaque or simply a lack of adequate legislation. All too often, central authorities argue responsibility for resolving problems lies with Autonomous Communities or regional authorities and vice versa. Decisive and coordinated support from all authorities is needed to boost this essential industry.

HOW CAN WFW HELP?

Our maritime corporate, finance and regulatory expertise is second to none. With 25+ years' experience in all practice areas relevant, directly or indirectly, to aquaculture, no firm is better placed than WFW to help you navigate the complex legal requirements surrounding this growing industry in Spain.

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