

L.N. 341 of 2001

**ENVIRONMENT PROTECTION ACT, 2001
(ACT NO. XX OF 2001)**

Quality required of Shellfish Waters Regulations, 2001

BY virtue of the powers conferred by articles 9 and 28 of the Environment Protection Act, 2001, the Minister for the Environment has made the following regulations:-

1. (1) The title of these regulations is the Quality required of Shellfish Waters Regulations, 2001.

(2) These regulations shall come into force on such date as the Minister responsible for the environment may by notice in the Gazette appoint and different dates may be so appointed for the different provisions and different purposes of these regulations.

(3) A notice under sub-regulation (2) of this regulation may make such transitional provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force.

2. (1) These regulations concern the quality of shellfish waters and apply to the coastal and brackish waters designated by the competent authority as needing protection or improvement in order to support shellfish (bivalve and gastropod molluscs) life and growth and thus to contribute to the high quality of shellfish products directly edible by man.

(2) The parameters applicable to the waters designated by the competent authority are listed in Annex I to these regulations.

3. (1) The competent authority shall for the designated waters, set values for the parameters listed in Annex I, in so far as values are given in column G or column I. The competent authority shall comply with the comments contained in both columns.

(2) The competent authority shall not set values less stringent than those given in column I of the Annex and shall endeavour to observe the values in column G, while taking into account the principle set out in regulation 8.

(3) For discharges of effluents falling within parameters "organohalogenated substances" and "metals", the emission standards laid down by the competent authority pursuant to the Pollution Caused by Certain Dangerous Substances Discharged into the Aquatic Environment Regulations, 2001 shall be applied at the same time as the quality objectives and the other obligations arising from these regulations, in particular those relating to sampling.

4. (1) The competent authority shall designate shellfish waters.

(2) The competent authority may subsequently make additional designations.

(3) The competent authority may revise the designation of certain waters owing in particular to factors unforeseen at the time of designation, taking into account the principle set out in regulation 8.

5. The competent authority shall establish programmes in order to reduce pollution and to ensure that designated waters conform, within six years following designation in accordance with Article 4, to both the values set by the competent authority in accordance with regulation 3 and the comments contained in columns G and I the Annex.

6. (1) For the purpose of implementing regulation 5, the designated waters shall be deemed to conform to the provisions of these regulations if samples of such waters, taken at the minimum frequency specified in Annex I, at the same sampling point and over a period of 12 months, show that they conform to both the values set by the competent authority in accordance with regulation 3 and the comments contained in columns G and I of the Annex as regards:

- 100 % of the samples for the parameters “organohalogenated substances” and “metals”
- 95 % of the samples for the parameters “salinity” and “dissolved oxygen”
- 75 % of the samples for the other parameters listed in Annex I.

If, in accordance with subregulation (2), the sampling frequency for all the parameters in the Annex except “organohalogenated substances” and “metals” is lower than that indicated in the Annex, the above mentioned values and comments shall be complied with in the case of all the samples.

(2) Instances in which the values set by the competent states in accordance with regulation 3 or the comments contained in columns G and I of the Annex I are not respected shall not be taken into consideration in the calculation of the percentages provided for in paragraph 1 when it is the result of a disaster or an emergency.

7. (1) The competent authority shall carry out sampling operations, the minimum frequency of which is laid down in Annex I.

(2) Where the competent authority records that the quality of designated waters is appreciably higher than that which would result from the application of the values set in accordance with regulation 3 and the comments contained in Columns G and I of the Annex, the frequency of the sampling may be reduced. Where there is no pollution and no risk of deterioration in the quality of the waters, the competent authority may decide that no sampling is necessary.

(3) If sampling shows that a value set in accordance with regulation 3 or a comment contained in columns G and I of Annex I is not respected, the competent authority shall establish whether this is the result of chance, a natural phenomenon or pollution, and shall adopt appropriate measures.

(4) The exact sampling point, the distance from this point to the nearest point where pollutants are discharged and the depth at which the samples are to be taken shall be fixed by the competent authority on the basis of local environmental conditions in particular.

(5) The reference methods of analysis to be used for calculating the value of the parameters concerned are set out in Annex I. Laboratories that employ other methods shall ensure that the results obtained are equivalent or comparable to those specified in Annex I.

8. Implementation of the measures taken pursuant to these regulations may on no account lead, either directly or indirectly, to increased pollution of coastal and brackish waters.

9. The competent authority may at any time set more stringent values for the designated waters than those laid down in these regulations. The competent authority may also lay down provisions relating to other parameters than those provided for in these regulations.

10. The competent authority may derogate from these Regulations in the event of exceptional weather or geographical condition

11. Such amendments as are necessary for adapting to technical and scientific progress the G values for the parameters and the methods of analysis contained in Annex I shall be adopted by the competent authority.

12. The competent authority shall publish by notice in the Gazette on a periodic basis information concerning:

- the waters designated in accordance with subregulations 4(1) and (2) of these regulations in summary form,
- the revision of the designation of certain waters in accordance with subregulation 4(3),
- the provisions laid down in order to establish new parameters in accordance with regulation 9

Where the competent authority applies the provisions of regulation 11, it shall forthwith publish by notice in the Gazette reasons and the periods anticipated.

13. Any person shall be guilty of an offence under these offences under these regulations if:

- (a) he fails to comply with any provision of these regulations or with any order lawfully

given in terms of any provision of these regulations; or

(b) he contravenes any restriction, prohibition or requirement imposed by or under these regulations; or (c) he acts in contravention of any of the provisions of these regulations; or

(d) he conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement to contravene the provisions of these regulations or to fail to comply with any such provisions, including any order lawfully given in terms of any of the provision of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

14. Any person who commits an offence against these regulations shall, on conviction, be liable:

(a) on a first conviction to a fine (*multa*) of not less than ten thousand liri but not exceeding one hundred thousand liri;

(b) on a second or subsequent convictions, to a fine (*multa*) of not less than fifty thousand liri, but not exceeding two hundred thousand liri or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment:

Provided that whenever any person is found guilty of committing an offence under these regulations by means of a vehicle or ship, the owner of the said vehicle or ship, where applicable, is held liable in the same manner and degree:

Provided further that the court shall order any person who has been found guilty of committing an offence against these regulations to pay for the expenses incurred by the competent authority or any public entity or any other persons acting on their behalf involved in the implementation of these regulations, and restitution of the environment as a result of the said offence, and the confiscation of the *corpus delicti*.

15. (1) The provisions of article 23 and sub-article (1) of article 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings, in respect of offences against these regulations, so however that the disqualification from holding or obtain a licence, permit or authority shall in no case be for less than one year.

(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against these regulations shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against these regulations.

16. The Annexes to these regulations are being published in the English language with the English text of these regulations.

ANNEX I – QUALITY OF SHELLFISH WATERS