

# **FISHERY AND PRESERVATION OF AQUATIC BIOLOGICAL RESOURCES IN RUSSIA: A VIEW THROUGH THE PRISM OF LAW**

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## **ABSTRACT**

The article is devoted to the challenging and not adequately researched issue related to the legal regulation of social relations in the field of fishery and preservation of aquatic biological resources in the Russian Federation. The purpose of the article is to analyze the legislation on fishery and preservation of aquatic biological resources in connection with the objectives of the successful development of fishing industry and the interests of the business community. The scientific and practical significance of the article lies in the fact that the authors study the practical implementation of the following legal mechanisms: quotas for catching aquatic bioresources, licensing and contractual methods of regulation, control and supervision, determination of the prospects for further legal regulation. In this regard, such methods of obtaining knowledge as comparative legal analysis and modeling are used. The comparative research method allows increasing the reader's interest to the issues under consideration. The authors come to conclusion that there are certain contradictions in the current legal regulation in the field of fishery. On the one hand, such legal institutions as trades and contracts allow to ensure the competitiveness of economic entities and equal status in relations with the state authorities, and on the other hand, the possibility of forced termination of contracts.

***Keywords: fishery, investment quotas, entrepreneurship activities, contractual relations, overfishing, licensing procedures***

## **INTRODUCTION**

The Russian legislation on fishery and preservation of aquatic biological resources demonstrates rather dynamic development. Having emerged at the beginning of the 21st century, it has been developing intensively taking into account the difficult challenges of modernity, including illegal, unregulated and unreported fishing. Difficult tendencies of its development were studied by the legal scholars who outlined prospects of its improvement.

Art. 1 of the Federal Law No. 166-FZ of December 20, 2004 “On Fishery and Preservation of Aquatic Biological Resources” (hereinafter referred as Federal

Law on Fishery) contains the following definition of the key term “aquatic biological resources”: fish, aquatic invertebrates, aquatic mammals, algae, other aquatic animals and plants in a state of natural freedom. Considering the above definition, the term “aquatic biological resources” is a two-part concept combining the animal and plant world in conjunction with the aquatic environment. Aquatic bioresources build up the resource base for the fishery that provides the country with food.

The legislation on fishery and preservation of aquatic biological resources is in a complex relations with the legislation on aquaculture. The Federal Law No. 148-FZ of July 2, 2013 “On Aquaculture (Fish Farming) and on Introducing Amendments to Certain Legislative Acts of the Russian Federation” refers commercial aquaculture to agricultural production. According to Art. 11 of this Federal Law aquaculture (fish farming) to a certain part refers to the preservation of aquatic biological resources (that is acclimatization and artificial reproduction of aquatic biological resources) and, therefore, to fisheries. In this case, it is carried out in accordance, first of all, with the Federal Law on Fishery, and with the Federal Law on Aquaculture to the extent not regulated by the Federal Law on Fishery.

The establishment of quotas is a common way of regulating fisheries used in many countries. It should be borne in mind that any quotas (as well as total allowable catches) are in fact an abstract expression of the right to catch aquatic bioresources. The following types of quotas are envisaged in Russia: industrial, coastal, scientific, for cultural and educational purposes, for fishing with the purpose of aquaculture (fish farming), amateur and sports, traditional, industrial quotas for freshwater objects. The legislator puts high hopes on quotas of catching of aquatic biological resources provided for the investment purposes to carry out industrial fishery and (or) coastal fishery (hereinafter referred as quotas of procurement (catching) of aquatic biological resources for the investment purposes). The utmost importance is given to quotas of the Russian Federation for catching of aquatic biological resources in the areas covered by the international treaties on fisheries and preservation of aquatic biological resources, as well as quotas of foreign countries for catching aquatic biological resources in the exclusive economic zone of Russia established in accordance with international treaties on fisheries and preservation of aquatic biological resources (Art. 30 of the Federal Law on Fishery) [1].

Quotas of procurement (catching) of aquatic biological resources for investment purposes, distributed through special contracts (Art. 29.3, 30, 33.7 of the Federal Law on Fishery), is a novel of the Russian legislation, partly adopting foreign experience. The question of a free circulation of catch quotas (including investment ones), the use of these quotas as collateral (pledge) of credit obligations are currently being discussed in the business community. At the same time, there are some concerns that the free circulation of quotas (as well as their pledge) will lead to capital outflows from the fishing industry to trade, the emergence of “quota speculators”, and a decrease in business activity and employment in fishing industry. It will not be able to provide the proper volume

of investments in a fishery that is necessary for its technical re-equipment and release of competitive product. Currently, there is a mixed procedure for the use of aquatic biological resources in Russia, which involves mutual supplement of contractual, and licensing methods of regulation provides for. A number of countries also use the combination of licensing and contractual methods of the regulation (USA, Canada [2], Norway [3], China [4] and Turkmenistan). This ensures both the manageability of the industry and competition for the right to use these types of natural resources. Some neighboring countries rightly consider the fishery industry as an important source of national income [5].

In Russia, the permit for procurement (catching) of aquatic biological resources (Art. 34–37 of the Federal Law on Fishery) and decisions to grant for use aquatic biological resources classified as fishing objects (Art. 33.2 of the Federal Law on Fishery) can be referred to the licensing procedures of granting the right for use aquatic biological resources. A permit is required for all types of fishing, except for the traditional one. Permit, in turn, is entitling document for the fishery for scientific research and monitoring purposes, educational and cultural-educational purposes, fishery for the purposes of aquaculture (fish farming) and traditional fishery, otherwise speaking for activities that are not typical for business. The practical implementation of these mechanisms allows the state authorities to establish control over the persons having the right to use aquatic bioresources and thereby ensure compliance with the legal requirements.

The legislation on fishery and conservation of aquatic biological resources contributes to the intensive development of contractual relations. Art. 5 of the Federal Law on Fishery provides that contractual commitments and other relations connected with a turnover of aquatic biological resources shall be regulated by the civil legislation unless otherwise provided for by this Federal Law. The prevalence regulation of these contractual relations within the framework of the special law on fishery shall be regarded as the correct approach that has been repeatedly emphasized in the academic literature.

The legislator provides for the contracts on the reservation of a share of the quota for catching aquatic biological resources, on the allotment of fishing ground, on the use of aquatic biological resources. Since these contracts are concluded on the basis of tenders, it is ensured a certain business competition between economic entities. Concomitantly public entities have gained some additional opportunities to influence on rapidly developing contractual relations. For instance, the standard forms of all types of contracts, provided by the Federal Law on Fishery, are asserted by the resolutions of the Government of the Russian Federation that allows to mildly streamline these relations. Considerable changes in the procedure of access of economic entities to the use of aquatic biological resources and the procedure for its withdrawal were made by the Federal Law No. 349-FZ of July 20, 2016 “On Introducing Amendments to the Federal Law “On Fishery and Preservation of Aquatic Biological Resources” and Certain Legislative Acts of the Russian Federation in Terms of the Improvement of Distribution of Quotas for Procurement (Catching) of Aquatic Biological Resources”.

In the following year (from January 1, 2019) a new provision of Art. 18 of the Federal Law on Fishery titled “fishing ground” will be put into effect. A fishing ground is a water object or part of it (as before – a fishing area). Commercial fishing has required the allocation of fishing grounds in freshwater. At the same time, a fishing ground is not allocated in the sea waters of Russia. There is a special provision: for the purposes of catching of anadromous species of fishes, the fishing ground is allocated in any waters within the frontier of the Russian Federation, including sea waters [6].

It should be noted that fishing ground is provided for the organization of amateur and sports as well as traditional fishing. The encroachment lines of fishing grounds are determined in accordance with the requirements of the Water Code of the Russian Federation pursuant to the procedure established by the Government of the Russian Federation. In turn, the list of fishing grounds in any waters of Russia is approved by the executive body of the subject of the Russian Federation in coordination with the Federal Agency for Fishery. Amending law also increased the validity period of the contract on the reservation of a share of the quota for catching aquatic biological resources from 10 to 15 years, while preserving the historical principle of granting the right to catch biological resources with regard to the previously established quotas. At the same time, the threshold for the necessary procurement of aquatic biological resources is increased from 50% to 70% of the allocated quotas and the right to use the provided resources in the amount of not less than 70% only on own vessels or used under a leasing contract is established. In any cases where there has not been compliance with this provision, the right for catching aquatic biological resources shall be forcibly terminated and the share of quotas shall be sold at auction. These legislative innovations are intended to ensure the sustainability of fisheries and create the confidence of entrepreneurs in the effective return on their investments that will help the successful development of fishing industry.

As a general rule, the contracts on the reservation of a share of the quota for catching aquatic biological resources, on the allotment of fishing ground, on the use of aquatic biological resources may be canceled before maturity at the request of one of the parties in accordance with civil legislation and the Federal Law on Fishery (Art.33.5 of the Federal Law on Fishery). If the parties remain at odds over termination and amendment of the contract, the contract shall be terminated or amended by a judicial decision. Compulsory termination of the right to catch aquatic biological resources shall be effected in the event that: it has become necessary to use of water objects for state needs; aquatic biological resources are procured (caught) within two years running in the amount of less than 70 % of industrial quotas and coastal quotas except in the case of an emergency and fishing restrictions; the person enjoying the right to procure (catch) aquatic biological resources has violated two or more times within a calendar year fishery regulations resulting in a major damage to aquatic biological resources; the person enjoying the right to procure (catch) aquatic biological resources has not delivered the catch of aquatic biological resources to the seaports of Russia, as well as to other places of delivery subject to applicable legal requirements provided by the

Government of the Russian Federation; the person enjoying the right to procure (catch) aquatic biological resources within calendar year has made suspension of work of technical control means for 48 hours and more without consent in accordance with the established procedure; the person enjoying the right to procure (catch) aquatic biological resources has not carried out the unloading of catches of aquatic biological resources caught in coastal fisheries, as well as fish and other products made from such catches on fishing vessels (Art. 13 of the Federal Law on Fishery).

According to the contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes one of contracting parties – public authority undertakes to reserve and grant the right to procurement (catch) of aquatic biological resources to other party – legal entity or the individual entrepreneur. The right for catching aquatic biological resources is assigned to the person for the period of the implementation of investment project (Art. 33.7 of the Federal Law on Fishery). The right to procurement of aquatic biological resources is granted for 15 years to the person concluded the contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes. In addition, this person shall have right of ownership on the object of investments placed in operation or own it by virtue of the financial lease contract.

The contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes contains the following provisions: its parties, the subject of the contract, its validity, investment vehicle, the types of aquatic biological resources, fishing areas, types of fisheries, share size of quotas for catching aquatic biological resources and term for the granting of right for catching aquatic biological resources. Simultaneously the following mandatory provisions shall be stated in the contract: conditions for ensuring the implementation of investment projects, the provisions of the investment project, as well as a special condition providing for compliance with the schedule of construction and commissioning of the investment object or compliance with the schedule of investments and commissioning of the investment object. The grounds for early termination of the contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes are: nonobservance of an one of the special terms of the contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes; transmission of the right to the investment object from the person concluded the contract on the reservation and granting of a share of the quota for catching aquatic biological resources for investment purposes to other people by alienation.

It is necessary to pay attention that the Russian legislator prevents from performing speculative operations with the mentioned type of quotas. The Resolution of the Government of the Russian Federation No. 648 of May 29, 2017 “On the Reservation and Granting of a Share of the Quota for Catching Aquatic Biological Resources for Investment Purposes in the Field of Industrial Fishery and (or) Coastal Fishery” is of great importance for the regulation of these social

relations. This by-law act contains “Regulation on the Reservation and Granting of a Share of the Quota for Catching Aquatic Biological Resources for Investment Purposes in the Field of Industrial Fishery and (or) Coastal Fishery”. It should be noted that these quotas are distributed on a complex competitive basis. At the first stage, a tender is held with the participation of the tender commission, and then in some cases a reversed auction is held. The legal mechanism of investment quotas in the Russian legislation was created with a focus on the quotas under the keel, although it is not a direct copy of the foreign legal category. Interesting to note that foreign experience (Canada, Iceland) shows a negative effect: increased lending upon the security of ship quotas leads to excess capacity of the fishing fleet over the existing stocks of “fish in the water”. In this situation, ship-owners are forced to charter their ships to the business people of other countries, as there is a threat of overfishing of aquatic biological resources [1].

Unfortunately, even taking into account foreign omissions and difficulties, investment quotas have not provided a qualitative leap in the development of the national fisheries sector. During the bidding process the Federal Agency for Fishery has received only 4 applications for investment quotas providing for the construction of a small fleet. Along with investment quotas, the state authorities are looking for other legal and organizational methods of modernization of the fishing fleet (including fleet operating in fresh water areas).

## CONCLUSION

Legislation of different countries of the world often combines permissive and contractual mechanisms of public relations regulation on the use and protection of aquatic biological resources. Such combination allows the state to achieve controllability of the fisheries providing population and at the same time to protect the legal interests of the business community investing in fisheries.

The system of distribution of rights to catch aquatic biological resources has changed many times. Further improvement of the legislation shall be made in the course towards investment, innovation, maintenance of a competitive environment. At the same time, the free circulation of various types of quotas for catching aquatic biological resources, once received by fishermen from the state, would lead to the movement of capital from the fishery industry to the commercial sphere, which in turn would hinder the fishery and food security of Russia. There are some contradictions in the legal regulation of fishery. Such legal institutions as trades and contracts allow to ensure the competitiveness of economic entities and equal status in relations with the state authorities, and on the other hand, the possibility of forced termination of contracts.

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