

立法會
Legislative Council

LC Paper No. LS71/01-02

**Paper for the House Committee Meeting
on 26 April 2002**

**Legal Service Division Report on
Marine Fish Culture (Amendment) Bill 2002**

I. SUMMARY

1. **Objects of the Bill** To amend the Marine Fish Culture Ordinance (Cap. 353) ("the Ordinance") to empower the Director of Agriculture, Fisheries and Conservation ("DAFC") to approve transfer of fish culture licences and to make the enforcement of the Ordinance more effective.

2. **Comments**
 - (a) Apart from empowering DAFC to approve transfer of fish culture licences, the Bill also proposes a number of procedural safeguards to improve the exercise of the existing power of search and seizure, power of disposal of seized property and power of arrest provided under the Ordinance.

 - (b) Introduction of a new enforcement power to require a suspected person to provide his name and address and produce proof of identity for inspection.

 - (c) The existing level of penalty for offences under the Ordinance is proposed to be raised.

3. **Public Consultation** The marine fish culture industry and the concerned Provisional District Boards have been consulted.

4. **Consultation with LegCo Panel(s)/ Committee(s)** The policy aspects of the Bill were discussed at the meeting of the Panel on Food Safety and Environmental Hygiene on 25 February 2002.

5. **Conclusion**
 - (a) The Administration has agreed to introduce Committee Stage amendments to improve the drafting of the Bill.

 - (b) Members may wish to defer their decision on the Bill pending the proposed Committee Stage amendments and a further report from the Legal Service Division.

II. REPORT

Objects of the Bill

To amend the Marine Fish Culture Ordinance (Cap. 353) to empower the Director of Agriculture, Fisheries and Conservation ("DAFC") to approve transfer of fish culture licences and to make the enforcement of the Ordinance more effective.

LegCo Brief Reference

2. EFB 6/12/25/1 Pt. 3 dated 26 March 2002 issued by the Environment and Food Bureau.

Date of First Reading

3. 17 April 2002.

Comments

4. The Marine Fish Culture Ordinance (Cap. 353) ("the Ordinance") was enacted in 1980 to enhance the effectiveness of fish culture industry and to provide for its regulation and protection. Under the Ordinance, fish culture is only permitted in areas within Hong Kong waters designated to be fish culture zones and persons engaging in fish culture within the fish culture zones must obtain a licence granted by DAFC. Under the existing Ordinance, fish culture licences are not transferable. On the other hand, the Administration is no longer issuing new fish culture licences in order to avoid overcrowding of fish culture farms and to protect the environment.

5. The Bill seeks to empower DAFC to approve transfer of fish culture licences with a view to encouraging new investors to enter the fish culture business and to ensure the sustainability of the industry. The proposed fee payable for the application for the transfer of a licence is \$180. To forestall speculation, the Bill proposes that a licence will not be allowed for transfer if it has only been held by the applicant for less than two years. Any person aggrieved by DAFC's decision to refuse to approve the transfer of a licence may appeal to the Administrative Appeals Board against that decision.

6. The Bill also transfers the power of determining appeals against DAFC's decisions concerning the grant and renewal of licences to the Administrative Appeals Board.

7. Under the existing Ordinance, DAFC and his authorized officers have certain enforcement powers if they have reason to suspect that any vessel or raft or impoundment within the waters of Hong Kong is being or has been used in the commission of any offence under the Ordinance. These enforcement powers include the power of search and seizure, the power of sale or other disposal of anything seized and detained and the power of arrest. The Bill introduces the following procedural safeguards to improve the exercise of these powers :

- (a) to require DAFC or his authorized officer to obtain a search warrant before he exercises the power of search and seizure;
- (b) to require DAFC or his authorized officer to give notification to the owner of any thing seized and detained; and
- (c) to empower DAFC or his authorized officer to apply to a magistrate for forfeiture of the seized property.

8. To strengthen enforcement actions, the Bill also proposes to confer on DAFC or his authorized officer a new power to require a person who is suspected to have committed or is about to commit an offence under the Ordinance to give his name and address and to produce proof of identity for inspection and to provide for the power of arrest if a person fails to comply with the requirement.

9. To maintain the deterrent effect of the Ordinance, the Bill proposes to revise the penalty provisions as follows:

Offence	Existing penalty	Proposed penalty
Engaging in fish culture within a fish culture zone without a licence	A fine of \$20,000 and one year's imprisonment	A fine at level 6 (\$100,000) and one year's imprisonment
Engaging in fish culture outside a fish culture zone	A fine of \$5,000 and 6 months' imprisonment	A fine at level 6 (\$100,000) and one year's imprisonment
Depositing chemical or other substance to injure any fish in a fish culture zone or pollute the waters in a fish culture zone	A fine at \$20,000 and one year's imprisonment	A fine at level 6 (\$100,000) and one year's imprisonment
Interference with rafts or impoundments or fish therein	A fine of \$5,000 and 6 months' imprisonment	A fine at level 4 (\$25,000) and 6 months' imprisonment

Offence	Existing penalty	Proposed penalty
Failing to give name and address or to produce proof of identity and giving false or misleading name or address	New offence	A fine at level 2 (\$5,000)

Public consultation

10. According to the LegCo Brief, the marine fish culture industry and the concerned Provisional District Boards have been consulted and they generally support the proposals.

Consultation with LegCo Panel(s)/Committee(s)

11. When consulted on the legislative proposals on 25 February 2002, the Panel on Food Safety and Environmental Hygiene sought clarification from the Administration on how the objective of facilitating large-scale company-based operations could be achieved. Members also enquired about the extent of existing fish culture farms which was not in active operation. The Administration explained that at present, most marine fish culture farms in Hong Kong were small-scale family-type operations. About 25% (roughly 300) of the existing fish culture farms were not in active operation. The proposal to allow transfer of fish culture licences would facilitate transfer of the licences to more effective operators and encourage new investors to enter the fish culture business. The Panel was generally in support of the legislative proposal to allow transfer of fish culture licences to enable the fishing industry to restructure under market forces.

12. As regards the other amendments proposed by the Bill, the Panel did not discuss them as the text of such amendments was not provided to the Panel.

Conclusion

13. The Administration has agreed to introduce some Committee Stage amendments to improve the drafting of the Bill. The Legal Service Division will make a further report on the Bill after receiving the Committee Stage amendments from the Administration. Members may wish to defer decision on the Bill pending our further report.

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