

立法會
Legislative Council

LC Paper No. LS92/01-02

**Paper for the House Committee Meeting
of the Legislative Council
on 10 May 2002**

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

I. SUMMARY

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| <p>1. Objects of the Bill</p> <p>2. Previous discussion in the House Committee meeting</p> <p>3. Development since previous discussion</p> <p>4. Conclusion</p> | <p>To amend the Marine Fish Culture Ordinance (Cap. 353) ("the Ordinance") to empower the Director of Agriculture, Fisheries and Conservation ("the Director") to approve transfer of fish culture licences and to make the enforcement of the Ordinance more effective.</p> <p>The House Committee considered the above Bill at its meeting on 26 April 2002 and decided to defer decision on the Bill pending a further report from the Legal Service Division on queries raised by Members.</p> <p>(a) The Administration's reply is summarized as follows :</p> <p class="list-item-l1">(i) Existing Government policy allows a person to hold more than one fish culture licence. The Administration does not intend to change this policy.</p> <p class="list-item-l1">(ii) Under the Bill, the Director may refuse to approve the transfer of a fish culture licence if he considers that the transfer would not be in the best interests of the industry.</p> <p class="list-item-l1">(iii) The proposed increase in fines mainly reflects the inflationary adjustment since 1980 and 1981 when the Ordinance and the Marine Fish Culture Regulations were enacted respectively.</p> <p class="list-item-l1">(b) The Administration has proposed Committee Stage amendments ("CSAs") to improve the drafting of the Bill. The CSAs are legally in order.</p> <p>With the proposed CSAs, we are satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' views on the policy aspects, the Bill is ready for resumption of Second Reading debate.</p> |
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II. FURTHER REPORT

Background

Members may recall that the Legal Service Division made a report to the House Committee on 26 April 2002 on the above Bill (LC Paper No. LS71/01-02). At the meeting, we informed Members that in response to queries raised by the Legal Service Division, the Administration had agreed to introduce Committee Stage amendments ("CSAs") to improve the drafting of the Bill. The Legal Service Division would provide a further report on the Bill after receiving the proposed CSAs from the Administration.

2. At the meeting, a member expressed concern about the possible monopoly of the marine fish culture industry by a few individuals, and asked whether there was any restriction on the number of licences that a person could possess. Another member asked whether the Administration had provided justification for the substantial increase in the existing levels of penalty for offences under the Marine Fish Culture Ordinance (Cap. 353) ("the Ordinance").
3. Members decided to defer decision on the Bill pending a further report from the Legal Service Division after receiving the proposed CSAs and the Administration's response to the above queries.

Administration's response

4. The Administration's response to Members' queries are set out below :

A. *Person holding more than one licence*

- (a) It has been the existing Government policy not to restrict any mariculturists to operate one single fish culture farm only. At present, some mariculturists who operate fish culture farms in more than one fish culture zone already hold more than one licence. The Administration does not intend to add additional restrictions on the holding of fish culture licence in the current legislative amendment exercise. The Administration considers that the policy of allowing an intended transferee to hold more than one fish culture licence will enable those progressive mariculturists to take up the licences and farms of other less active mariculturists for expansion. This will help enhance competitiveness and promote the sustainability of the industry.

- (b) In practice, the Director of Agriculture, Fisheries and Conservation ("the Director") will take into account operational concerns before determining whether an intended transferee, who is already holding a licence, should hold more than one licence after the approval of the application for transfer of licence. For example, if a transferee will operate two farms in two fish culture zones, the transferee may have to hold two licences for the Director's effective monitoring. However, if a transferee will operate two adjacent farms, it will not be necessary for the transferee to hold two licences. The Director will ask the transferee to surrender his/her existing licence and issue a new licence covering the operation of the two adjacent farms.
- (c) Under the proposed section 8A of the Bill, the Director is empowered to refuse transfer of a licence if he considers that the transfer would not be in the best interests of fish culture. Hence, if any application for transfer of licences will result in any operation which is not in the best interests of the further development of the industry, the Director will refuse to approve the application.

B. *Reasons for the increase in the level of penalty*

- (a) Under the existing Ordinance and the Marine Fish Culture Regulations (Cap. 353 sub. leg.), all the fines are expressed in monetary terms. The Ordinance and the Regulations were enacted in 1980 and 1981 respectively and since then the levels of fine have not been revised to catch up with inflation. In view of the serious consequences of unauthorized acts and operations under the Ordinance, it is important to maintain the deterrent effect of the Ordinance. The Administration's explanation on the seriousness of the offences under the Ordinance is attached (LC Paper No. LS92/01-02(01)).
- (b) The Administration intends to update the fine levels for the offences concerned and convert them into levels of the standard scale under the Criminal Procedure Ordinance (Cap. 221). The proposed increase in the fine levels mainly reflects the inflationary adjustment based on the movements of the Consumer Price Index (A) over the years.

5. Members may wish to note that the Administration has also provided for Members' information the factors which the Director will take into account when considering an application for transfer of a fish culture licence. These factors are :

- (a) whether the transfer of licence would result in any operation that would cause overcrowding of the fish culture zone or would not be in the best

interests of fish culture in the light of the size or location of the fish culture zone;

- (b) whether any raft or impoundment to be used after the transfer is not in compliance with any of the provisions of the Ordinance or any regulations made thereunder;
- (c) whether the transferor has contravened any provisions of the Ordinance, any regulations made under the Ordinance or any conditions of the licence;
- (d) in case the intended transferee is already a holder of a licence, whether he has contravened any provisions of the Ordinance, any regulations made under the Ordinance or any conditions of the licence;
- (e) whether the licence has been held by the transferor for less than two years; and
- (f) whether the transferor and intended transferee have furnished any false or misleading information in connection with the application for transfer of licence.

Committee Stage amendments

6. The Administration has proposed some CSAs to improve the drafting of the Bill and to make it clear that a licensee is defined under the Ordinance to include a person to whom a licence has been transferred. A copy of the draft CSAs is attached (LC Paper No. LS92/01-02(02)).

Conclusion

7. With the proposed CSAs, we are satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' views on the policy aspects, the Bill is ready for resumption of Second Reading debate.

Encl.

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8 May 2002

Seriousness of the offences under the Marine Fish Culture Ordinance and the regulations made thereunder

Offence	Seriousness of the offence and its consequence	Existing penalty	Proposed penalty
I. Ordinance			
Engaging in fish culture within a fish culture zone without a licence	<p>It is necessary to effectively control the number of fish culture farms in each fish culture zone to avoid environmental problems and to protect the best interests of legitimate fish culture activities. Unauthorized fish culture operation in fish culture zone may cause overcrowding of the zone, resulting in inadequate tidal flow, insufficient oxygen or an excess of nutrient content or other pollutants in the sea. Moreover, as cultured fish is highly vulnerable to water pollution, unauthorized fish culture operation that adversely affects the culture environment may lead to deaths of fish in licensed farms in the vicinity. It also takes considerable Government resources and efforts to rectify the undesirable effects caused by unauthorized fish culture activities.</p>	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	<p>Such unauthorized activities may block navigational channels and obstruct users of typhoon shelters and public piers, or occupy areas of water for recreational or other uses. They may also cause pollution to the sea. Under the existing Ordinance, the penalty for this offence is much lower than that of engaging in fish culture within a fish culture zone without a licence. However, as both offences concern illegal fish culture activities that may affect other users of the waters and cause pollution, we propose to reconcile the two penalty levels.</p>	A fine of \$5,000 and 6 month's imprisonment	A fine at level 6 (\$100,000) and one year's imprisonment

Offence	Seriousness of the offence and its consequence	Existing penalty	Proposed penalty
Depositing chemical or other substance to injure any fish in a fish culture zone or pollute the waters in a fish culture zone	Since cultured fish is contained in raft or impoundment in the sea, they can be easily tampered with if someone intends to do so. Cultured fish is the private property of mariculturists and should be adequately protected. Besides, as cultured fish is highly vulnerable to water pollution, they can die quickly if the sea is polluted. It also takes time and resources to rectify the hazardous effects caused to the water quality. Hence, the act of depositing chemical or other substance which can injure fish or cause pollution is very irresponsible and should be deterred.	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	Cultured fish, rafts and impoundments are in the sea and can be easily tampered with if someone wants to do so. Such private property of mariculturists should be adequately protected. We therefore need to maintain the deterrent effect against any interference with such private property. However, as this offence will probably result in less longer-term and less hazardous effects as compared with the deposition of harmful chemical or other substance in the sea, the penalty level for this offence is therefore lower.	A fine of \$5,000 and 6 month's imprisonment	A fine at level 4 (\$25,000) and 6 month's imprisonment
Entry of unauthorized vessels in fish culture zone	Unauthorized vessels in fish culture zones may cause danger to the persons working on the rafts and create pollution problems or other nuisances which may affect the health of cultured fish.	A fine of \$5,000 and 6 month's imprisonment	A fine at level 4 (\$25,000) and 6 month's imprisonment
Obstruction against	We need to maintain the deterrent effect against this offence; otherwise, the unauthorized operations and acts under the Ordinance cannot be	A fine of \$5,000 and 6 month's	A fine at level 4 (\$25,000) and 6

Offence	Seriousness of the offence and its consequence	Existing penalty	Proposed penalty
enforcement officers or failure to comply with the instruction given by the Director	effectively enforced. The proposed fine level of this offence is the same as the fine levels of similar offences under a number of Ordinances such as the Public Health and Municipal Services Ordinance (Cap 132) (section 139), the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap 570) (section 16), and the Dogs and Cats Ordinance (Cap 167) (section 7).	imprisonment	month's imprisonment
II. Regulations			
Mooring and anchoring of rafts, and marking and lighting of rafts and impoundments not in a manner specified by the Director	If rafts are not properly anchored, they may drift to waters outside the fish culture zones and may even affect the navigational channels or other users of the waters causing danger to their activities. Besides, proper lighting and marking of rafts and impoundments should be made to ensure marine safety.	\$500 and a daily fine of \$50 for continuing offence	A fine at level 1 (\$2,000) and a daily fine of \$140 for continuing offence
Erect structure on rafts without the Director's permission	Illegal structures erected on rafts can cause safety and environmental problems and hence it is important to ensure that all structures erected have the permission of the Director.	\$1,000	A fine at level 2 (\$5,000)

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1st draft : 24.4.2002

MARINE FISH CULTURE (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for
the Environment and Food

Clause

Amendment Proposed

2 By deleting "by adding -" and substituting -

" -

(a) in the definition of "licensee", by
repealing "the holder of a licence"
and substituting "a person to whom
a licence has been issued or
transferred or whose license has
been renewed";

(b) by adding "-".

5 In the proposed section 16(2)(c), by deleting "grant" and
substituting "approve".

**Schedule,
section 6**

In the proposed item 59, in paragraph (b), by deleting
"grant" and substituting "approve".

