

For discussion

On 25 February 2002

**LegCo Panel on
Food Safety and Environmental Hygiene**

Amendments to the Marine Fish Culture Ordinance

INTRODUCTION

This paper brief Members on our proposed amendments to the Marine Fish Culture Ordinance (Chapter 353).

BACKGROUND

2. The Marine Fish Culture Ordinance was enacted in 1980 to enhance the fish culture industry's effectiveness and to provide for its regulation and protection. Marine fish culture basically involves the growing of fish fry to marketable size. Under the Ordinance, marine fish culture is only permitted within specific areas within Hong Kong waters designated as fish culture zones. At present, there are 26 fish culture zones in Hong Kong occupying 209 hectares (0.12%) of Hong Kong waters. Since 1991, no new fish culture zones have been designated because of competing uses of Hong Kong waters.

3. Within the fish culture zones, all fish culture operations must be licensed by DAFC. At present, there are some 1 300 fish culture licences and permits, involving the employment of about 2 300 persons. It is estimated that mariculture production contributed to 13% of Hong Kong's live marine fish consumption in 2001.

4. Under the existing Ordinance, fish culture licences are not transferable and most fish culture farms remain as family based operations. Due to their small-scale, these operations usually lack efficiency and have become less profitable in recent years as a result of increased operating costs. The family-based mariculturists lack the means and knowledge to invest in

modern and environmentally friendly practices to upgrade their operations. Many of them are not always in active operation. However, there is little incentive for them to surrender their licences because they have to clear the licensed area including dismantling the rafts at their own expenses.

5. On the other hand, some progressive large-scale and company-based marine fish culture operations are eager to expand their operations. There are also new comers who would like to enter the fish culture business. However, they cannot obtain any new licences to operate new culture farms as the issue of new licences has to be withheld in order to avoid overcrowding of fish culture farms and to protect the environment.

THE PROPOSALS

(a) Transfer of a fish culture licence

6. To allow the industry to restructure under market forces, we therefore propose to amend the Marine Fish Culture Ordinance so that the Director of Agriculture, Fisheries and Conservation (DAFC) can approve transfer of fish culture licenses. In order to forestall speculation, a licence will not be allowed for transfer if it has only been held by the applicant for less than two years. By making the licences transferable, it will facilitate the establishment of larger scale operations and attract new investment in terms of capital and talents. The industry will be able to move towards a more competitive and modern direction. Our proposal can help ensure the sustainability of the industry.

7. In addition, we propose that any person aggrieved by DAFC's decision to refuse transfer of a licence may lodge an appeal to the Administrative Appeals Board ("AAB") against the decision. We also propose to change the authority to determine appeals against DAFC's decision to cancel or refuse to grant or renew a licence or permit under the Ordinance from the Chief Executive to the AAB as appeals of similar nature are mostly handled by the latter now instead of the former.

(b) Technical amendments

8. We intend to take the opportunity to improve some provisions of the Ordinance in order to provide additional safeguards against any abuse of power and to maintain the deterrent effect of the Ordinance. Major improvements include –

- (a) requiring DAFC or his authorized officer to obtain a search warrant before he exercises the power of search and seizure already provided for in the Ordinance;
- (b) setting out more clearly the circumstances under which items seized can be sold and forfeited;
- (c) empowering DAFC or his authorized officer to require any person who is suspected to have committed or is about to commit an offence under the Ordinance to produce proof of identity so as to facilitate enforcement actions; and
- (d) updating the penalty provisions in the light of inflation so as to maintain deterrent effect of the Ordinance.

CONSULTATION

9. We have consulted the marine fish culture industry and the concerned District Councils. They generally support our proposals.

WAY AHEAD

10. We plan to introduce the proposed amendments to the Legislative Council within this legislative session.