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**Subcommittee on
Food Business (Amendment) Regulation 2009**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environment Hygiene (the Panel) on the Administration's proposal to prohibit abstraction of seawater from specified prohibited areas for keeping live fish and live shell fish intended for sale for human consumption.

Background

2. At present, the Food and Environmental Hygiene Department (FEHD) adopts a number of measures to control the quality of water used for keeping live fish and shell fish intended for sale for human consumption.

Legislative control

3. Section 10A of the Food Business Regulation (Cap. 132X) provides that no person shall in the course of any food business keep any live fish or shell fish intended for human consumption in water of a quality below the standard specified by the Director of Food and Environmental Hygiene by notice published in the Gazette. The specified standard is "*E. coli* less than 610 per 100 ml and absence of pathogenic organisms". Contravention of the provision is liable to a maximum fine of \$10,000 and imprisonment for three months upon conviction.

Inspection regime

4. In accordance with the licensing requirements/conditions and market tenancy conditions of FEHD, licensed food premises and markets stalls are required to install and maintain proper filtration and disinfection facilities to filter and disinfect water used for keeping live fish and live shell fish intended for human consumption. Licensees/stallholders are also prohibited from using flushing water for keeping live seafood. The same requirements and conditions are applicable to live fish wholesalers under a permit system administered by FEHD.

5. FEHD staff inspect market fish stalls and wholesale premises once every eight weeks and conduct regular inspections to supermarkets, fresh provision shops and restaurants in accordance with a risk-based inspection system to ensure that operators comply with the licensing requirements/conditions and market tenancy conditions. Verbal and written warnings are given for non-compliance. Repeated breaches of requirements and conditions may lead to cancellation of licence or permit or termination of tenancy.

Water sampling and surveillance

6. In addition to routine inspections, fish tank water samples are collected from all licensed food premises, including supermarkets and seafood stalls, for *E. coli* and *Vibrio cholerae* testing. Under a risk-based surveillance programme implemented since January 2004, while the normal frequency of testing for *E. coli* for each premise remains at once every eight weeks, the action level is set at 180 per 100 ml. This provides an early alert signal to those premises with deteriorating quality of fish tank water or failing disinfection system so that remedial measures can be carried out in a timely manner. Upon receipt of any report exceeding this action level, FEHD staff will inspect the premises concerned within three working days to give advice to the operators to carry out proper maintenance work. If the test results of the follow up samples remain unsatisfactory, FEHD staff will continue to conduct site inspections and take samples until the irregularities are rectified.

7. In addition, at least one sample will be taken from each premise for *Vibrio cholerae* testing between May and September every year. Once the presence of highly infectious *Vibrio cholerae* is detected in a water sample, FEHD will close the premise concerned on health hazard grounds under the authority conferred by section 128C of the Public Health and Municipal Services Ordinance (Cap. 132).

Quality Seawater Assurance Scheme

8. A voluntary Quality Seawater Assurance Scheme was launched in January 2006 to enhance the quality of seawater supplied by seawater suppliers, to assist seafood traders to have better control of the quality of their fish tank water for compliance with the legal standards and to help inform the public about the quality of the fish tank water of seafood restaurants and sales outlets. Under the Scheme, seawater suppliers who comply with the accreditation criteria can be accredited as "Accredited Quality Seawater Suppliers". They are not allowed to abstract seawater from areas which show a high level of *E. coli*. Seafood restaurants/sales outlets which acquire seawater from Accredited Quality Seawater Suppliers or prepare their own synthetic seawater using marine salt and tap water are eligible to apply for accreditation as "Quality Seawater Logo Holders".

Past discussions

9. The Administration briefed the Panel on 20 January 2009 on the proposal to amend Cap. 132X to prohibit abstraction of seawater from the following specified areas which showed a consistently high level of *E. coli* -

- (a) the Victoria Harbour;
- (b) the 14 typhoon shelters specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548E);
- (c) areas along the shoreline of Hong Kong Island (including Ap Lei Chau); and
- (d) areas along the western shoreline of the New Territories (including Tsing Yi).

Major views expressed by members and the Administration's responses are set out in the ensuing paragraphs.

10. Members noted that some seafood traders at the Lei Yue Mun (LYM) area expressed different views on the demarcation of the proposed prohibited areas. They claimed that the water quality of the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter where they usually obtained seawater for keeping their seafood was satisfactory and should be excluded from the proposed prohibited areas.

11. The Administration advised that according to the data collected by the Environmental Protection Department (EPD) on marine water quality in Hong Kong, a consistently high level of *E. coli* was detected in areas close to LYM in recent years. In response to the claims made by some seafood traders in LYM area that the water quality of the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter was satisfactory and should be excluded from the proposed prohibition areas, FEHD engaged a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme to ascertain the water quality of that coastal strip in accordance with the general protocol for marine water testing adopted by EPD in September 2008. Laboratory findings were that the average *E. coli* content of seven of the 10 locations tested ranged from 629 to 990 per 100 ml and exceeded the statutory limit for fish tank water, which was "*E. coli* less than 610 per 100 ml and absence of pathogenic organisms". The *E. coli* counts at the remaining three locations ranged from 529 to 552 per 100 ml and were close to the statutory limit. On this basis, the Administration maintained the view that the proposed prohibition areas should remain unchanged.

12. On whether the locations where the seafood traders at LYM area extracted their seawater from were covered in the marine water testing conducted by EPD and by an accredited laboratory in September 2008, the Administration pointed out that seafood traders at LYM area generally obtained

seawater along the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter, whereas the locations which EPD and the accredited laboratory collected samples for marine water testing were further away from the coastline. If the *E. coli* count of water testing samples taken further away from the coastline was high, logically the count could only be higher for water extracted along the coastal strip as the latter location was closer to possible sources of pollution such as sewage outlets.

13. Hon Andrew CHENG was of the view that the demarcation of the proposed prohibition areas should extend to the areas along the shoreline of Yau Tong where the maximum values of *E. coli* ranged from 181 to 610 per 100 ml. The Administration explained that areas along the shoreline of Yau Tong were not included in the proposed prohibited areas for abstraction of seawater because the maximum level of *E. coli* thereat did not exceed the statutory limit and there were very few seafood restaurants or sales outlets in Yau Tong.

14. Some members were of the view that imposing a maximum fine of \$10,000 and imprisonment for three months for extracting seawater from specified areas was too lenient and should be increased. The Administration advised that the proposed penalty level was the same as that for contravening the existing section 10A on the control of water quality for keeping live fish or shell fish intended for human consumption. Nevertheless, the Administration agreed to consider members' suggestion.

Relevant papers

15. Members are invited to access the Legislative Council website (<http://www.legco.gov.hk>) for details of relevant papers and minutes of the meeting.

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