

**For discussion
on 20 January 2009**

LegCo Panel on Food Safety and Environmental Hygiene

**Amendments to the Food Business Regulation
to prohibit extraction of seawater from specified areas
for keeping live seafood**

PURPOSE

This paper briefs Members on the plan to amend the Food Business Regulation (Cap. 132X) (FBR) to prohibit extraction of seawater from specified areas for keeping live fish or shell fish for sale for human consumption.

BACKGROUND

Legislative Control

2. Section 10A of the FBR stipulates 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 (DFEH) by notice published in the Gazette, which is “*E. coli* less than 610 per 100 ml and absence of pathogenic organisms”. Anyone in breach of the provision is liable to a maximum fine of \$10,000 and imprisonment for three months upon conviction. The level of fine is in line with most other provisions under the FBR concerning the hygienic operation of food businesses.

Administrative Requirements and Conditions

3. At present, there are about 1 780 food premises and public market stalls with licence or permit for selling live seafood. They are required by licensing requirements / conditions or market tenancy conditions to install and maintain proper filtration and disinfection facilities.

Inspections and Water Sampling Programme

4. Since 2004, the Food and Environmental Hygiene Department (FEHD) takes fish tank water samples from food premises and market stalls selling live fish or shell fish for *E. coli* testing once every eight weeks. In case the *E. coli* count exceeds the 180 per 100 ml (known as the “action level”), FEHD will provide hygiene advice to the operators on matters such as proper maintenance of the filtration and disinfection facilities. Further fish tank water samples will then be taken for tests until the quality of the fish tank water becomes satisfactory again. This mechanism provides an early alert to enable timely remedy by operators before fish tank water quality deteriorates below the statutory standard. From 2006 to 2008, of 26 763 samples tested, 350 were found to contain *E. coli* count exceeding the action level, and seven premises were prosecuted for failing to meet the statutory standard of *E. coli* count of less than 610 per 100 ml.

5. In addition, given the highly infectious nature of pathogenic *Vibrio cholerae*, and its immediate threat to human health if found in fish tank water of food business premises, FEHD has stepped up its surveillance of fish tank water for *Vibrio cholerae* testing in recent years. At least one separate sample is taken from each premises for *Vibrio cholerae* testing between May and September every year. In case highly infectious *Vibrio cholerae* is detected in a water

sample, DFEH may exercise power under section 128C of the Public Health and Municipal Services Ordinance (Cap. 132) to close the premises concerned in order to remove an immediate health hazard to the public. From 2006 to 2008, three food premises, including one fresh provision shop and two market stalls, were closed because of the presence of highly infectious *Vibrio cholerae* in fish tank water samples.

Limitations of the Existing Regime

6. Despite the statutory and administrative controls, from time to time, fish tank water is found to contain *E. coli* count exceeding the statutory limit or even *Vibrio cholerae*. These incidents have raised concern over the adequacy of the existing regulatory regime. To further enhance protection for public health, especially against the highly infectious *Vibrio cholerae*, we propose to introduce legislative amendments to control the source of fish tank water.

THE PROPOSAL

7. We propose to introduce new provisions to the FBR to prohibit the extraction, use, supply and delivery of seawater from certain prohibited areas with consistently unsatisfactory water quality for keeping live fish or shell fish intended for sale for human consumption. We are mindful that an operator may be genuinely unaware of the source of the seawater supplied or delivered to him, the operator will only be held responsible if it can be proved that he knows or has reason to believe that such seawater is extracted from a prohibited area but continues to use it for keeping live fish or shell fish in the course of food business. Our proposed provisions would make it an offence for any person -

- (a) to extract seawater from a prohibited area, in the course of any food business, to keep any live fish or shell fish that is intended to be sold for human consumption;
- (b) to use, for the purpose of keeping such live fish or shell fish in the course of any food business, seawater knowing or having reason to believe that it is extracted from a prohibited area;
- (c) to extract seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, such live fish or shell fish; or
- (d) to supply, deliver or cause to be delivered to another person seawater knowing or having reason to believe that it is extracted from a prohibited area and it is to be used for the purpose of keeping, in the course of any food business, such live fish or shell fish.

8. With reference to marine water quality data collected by the Environmental Protection Department (EPD) over the past years, we propose to demarcate areas with a consistently high level of *E. coli* as prohibited areas. More specifically, they include -

- (a) the Victoria Harbour;
- (b) all 14 typhoon shelters specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548E);
- (c) areas along the shoreline¹ of Hong Kong Island (including Ap Lei Chau);
and
- (d) areas along the western shoreline of the New Territories (including Tsing

¹ Areas along the shoreline include areas that are (a) between the high water level and low water level of the shoreline and (b) within 50 metres seaward from the low water level of the shoreline.

Yi).

9. Violations may attract a maximum penalty identical to that for contravening section 10A, i.e. a fine of \$10,000 and imprisonment for three months. The proposed prohibited areas are represented on the maps at **Annex A**. The relevant marine water quality data are at **Annexes B** and **C**.

ADDRESSING THE CONCERNS OF THE TRADE

Quality Seawater Assurance Scheme

10. Since January 2006, the Hong Kong Productivity Council has been engaged in implementing a voluntary Quality Seawater Assurance Scheme (QSAS) to enhance the quality of fish tank water, minimise the risk of contamination, and assist operators to have better control of the quality of such water.

11. Under QSAS, various operators in the seafood trade can apply for different types of accreditation status. Seawater suppliers may apply to become Accredited Quality Seawater Suppliers (AQSS) if the seawater they supply is either extracted from clean sources, or is made up of marine salt and tap water. At present, there are a total of 17 accredited AQSSs, including the outlets of Fish Marketing Organisation at Aberdeen, Cheung Sha Wan and Kwun Tong, which supply seawater extracted from clean sources at \$27 per tonne. Seafood restaurants or sales outlets that utilise seawater supplied by AQSS or prepare their own synthetic seawater using marine salts and tap water may apply to become a Quality Seawater Logo Holder. AQSSs are also eligible to apply and post the Quality Seawater Logo on their premises. At present, there are about

224 of them. Supply of quality fish tank water should not be a constraint upon the implementation of the proposal.

Alternatives considered

12. Despite the promotion and smooth implementation of QSAS, we consider that to further deal with the problem of the quality of seawater supplied for keeping live fish or shell fish for sale for human consumption, the most effective means is to control the supply of seawater through amending the FBR, as we propose in this paper, to prohibit extraction of seawater from specified areas for keeping live seafood. We have explored other options such as centralising seawater supply, designating seawater abstraction spots for seawater suppliers, and regulating or licensing seawater suppliers and trucks used for delivery of seawater. These options are not considered effective or feasible because they are not financially viable, or they carry significant resource implications or enforcement difficulties.

Extensive consultation with the trade and other stakeholders

13. We have conducted two rounds of consultation with representatives of seawater suppliers and food businesses selling live fish or shell fish. Although the majority supported the proposal, some seafood traders at the Lei Yue Mun area expressed different views about 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 was satisfactory and should therefore be excluded from the proposed prohibited areas. Subsequently, FEHD engaged a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme (HOKLAS) to ascertain the water quality of that coastal strip in accordance with the general protocol for marine water testing adopted by

EPD. Laboratory findings were that the average *E. coli* content of most of the locations tested exceeded the statutory limit for fish tank water. The *E. coli* counts at the remaining locations were found close to the statutory limit. On this basis, we remain of the view that the proposed prohibited areas mentioned in paragraph 8 should remain unchanged.

14 Apart from the food trade, the Administration also arranged a number of district consultation fora and invited members of the District Councils and Area Committees to express their views. They supported the proposal.

Education and enforcement

15. With the QSAS in operation, and the food businesses selling live fish or shell fish are already aware of the proposal, time is ripe for introducing legislative amendments. To step up education and enforcement, FEHD will issue advisory letters and distribute publicity materials to the trade before and after enactment of the legislative amendments to remind them of the new provisions. Signs will be erected at extraction black spots to warn against illegal seawater extraction. Surveillance and surprise checks will be conducted and enforcement actions taken on detection of offences.

NEXT STEP

16. Subject to any comments Members may have on the proposal, we intend to proceed with the preparation of the necessary legislative amendments for tabling at the Legislative Council in the first half of 2009.

ADVICE SOUGHT

17. Members are invited to note the progress made and comment on the proposed way forward.

**Food and Health Bureau
Food and Environmental Hygiene Department
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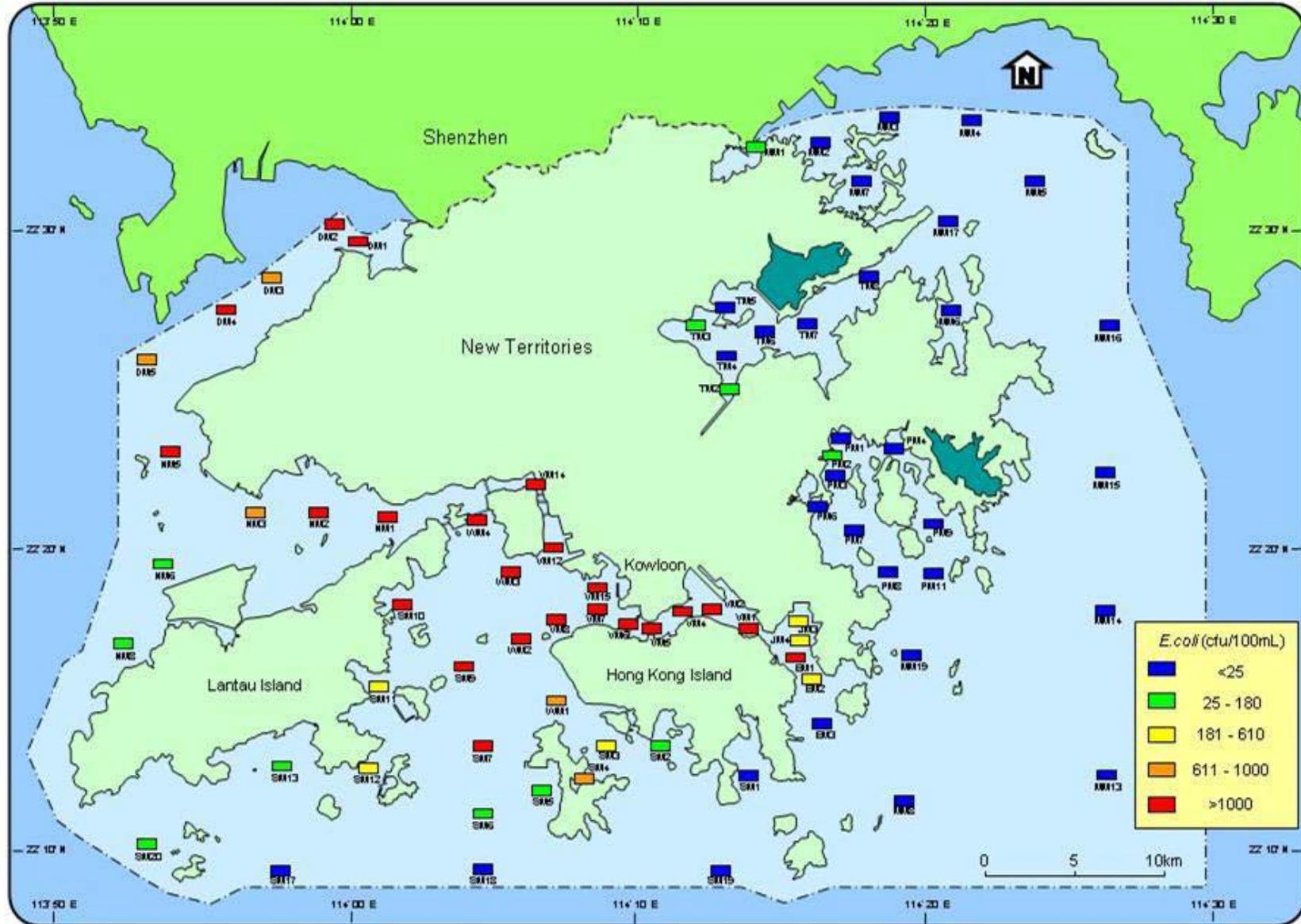
Proposed areas where extraction of seawater for keeping live seafood are prohibited



Proposed areas where extraction of seawater for keeping live seafood are prohibited
(Victoria Harbour)



Maximum values of *E.coli* at different marine monitoring stations in Hong Kong in 2008



Water Quality Statistics of Typhoon Shelters in 2008

Typhoon Shelters	Maximum Level of <i>E. coli</i> (cfu/100ml)
	2008
Tuen Mun	12,000
Cheung Chau	270
Hei Ling Chau	28
Aberdeen (South)	1,200
Aberdeen (West)	5,600
Rambler Channel	7,200
Yau Ma Tei	33,000
Causeway Bay	49,000
To Kwa Wan	1,600
Kwun Tong	5,000
Sam Ka Tsuen	1,800
Aldrich Bay (Shau Kei Wan)	2,000
Yim Tin Tsai	1
Shuen Wan	63