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Paper for the House Committee meeting on 13 May 2011

**Report of the Subcommittee on Fisheries Protection
(Specification of Apparatus) (Amendment) Notice 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011.

Background

2. The Chief Executive announced in the 2010-2011 Policy Address on 13 October 2010 the Administration's plan to ban trawling in Hong Kong waters through introducing legislation into the Legislative Council in the 2010-2011 session. To address the livelihood problems faced by the affected fishermen, the Administration would launch a voluntary trawler buyout scheme for eligible trawler fishermen ("the Scheme"). The Scheme includes -

- (a) payment of an ex-gratia allowance ("EGA") to trawler owners affected for permanent loss of fishing grounds arising from the proposed trawl ban;
- (b) introducing a voluntary buyout scheme to purchase the trawler vessels from the affected owners; and
- (c) payment of one-off grants to assist the affected local deckhands employed by trawler vessel owners joining the buyout scheme.

Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 ("Amendment Notice")

3. The Fisheries Protection Regulations (Cap. 171 sub. leg. A) prohibit destructive fishing activities, which include the use of explosive, toxic substance, electricity, dredging and suction devices for fishing. Regulation 4A prohibits the use for the purpose of fishing any apparatus of a class or description specified by the Director of Agriculture, Fisheries and Conservation ("DAFC") in the Schedule to the Fisheries Protection (Specification of Apparatus) Notice (Cap. 171 sub. leg. B). To take forward the trawl ban initiative, DAFC specified trawling devices as an item in the Schedule by notice published in the Gazette on 25 March 2011. The Amendment Notice will come into operation on 31 December 2012.

The Subcommittee

4. At the House Committee meeting on 1 April 2011, Members formed a subcommittee to study the Amendment Notice. The membership list of the Subcommittee is in the **Appendix**.

5. Under the chairmanship of Hon TAM Yiu-chung, the Subcommittee has held two meetings with the Administration.

6. To allow more time for the Subcommittee to study the Amendment Notice, the scrutiny period of the Amendment Notice has been extended from 13 April 2011 to the Council meeting of 18 May 2011 by a resolution of the Council.

Deliberations of the Subcommittee

Need for the trawl ban in Hong Kong waters

7. According to the Administration, Hong Kong waters are important fish spawning and nursery grounds, supporting a wide diversity of fishes, crustaceans, mollusks, corals and other marine species. However, the non-selective nature of trawling operations capturing fish of all sizes particularly in inshore waters, irrespective of their commercial and ecological value, and its damaging effect to the seabed, are detrimental to the marine ecosystems. Over the years, these operations have led to a continuous decline in the quantity, species diversity and size of marine organisms and deterioration of the marine environment.

8. Set up by the Government in December 2006 to study the long term goals, the direction and the feasible options for the sustainable development of the local fisheries industry, the Committee on Sustainable Fisheries ("the Committee") has recommended, inter alia, a ban on trawling activities in Hong Kong waters in its final report submitted to the Government in April 2010.

9. In the view of the Administration, the proposed trawl ban would bring the harmful depletion to an immediate halt and enable the marine ecosystems to be gradually rehabilitated to an ecologically sustainable level. The cessation of trawling activities in Hong Kong waters would substantially reduce the fishing effort in local waters and fish catch therein. Slow-growing fish and species of high value would be allowed to grow and reproduce in Hong Kong waters, thus effectively restructuring the local fishing industry into a more sustainable one. The ban on trawling activities in local waters would improve the quantity and quality of fish catch in Hong Kong waters in the long run. Besides, a ban on trawling activities in inshore waters is a common fisheries management practice worldwide.

10. Some members, including Hon WONG Yung-kan and Hon Mrs Regina IP, consider that the decline in fisheries resources and the deterioration of marine environment are closely associated with the developments in Hong Kong, Macao and Pearl River Delta. The development projects have adversely affected the marine environment in the vicinity of these places. Members have enquired whether the development projects would take into account the impact on marine environment. According to the Administration, the potential impacts of marine works projects on marine environment would be adequately assessed and addressed in accordance with the requirements under the Environmental Impact Assessment Ordinance (Cap. 499).

11. Concern has been raised as to whether consideration will be given to allowing trawler fishermen to continue trawling in some designated areas in Hong Kong waters during specified periods.

12. The Administration has responded that it will be difficult to delineate a designated area for trawling given the already small area of Hong Kong waters. Besides, partial ban is not feasible and will frustrate the objectives of the trawl ban initiative in conserving marine environment and fisheries resources.

13. There is a call for the Administration to regulate the mesh size of fishing nets for the conservation of fisheries resources. The Administration has explained that with the trawl ban in Hong Kong waters, the need for regulating

mesh size of fishing nets would be substantially reduced. If it is deemed necessary to regulate mesh size of other fishing nets in future, this could be addressed in the context of the legislative proposals on other fisheries management measures which the Administration is working on, including the designation of fisheries protection areas ("FPAs") to protect fish fry, juvenile and spawning fish from unregulated fishing in important spawning and nursery grounds. Under the legislative proposals, the Government may make regulations to provide for the control and management of FPAs. This may include considering whether or not to impose requirements on mesh size of fishing nets that can be used in FPAs.

Details of the Scheme

14. Members are generally concerned about the impact of the Amendment Notice on the livelihood of trawler fishermen and other related trades. Concerns have been raised over the details of the Scheme.

Proposed ex-gratia allowance to affected trawler fishermen

15. Members are particularly concerned about the principles adopted for calculating the amount of EGA, the eligibility criteria for EGA and whether local trawler fishermen operating in Mainland waters will be eligible. Members have queried whether the Administration intends to make reference to the existing formula for calculating EGA payable to fishermen affected by marine works projects in determining the EGA payment. Under the existing formula, EGA for fishermen affected by marine works projects resulting in permanent loss of fishing grounds in Hong Kong waters is the notional value of seven years' fish catch in the affected area derived from the Port Survey conducted by the Agriculture, Fisheries and Conservation Department ("AFCD") in 1989-1991. Members have pointed out the views of the fisheries trade that the EGA payment should be raised to the notional value of 15 years' fish catch in the affected area. The related trades (e.g. fish collectors, ice supply and vessel repair) have also requested the grant of EGA as they would also be impacted by the trawl ban.

16. The Administration has informed members that the eligibility criteria for EGA are to be determined by an inter-departmental working group ("the Working Group") established for the trawl ban exercise before the commencement of the registration for EGA claims. Only applicants who can meet the criteria are eligible for EGA. The criteria would include the following -

- (a) the applicant must be the owner of a trawler vessel which is used for fishing only and not engaged in other commercial activities as at 13 October 2010, and at the time of application is still the owner of that trawler;
- (b) the applicant must be the holder of a valid certificate of ownership and operating licence of a Class III vessel issued by the Marine Department under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) in respect of the trawler vessel on or before 13 October 2010; or has obtained an approval-in-principle letter for construction of a Class III vessel issued by the Marine Department on or before 13 October 2010, and submit a document proving that the vessel under construction is a trawler vessel;
- (c) the trawler vessel in the application must wholly or partly fish within Hong Kong waters;
- (d) the applicant must provide the trawler vessel and fishing gear for inspection during registration;
- (e) the particulars of qualified coxswain and engineer operator of the vessel must be provided for registration; and
- (f) other criteria as determined by the Working Group.

17. According to the Administration, there are about 1 130 trawler vessels of different types in Hong Kong (580 pair trawlers, 160 stern trawlers, 350 shrimp trawlers and 40 hang trawlers) and of which about 400 inshore trawlers operate wholly or partly in local waters. For these inshore trawlers, their owners are most affected as they will lose their fishing grounds in Hong Kong waters. During its consultation with the fisheries trade, the Administration has noted the view of owners of inshore trawlers that the amount of EGA derived from the existing formula for calculating EGA for fishermen affected by marine works projects is inadequate to address the plight of local fishermen affected by the trawl ban. Unlike past marine works projects which affected localized areas of Hong Kong waters only, the trawl ban will cover the entire Hong Kong waters. The affected fishermen will have to travel further afield, if they wish, to continue fishing. When they fish in Mainland waters, they will be subject to more stringent management measures. The impact on fishermen arising from the trawl ban will therefore be more significant than that of marine works projects.

18. Members note that having considered the above factors and upon further discussions with the fisheries sector, the Administration proposes to raise the multiplier of the EGA formula from seven years to 11 years' notional fish catch value in calculating EGA for inshore trawler owners affected by the trawl ban. The total amount of EGA derived from the enhanced formula will be fully disbursed to, and apportioned amongst, the successful applicants in accordance with the decisions of the Working Group. The EGA payable to individual trawler owners will depend on the number of successful applications as well as other apportionment criteria such as vessel type, vessel length, engine power, equipment on board, the percentage of time spent on trawling, and/or production in Hong Kong waters. The estimated ranges of EGA payable to different types to inshore trawlers may vary from about \$900,000 to about \$5.5 million per vessel.

19. Apart from the most affected inshore trawlers, the Administration estimates that about 700 larger trawlers generally do not operate in Hong Kong waters. Owners of these larger trawlers are concerned that after the trawl ban, they would lose the option to trawl in Hong Kong waters during the annual moratorium in the South China Sea, when their vessels age to the extent that they are not fit for deep sea fishing further afield, and if the Mainland authorities impose more stringent fisheries management measures in the South China Sea in future, forcing them to return to Hong Kong waters for operations. Given that these larger trawlers would lose the opportunity to move back to Hong Kong for trawling in future, the Administration considers that their demand for EGA as reflected during the consultation should also be addressed. However, as the impact of the trawl ban on them is far much less when compared with inshore trawlers, a lump sum EGA is considered to be appropriate. In deciding on the amount of the lump sum, the Administration has taken into account the need to maintain relativity with inshore trawlers which will be directly affected. The Administration proposes that a lump sum EGA of \$150,000 be given in respect of each larger trawler if the relevant application is successful, and the total amount of EGA involved is about one year's notional fish catch value.

20. Some members are concerned that owners of the larger trawlers may have strong views on the amount of lump sum EGA to be payable to them. Hon WONG Yung-kan has requested the Administration to consider raising the total amount of EGA to, say, two years' notional fish catch value. The Administration considers the proposed EGA fair and reasonable having regard to the fact that there is no immediate impact on these larger trawler owners. The Administration maintains its view that there are no strong justifications for increasing the lump sum EGA.

21. Members note that a Fishermen Claims Appeal Board, comprising non-official members, will be set up where necessary for processing appeal cases by the aggrieved applicants to ensure that the Working Group's decisions relating to EGA comply with Government policy. The aggregate total EGA payable to inshore trawlers and larger trawlers together with contingency is estimated to be about \$1,400 million, with breakdown as follows -

- (a) EGA payable to inshore trawlers is about \$1,190 million;
- (b) EGA payable to larger trawlers is about \$110 million; and
- (c) contingency for meeting expenses mainly arising from appeals allowed by the Fishermen Claims Appeal Board is about \$100 million.

22. As regards the call for EGA payable to the related trades (e.g. fish collectors, ice supply and vessel repair), the Administration considers that there are insufficient justifications in support of their requests, mainly because the remaining fishing vessels will continue to generate ancillary service requirements on these trades. The impact of the trawl ban on them is not considered to be significant. As a result of the trawl ban, the Administration expects that there would be increased activities of fish collectors as some trawlers which at present operate mainly in Hong Kong waters may travel further afield to operate in the South China Sea and therefore will need the services of fish collectors and ice suppliers to transport the fish catches back to Hong Kong and keep them fresh. Vessels operating further afield may also require increased repair and maintenance service. Should the fish collectors require funding for equipping their vessels for change of mode of operations, they could apply to the Fisheries Development Loan Fund ("the Fund") for low-interest loans.

23. Some members, including Hon WONG Yung-kan and Hon Tommy CHEUNG, are of the view that some form of compensation or EGA should be given to the related trades (e.g. fish collectors) to help them modify their vessels or equipments to cater for the change of business model. Hon Tommy CHEUNG does not consider the Administration's explanation justifiable. He has indicated that Members belonging to the Liberal Party would have objection to the Amendment Notice if the parties affected do not find the Scheme package acceptable. Under the circumstances, he may consider moving a motion to amend the Amendment Notice.

Voluntary buying out of trawlers

24. Members note the Administration's proposal to invite EGA claimants to indicate in their EGA applications whether they would surrender their trawler vessels to the Government. The buyout scheme would be voluntary. Owners of trawlers can decide in the light of their own circumstances whether they would surrender their vessels to the Government or make their own arrangements to sell their vessels in the market. Members have expressed concern about the buyout price of trawler vessels to be offered by the Government and the disposal of the vessels surrendered.

25. According to the Administration, the buyout price of an individual vessel to be offered by the Government will be the estimated current value to be determined by the Working Group and will vary according to the type, length, age and equipment/gear of the trawler vessels. The Working Group will also make reference to the valuation provided by an independent marine surveyor as necessary in determining the buyout price. The Administration estimates that the buyout prices would range from about \$130,000 for an old, small wooden-hull stern/shrimp trawler, about \$1.1 million for a medium-size stern/shrimp trawler in the middle of its serviceable life, to about \$3.5 million for a newer, large hang trawler. It is estimated that about \$240 million would be required for the voluntary buying out of some 400 trawlers. The trawler vessels surrendered will be retained and/or scrapped by the Government to ensure that fishing effort is removed from Hong Kong waters, and they will not be resold to the Mainland. As part of the fisheries management measures, AFCD will consider using some of the surrendered vessels as artificial reefs, which are conducive to enhancing the rehabilitation of the fisheries resources in Hong Kong waters. Furthermore, if suitable vessels can be identified, AFCD plans, in collaboration with non-governmental organizations and fishermen organizations, to convert some vessels for pilot recreational fisheries programmes.

One-off grants to local deckhands

26. Concerns have been raised over the eligibility criteria for and the amount of the one-off grants, and the provision of assistance to affected local deckhands to find employment.

27. The Administration has advised members that the actual eligibility criteria are subject to the deliberations of the Working Group. The preliminary thinking is that the applicant must be a local deckhand and must, at the time of application, provide evidence proving that he/she has already been employed to work as at

13 October 2010 on the trawler vessel successfully joining the buyout scheme, and has remained working on the trawler vessel until the owner of the trawler vessel has submitted an application under the buyout scheme. The applicant must make a declaration on his/her employment and submit a declaration from his/her employer confirming his/her employment record. The applicant should as far as practicable provide documentary evidence (e.g. Mandatory Provident Fund records, employment contracts, salary payment records, etc.) to support his/her claim in his/her employment on the trawler vessel. AFCD will also try to obtain other evidence for verifying eligibility, where necessary. Family deckhands meeting the criteria will also be eligible. Drawing reference to the 2008 buyout scheme for the poultry trade, the Administration proposes to offer a one-off grant of \$34,000 to each eligible local deckhand, which is equivalent to about three months of the average salary of a worker. The Administration estimates that about 1 000 local deckhands will be eligible for the one-off grants, and an estimate of about \$34 million would be required for the purpose.

28. On whether the one-off grant could be raised to more than three months' salary of a worker, the Administration considers the proposed amount appropriate after drawing reference to the buyout scheme for the poultry trade in 2008. Moreover, the trawl ban was announced in October 2010 and is scheduled to take effect on 31 December 2012. The local deckhand would have more than two years from the announcement of the trawl ban initiative to prepare themselves and seek employment. AFCD and the Employees Retraining Board will organize suitable training programmes to assist them to switch to fisheries related or other employment.

Funding required

29. According to the Administration's estimation, the Scheme together with other measures would involve \$1,726.8 million. The financial involvement comprises -

- (a) about \$1,400 million for payment of EGA to the affected trawler fishermen in view of the permanent loss of fishing grounds;
- (b) about \$240 million for the voluntary buying out of some 400 trawlers;
- (c) about \$34 million for providing one-off grants to some 1 000 local deckhands employed by the trawler fishermen who take part in the voluntary buyout scheme; and

- (d) about \$52.8 million for implementing measures conducive to marine conservation and replenishment of fisheries resources as well as providing a special training programme for the affected trawler fishermen and local deckhands.

Other assistance to trawler fishermen

Training

30. Members call upon the Administration to provide adequate support to the affected trawler fishermen for switching to other sustainable fisheries operations. According to the Administration, to help fishermen gain practical experience in other sustainable operations, since 2010, AFCD has been providing free training courses on eco-tourism, aquaculture and other fisheries related operations during the fishing moratorium of the South China Sea to fishermen. Over 130 fishermen have attended these training courses. AFCD has also launched, in collaboration with local fishermen and the private sector, a pilot scheme of fisheries eco-tourism in Sai Kung, the north-eastern New Territories and the southern part of Hong Kong Island to help fishermen venture into eco-tourism. The scheme provides marine-based guided tours which cover the culture and practices of fisherman communities as well as the ecological and geological features of Hong Kong. So far, over 70 fishermen have been trained in the pilot scheme.

31. Upon the implementation of the trawl ban, the Administration expects that not all fishermen will leave the trade for good. A special training programme for trawler fishermen will be introduced to equip them (both the vessel owners and the local deckhands) with the skills and knowledge for switching to other sustainable fisheries related operations.

Fisheries Development Loan Fund

32. Members note that affected fishermen may apply to the Fund, a government loan fund with a fund capital of \$290 million, for low-interest loans for switching to sustainable fisheries operations using selective fishing methods and other fisheries related operations. Some members, including Hon WONG Yung-kan and Hon WONG Kwok-hing, have asked the Administration to consider offering interest-free loans to affected fishermen. Hon WONG Yung-kan has also suggested that part of the loan could be interest-free.

33. The Administration takes the view that it is difficult to justify the provision of interest-free loans to fishermen, and consideration is being given to lowering the interest rate to between 1% and 2%. Nevertheless, the Administration is

reviewing the mechanism and terms of loans and eligibility of the applicants to better cope with fishermen's needs for developing or switching to sustainable fisheries and related operations.

34. Hon WONG Kwok-hing maintains his view that interest-free loans should be offered to demonstrate the Administration's support to the affected fishermen for switching to sustainable fisheries operations.

35. Members have pointed out the trades' concern about the collateral for loans granted under the Fund. The Administration has informed members that not only fishing vessels but also other alternatives with resale value would be accepted as collateral against the loan.

Marine fish culture zones

36. At present, there are 26 designated marine fish culture zones in Hong Kong and a licence is required for mariculture operation in one of the zones. Some members, including Hon WONG Yung-kan, Hon CHEUNG Hok-ming and Hon Albert CHAN, have called upon the Administration to actively consider expanding the designated zones to facilitate the switching of trawler fishermen to mariculture operations.

37. The Administration has explained that since 1987, the Government has introduced a moratorium on the issue of new licences to reduce the possible impact of mariculture on the marine environment. Advances in mariculture techniques in recent years, e.g. the use of pellet feed, have significantly reduced such possible impact. AFCD has been following up with relevant Bureaux and Departments in reviewing the moratorium on the issue of new marine fish culture licences, and studying the expansion and rotation of fish culture zones to facilitate trawler fishermen to switch to mariculture.

Fishing in Mainland waters

38. Members have urged the Administration to provide support to local fishermen for developing business opportunities in the Mainland. Members have been advised that the Permanent Secretary for Food and Health (Food) conducted a duty visit to the Mainland in April 2011 to reflect Hong Kong fishermen's views on developing capture fisheries in Mainland waters and exchange views with the relevant Mainland authorities on ways to enhance liaison and co-operation on fisheries development between the two places. Opportunity was taken to brief the Mainland officials that to protect marine resources and ecology, the Administration has proposed legislation to ban non-selective trawling operations

in Hong Kong waters from further damaging the seabed and adversely affecting the marine resources. It is noted that most Hong Kong trawlers have already obtained fishing permits issued by the Mainland authorities for operating in Mainland waters. The Administration also reflected to the Mainland authorities local fishermen's views, in the hope that the authorities could possibly offer assistance to Hong Kong fishermen and let them continue their fishing operations in Mainland waters.

39. At the request of the Subcommittee, the Administration has agreed to reflect to the Mainland authorities members' views that the use of destructive fishing devices by Mainland fishermen should not be allowed.

Illegal fishing in Hong Kong waters

40. Another concern of members is the enforcement action against illegal fishing by non-local fishing vessels in Hong Kong waters. Members call upon the Administration to strengthen law enforcement to protect the interests of local fishermen.

41. According to the Administration, the Marine Police has continuously taken action against non-local fishing vessels involved in fishing activities in Hong Kong waters. If any person who is not authorized to enter Hong Kong is found onboard any vessel (including non-local vessel), the Marine Police will refuse entry of such vessel or arrest the person concerned in accordance with the Immigration Ordinance (Cap. 115). Apart from taking enforcement operations on its own, the Marine Police conducts joint operations with AFCD where necessary. The Administration will take forward the legislative proposal of prohibiting fishing activities with the use or aid of non-local fishing vessels. To cope with this, AFCD will consider how to further strengthen its enforcement in terms of manpower and equipment. The Marine Police will also assist AFCD to enforce the law after the new legislation takes effect. In addition to enhancing communication and co-operation with AFCD and the Mainland authorities, the Marine Police will maintain close liaison with the local fishing industry and community to collect information on illegal fishing activities for the planning of enforcement operations. It will also continue to adopt the "Versatile Maritime Policing Response" operational strategy to combat illegal activities at sea.

Other complementary measures

42. There are concerns over whether complementary measures will be implemented for conservation and restoration of marine resources. To bring the fishing industry back to a sustainable path, the Subcommittee notes the

Administration's plan to take forward measures recommended by the Committee to control fishing effort in Hong Kong waters. These measures include -

- (a) setting up a registration system for local vessels engaging fishing in Hong Kong waters;
- (b) limiting the entry of new fishing vessels and maintaining an appropriate level of fishing effort;
- (c) prohibiting fishing activities with the use or aid of non-local fishing vessels and restricting fishing activities with the use or aid of non-fishing vessels; and
- (d) designating FPAs to protect fish fry, juvenile and spawning fish from unregulated fish in important spawning and nursery grounds.

Proposed amendments

43. The Subcommittee will not propose amendments to the Amendment Notice.

44. Hon Tommy CHEUNG has indicated that Members belonging to the Liberal Party would have objection to the Amendment Notice if the parties affected do not find the Scheme package acceptable. Under the circumstances, he may consider moving a motion to amend the Amendment Notice (paragraph 23 above refers).

Advice sought

45. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Fisheries Protection (Specification of Apparatus)
(Amendment) Notice 2011**

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon Fred LI Wah-ming, SBS, JP
Hon WONG Yung-kan, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Albert CHAN Wai-yip

(Total : 13 Members)

Clerk Mrs Sharon TONG

Legal Adviser Ms Clara TAM

Date 13 April 2011