

立法會
Legislative Council

LC Paper No. CB(2)2135/11-12
(These minutes have been
seen by the Administration)

Ref : CB2/BC/1/11

Bills Committee on Fisheries Protection (Amendment) Bill 2011

Minutes of the fifth meeting
held on Thursday, 15 March 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHAN Hak-kan
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip

Members absent : Hon WONG Yung-kan, SBS, JP
Hon Vincent FANG Kang, SBS, JP

Public Officers attending : Item I

Ms Kitty CHOI, JP
Deputy Secretary for Food and Health (Food) 1
Food and Health Bureau

Miss Diane WONG Shuk-han
Principal Assistant Secretary for Food and Health (Food) 2
Food and Health Bureau

Dr SO Ping-man
Assistant Director (Fisheries)
Agriculture, Fisheries and Conservation Department

Mr Mickey LAI Kin-ming
Senior Fisheries Officer (Management)
Agriculture, Fisheries and Conservation Department

Mr SUEN Wai-chung
Senior Assistant Law Draftsman (Professional Development)
Department of Justice

Ms Carmen CHAN Ka-man
Government Counsel
Department of Justice

Clerk in Attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in Attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Candice LAM
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with the Administration

[The Bill, LC Paper Nos. CB(2)628/11-12(02) and CB(2)1278/11-12(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members noted the Administration's responses to issues raised by members at the meeting held on 22 February 2012. Members also noted that the Administration would propose an amendment to the Chinese definition of "impoundment" under clause 4 of the Bill and remove the punctuation "、" in the Chinese text of proposed section 6(2).

3. The Bills Committee continued the clause-by-clause examination of

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the Bill from clause 11 onwards.

4. The Administration was requested to consider the following concerns raised by members -

- (a) whether the deployment of cage traps, in particular rabbitfish traps, for recreational fishing should be permitted for the purpose of the Bill;
- (b) the Administration should further consult the fishing communities, particularly those in remote areas like Cheung Chau and Ping Chau, as to whether they had occasionally engaged in fishing activities using non-fishing vessels, and if so, the impact of the Bill on such activities; and
- (c) the Administration would consider improving the drafting of the Chinese text of the proposed section 16(1) for better comprehension.

II. Any other business

5. Members noted that the next meeting had been scheduled for 27 March 2012.

6. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
23 May 2012

**Proceedings of the fifth meeting of the
Bills Committee on Fisheries Protection (Amendment) Bill 2011
on Thursday, 15 March 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000312 - 000504	Chairman	Opening remarks.	
000505 - 000805	Administration	<p>The Administration's response to issues raised by members at the meeting held on 22 February 2012 [LC Paper No. CB(2) 1278/11-12(01)].</p> <p>Members noted that the Administration would propose an amendment to the Chinese definition of "impoundment" under clause 4 of the Bill and remove the punctuation "、" in the Chinese text of the proposed section 6(2).</p>	Admin
000806 - 001250	Chairman Mr Albert CHAN Administration	<p><u>Continuation of clause-by-clause examination of the Bill</u></p> <p>In response to Mr Albert CHAN's enquiry about the consistency of the Chinese and English text of the proposed section 6(2), the Administration clarified that the proposed amendment sought to improve the drafting of the English text to bring it in line with modern English usage.</p> <p>Clause 11 - Section 7 amended (seizure and forfeiture of things used for the commission of offences)</p> <hr/> <p>Members raised no question on clause 11.</p>	
001251 - 002739	Chairman Mr Albert CHAN Administration	<p><u>Clause 12 - Sections 7A, 7B and 7C added</u></p> <p><u>New section 7A</u></p> <p>Mr Albert CHAN's concern about the enforcement of the Bill if police officer was not within the meaning of "authorized officer".</p> <p>The Administration's clarification -</p> <p>(a) the Bill sought to prohibit fishing with the use or aid of non-local fishing vessels;</p> <p>(b) the Agriculture, Fisheries and Conservation Department ("AFCD") took the leading role in combating illegal fishing activities prohibited under the Fisheries Protection Ordinance (Cap. 171) with the assistance from the Marine Police. AFCD and Marine Police would continue to conduct joint operations where required;</p>	

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		<p>(c) Marine Police was empowered under the Police Force Ordinance (Cap. 232) to take enforcement actions. The entry of Mainlanders into Hong Kong waters without entry permits would be in breach of the Immigration Ordinance (Cap. 115); and</p> <p>(d) Marine Police had all along undertaken enforcement actions to combat illegal fishing activities in Hong Kong waters, either during joint operations with AFCD or when this came to its attention in the Police's own operations. As requested by members at previous meetings, the enforcement statistics for anti-illegal fishing operations by AFCD and Marine Police were set out in LC Paper No. CB(2) 976/11-12(01).</p>	
002740 - 002920	Chairman	<p><u>New section 7B</u></p> <p>Members raised no question on the new section 7B.</p>	
002921 - 003055	Chairman Mr Albert CHAN Administration	<p><u>New section 7C</u></p> <p>In response to Mr Albert CHAN's enquiry, the Administration advised that a fine at level 5 ranged from \$25,000 to \$50,000.</p>	
003056 - 003130	Chairman	<p><u>Clauses 13 and 14</u></p> <p>Members raised no question on clauses 13 and 14.</p>	
003130 - 004654	Chairman Mr Albert CHAN Administration	<p><u>Clause 15 - Parts 4 to 10 added</u></p> <p><u>Proposed section 11</u></p> <p>Concerns raised by Mr Albert CHAN -</p> <p>(a) whether vessels which were not licensed under the Merchant Shipping (Local Vessel) Ordinance (Cap. 548) and were occasionally engaged in fishing activities, for instance in remote areas of Cheung Chau and Peng Chau, would be permitted to use non-fishing vessels for ad hoc fishing activities after the commencement of the Bill; and</p> <p>(b) whether fish collectors or transportation sampans carrying passengers would be eligible for registration for the purpose of the Bill.</p> <p>The Administration's response -</p> <p>(a) the Bill aimed to, among others, allow registration of all local fishing vessels,</p>	

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		<p>including P4 sampans, in respect of which there were valid operating licences issued by the Marine Department ("MD"), if they were used primarily for fishing in Hong Kong waters;</p> <p>(b) fishing activities with the use or aid of vessels other than non-local fishing vessels specified in Schedule 2 to the Bill would be permitted;</p> <p>(c) AFCD had conducted over 40 consultation sessions with the fisheries industry on the legislative proposals, and no concern was raised by fishermen about using non-fishing vessels or unlicensed vessels to engage small scale fishing activities. AFCD would seek further information from fishermen on Cheung Chau and Peng Chau on the concerns raised by Mr CHAN and revert to the Bills Committee.</p>	Admin
004655 - 011525	<p>Chairman Mr TAM Yiu-chung Administration Mr Albert CHAN ALA10</p>	<p><u>Proposed section 12</u></p> <p>In response to Mr TAM Yiu-chung, the Administration advised that a breach of the proposed section 12(a) would constitute a strict liability offence, whereas the onus of proof for contravening the proposed section 12(b) would be on the prosecution.</p> <p>Concerns raised by Mr Albert CHAN -</p> <p>(a) whether using inflatable boats for fishing activities would be permitted under the proposed section 12; and</p> <p>(b) whether using cage traps, especially rabbitfish traps, by the public in recreational fishing were permitted under Schedule 2; and</p> <p>(c) the Administration should consider including recreational fishing in the list of permitted fishing activities for the purpose of Schedule 2 or regulating recreational fishing by introducing a permit system.</p> <p>The Administration's advice -</p> <p>(a) fishing activities with the use or aid of an unregistered vessel, except those stipulated under Schedule 2 with the use or aid of vessels other than non-local fishing vessels, would be prohibited in Hong Kong waters;</p> <p>(b) cage trap was within the meaning of fishing gear for the purpose of the Bill; and</p>	

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		<p>(c) it would be difficult to differentiate the intention of fishing activities i.e. recreational or commercial purpose. The Bill sought to strike a balance between regulating fishing activities which depleted fisheries resources and minimising the impact on recreational fishing.</p> <p>The Chairman suggested the Administration to consider members' concerns about whether the deployment of cage traps for recreational fishing should be permitted under the Bill by, say, stipulating the number and size of cage traps for the purpose of permitted fishing activities under Schedule 2.</p> <p>ALA's advice on the considerations to be taken into account in proposing definitions of recreational and commercial fishing from the technical and drafting perspectives.</p>	Admin
011526 - 012015	Chairman	<p><u>Proposed sections 13 and 14</u></p> <p>Members raised no question on the proposed sections 13 and 14.</p>	
012016 - 012806	Chairman Mr Albert CHAN Administration	<p><u>Proposed section 15</u></p> <p>Mr Albert CHAN's concern whether P4 sampans with exceeded engine power would become illegal after the commencement of the Bill, if so, the estimated of number of such vessels.</p> <p>The Administration's advice -</p> <p>(a) the conversion of P4 sampans to fishing sampans of higher engine power was possible and the requirement was stipulated in Cap. 548, and owners of existing P4 vessels who had a genuine need to upgrade their vessels might apply to Marine Department for an Approval-in-Principle ("AIP") letter in respect of their proposals to convert their vessels well before the commencement of the Bill;</p> <p>(b) owners of P4 sampans who had obtained an AIP letter issued by MD in respect of their applications for conversion of their vessels to fishing sampans with higher engine power before the commencement of the Bill could apply for registration under the proposed section 14(1)(b). In other words, where P4 sampan owners had successfully applied for the AIP letter could have an extra 12 months to complete their vessel conversion;</p>	

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		<p>(c) fishermen and relevant organisations were consulted on the conversion arrangements and registration procedures; and</p> <p>(d) MD had assured that the applications for AIP letters would be processed in time, and AFCD would offer assistance to fishermen in preparing their applications as appropriate.</p>	
012807 - 013400	Chairman ALA10 Administration	<p><u>Proposed section 16(1)</u></p> <p>In response to ALA's enquiry, the Administration advised that the phrase "on the vessel" in the proposed section 16(1)(c) sought to qualify both "fishing methods" and "fishing gear".</p> <p>In response to ALA's further enquiry on the consistency between the Chinese text and English text of the proposed section 16(1), ALA would liaise with the Administration on the amendments to the Chinese text of the proposed section 16(1) for better comprehension.</p>	ALA & Admin
013401 - 014709	Chairman ALA10 Administration Mr Albert CHAN	<p><u>Proposed section 16(2)</u></p> <p>Mr Albert CHAN's enquiry about the rationale for proposing new section 16(2).</p> <p>The Administration's response -</p> <p>(a) the proposed section 16(2) sought to put it beyond doubts that conditions regulating fishing to be imposed by DAFC would not be inconsistent with the provision of the Amendment Ordinance; and</p> <p>(b) FPAs to be designated under the Bill would be promulgated by means of subsidiary legislation, and DAFC would notify individual fishing vessel owners of the conditions regulating fishing referred to in section 16(1) by administrative arrangements.</p> <p>ALA's advice that -</p> <p>(a) designation of FPAs would be promulgated by notice published in the Gazette which would be subject to the negative vetting procedure of LegCo; and</p> <p>(b) DAFC was empowered under the Bill to impose specific conditions for individual registered local fishing vessels that the Director thought fit.</p>	

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014710 - 015108	Chairman	<u>Proposed sections 17 to 19</u> Members raised no question on the proposed sections 17 to 19.	
015109 - 015340	Chairman Dr Joseph LEE Administration	<u>Proposed section 20</u> In response to Dr Joseph LEE's enquiry, the Administration explained that the term "days" in the proposed section 20(2) meant calendar days.	
015341 - 015843	Chairman	<u>Clause 15 - Part 5 Sections 21 to 24</u> Members raised no question on the proposed sections 21 to 24.	
<i>Agenda item II – Any other business</i>			
015844 - 015850	Chairman	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
23 May 2012