

Bills Committee on Fisheries Protection (Amendment) Bill 2011

**Follow-up on Matters arising from the Bills Committee Meeting
on 20 December 2011**

Purpose

This paper sets out our responses to the issues raised by Members at the Bills Committee meeting on 20 December 2011. These are –

- (a) applicability of Schedule 2 to the Fisheries Protection (Amendment) Bill 2011 (the Amendment Bill);
- (b) consideration on the arrangements for the transfer of engine power of local fishing vessels under the registration system; and
- (c) whether regulation of leisure fishing along the harbor promenade would be covered by the Amendment Bill, as its long title refers to “the regulation of fishing within the waters of Hong Kong”.

(a) Applicability of Schedule 2 to the Amendment Bill

2. The new Section 11(1) of the Amendment Bill provides that—

“No person may be engaged in fishing with the use or aid of a vessel in any area of the waters of Hong Kong, other than in a fish pond or reservoir, unless—

- (a) the vessel is a registered vessel or an ancillary vessel of a registered vessel, and the fishing does not contravene section 15 and is in accordance with any conditions imposed under section 16;
- (b) the person is so engaged under and in accordance with a valid research fishing permit and section 28 is not contravened; or

(c) the vessel is—

- (i) a vessel in respect of which there is a valid operating licence; or
- (ii) a vessel that is neither designed nor equipped to be used primarily for fishing,

and the fishing is an activity specified in Schedule 2.”

3. Schedule 2 to the Amendment Bill specifies the following as fishing activities permitted with the use or aid of vessels other than non-local fishing vessels—

- “1. Fishing by means of a line (without any branch line) with one or more hooks or jigs operated by hand.
- 2. Fishing without the use or aid of any fishing gear.
- 3. Fishing, whether with or without the use or aid of hand nets, spear guns or hooks, during diving supported by self contained underwater breathing apparatus but not by the supply of compressed air to the diver through a hose from a support vessel for the diver to breathe in and out through a regulator.”

4. As such, fishing activities specified in Schedule 2 to the Amendment Bill are allowed, if it is carried out with the use or aid of any vessel **other than a non-local fishing vessel**, even if the vessel is not registered under the Amendment Bill.

5. The table below summarises the applicability of Schedule 2 to the Amendment Bill to the various types of vessels.

<i>Local fishing vessels</i>	<i>Non-local fishing vessels</i>
● Schedule 2 applicable.	● Schedule 2 <u>not</u> applicable.
<i>Local non-fishing vessels</i>	<i>Non-local non-fishing vessels</i>
● Schedule 2 applicable	● Schedule 2 applicable.

- Note: (a) Local vessels are those in respect of which there is a valid operating licence; and
- (b) Fishing vessels are those designed and equipped to be used primarily for fishing.

(b) Consideration on the arrangements for the transfer of engine power of local fishing vessels under the registration system

6. The new section 19(1) of the Amendment Bill provides that –
- “the Director may register a local fishing vessel under section 14 in respect of which there is a valid operating licence on application by the owner of the vessel under this section if the application is supported by –
- (a) a notice given by a certificate holder in relation to a vessel the registration of which has been cancelled within 2 years before the application by virtue of section 22(1)(a) or a notice received under section 22(1)(b); or
- (b) a notice given by the certificate holder in relation to a registered vessel to cancel the registration of the registered vessel.”
7. Subsection (3) stipulates that “the engine power of the local fishing vessel referred to in subsection (1) must not be greater than –
- (a) the engine power of the vessel the registration of which has been cancelled; or

- (b) (if the application is supported by 2 notices) the total engine power of the 2 vessels the registration of which has been cancelled.”

8. The engine power of a registered vessel can be transferred to another vessel under the registration system provided that the engine power of that vessel is not greater than that of the original registered vessel (or the total engine power of the two original registered vessels if supported by two notices of cancellation) as stipulated in section 19 (3) of the Amendment Bill.

(c) Clarification on the Long Title of the Amendment Bill whether leisure fishing along the promenade falls within the scope of Cap. 171

9. The long title of the Amendment Bill is to –

“amend the Fisheries Protection Ordinance to provide for the registration of local fishing vessels, the regulation of fishing within the waters of Hong Kong, the designation of fisheries protection areas and appointment of an authority to manage and control fishing in those areas and for incidental and connected matters.”

10. While it is possible that taken independently “fishing” may mean any form of fishing activity, whether commercial or leisure, but when determining the scope of the Amendment Bill, it would be necessary to consider the term “fishing” in the long title of the Amendment Bill in the context of the LegCo Brief, the substantive provisions of the Amendment Bill, and its Explanatory Memorandum and other relevant information. Members may note that various parts of the LegCo Brief, the substantive provisions of the Amendment Bill, and its Explanatory Memorandum show that the main purpose of the Amendment Bill is to restrict commercial fishing carried out with the use or aid of vessels. It does not include leisure fishing along the harbour promenade without the use or aid of vessels. As the Administration stated in the previous meeting of the Bills Committee, the policy intent of the Amendment Bill does not seek to regulate leisure fishing along the harbour promenade.

Advice Sought

11. Members are invited to note the Administration's responses to the issues raised at the last meeting.

Food and Health Bureau
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