

Bills Committee on Fisheries Protection (Amendment) Bill 2011

**Follow-up on Matters arising from the Bills Committee Meeting
on 20 January 2012**

Purpose

This paper sets out the Administration's responses to the issues raised by Members and the deputations at the Bills Committee meeting on 20 January 2012. These are –

- (a) the designation and management of fisheries protection areas (FPAs);
- (b) the registration of existing trawler vessels;
- (c) conversion of outboard open sampans to fishing sampans of higher engine power; and
- (d) enforcement against illegal fishing activities.

(a) Designation and management of FPAs

2. Certain areas in Hong Kong waters are important fish spawning and nursery grounds. It is the Administration's intention to designate such areas as FPAs so as to protect fish fry, juvenile and spawning fish, help restore fisheries resources in Hong Kong waters, and promote sustainable fisheries development in the long run. For these purposes, fishing, if allowed, would be limited in various forms within FPAs.

3. The purpose of the Fisheries Protection (Amendment) Bill 2011 (the Amendment Bill) is to provide for, among others, "the designation of fisheries protection areas and appointment of an authority to manage and control fishing in those areas". The new section 4A of the Amendment Bill provides that —

“The Secretary may, by order published in the Gazette —

- (a) designate any area of the waters of Hong Kong to be a fisheries protection area to promote the conservation and management of marine and fisheries resources; and
- (b) appoint a person to be the Authority for the purposes of this Ordinance.”

Under the new section 2, the Secretary means the Secretary for Food and Health (SFH).

4. The new section 4B(1) provides for the management and control of fishing in FPAs as follows:

“The Authority may make rules for the management and control of fishing in any fisheries protection area, including but not limited to the specification of any zone within any fisheries protection area and the prohibition of any fishing in the specified zone.”

5. In gist, the Amendment Bill proposes to empower SFH to designate by order published in the Gazette any area of the waters to be an FPA, and appoint a person to be the Authority for the purposes of this Ordinance. The Authority may make rules for the management and control of fishing in any FPA. The orders and rules are pieces of subsidiary legislation subject to negative vetting of the Legislative Council (LegCo).

6. The proposed FPAs which we have in mind at this stage are the “Tolo Channel and Long Harbour” and the “Port Shelter”. These are important fish spawning and nursery grounds in Hong Kong waters. The designation of such areas and the size of such FPAs will be decided after consultation with the trade. We will seek to strike a balance between conservation on the one hand and ensuring the continued operation of fishermen on the other. Depending on the speed of recovery of our marine environment after the trawl ban, there is a possibility that more spawning and nursery areas may be identified and

designated as FPAs in future.

7. What kind of management measures are to be devised for an FPA and their duration will depend on the characteristics of the area. A tailored approach will be adopted, with thorough consultation with the trade. Fisheries management measures being contemplated for the FPAs may include the following —

- (a) restricting or prohibiting the use of specified fishing methods and gear;
- (b) restricting the capture of species of certain size;
- (c) designation of “no-take” zone in FPAs (such as in areas where deployment of artificial reefs and restocking will be carried out); and
- (d) implementation of “closed season” to protect spawning fish and fry from fishing during certain periods of a year.

We expect the area of the “no-take” zone to be only around 10% to 15% of the whole FPA area.

8. The Agriculture, Fisheries and Conservation Department (AFCD) will conduct detailed research before proposing locations for designation as FPAs and corresponding fisheries management measures. AFCD will consult the relevant bureaux/departments, the fishing community and other stakeholders on the proposals. Where “no-take zones” are to be designated within FPAs, the area will also be clearly identified. We will take into account views collected in the consultation before finalising the proposals and introducing the subsidiary legislation into LegCo for negative vetting.

(b) Registration of existing trawler vessels

9. LegCo passed the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 on 18 May 2011 to ban trawling in

Hong Kong waters with effect from 31 December 2012. The purpose of the registration of local vessels as provided in section 14 of the Amendment Bill is to ensure that only registered local vessels are allowed to fish in Hong Kong waters. It is meant to complement the legislation on trawl ban. Hence, it is provided in section 21(3) of the Amendment Bill that the Director of Agriculture, Fisheries and Conservation (DAFC) must not register a vessel unless he is satisfied that trawling with the use or aid of the vessel is unlikely. It would be inconsistent if we ban trawling on the one hand under the Fisheries Protection Ordinance (Cap. 171) (the Ordinance), and then register such vessels which carry out such operations which are prohibited under the Amendment Bill to the same Ordinance.

10. While it is not our policy intention to register trawler vessels as such, we are mindful that trawler owners might choose to continue with their trawler operations outside Hong Kong waters for some time before coming back to pursue their fishing business using non-trawling fishing methods, and that they would require more time than their counterparts using other fishing modes in coming forward for registration. Therefore, we are prepared to allow them a longer period for registration and DAFC will be issuing such trawler owners with a “certificate of eligibility for registration”.

11. To cater for the special situation of the trawlers, the new section 21 of the Amendment Bill provides that

“(1)An application under this section for registration under section 14 –

- (a) may only be made by the owner of a local fishing vessel in respect of which there is a valid operating licence; and
- (b) must be accompanied by a certificate of eligibility for registration.

(2)An application under this section must be made in accordance with such terms and time limit (if any) as may be specified in the certificate of eligibility for registration.

Certificate of eligibility for registration means a certificate of eligibility for registration issued by the Director in relation to a trawler.”

The section provides for an enabling provision to allow a trawler owner an option of registering a non-trawler by modifying his/her existing trawler or by acquiring a new vessel, on condition that the engine power of the non-trawler is no higher than the trawler to be replaced.

12. We consider the special arrangements provided under the new section 21 would meet the need of trawler owners’ when they choose to return to Hong Kong waters to operate non-trawling fishing business in the future. While the Amendment Bill allows these owners to exercise the registration option beyond the 12-month period, we consider that the period should not be indefinite for it would not be desirable from both the legislation and policy points of view to enact a legal provision when one has no idea on the applicability to a major group of stakeholders. With such open-ended eligibility for registration, it will render the policy objective of limiting the number of fishing vessels and the total engine power of these vessels impossible to be achieved. That would defeat the key purpose of the Amendment Bill. Upon the enactment of this enabling legislation, we will work out the detailed arrangements after consultation with the trade.

(c) Conversion of outboard open sampans to fishing sampans of higher engine power

13. Outboard open sampans (commonly referred in the trade as P4 sampans) are small multi-purposes vessels commonly used by mariculturists and inshore fishermen. They are licensed as Class III type (d) vessels under the Merchant Shipping (Local Vessels) (Certification and Licensing Regulation (Cap. 548D). At the Bills Committee meeting on 20 January, some deputations said that many P4 sampan owners have started to upgrade their vessels which are currently with their engine power not exceeding 12 kW to a fishing sampan with higher engine power not exceeding 67 kW. They were concerned that there might not be sufficient time before the lapse of the specified period for their

successful conversion and licensing with the Marine Department (MD) and wondered whether more time would be allowed for registration or whether the Administration could “reserve” the anticipated increase in engine power even if they have yet to complete the physical conversion.

14. We understand that in the last few years (since the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) came into force in 2007), the upgrading of P4 sampans by their owners was ongoing. We welcome owners of existing P4 sampans who have a genuine need to upgrade their vessels to fishing sampans with higher engine power, subject to the requirements of Cap. 548, before the commencement date of the Amendment Bill.

15. Section 14(1)(b) of the Amendment Bill provides that –

“The Director may, on application –

(b) by the owner of a local fishing vessel –

(i) acquired or constructed after the commencement date pursuant to an Approval-in-Principle Letter issued by the Director of Marine to acquire or construct a fishing vessel which was valid on the commencement date; and

(ii) in respect of which there is a valid operating licence; or

register the vessel for the purposes of this Ordinance and issue a certificate of registration to the applicant”.

The Approval-in-Principle (AIP) Letter referred to above applies to P4 sampan owners seeking conversion of their vessels to fishing sampans with higher engine power. According to MD, the validity of an AIP Letter is normally one year. In other words, where P4 sampan owners have successfully applied for the AIP Letter would have an extra 12 months to complete their vessel conversion. Supported by an AIP Letter issued by MD which is valid on the commencement date, the newly converted vessels will be eligible for registration (if they can meet other registration requirements of the Amendment Bill such as possession of

valid operating licence issued by MD). We will monitor the situation and liaise with MD to facilitate relevant applications for AIP Letter before the commencement date to convert to a fishing sampan.

(d) Enforcement against illegal fishing activities

16. Destructive fishing activities, for example those involving the use of explosive, toxic substances, electricity, dredging and suction devices, are detrimental to fisheries and the marine ecosystems and prohibited under the Ordinance. AFCD takes the leading role in combating illegal fishing activities with the assistance from the Marine Police.

17. The Marine Police has long maintained close liaison with AFCD and MD, and has undertaken enforcement actions either independently or during joint operations to combat illegal fishing activities. The Marine Police patrols the waters of Hong Kong 24 hours a day and implemented a Versatile Maritime Policing Response (VMPR), which employs Central Command System (CCS) and Digital Radar Security System (DRSS) to monitor the waters of Hong Kong. Marine Region police launches are able to be deployed effectively and efficiently to intercept any vessels suspected to be engaged in illegal activities, including illegal fishing within waters of Hong Kong.

18. The figures for enforcement actions against illegal fishing between 2009 and 2011 are in Annex I.

19. The Amendment Bill proposes to prohibit all fishing with the use or aid of non-local fishing vessels with a view to protecting our marine environment from illegal fishing operations with such vessels. It provides specific legal backup for combating any illegal fishing activities by non-local fishing vessels. AFCD and Marine Police will continue to conduct joint operations where required.

Advice Sought

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

**Food and Health Bureau
February 2012**

Enforcement Statistics for Anti-illegal Fishing Operations**(A) By AFCD**

	No. of operations against illegal fishing activities under Cap. 171	No. of joint operation with Marine Police	No. of prosecution made under Cap. 171
2009	1321	23	11
2010	1466	11	7
2011	1475	35	14

(B) By the Marine Police

	No. of Incident	No. of Vessel Intercepted	No. of Arrest
2009	101	101 (53 urchin collection / 6 clam dredging / 42 fishing)	311 Mainland Illegal Immigrants (MII) (164 urchin collection / 35 clam dredging / 112 fishing)
2010	141	141 (53 urchin collection / 7 clam dredging / 81 fishing)	460 MII (161 urchin collection / 43 clam dredging / 256 fishing)
2011	140	140 (32 urchin collection / 20 clam dredging /88 fishing)	474 MII (120 urchin collection / 115 clam dredging /239 fishing)