

立法會
Legislative Council

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**Discussion Note for the Bills Committee Meeting
on 27 March 2012**

**Committee Stage Amendments (CSA) proposed by the Administration on
Fisheries Protection (Amendment) Bill 2011**

Background

During the bills committee meeting of the Fisheries Protection (Amendment) Bill 2011 (the Bill) on 15 March 2012, Members' attention was drawn to the drafting aspects of section 16(1) of the Bill. The Administration and the Legal Service Division undertook to study the issue and come back with proposals on how to improve its drafting.

Administration's proposed CSA to the Chinese text of section 16(1)

2. Section 16(1) empowers the Director of the Agriculture, Fisheries and Conservation (the Director) to impose conditions on fishing that is carried out with the use or aid of registered vessels. The English text of the section reads –

"The Director may impose any conditions in accordance with which fishing with the use or aid of a registered vessel may be carried out as the Director thinks fit, including but not limited to

3. The Administration proposed the following CSA to the corresponding Chinese text of section 16(1) –

"任何人使用或借助任何已登記船隻而捕魚，可按照署長認為合適的條件進行，署長有權施加的該等條件包括(但不限於)....."

Observations on the proposed CSA

4. It appears that the legislative effect of the English text of the section is that once conditions are imposed by the Director, fishing which is carried out with the use or aid of a registered vessel **MUST** comply with those

conditions. However, it seems that the CSA proposed above states that such fishing MAY comply with those conditions.

5. In the English text of section 16(1), the focus is on the Director's power to impose conditions to regulate fishing. It is not necessary to refer to "任何人" in the Chinese rendition. Further, the proposed CSA also shifts the focus to the carrying out of fishing subject to the conditions imposed by the Director.

Option proposed by the Legal Service Division

6. To address the above concerns, we propose the following option for Members' consideration –

"凡使用或借助任何已登記船隻捕魚，署長可施加他認為合適的條件，使有關捕魚在符合有關條件下方可進行。該等條件包括(但不限於)....."

7. It is also noticed that the Chinese text of section 16(1)(c) expressly refers to fishing methods as being "在該船隻上採用的捕魚方法" whereas its corresponding English text may be read in such a way that only the fishing gear is referred to as being used on the vessel. The Administration may wish to clarify whether the English text may be read as "the fishing method that may be employed on the vessel" and the meaning of "在該船隻上採用的捕魚方法".

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