

LEGISLATIVE COUNCIL BRIEF

Fisheries Protection Ordinance (Chapter 171)

FISHERIES PROTECTION (AMENDMENT) BILL 2011

INTRODUCTION

At the meeting of the Executive Council on 4 October 2011, the Council ADVISED and the Chief Executive ORDERED that the Fisheries Protection (Amendment) Bill 2011 (the Amendment Bill), at **Annex A**, should be introduced into the Legislative Council.

JUSTIFICATIONS

The Issue

2. The fish catch and fishing effort have far exceeded the “maximum sustainable yield” and “optimal fishing effort” as assessed by experts. To bring the fisheries industry back to a sustainable path, the Administration has already imposed a ban on trawling in Hong Kong waters as a first step, but we need to follow through with amendments to the Fisheries Protection Ordinance (Cap. 171) to implement a series of complementary fisheries management measures to regulate fishing activities.

Proposed Fisheries Management Measures

3. The Committee on Sustainable Fisheries¹ (the Committee) was established in December 2006 to study the long term goals, the direction and feasible options for the sustainable development of the local fisheries industry.

¹ The Committee was chaired by the Director of Agriculture, Fisheries and Conservation, and members included members of the Legislative Council, fisheries industry representatives, scholars and experts in various professional areas, and representatives of related government authorities.

The Committee submitted the report for Government's consideration in April 2010, recommending a suite of fisheries management measures to control the fishing effort in Hong Kong waters and protect important fish spawning and nursery grounds. The key measures proposed by the Committee include –

- (a) limiting the entry of new fishing vessels and maintaining an appropriate level of fishing effort;
- (b) prohibiting fishing activities with the use or aid of non-local fishing vessels;
- (c) restricting fishing activities with the use or aid of non-fishing vessels; and
- (d) designation of fisheries protection areas (FPAs).

4. The Fisheries Protection Ordinance, with the long title “to promote the conservation of fish and other forms of aquatic life within the waters of Hong Kong and to regulate fishing practices and to prevent activities detrimental to the fishing industry”, is the appropriate piece of legislation to give effect to the proposed measures for promoting the sustainable development of the fisheries industry. As set out in the Committee's report, it should be our goal to help our fishermen maintain their livelihood and cope with changing operating environment, provide job opportunities for the fisheries community and ensure the supply of fresh and quality fisheries products to Hong Kong people. Our society will also benefit from a sustainable fisheries industry, as it will help restore our marine ecological environment to a state of abundant fisheries resources.

Salient Features of the Amendment Bill

5. It is our policy intention to pursue sustainable fisheries development in Hong Kong through limiting entry of new fishing vessels, designation of FPAs, restriction of fishing activities with the use or aid of non-fishing vessels and prohibition of fishing activities with the use or aid of non-local fishing vessels. The salient features of the Amendment Bill are summarised in the ensuing paragraphs.

(A) General

6. Under the Amendment Bill, no person may be engaged in fishing with the use or aid of a vessel in Hong Kong waters, unless –

- (a) the vessel is a registered vessel (see paragraph 8 below) and the fishing is either in accordance with conditions imposed in the registration or falls under the list of permitted fishing activities;
- (b) the person is so engaged under and in accordance with a valid research fishing permit; or
- (c) the fishing is one that falls under the list of permitted fishing with the use or aid of non-fishing vessels or local fishing vessels which have not been registered.

(B) Registration system for local fishing vessels

7. To limit the entry of new fishing vessels and to maintain an appropriate level of fishing effort in Hong Kong waters, we need to develop a registration system for local fishing vessels. Hong Kong has a long-developed fishing sector but unlike our counterparts in most other places, access to the fisheries resources in Hong Kong waters is open to all. Currently, fishing vessels are only required to hold a valid operating licence under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) issued by the Marine Department (MD). The above licence aims primarily at regulating vessels from the vessel safety and seaworthiness angle.

8. We propose to introduce a registration system, with the Director of Agriculture, Fisheries and Conservation (DAFC) as the authority for registration. The objective of the system is to regulate access of fishing vessels into Hong Kong waters for fishing purpose. The Amendment Bill will require owners of local fishing vessels to register their vessels, if they are to be used for fishing in Hong Kong waters. The registration will remain valid throughout the life span of the vessel and no renewal of registration will be required. Replacement of vessels will be allowed. DAFC will only register existing local fishing vessels which already possess a valid operating licence issued by MD on the commencement date of the Amendment Bill (commencement date). A vessel constructed or acquired after the commencement date will also be eligible for registration if its owner possesses an approval-in-principle letter issued by MD² that is valid on the commencement date and a valid operating licence can be produced at the time of application for registration.

² The applicant must, at the time of application for registration, be able to provide the constructed or acquired vessel to the DAFC for inspection.

9. For the purpose of processing an application for registration, the Amendment Bill will empower DAFC to obtain information on a vessel in relation to the application from MD direct, and inspect the vessel and fishing gear on board, as he considers necessary. For a successful application, a certificate of registration will be issued to the owner of the registered vessel. Details such as engine power, number of ancillary vessels and fishing method(s) of the registered vessel, period during and area(s) of the waters of Hong Kong in which fishing is allowed will be specified in the registration. The registered vessel will be required to operate in accordance with the conditions. The owner must not increase the engine power or number of ancillary vessels (if any) of the registered vessel. DAFC may, however, approve subsequent applications related to a registered vessel which will not lead to an increase in fishing effort in Hong Kong waters. Examples include change of ownership of a registered vessel and replacement of a registered vessel by a new one without any increase in engine power.

10. DAFC must refuse an application for registration if –

- (a) the applicant fails to produce a valid operating licence in respect of the vessel or produce the vessel for inspection; or
- (b) DAFC is not satisfied that –
 - (i) the vessel is designed and equipped to be used primarily for fishing; and
 - (ii) the vessel is likely to be used for fishing which will not contravene provisions of the Ordinance.

11. DAFC will keep a complete register of all registered vessels. The information concerning the registered vessels [e.g. certificate of ownership number, engine power, number of ancillary vessels and fishing method(s)] will be made available for public inspection at the headquarters of the Agriculture, Fisheries and Conservation Department (AFCD). The holder of the certificate of registration will be required to notify DAFC of any changes in the particulars in the registration after the change has occurred to ensure information in the register is up-to-date.

12. DAFC must cancel a registration on the request of the holder of the certificate of registration or if he is satisfied that –

- (a) the fishing vessel is dispatched permanently from Hong Kong or is lost or destroyed;
- (b) the operating licence of the vessel is cancelled; or
- (c) the vessel ceases to be one that is designed and equipped to be used primarily for fishing.

(C) Limiting New Entrants

13. To control the fishing effort so as to enable the marine environment to rehabilitate, we need to limit the number of fishing vessels and the total engine power of these vessels. Apart from existing local fishing vessels, we do not intend to allow any fishing vessels to enter the local fisheries industry. To this end, the Amendment Bill will stipulate that owners of existing local fishing vessels must apply for registration on or before the expiry of a period of 12 months from the commencement date of the Amendment Bill. All existing local fishing vessels referred to in paragraph 8 above will be eligible. DAFC will not entertain any applications for registration after the 12-month period, except as mentioned in paragraph 14 below.

14. There are about 1 100 existing trawlers, comprising some 700 larger trawlers and some 400 inshore trawlers. While we should not be registering any trawlers as trawling will be banned in Hong Kong waters with effect from 31 December 2012, we are mindful of the following which arise as a result of the trawl ban –

- (a) for larger trawlers, their owners (and descendants) would most likely continue with their trawler operations outside Hong Kong waters for some time as far as circumstances (sea-worthiness of the vessel as well as fish catch volume and value etc.) permit, even after the trawl ban takes effect on 31 December 2012. By the time they cannot sustain the ocean-going trawling operations anymore, they might choose to come back to Hong Kong waters to pursue their fishing business using non-trawling fishing methods. They consider it their right to get their vessels registered as they are existing fishing vessels and will object to being bound by the specified period referred to in paragraph 13 above on the ground that they are uncertain if they would revert to operate in Hong Kong waters in future, and if so, in what form; and

- (b) for inshore trawlers, their owners might require a bit more time after the trawl ban to try fishing outside Hong Kong waters before deciding whether or not to switch to other non-trawling fishing operations in Hong Kong waters and they will also object to being bound by the specified period for similar reasons as the larger trawlers. That said, given the higher amount of ex-gratia payment the inshore trawlers will receive which covers an incentive element to enable them to switch to alternative operating modes, we consider that they should not be allowed as long a period as the larger trawlers to exercise their registration option.

15. To cater for the special situation of the trawlers, the Amendment Bill will provide 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. We are prepared to allow these owners to exercise the option beyond the specified period. We will work out the detailed arrangements after consultation with the trade.

(D) Restriction of fishing with the use or aid of non-fishing vessels and prohibition of fishing with the use or aid of non-local fishing vessels

16. To further control the fishing effort in Hong Kong waters, the Amendment Bill will restrict fishing with the use or aid of non-fishing vessels (both local and non-local) and prohibit fishing with the use or aid of non-local fishing vessels. A fishing vessel is a vessel designed and equipped to be used primarily for fishing and a “local fishing vessel” is defined as any fishing vessel in respect of which an operating licence under the Merchant Shipping (Local Vessels) Ordinance has been issued (paragraph 7 above). Instead of an outright prohibition of fishing with the use or aid of non-fishing vessels, the Amendment Bill will allow fishing by specified fishing methods which will not adversely impact on the fisheries resources. Fishing by hand-lining or without any fishing gear with the use or aid of a non-fishing vessel (whether local or otherwise) will not be subject to the restriction. To cater for future changes, we propose to specify the above methods in a schedule, and DAFC will be empowered to amend the schedule by notice in the Gazette. All fishing with the use or aid of non-local fishing vessels will be prohibited on the ground that the fishing operation of such vessels would impact adversely on our marine environment. This is consistent with the practice in the Mainland, as well as economies with a well-developed fishing sector. The Amendment Bill will provide that DAFC may on application grant a research fishing permit, upon such conditions as he thinks fit, for fishing with the use or aid of a local fishing vessel for necessary

scientific, environmental monitoring or related purposes. These may include fishing surveys using trawling methods which will normally be banned after 31 December 2012.

(E) Fisheries Protection Area (FPAs)

17. We propose to designate certain areas in Hong Kong waters as FPAs to protect fish fry, juvenile and spawning fish in important spawning and nursery grounds, help restore fisheries resources in Hong Kong waters, and promote their sustainable growth in the long run. For these purposes, fishing, if any, would be limited in various forms in the FPAs. The Amendment Bill will provide that –

- (a) the Secretary for Food and Health may by order designate any area in Hong Kong waters as FPAs, and appoint a person to be the Authority for the management and control of fishing in any FPA; and
- (b) upon the designation of a FPA, the Authority may make rules for the management and control of fishing in any FPA, including but not limited to the specification of any zone within any FPA and the prohibition of any fishing in the specified zone.

18. In drawing up proposals for FPAs, the Food and Health Bureau and AFCD will consult concerned bureaux / departments, the fishing community and other stakeholders on the proposed locations and the fisheries management measures to be imposed. 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 known to both green groups as well as the engineering and construction sectors. The long title of the Amendment Bill clearly confines the role of the Authority in respect of FPAs to fishing matters only. Section 4B(1) explicitly states that management and control of fishing is the sole purpose of any relevant rules for FPAs to be made. Fisheries management measures which may be imposed for FPAs include –

- (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 (for example 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 and hence leisure and marine ecotourism activities will not be affected except that recreational fishing may not be allowed in the “no-take” zone.

19. The Amendment Bill will not impose any control on works projects or navigation of vessels in FPAs. The two proposed FPAs have no overlapping with the footprint of the known major works projects and major navigation channels. The designation of FPAs, the appointment of the Authority and the above management rules will be made by means of subsidiary legislation which will be subject to negative vetting by the Legislative Council.

(F) Others

Offences

20. Under the Amendment Bill, it is an offence for any person who is engaged in fishing in Hong Kong waters –

- (a) not in accordance with the conditions in the registration or research fishing permit or a fishing activity specified in the schedule with the use or aid of a registered vessel;
- (b) not in accordance with the research fishing permit or other than a fishing activity specified in the schedule with the use or aid of a local fishing vessel which has not been registered;
- (c) other than a fishing activity specified in the schedule with the use or aid of a non-fishing vessel; or
- (d) with the use or aid of a non-local fishing vessel.

The list of offences together with the penalty levels under the Amendment Bill is set out in **Annex B**.

Other powers

21. To ensure that DAFC or his authorised officer can carry out their

enforcement duties effectively, in particular, on board vessels in question, the Amendment Bill will provide DAFC or his authorised officer with the power to detain a vessel or person for inspection or inquiry in addition to those powers already provided under the existing Ordinance. DAFC or his authorised officer may arrest any person whom is reasonably suspected of having committed an offence under the Ordinance if it appears that service of a summons is impracticable.

Transitional period

22. The Amendment Bill will provide a transitional period of 12 months from the commencement date for existing local fishing vessels to register with DAFC. To cater for any pending applications for registration which may still be under processing by DAFC after the expiry of the transitional period, we propose to specify that the offence provision does not apply to any person who is engaged in fishing with the use or aid of an unregistered local fishing vessel in the intervening period between the expiry of the transitional period and the receipt of DAFC's decision on the application for registration, where the applicant has submitted an application for registration during the period and the application has not been refused or finally disposed of.

Appeals

23. Any person who is aggrieved by DAFC's decision may, within 21 days after the date of the notice of DAFC's decision, appeal to the Administrative Appeals Board (AAB) established under the Administrative Appeals Board Ordinance (Cap. 442). The Amendment Bill will provide that if an appeal is made to AAB against the decision of DAFC to cancel a registration or a research fishing permit or adding, removing or amending conditions of registration, DAFC as the registration authority may suspend the operation of his decision, pending determination of the appeal. A table showing DAFC's decisions that could be subject to appeal is set out in **Annex C**.

THE AMENDMENT BILL

24. The main provisions of the Amendment Bill are –

- (a) clause 4 amends the definition section of the Fisheries Protection Ordinance (principal Ordinance) to add certain definitions for the purpose of the registration system and amend the definition of “fishing” and “vessel”;

- (b) clause 7 enables the designation of FPAs and appointment of an Authority for the management and control of fishing in FPAs. The Authority is also empowered to make rules to manage and control fishing in FPAs;
- (c) clause 9 substitutes a new section 5 for the existing section to make better provision for search of places and seizure of items;
- (d) clause 12 adds new sections 7A and 7B to provide for powers to stop, search and arrest persons in connection with contraventions against the principal Ordinance. It also adds a new section 7C to provide for the offence of obstruction. Clause 11 amends section 7 to bring it in line with new section 7A;
- (e) clause 15 adds new Parts 4 to 10 (new sections 11 to 45) to the principal Ordinance;
- (f) new section 11 prohibits fishing with the use or aid of a vessel unless it is carried out in accordance with the provision, and new section 12 provides for liabilities of owners or persons in charge of vessels, etc. for contraventions with the use or aid of their vessels;
- (g) part 5 (new sections 13 to 24) introduces a registration system for local fishing vessels;
- (h) new section 13 requires DAFC to keep a register of local fishing vessels, and new section 14 provides for registration and application for registration;
- (i) new section 15 imposes a restriction on the engine power and number of ancillary vessels, and new sections 16 and 17 provide for conditions to be imposed in respect of the use of registered vessels for fishing and their alteration;
- (j) new section 18 provides for refusal of registration;
- (k) new sections 19 to 21 provide for change of ownership of vessels and registration of replacement vessels and former trawlers;
- (l) new sections 22 to 24 provide for cancellation of registration;

- (m) part 6 (new sections 25 to 29) makes provisions relating to research fishing permits;
- (n) new section 25 enables DAFC to issue and renew research fishing permits and new section 26 sets out the criteria for their issue and renewal. New section 28 requires that vessel particulars must be adhered to. New section 29 provides for the cancellation of research fishing permits;
- (o) part 7 (new sections 30 to 32) provides for matters relating to certificates of registration and research fishing permits and changes of particulars in the certificates or permits;
- (p) part 8 (new sections 33 and 34) allows aggrieved persons to appeal to AAB and provides for matters pending the determination of appeals;
- (q) part 9 (new sections 35 to 37) relates to information. New section 35 allows the supply of information to DAFC by the Director of Marine for purposes of the principal Ordinance. New section 36 provides for an offence of false statement or information. New section 37 enables DAFC to require information from persons;
- (r) part 10 contains certain miscellaneous provisions (new sections 38 to 45);
- (s) new section 38 prohibits unauthorised alteration to certificates of registration or research fishing permits;
- (t) new section 39 enables DAFC to determine forms to be used for purposes of the principal Ordinance. New section 40 sets out the fees payable under the principal Ordinance as amended;
- (u) new section 41 provides for the contents of certain notices to be sent under this Ordinance, and new section 42 provides for the sending of documents;
- (v) new section 43 provides for the resolution of conflicting provisions and new section 45 provides for a transitional arrangement of a grace period of one year for certain activities;

- (w) new section 44 enables DAFC to amend schedules 1 and 2 and the Secretary for Food and Health to amend the fees set out in schedule 3; and
- (x) clause 17 introduces new schedule 2 (exempting the application of new section 11 from certain fishing activities) and new schedule 3 (fees payable under the principal Ordinance as amended), and clauses 18, 19 and 20 provide for an amendment to the Fisheries Protection Regulations (Cap. 171A) and consequential amendments.

LEGISLATIVE TIMETABLE

25. The legislative timetable will be as follows –

Publication in the Gazette	21 October 2011
First reading and commencement of second reading debate in the Legislative Council	2 November 2011
Resumption of second reading debate, committee stage and third reading in the Legislative Council	to be notified

IMPLICATIONS OF THE PROPOSAL

26. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the principal Ordinance and its subsidiary legislation. The financial, civil service, economic, environmental and sustainability implications are set out at **Annex D**.

PUBLIC CONSULTATION

27. Since the announcement of the proposed fisheries management measures in October 2010, AFCD has consulted the Advisory Committee on Agriculture and Fisheries (including its Capture Fisheries Subcommittee and Aquaculture Subcommittee), the Fish Marketing Advisory Board, umbrella fishermen bodies, and fishermen representatives / individual fishermen in major home ports on the

proposed fisheries management measures among other initiatives. We also consulted the Legislative Council's Panel on Food Safety and Environmental Hygiene (Panel) on the proposed legislative amendments on 8 March 2011. The consultation programme showing the list of consultees with the dates of consultation sessions is at **Annex E**. The proposal was generally supported by the fisheries industry and the Panel members. The industry has on a number of occasions requested the Government to license their fishing vessels and to combat the activities of fishing vessels from the Mainland. They considered the proposal a right move to control fishing effort and protect the fisheries resources in Hong Kong waters. The industry urged the Government to step up enforcement so as to effectively combat any illegal fishing activities. Some fishermen requested the Government to provide details on the proposed FPAs, and adequately address any impact arising from the designation of FPAs.

PUBLICITY

28. A press release will be issued and a spokesperson will be available to answer media enquiries.

ENQUIRIES

29. Any enquiries on this brief may be addressed to Miss Diane Wong, Principal Assistant Secretary (Food) at 2973 8276.

Food and Health Bureau
12 October 2011

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A BILL

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.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Fisheries Protection (Amendment) Ordinance 2011.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Fisheries Protection Ordinance (Cap. 171)

3. Part 1 heading added

Before section 1—

Add

“Part 1

Preliminary”.

4. Section 2 amended (interpretation)

(1) Section 2, definition of *fishing*—

Repeal

“of fish”

Substitute

“or taking of fish, and any attempt to do so”.

(2) Section 2, definition of *toxic substance*—

Repeal

“the Schedule”

Substitute

“Schedule 1”.

(3) Section 2—

Repeal the definition of vessel

Substitute

“*vessel* (船隻) means any ship, junk, boat, dynamically supported craft, or any other description of vessel used in navigation.”.

- (4) Section 2, Chinese text, definition of **獲授權人員**—

Repeal the full stop

Substitute a semicolon.

- (5) Section 2—

Add in alphabetical order

“ancillary vessel (附屬船隻), in relation to a vessel registered under section 14, means a vessel that falls within the description of an ancillary vessel endorsed on the certificate of ownership of the vessel;

Authority (總監) means the person appointed by an order made under section 4A;

certificate holder (證明書持有人) means a person to whom a certificate of registration is issued under section 14;

certificate of ownership (擁有權證明書) has the meaning given by section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

certificate of registration (登記證明書) means a certificate issued under section 14;

commencement date (生效日期) means the date on which the Fisheries Protection (Amendment) Ordinance 2011 (of 2011) comes into operation;

fisheries protection area (漁業保護區) means an area of the waters of Hong Kong designated as a fisheries protection area by an order made under section 4A;

fishing gear (捕魚用具) means any equipment, apparatus, tool, instrument or device and its accessories utilized in fishing;

impoundment (圍塘) means an enclosure of an area of the waters of Hong Kong, by means of a net or other removable or permeable structure, that is used or designed for the purpose of fish culture;

local fishing vessel (本地漁船) means any fishing vessel in respect of which an operating licence has been issued;

operating licence (運作牌照) has the meaning given by section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

owner (船東) has the meaning given by section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

permit holder (許可證持有人) means a person to whom a research fishing permit has been issued or whose permit has been renewed;

register (登記冊) means the register kept under section 13;

registered vessel (已登記船隻) means a local fishing vessel registered under section 14;

research fishing permit (研究捕魚許可證) means a permit issued or renewed under section 25;

Secretary (局長) means the Secretary for Food and Health;”.

5. **Part 2 heading added**

Before section 3—

Add

“Part 2

Appointment and Powers of Officers and Making of Subsidiary Legislation”.

6. **Section 4 amended (regulations)**

Section 4(2), English text—

Repeal

“of the provisions of such regulations shall constitute”

Substitute

“provision of the regulations constitutes”.

7. Sections 4A and 4B added

After section 4—

Add

“4A. Orders

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.

4B. Management and control of fishing in fisheries protection areas

- (1) 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.
- (2) Any rules made under this section may provide that any contravention of any provision of the rules constitutes an offence and may prescribe penalties for the contravention not exceeding a fine of \$200,000 and imprisonment for 6 months.
- (3) A provision of a regulation made under section 4 is to prevail over any inconsistent provision of a rule made under this section.”.

8. Part 3 heading added

Before section 5—

Add

“Part 3

Search, Seizure, Arrest and Evidence”.

9. Section 5 substituted

Section 5—

Repeal the section

Substitute

“5. Power of search and seizure

- (1) If a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that—
 - (a) any vessel, raft or impoundment within the waters of Hong Kong; or
 - (b) any premises or place,

is being or has been used in connection with any offence under this Ordinance, the magistrate may issue a search warrant.
- (2) A search warrant issued under subsection (1) may authorize the Director or any fisheries inspector or authorized officer to—
 - (a) board and search the vessel or raft, or enter and search the impoundment, premises or place; and
 - (b) seize, remove and detain the raft or any thing which the Director, fisheries inspector or authorized officer reasonably suspects to be, or to contain, evidence of the commission of such an offence.
- (3) The Director or a fisheries inspector or authorized officer may exercise any of the powers referred to in

subsection (2) without a search warrant issued under this section if—

- (a) there are reasonable grounds for suspecting that any vessel, raft, impoundment, premises or place is being or has been used in connection with any offence under this Ordinance; and
- (b) it would not be reasonably practicable to obtain the search warrant in respect of the vessel, raft, impoundment, premises or place before exercising those powers.”.

10. Section 6 amended (forfeiture of things in respect of which offences are committed)

- (1) Section 6(2), after “any fish”—

Add

“or perishable thing”.

- (2) Section 6(2)—

Repeal

“such fish” (wherever appearing)

Substitute

“the fish or thing”.

11. Section 7 amended (seizure and forfeiture of things used for the commission of offences)

Section 7—

Repeal

“authorized officer, fisheries inspector or police officer”

Substitute

“fisheries inspector or authorized officer”.

12. Sections 7A, 7B and 7C added

After section 7—

Add

“7A. Stop and search without warrant

- (1) If the Director or a fisheries inspector or authorized officer has reasonable grounds for suspecting that a person has committed or is about to commit an offence under this Ordinance, the Director, fisheries inspector or authorized officer may, without a warrant and on production of proof of identity—
 - (a) stop the person or, if the person is on board a vessel or raft, stop and board the vessel or raft, for the purposes of requiring that person to produce for inspection—
 - (i) proof of his or her identity;
 - (ii) any certificate of registration issued in respect of the vessel (if the person is on board a vessel);
 - (iii) any research fishing permit issued for the activity which the person has carried out or is about to carry out or intends to carry out;
 - (b) detain the person for a reasonable period for inquires about the suspected commission of the offence; or
 - (c) detain the vessel or raft which the Director, fisheries inspector or authorized officer is empowered by this section to detain in order to board and search until it has been searched.
- (2) A person who without reasonable excuse—
 - (a) fails to give the person’s name and address or to produce the person’s proof of identity when required to do so under subsection (1);

- (b) gives a false or misleading name or address; or
 - (c) fails to produce the certificate of registration or research fishing permit on request,
- commits an offence and is liable on conviction to a fine at level 3.

7B. Arrest without warrant

- (1) If the Director or a fisheries inspector or authorized officer has reasonable grounds for suspecting that a person has committed an offence under this Ordinance and it appears that service of a summons is impracticable because of any reason set out in subsection (2), the Director, fisheries inspector or authorized officer may arrest the person without a warrant.
- (2) The reasons are—
 - (a) the name of the person is unknown to, and cannot readily be ascertained by, the Director, fisheries inspector or authorized officer;
 - (b) there are reasonable grounds for doubting whether a name given by the person as the person's name is the person's real name;
 - (c) the person has failed to give a satisfactory address for service; and
 - (d) there are reasonable grounds for doubting whether an address given by the person is a satisfactory address for service.
- (3) For the purposes of subsection (1), the Director, fisheries inspector or authorized officer may use all means necessary to effect the arrest.
- (4) If the Director or a fisheries inspector or authorized officer arrests a person under this section, the Director, fisheries inspector or authorized officer must as soon as possible take the person to the nearest police station or

hand the person over to the custody of a police officer to be dealt with in accordance with the Police Force Ordinance (Cap. 232).

7C. Obstruction, etc.

A person who without reasonable excuse—

- (a) obstructs the Director or a fisheries inspector or authorized officer in the exercise of any power or the performance of any duty or function conferred or imposed on the Director, fisheries inspector or authorized officer under this Ordinance; or
- (b) fails to comply with any instruction given under this Ordinance,

commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.”.

13. Section 8 amended (presumptions)

Section 8(1), Chinese text—

Repeal

“從事捕魚”

Substitute

“從事捕魚活動”.

14. Section 10 repealed (amendment of Schedule)

Section 10—

Repeal the section.

15. Parts 4 to 10 added

Before the Schedule—

Add

“Part 4**Control on Fishing****11. General control on fishing**

- (1) 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.
- (2) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

12. Liability of owner, certificate holder, master, coxswain, permit holder or other person in charge of vessel

If a contravention of section 11 has taken place with the use or aid of a vessel, each of the following persons also commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months—

- (a) the owner, certificate holder, master, coxswain, permit holder or other person in charge of the vessel if he or she was on board the vessel when the contravention was committed; and
- (b) the owner, certificate holder or permit holder if he or she was not on board the vessel when the contravention was committed but knowingly permitted or assisted in the contravention.

Part 5**Registration of Local Fishing Vessels****13. Register of local fishing vessels**

- (1) The Director must keep a register of registered vessels for the purposes of this Ordinance.
- (2) The register is to contain, in respect of every registered vessel—
 - (a) the name and address of the certificate holder and any other particulars or information of the certificate holder as the Director may consider necessary for the purposes of this Ordinance;
 - (b) the certificate of ownership number, engine power and maximum number of ancillary vessels (if any) of the vessel;
 - (c) the date of registration of the vessel under section 14;
 - (d) any conditions imposed under section 16; and
 - (e) any other vessel particulars or other information as the Director thinks fit.
- (3) The register may be kept in a form the Director considers appropriate, including in a form other than a

documentary form as long as the information recorded under subsection (2) is capable of being reproduced in a legible form.

- (4) The register (including the names of certificate holders but no other particulars or information concerning them) is to be made available for inspection by any person at the headquarters of the Agriculture, Fisheries and Conservation Department during the hours when the office is normally open to the public.
- (5) Copies of entries in the register as the Director may determine may be obtained from the Director.

14. Registration of local fishing vessels

- (1) The Director may, on application—
 - (a) by the owner of a local fishing vessel in respect of which there is a valid operating licence on the commencement date;
 - (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
 - (c) by the owner of a local fishing vessel under section 19 or 21,

register the vessel for the purposes of this Ordinance and issue a certificate of registration to the applicant.
- (2) An application under subsection (1)(a) or (b) must be made within 12 months immediately after the commencement date.

- (3) Despite subsection (2), an application may be made under subsection (1)(a) or (b) if the applicant shows to the satisfaction of the Director that—
 - (a) the failure to make the application within the time specified in subsection (2) was not due to the applicant's default; and
 - (b) the applicant exercised due diligence to ensure that the application would be made as soon as practicable after the commencement date.
- (4) A certificate of registration issued under this section must contain the name of the certificate holder and the information referred to in section 13(2)(b), (c), (d) and (e).
- (5) If the Director refuses an application made under subsection (1) or section 19 or 21, the Director must send a notice of refusal to the applicant within 14 days from the date of the decision.
- (6) In this section—

Approval-in-Principle Letter (原則批准書) means a letter issued by the Director of Marine which approves in principle a proposal to acquire or construct a fishing vessel.

15. Engine power and number of ancillary vessels must not be exceeded

No fishing (other than an activity specified in Schedule 2) with the use or aid of a registered vessel or any of its ancillary vessels may be carried out within the waters of Hong Kong if—

- (a) the engine power of the vessel; or
- (b) the maximum number of ancillary vessels the vessel has,

exceeds that specified in the certificate of registration in relation to the registered vessel.

16. Conditions regulating fishing

- (1) 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—
 - (a) the area within which any fishing may be carried out, which may include any fisheries protection areas;
 - (b) the period during which any fishing in any such area may be carried out; and
 - (c) the fishing methods that may be employed and the fishing gear that may be used on the vessel.
- (2) Nothing in this section is to be construed as enabling the Director to impose any condition that is inconsistent with any provision of this Ordinance.

17. Alteration to conditions of registration

- (1) The Director may, either on the Director's own volition or on application by a registered vessel's certificate holder, add, remove or amend any conditions imposed under section 16 in relation to that vessel.
- (2) If the Director adds, removes or amends any condition on the Director's own volition, the Director must—
 - (a) send a notice to the certificate holder notifying the addition, removal or amendment;
 - (b) update the register accordingly; and
 - (c) issue a new certificate of registration to the certificate holder within 14 days of the update.
- (3) An addition, removal or amendment of a condition under subsection (1) becomes effective on the date specified in

the new certificate of registration and the original certificate ceases to be valid on the same date.

- (4) If the Director refuses an application made under subsection (1), the Director must send a notice of refusal to the applicant within 14 days from the date of the decision.

18. Refusal of registration

The Director must refuse to register a vessel under section 14 if—

- (a) the applicant fails to produce for inspection a valid operating licence in respect of the vessel;
- (b) the applicant fails to produce the vessel (including its ancillary vessels) in respect of which the application has been made for inspection on request; or
- (c) the Director is not satisfied that the vessel in respect of which the application is made—
 - (i) is designed and equipped to be used primarily for fishing; and
 - (ii) is likely to be used for fishing which will not contravene any provision of this Ordinance.

19. Registration of replacement vessels

- (1) 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.
- (2) The registration of a registered vessel referred to in subsection (1)(b) is cancelled on the registration of the local fishing vessel for which the application for registration is made.
- (3) 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.

20. Change of ownership

- (1) If there is a change of ownership of a registered vessel, the certificate holder must send a notice of change of ownership and return the certificate of registration to the Director within 14 days of the change.
- (2) The new owner of a registered vessel in respect of which a notice has been given under subsection (1) may apply to the Director within 14 days of the change of ownership for the issue of a new certificate of registration.
- (3) On receipt of a notice given under subsection (1) and an application made under subsection (2), the Director is to amend the register to reflect the change of ownership and issue a new certificate of registration to the applicant.

21. Registration of former trawlers or their replacements

- (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.
- (3) The Director must not register a vessel on application made under subsection (1) unless the Director is satisfied that trawling with the use or aid of the vessel in respect of which the application is made is unlikely.
- (4) In this section—

certificate of eligibility for registration (合資格登記證明書) means a certificate of eligibility for registration issued by the Director in relation to a trawler—

- (a) in respect of which there is a valid operating licence on the commencement date; and
- (b) affected by the trawl ban introduced by the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011).

22. Grounds for cancellation of registration and return of certificate

- (1) The Director must cancel the registration of a registered vessel if the Director—
 - (a) is satisfied that—
 - (i) the vessel is dispatched permanently from Hong Kong;
 - (ii) the vessel is lost or destroyed;
 - (iii) the operating licence of the vessel is cancelled;

- (iv) the vessel ceases to be a vessel designed and equipped to be used primarily for fishing; or
- (b) receives a written notice to cancel the registration from the certificate holder.
- (2) The Director may cancel the registration of a registered vessel if the Director is satisfied that the registration was made as a result of a false representation of any fact made by the applicant or an unlawful act of the applicant.
- (3) The certificate holder in relation to a registered vessel must notify the Director by notice in writing within 14 days after the occurrence of any event set out in subsection (1)(a)(i), (ii), (iii) and (iv) and at the same time deliver to the Director the certificate of registration issued in respect of the vessel.
- (4) A person who without reasonable excuse contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3.

23. Notice to be sent and representations

- (1) If the Director intends to cancel a registration by reason of section 22(1)(a) or (2), the Director must send a notice to the certificate holder.
- (2) A notice sent under subsection (1) must state—
 - (a) the fact that the Director intends to cancel the registration;
 - (b) the reasons for the intended cancellation; and
 - (c) that the certificate holder may make written representations to the Director within 21 days from the date of the notice.

24. Cancellation of registration

- (1) If, having considered any representations referred to in section 23(2)(c), the Director decides to cancel a registration, the Director must send a notice of cancellation to the certificate holder.
- (2) If no appeal is lodged under section 33, the certificate holder must, within 21 days from the date of sending of a notice under subsection (1), return the certificate of registration to the Director.
- (3) A person who without reasonable excuse fails to comply with subsection (2) commits an offence and is liable on conviction to a fine at level 3.
- (4) Subject to Part 8, the Director's decision under subsection (1) takes effect 21 days after the notice is sent under that subsection.

Part 6**Research Fishing Permits****25. Issue and renewal of research fishing permit**

- (1) The Director may on application issue a research fishing permit to any person for fishing with the use or aid of a local fishing vessel within the waters of Hong Kong for the purpose of scientific research, environmental monitoring or related purposes.
- (2) A research fishing permit must contain the following information—
 - (a) the name of the permit holder;
 - (b) the certificate of ownership number of the vessel in respect of which the permit is issued;
 - (c) the engine power of the vessel;

- (d) the maximum number of ancillary vessels it may have;
 - (e) the expiry date of the permit, which must not be later than the expiry of a period of 3 years after the date of issue or renewal;
 - (f) any conditions imposed under subsection (3);
 - (g) any other vessel particulars or other information as the Director thinks fit.
- (3) The Director may impose such conditions in a research fishing permit as the Director thinks fit, including a condition that fishing with the use or aid of the vessel in respect of which the permit is issued or renewed is limited to such—
- (a) areas;
 - (b) periods or dates; or
 - (c) fishing methods and fishing gear,
- as may be specified in the permit.
- (4) The Director may on application renew a research fishing permit.
- (5) An application for renewal of a research fishing permit must be made to the Director not later than 1 month before the expiry date of the permit.
- (6) An application under this section made by a person who is not the owner of the vessel must be accompanied by a written consent of the owner of the vessel.
- (7) If the Director has not renewed a research fishing permit on an application for renewal under subsection (4) on the expiry date of the permit, the permit is to, unless sooner cancelled under this Ordinance, continue in force according to its conditions until the permit holder is notified either that the permit is renewed or that the Director has refused to renew it, as the case may be.

26. Refusal of applications for issue or renewal of research fishing permit

- (1) The Director must refuse an application made under section 25—
- (a) unless the Director is satisfied that—
 - (i) there is a valid operating licence in respect of the vessel;
 - (ii) the vessel is designed and equipped to be used primarily for fishing employing the fishing methods claimed by the applicant in the application for a research fishing permit;
 - (iii) the fishing is for the purpose of scientific research, environmental monitoring or related purposes only; and
 - (iv) the granting of the application will be consistent with the provisions of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or
 - (b) if the applicant fails to produce the vessel (including its ancillary vessels) for inspection on request.
- (2) The Director may refuse an application made under section 25 if—
- (a) the Director is of the opinion that—
 - (i) the issue or renewal of the research fishing permit will not be in the best interests of promoting the sustainability of fisheries resources of the waters of Hong Kong; or
 - (ii) the vessel in respect of which the permit has been issued or any of its ancillary vessels has been engaged in fishing in contravention of the provisions of this Ordinance (or, in the

- case of an application for renewal, any conditions imposed in the original permit); or
- (b) the applicant has been convicted of any offence under this Ordinance.
- (3) In considering an application made under section 25, the Director may have regard to such other matters as the Director thinks fit.
- (4) If an application is refused under this section, the Director must send a notice of refusal to the applicant and the owner of the vessel who has given the written consent (if any) within 14 days from the date of the decision.

27. Research fishing permit not transferable

A research fishing permit is not transferable.

28. Vessel particulars to be adhered to

Despite any research fishing permit, no fishing with the use or aid of the vessel or any of its ancillary vessels may be carried out within the waters of Hong Kong if—

- (a) the engine power of the vessel; or
- (b) the maximum number of ancillary vessels the vessel has,

exceeds that specified in the permit.

29. Grounds for cancellation of research fishing permit and its return

- (1) The Director may cancel a research fishing permit if—
- (a) the permit holder has been convicted of any offence under this Ordinance;
- (b) in the opinion of the Director, allowing the permit to continue in force is not in the best interests of

promoting the sustainability of fisheries resources of the waters of Hong Kong; or

- (c) the vessel in respect of which the permit has been issued has been engaged in fishing which does not comply with the provisions of this Ordinance.
- (2) If the Director intends to cancel a research fishing permit under subsection (1), the Director must send a notice of cancellation of a research fishing permit to the permit holder.
- (3) A research fishing permit is cancelled on the expiry of the date of cancellation stated in the notice sent under subsection (2), which must not be earlier than 21 days after the date of the notice.
- (4) Unless an appeal has been lodged under section 33, a permit holder who has received a notice under subsection (2) and fails to return the research fishing permit to the Director within 21 days from the date of cancellation without reasonable excuse commits an offence and is liable on conviction to a fine at level 3.

Part 7
Change of Particulars and Production of Certificate or Permit, etc.
30. Change of particulars

- (1) Subject to subsection (5), a person to whom a certificate of registration or a research fishing permit has been issued must within 7 days after any change in the particulars specified in the certificate (other than the identity of the owner) or permit—
- (a) notify the Director by notice in writing of the change;

- (b) provide the Director with all information as may be necessary to enable the Director to verify the change so notified; and
- (c) at the same time deliver to the Director the certificate or permit.
- (2) The Director is to amend the register (in the case of a change in the particulars of a certificate of registration) and issue a replacement certificate or permit to the certificate holder or permit holder, as the case may be.
- (3) On the issue of the replacement certificate or permit, the original ceases to be valid.
- (4) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.
- (5) Despite subsection (1), no change may be made under this section to—
 - (a) the identity of the owner of a registered vessel; or
 - (b) any vessel particulars of a registered vessel that would increase its engine power or number of ancillary vessels (if any).

31. Production of certificate or permit

- (1) A certificate holder or a permit holder to whom a certificate of registration or a research fishing permit has been issued must ensure that the valid certificate of registration or research fishing permit is produced on demand by the Director or a fisheries inspector or authorized officer.
- (2) A person who without reasonable excuse fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 3.

32. Duplicate certificate or permit

- (1) If a certificate of registration or a research fishing permit has been destroyed, defaced or lost, the Director may on application issue a duplicate certificate of registration or research fishing permit, as the case may be.
- (2) A certificate of registration or a research fishing permit ceases to be valid when a duplicate in respect of which is issued.

Part 8**Appeals****33. Right of appeal**

Any person aggrieved by a decision of the Director—

- (a) refusing an application for registration made under section 14, 19 or 21 or an application for the issue or renewal of a research fishing permit made under section 25;
- (b) imposing conditions under section 16 or 25(3);
- (c) adding, removing or amending any conditions of registration or refusing to do so under section 17;
- (d) cancelling a registration under section 24 or a research fishing permit under section 29,

may, within 21 days from the date of the notice of the decision of the Director, appeal to the Administrative Appeals Board.

34. Pending determination

If an appeal is lodged—

- (a) against a decision of the Director to cancel a registration or a research fishing permit or an action under section 17, the Director may suspend

the operation of the decision or action for any period before the appeal is disposed of, withdrawn or abandoned;

- (b) against a decision of the Director to refuse to renew a research fishing permit, the research fishing permit (if expired) is to be taken to continue in force according to its conditions until such appeal is disposed of, withdrawn or abandoned.

Part 9

Information

35. Giving and obtaining information

Despite any provision in any other Ordinance—

- (a) the Director may obtain from the Director of Marine any particulars or information relating to a vessel (including particulars of its owner) for any purpose in connection with any matter relating to fishing, registration of local fishing vessels or any research fishing permit; and
- (b) the Director of Marine may supply any particulars or information referred to in paragraph (a) to the Director.

36. False statement or information

A person who, for the purpose of procuring, whether for the person or any other person—

- (a) the registration of a fishing vessel or alteration to any vessel particulars or conditions for registration; or
- (b) the issue or renewal of a research fishing permit,

makes a declaration or statement, or furnishes any information or document, knowing it to be false or misleading as to a material particular, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

37. Director may require information or document

- (1) The Director may, for the purpose of ascertaining whether any provision of this Ordinance is complied with in respect of a vessel, by notice sent to the owner, certificate holder, master, coxswain, permit holder or other person in charge of the vessel or an applicant for registration or research fishing permit, require that person to furnish to the Director, within the period specified in the notice, any information or document as required by the Director.
- (2) The Director may refuse an application made under this Ordinance if the applicant fails to furnish any information or document in connection with the application as required by the Director.
- (3) An applicant who had made an application under this Ordinance or a certificate holder or permit holder must inform the Director by notice in writing of his or her change of address within 7 days of the change.
- (4) The information which may be required under subsection (1) includes information on the names and addresses of persons on board the vessel at any time fishing is carried out with the use or aid of the vessel within the waters of Hong Kong or any other information as the Director may require for the exercise of any power or the performance of any duty or function conferred or imposed on the Director under this Ordinance.
- (5) A person who without reasonable excuse fails to comply with a requirement of a notice sent under subsection (1)

commits an offence and is liable on conviction to a fine at level 3.

Part 10

Miscellaneous

38. No unauthorized alteration to certificate of registration or research fishing permit

A person who without reasonable excuse makes any alteration to or obliteration or defacement of a certificate of registration or research fishing permit otherwise than as a public officer performing a function under this Ordinance commits an offence and is liable on conviction to a fine at level 3.

39. Director may determine any form to be used

Any application, notice or consent that may be or required to be made or given under this Ordinance is to be made or given in such form as may be determined by the Director.

40. Fees

- (1) The fee for an item specified in column 2 of Schedule 3 is payable at the time specified in column 3 of that Schedule in the amount specified in column 4 of that Schedule opposite to that item.
- (2) A fee paid under this section is not refundable.

41. Contents of notice of Director's decision

A notice sent under section 14(5) or 26(4) or a notice of cancellation of a research fishing permit under section 29(2) must state—

- (a) the fact that the Director refuses the application or cancels the permit;

- (b) the reasons for the refusal or cancellation; and
- (c) that the applicant or permit holder may appeal against the Director's decision to the Administrative Appeals Board within 21 days from the date of the notice.

42. Sending of documents

- (1) Any notice, document or information that may be or required to be sent to—
 - (a) an individual, may be sent by delivering it to the individual personally, or by leaving it with some person for the person at the person's last known address, or by sending it to the person by ordinary mail to that address;
 - (b) a company, may be sent by delivering it at or sending it by ordinary mail to the principal office of the company.
- (2) If the notice, document or information is sent—
 - (a) by ordinary mail under subsection (1), unless the contrary is shown, it is taken to have been received by the addressee at the time when it would be delivered in the ordinary course of post;
 - (b) by electronic mail transmission, unless the contrary is shown, it is taken to have been received by the addressee when it would be received at that address in the ordinary course of transmission.

43. Resolution of any conflicting provisions

If a provision of the Shipping and Port Control Ordinance (Cap. 313), the Marine Fish Culture Ordinance (Cap. 353), the Marine Parks Ordinance (Cap. 476) or the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) is inconsistent with a provision of this Ordinance, the provision of that other Ordinance prevails to the extent of the inconsistency.

44. Amendment of Schedules

- (1) The Director may, by order published in the Gazette, amend Schedule 1.
- (2) The Director may, by notice published in the Gazette, amend Schedule 2.
- (3) The Secretary may, by order published in the Gazette, amend Schedule 3.

45. Transitional

A person does not contravene section 11 if the person is engaged in fishing with the use or aid of a local fishing vessel or any of its ancillary vessels that is designed and equipped to be used primarily for fishing—

- (a) before the expiry of a period of 12 months beginning on the commencement date; or
- (b) if an application has been made under section 14 in respect of the vessel and has not been refused or finally disposed of.”.

16. Schedule amended (toxic substance)

- (1) The Schedule—

Renumber the Schedule as Schedule 1.

- (2) Schedule 1—

Repeal

“[ss. 2 & 10]”

Substitute

“[ss. 2 & 44]”.

17. Schedules 2 and 3 added

After Schedule 1—

Add

“Schedule 2

[ss. 11, 15
& 44]

**Permitted Fishing with 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.

Schedule 3

[ss. 40 & 44]

Fees

Item	Particular	When payable	Fee \$
1.	Application for registration of a local fishing vessel under section 14, 19 or 21	On making application	195
2.	Issue of certificate of registration under section	On issue of the	165

Item	Particular	When payable	Fee \$
	20 or 30	certificate	
3.	Application for alteration to conditions of a registration under section 17	On making application	120
4.	Application for issue or renewal of a research fishing permit under section 25	On making application	365
5.	Obtaining a copy of entries in the register under section 13(5) relating to 1 registered vessel	On request for the copy	37
6.	Application for a duplicate of a certificate of registration or a research fishing permit under section 32	On making application	81".

Part 3**Amendments to Other Legislation****Division 1—Amendment to Fisheries Protection Regulations (Cap. 171 sub. leg. A)****18. Regulation 6 amended (exemptions)**

Regulation 6(a), after “research”—

Add

“, environmental monitoring and related purposes”.

Division 2—Consequential Amendments**Subdivision 1—Amendment to Waterworks Regulations (Cap. 102 sub. leg. A)****19. Regulation 40 amended (interpretation)**Regulation 40, definition of *toxic substance*—**Repeal**

“the Schedule”

Substitute

“Schedule 1”.

Subdivision 2—Amendment to Administrative Appeals Board Ordinance (Cap. 442)**20. Schedule amended**

At the end of the Schedule—

Add

“72. Fisheries Protection A decision of the Director of

Ordinance
(Cap. 171)Agriculture, Fisheries and
Conservation—

- (a) to refuse to register a vessel on application made under section 14, 19 or 21;
- (b) to impose conditions under section 16;
- (c) to add, remove or amend any conditions or refuse to do so under section 17;
- (d) to cancel a registration under section 24;
- (e) to refuse to issue or renew a research fishing permit under section 25;
- (f) to impose conditions in respect of a research fishing permit under section 25(3); and
- (g) to cancel a research fishing permit under section 29.”.

Explanatory Memorandum

This Bill amends the Fisheries Protection Ordinance (Cap. 171) (*the principal Ordinance*) to provide for a tighter control of fishing and a registration system for local fishing vessels to be used for fishing within the waters of Hong Kong. The Bill also seeks to make further provisions in connection with the enforcement of the principal Ordinance.

2. Clause 1 sets out the short title.
3. Clause 2 introduces the enactments that are amended by the Bill.
4. Part 2 (clauses 3 to 17) sets out the amendments made to the principal Ordinance.
5. Clause 4 amends the definition section of the principal Ordinance to add certain definitions for the purpose of the registration system and amend the definitions of *fishing* and *vessel*.
6. Clause 7 makes provisions for the Secretary for Food and Health to designate fisheries protection areas and appoint an Authority for the management and control of fishing in those areas. The Authority is also empowered to make rules to manage and control fishing in the fisheries protection areas.
7. Clause 9 substitutes a new section 5 for the existing section to make better provision for search of places and seizure of items.
8. Clause 12 adds new sections 7A and 7B to provide for powers to stop, search and arrest of persons in connection with contraventions against the principal Ordinance. It also adds a new section 7C to provide for the offence of obstruction. Clause 11 amends section 7 to bring it in line with new section 7A.
9. Clause 15 adds new Parts 4 to 10 (new sections 11 to 45) to the principal Ordinance.
10. New section 11 prohibits fishing with the use or aid of a vessel unless it is carried out in accordance with the provision.

11. New section 12 provides for liabilities of owners or persons in charge of vessels, etc. for contraventions with the use or aid of their vessels.
12. New Part 5 (new sections 13 to 24) introduces a registration system for local fishing vessels.
13. New section 13 requires the Director of Agriculture, Fisheries and Conservation (*the Director*) to keep a register of local fishing vessels.
14. New section 14 provides for registration and application for registration.
15. New section 15 imposes a restriction on the engine power and number of ancillary vessels.
16. New sections 16 and 17 provide for conditions to be imposed in respect of the use of registered vessels for fishing and their alteration.
17. New section 18 provides for refusal of registration.
18. New sections 19 to 21 provide for registration of replacement vessels and former trawlers as well as change of ownership of vessels.
19. New sections 22 to 24 make provision relating to cancellation of registration.
20. New Part 6 (new sections 25 to 29) makes provision in respect of research fishing permits.
21. New section 25 enables the Director to issue and renew research fishing permits and new section 26 provides for the refusal of applications for their issue and renewal. New section 28 requires that vessel particulars must be adhered to. New section 29 provides for the cancellation of research fishing permits.
22. New Part 7 (new sections 30 to 32) provides for matters relating to certificates of registration and research fishing permits and changes of particulars in the certificates or permits.

23. New Part 8 (new sections 33 and 34) allows aggrieved persons to appeal to the Administrative Appeals Board and provides for matters pending the determination of appeals.
24. New Part 9 (new sections 35 to 37) relates to information. New section 35 allows the supply of information to the Director by the Director of Marine for the purposes of the principal Ordinance. New section 36 provides for an offence of false statement or information. New section 37 enables the Director to require information or document from persons.
25. New Part 10 contains certain miscellaneous provisions (new sections 38 to 45).
26. New section 38 prohibits unauthorized alteration to certificates of registration or research fishing permits.
27. New section 39 enables the Director to determine forms to be used for the purposes of the principal Ordinance.
28. New section 40 sets out the fees payable under the principal Ordinance.
29. New section 41 provides for the contents of certain notices to be sent under the principal Ordinance.
30. New section 42 provides for the sending of documents.
31. New section 43 provides for the resolution of conflicting provisions and new section 45 provides for a transitional arrangement of a grace period of 1 year for certain activities.
32. New section 44 enables the Director to amend Schedules 1 and 2 to the principal Ordinance and the Secretary for Food and Health to amend the fees set out in Schedule 3 to the principal Ordinance.
33. Clause 17 introduces new Schedule 2 (exempting the application of new section 11 from certain fishing activities) and new Schedule 3 (fees payable under the principal Ordinance).

34. Clause 18 amends regulation 6 of the Fisheries Protection Regulations (Cap. 171 sub. leg. A) to bring it in line with the purposes of the Bill.
35. Clauses 19 and 20 provide for consequential amendments.

Key Offences and penalty levels

General Heading	Offences	Proposed Penalties	Remarks
Management and control of fisheries protection areas	Any notices made under this section may provide that any contravention of any provisions of the notice constitutes an offence.	\$200,000 and imprisonment for 6 months	Ref: Section 4B(2)
Obstruction	<p>It is an offence if any person without reasonable excuse –</p> <p>(a) obstructs the Director of Agriculture, Fisheries and Conservation (the Director), a fisheries inspector or an authorised officer in the exercise of any power or the performance of any duty or function conferred or imposed on the Director, a fisheries inspector or an authorised officer under this Ordinance; or</p> <p>(b) fails to comply with any instruction given under this Ordinance.</p>	Level 5 (\$50,000) and imprisonment for 3 months	Ref: Section 7C

General control on fishing activities in Hong Kong waters	<p>It is an offence if any person without reasonable excuse is 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 –</p> <ul style="list-style-type: none"> (a) the vessel is a registered fishing vessel and the fishing is in accordance with any conditions relating to the registration of the vessel or falls under the list of permitted fishing activities specified in Schedule 2; (b) the person is so engaged under and in accordance with a valid research fishing permit; or (c) the vessel is a non-fishing vessel or a local fishing vessel which has not been registered and the fishing is an activity specified in Schedule 2. 	Level 6 (\$100,000) and imprisonment for 6 months	Ref: Sections 11(2) and 12
Notification of cancellation of a registered vessel	It is an offence if the certificate holder of a registered fishing vessel without reasonable excuse fails to notify the Director within 14 days after the occurrence of any of the following in respect of the vessel–	Level 3 (\$10,000)	Ref: Section 22(4)

	<p>(a) the vessel is dispatched permanently from Hong Kong;</p> <p>(b) the vessel is lost or destroyed;</p> <p>(c) the operating licence is cancelled;</p> <p>(d) the vessel ceases to be one that is designed for and equipped to be used primarily for fishing.</p>		
Cancellation of registration	It is an offence if the certificate holder of a registered vessel without reasonable excuse fails to return the certificate of registration to the Director within 21 days from the date of sending of a notice of cancellation.	Level 3 (\$10,000)	Ref: Section 24(3)
Change of particulars	The holder of a certificate of registration or research permit commits an offence if he/she without reasonable excuse fails to notify the Director the change in the particulars specified in the certificate or permit in writing within 7 days, or provide the information as may be necessary for enabling the	Level 3 (\$10,000)	Ref: Section 30(4)

	Director to verify the change so notified, or deliver to the Director the certificate or permit.		
Production of certificate and permit	It is an offence if the certificate holder of a registered vessel or a permit holder without reasonable excuse fails to ensure that the valid certificate of registration or research fishing permit is produced on demand by the Director, a fisheries inspector or an authorised officer.	Level 3 (\$10,000)	Ref: Section 31(2)
False statement and information	It is an offence for any person to make a declaration or statement, or furnish any information or document, knowing it to be false or misleading as to a material particular for the purpose of procuring the registration of a fishing vessel, alteration to any vessel particulars or conditions for registration, or the issue or renewal of a research fishing permit under this Ordinance.	Level 5 (\$50,000) and imprisonment for 3 months	Ref: Section 36
Director may require information	It is an offence if any person without reasonable excuse fails to comply with a requirement of a notice sent by the Director to furnish to the Director any information or document for the purpose of ascertaining whether this Ordinance is complied with in respect of a vessel.	Level 3 (\$10,000)	Ref: Section 37(5)

Power of inspection and arrest	It is an offence if a person without reasonable excuse fails to give the person's name and address or produce his proof of identity; gives a false or misleading name or address; or fails to produce the certificate of registration or research fishing permit on request by the Director, a fisheries inspector or an authorised officer.	Level 3 (\$10,000)	Ref: Section 7A(2)
No unauthorised alteration to certificate of registration or research fishing permit	It is an offence if any person without reasonable excuse makes any alteration to or obliteration or defacement of a certificate of registration or research fishing permit.	Level 3 (\$10,000)	Ref: Section 38
Cancellation of permit	It is an offence if any person without reasonable excuse fails to return the research fishing permit to the Director within 21 days from the date of cancellation.	Level 3 (\$10,000)	Ref: Section 29(4)

Appeals

DAFC's decisions that are subject to appeal	Remarks
Refusal of registration of a vessel	Ref: Section 14
Imposing conditions on a registration	Ref: Section 16
Adding, removing or amending any conditions or refusal of making such changes on a registration on application	Ref: Section 17
Refusal of registration of a replacement vessel	Ref: Section 19
Refusal of registration of a former trawler	Ref: Section 21
Cancellation of a registration	Ref: Section 24
Refusal to issue or renew a research fishing permit	Ref: Section 25
Imposing conditions on a research fishing permit	Ref: Section 25(3)
Cancellation of a research fishing permit	Ref: Section 29

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

The implementation of the proposal would incur additional capital and recurrent resources, which are being sought in accordance with the established mechanism.

2. All existing local fishing vessels are required to register under the Bill. No renewal is required after registration. A fee of \$195 will be charged for making an application for registration. We anticipate that owners of about 5 000 vessels will apply for registration. The total revenue generated is estimated to be about \$1 million.

3. The fees for subsequent applications and other applications in the registration scheme would be set at levels to recover full costs. However, we do not anticipate that there would be many applications after the registration of existing local fishing vessels. The revenue generated is estimated to be about \$0.3 million.

ECONOMIC IMPLICATIONS

4. Protecting the important spawning and nursery grounds through the designation of FPAs and limiting the entry of new vessels into the fishing industry would improve the quantity and quality of catch in Hong Kong waters in the long run. The public at large would benefit from a stable supply of quality marine fish. While the proposed registration system would impose certain compliance burden on the practitioners in the industry, the impact should be insignificant given that the registration fee is one-off and is only \$195.

ENVIRONMENTAL IMPLICATIONS

5. The control of fishing activities would help conserve the marine resources in Hong Kong waters. Similar management measures are already in place widely in different parts of the world and have proved to be essential to protecting the marine environment.

6. The establishment of FPAs will help restore the marine habitats, which will in turn promote the diversity of marine life and safeguard the ecological integrity of our marine environment.

SUSTAINABILITY IMPLICATIONS

7. Sustainability assessment has revealed that the proposed fisheries management measures would help restore the fisheries resources, contribute to marine biodiversity and benefit the fisheries industry in the long run. The proposals are conducive to the sustainability principle of maintaining the biodiversity of Hong Kong.

Annex E

CONSULTATION PROGRAMME Fisheries Protection (Amendment) Bill 2011

Meetings		Location	Date
2010			
1	Capture Subcommittee of Advisory Committee on Agriculture and Fisheries	AFCD	16 November
2	Hong Kong Fishermen's Association (Cheung Chau)	Cheung Chau	17 November
3	Sai Kung Fishermen Association Limited	Sai Kung	19 November
4	Aquaculture Subcommittee of Advisory Committee on Agriculture and Fisheries	AFCD	22 November
5	Hong Kong and Kowloon Fishermen Association Limited	Castle Peak	24 November
6	Hong Kong Fishermen's Association (Shau Kei Wan) and Hong Kong Off-shore Fishermen's Association	Shau Kei Wan	25 November
7	Hong Kong Fishermen Consortium	Aberdeen	25 November
8	Hong Kong Fishery Alliance	Aberdeen	26 November
9	Cheung Chau Fishermen's Welfare Promotion Association	Cheung Chau	26 November
10	Hong Kong Fishermen Consortium, The New Territories Fishermen Fraternity Association Limited	Tai Po	30 November
11	Fish Marketing Advisory Board	AFCD	6 December
2011			
12	Cheung Chau Fishermen's Welfare Promotion Association	Cheung Chau	24 January

13	Hong Kong Fishermen's Association (Cheung Chau)	Cheung Chau	24 January
14	Hong Kong Fishing Vessel Owners Association Limited	Shau Kei Wan	26 January
15	Hong Kong Fishermen Consortium	Aberdeen	27 January
16	Hong Kong Fishery Alliance	Aberdeen	28 January
17	Hong Kong and Kowloon Fishermen Association Limited	Castle Peak	31 January
18	Living Seas Hong Kong, World Wide Fund for Nature Hong Kong	Aberdeen	2 February
19	Sai Kung Fishermen Association Limited, The Federation of Fishermen's Co-operative Societies of Sai Kung District	Sai Kung	17 February
20	Ma Wan Fisheries Rights Association Limited	Ma Wan	18 February
21	The New Territories Fishermen Fraternity Association Limited	Tai Po	23 February
22	Legislative Council Panel on Food Safety and Environmental Hygiene	Central	8 March
23	Hong Kong Fishery Alliance	Aberdeen	18 July
24	Hong Kong and Kowloon Fishermen Association Limited	Castle Peak	19 July
25	The New Territories Fishermen Fraternity Association Limited	Tai Po	20 July
26	Hong Kong Fishing Vessel Owners Association Limited	Shau Kei Wan	21 July
27	Hong Kong Fishermen Consortium, Hong Kong Fishermen's Association	Aberdeen	22 July
28	Hong Kong Fishermen's Association (Shau Kei Wan) and Hong Kong Off-shore Fishermen's Association	Shau Kei Wan	26 July
29	Cheung Chau Fishermen's Welfare Promotion Association	Cheung Chau	28 July
30	Hong Kong Fishermen's Association (Cheung Chau)	Cheung Chau	28 July

31	Hong Kong and Kowloon Fishermen Association Limited	Castle Peak	1 August
32	The New Territories Fishermen Fraternity Association Limited	Tai Po	16 August
33	Ma Wan Fisheries Rights Association Limited	Ma Wan	29 August
34	Sai Kung Fishermen Association Limited, The Federation of Fishermen's Co-operative Societies of Sai Kung District	Sai Kung	1 September