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Paper for the House Committee meeting on 16 December 2016

**Report of the Subcommittee on Marine Parks (Designation)
(Amendment) Order 2016**

Purpose

This paper reports on the deliberations of the Subcommittee on Marine Parks (Designation)(Amendment) Order 2016 ("the Subcommittee").

Background

2. The Marine Parks Ordinance (Cap. 476) ("MPO") provides for the designation, control and management of marine parks and marine reserves, and stipulates the Director of Agriculture, Fisheries and Conservation as the Country and Marine Parks Authority ("the Authority"). The Marine Parks and Marine Reserves Regulation (Cap. 476A) ("the Regulation") provides for the prohibition and control of certain activities in marine parks or marine reserves. At present, four marine parks and one marine reserve have been designated.¹

3. The designation of The Brothers as a marine park (i.e. The Brothers Marine Park ("BMP")) was proposed in the Environmental Impact Assessment ("EIA") Report of the Hong Kong-Zhuhai-Macao Bridge ("HZMB") Hong Kong Boundary Crossing Facilities ("HKBCF") project as one of the mitigation measures.² A two-stage public consultation for the proposed BMP was conducted in 2014 and 2015. The Administration also consulted the Country

¹ They are the Hoi Ha Wan Marine Park, Yan Chau Tong Marine Park, Sha Chau and Lung Kwu Chau Marine Park, Tung Ping Chau Marine Park, and Cape D'Aguilar Marine Reserve.

² The Brothers are a group of islands (including West Brother (Tai Mo To), East Brother (Siu Mo To), and Tsz Kan Chau) located at the north of Lantau.

and Marine Parks Board and its Marine Parks Committee in 2015. The draft map for BMP was made available for public inspection from February to April 2016 in accordance with the statutory process stipulated in MPO. The Authority did not receive any objection to the draft map during the inspection period.

Marine Parks (Designation)(Amendment) Order 2016

4. The Marine Parks (Designation) (Amendment) Order 2016 ("Amendment Order") was published in the Gazette on 4 November 2016 and tabled before the Legislative Council ("LegCo") on 9 November 2016 for negative vetting. It seeks to amend the Marine Parks (Designation) Order (Cap. 476B) for the purpose of designating BMP as a marine park. The Amendment Order will come into operation on 30 December 2016.

The Subcommittee

5. At the House Committee meeting on 11 November 2016, Members agreed that a subcommittee should be formed to examine the Amendment Order. Under the chairmanship of Ms Tanya CHAN, the Subcommittee has held one meeting to discuss with the Administration. The membership list of the Subcommittee is in the **Appendix**.

6. To allow more time for the Subcommittee to consider the Amendment Order and prepare a report on its deliberations for submission to the House Committee, the Subcommittee Chairman moved a motion at the LegCo meeting of 30 November 2016 to extend the scrutiny period of the subsidiary legislation to 11 January 2017. The motion was passed.

Deliberations of the Subcommittee

7. While members in general appreciate the designation of marine parks as a measure to provide better habitats for marine organisms and safeguard/enhance fisheries resources in the subject waters, there are concerns about the potential adverse impacts of designating more marine parks on the development of the fisheries industry. In examining the Amendment Order, the Subcommittee has discussed issues including marine conservation, eco-tourism, fisheries management measures, and enforcement actions against illegal fishing activities in Hong Kong waters including marine parks.

Marine conservation and eco-tourism

8. The Subcommittee notes that conservation, education and recreation are the three major functions of marine parks, and the objectives of individual marine parks may vary having regard to their locations and the marine fauna thereat. On conservation, designating marine parks helps enhance marine eco-value and manage marine habitats, which is conducive to maintaining the marine biodiversity of Hong Kong in a sustainable way. Based on the long term dolphin monitoring data compiled by the Agriculture, Fisheries and Conservation Department ("AFCD") between 2001 and 2012, the waters around The Brothers is one of the hot spots with high concentration of Chinese White Dolphin ("CWD") sightings. The designation of BMP is intended to compensate for the loss of CWD habitats arising from the reclamation and marine works of the HZMB-HKBCF project. The Subcommittee also notes that in the longer term, BMP will be linked with existing/planned marine parks nearby to form a network of marine parks covering a sea area of about 4 500 hectares.

Conservation of marine resources

9. The Subcommittee has enquired about the reasons for not designating BMP earlier, given that the reclamation works of HZMB-HKBCF commenced some years ago. The Subcommittee has also sought information on the measures in place to protect the marine habitats in marine parks and the effectiveness of such measures. Mr YIU Si-wing asked about the requirements, if any, on leisure vessels providing dolphin watching tours at BMP, and the measures to minimize collision of vessels with CWDs in or near BMP.

10. The Administration has advised that in line with the Environmental Permit issued for the HZMB-HKBCF project, the designation of BMP would immediately follow the completion of the project.³ Pursuant to the requirements of the Regulation, which provides for the prohibition and control of certain activities in marine parks or marine reserves, fishing activities are controlled in marine parks. Under section 17(3) of the Regulation, only bona fide fishermen or persons who ordinarily reside near a marine park to which the permits relate will be granted fishing permits,⁴ and similar arrangements will be

³ Condition 2.4 of the Environmental Permit.

⁴ According to the Administration, a bona fide fisherman should possess a fishing vessel with a valid certificate of registration under the Fisheries Protection Ordinance (Cap. 171). Other factors such as the homeport and fishing methods/devices of the fisherman will also be taken into account in establishing whether the person is a bona fide fisherman.

made for BMP. Besides, recreational activities that are detrimental to the ecology of the area and the health of CWDs, such as water scooting and jet skiing, are prohibited in the entire marine park. There will be boundary marker buoys and signboards for demarcation and management of BMP, and no person shall operate a power-driven vessel at a speed exceeding 10 knots at any time inside BMP. To minimize navigational risks, and collision of vessels with CWDs, a buffer will be maintained between the boundary of BMP and high speed crafts' fairways.

11. According to the Administration, AFCD has been conducting long term monitoring in existing marine parks and the data so obtained do reflect the effectiveness of their establishment. With the marine park management measures in place, the level of fisheries resources within existing marine parks is generally higher than that outside the marine parks. As with other marine parks, AFCD will implement marine ecological enhancement measures in BMP, including placement of artificial reefs and release of fish fry, with a view to restoring and enhancing the fisheries resources thereat.

Eco-tourism at The Brothers Marine Park

12. The Administration has advised that dolphin watching will be the main eco-tour activity to be promoted at BMP at this stage, taking into account safety concerns in the subject waters (which has considerable marine traffic) for conducting other leisure activities such as canoeing or drift diving. AFCD has issued a Code of Conduct for Dolphin Watching Activities to inform eco-tour operators and participants concerned the "do's and don'ts" when conducting dolphin watching tours or watching dolphins. For instance, vessels should cruise slowly, avoid sudden change of course and always keep a distance from dolphins. AFCD is in regular contact with the tour operators to promote the said Code of Conduct. As regards a member's enquiry on whether a public pier will be built at BMP, the Administration has advised that the suggestion is infeasible given the marine park's proximity to the Hong Kong International Airport Approach Area at the Core Area of BMP.

Environmental impacts of infrastructural projects on the marine park

13. As reclamation works will take place at Tung Chung East under the Tung Chung New Town Extension Project, which is close to BMP, the Subcommittee has asked about the additional mitigation measures, if any, to minimize potential adverse environmental impacts arising from the works and associated marine traffic on the marine park. The Administration has explained that any designated projects, unless exempted, must follow the statutory EIA process and require approved EIA reports and/or environmental permits as applicable for

their construction and operation. Designated projects near BMP are/will be subject to the same EIA process and the environmental permit system. The Administration also affirms that the approved EIA report on the reclamation works at Tung Chung East has taken into account the cumulative impacts arising from the reclamation works and other ongoing/planned projects on the water sensitive receivers including BMP in the vicinity. The EIA report has proposed mitigation measures such as adoption of non-dredge reclamation method and control on the number, speed and fairway of construction vessels. The Administration stresses that construction vessels will not be allowed to stopover or anchor at BMP.

14. The Administration has assured members that it will continue to monitor the environmental, ecological and fisheries profiles of the waters in marine parks including BMP. The relevant data will be reported to the Marine Parks Committee of the Country and Marine Parks Board regularly. The Administration also undertakes to provide information on the said monitoring data and findings to the Panel on Environmental Affairs of LegCo in future upon the Panel's request.

Enforcement

15. In view of the recurrence of illegal fishing activities in Hong Kong waters involving non-local fishing vessels or vessels without valid certification of registration under the Fisheries Protection Ordinance (Cap. 171), the Subcommittee has enquired how AFCD will coordinate with other law enforcement departments to enhance its enforcement efforts and capabilities. Mr Steven HO criticizes that despite allocation of additional manpower resources in recent years for AFCD to step up enforcement actions against illegal fishing activities, such activities are still prevalent, reflecting ineffectiveness of the enforcement actions.

16. The Administration has advised that as with other marine parks, AFCD will patrol BMP and enforce the Regulation. In this connection, a patrol vessel will be procured under the project vote of the HZMB-HKBCF project, and additional manpower and other recurrent resources will be deployed by AFCD to manage BMP. To combat cross-boundary illegal fishing activities in Hong Kong waters including marine parks, AFCD has maintained close contact with the Guangdong Fisheries Administration General Brigade ("GFAGB") and exchanged information with GFAGB on the identity of the Mainland fishing vessels found operating illegally in Hong Kong waters. AFCD, the Marine Region of the Hong Kong Police Force ("Marine Police") and GFAGB also organize regular joint-operations to combat such activities. At the request of the Subcommittee, the Administration has provided supplementary information

for members' reference on how AFCD works with the Marine Police in carrying out enforcement actions.⁵

17. On members' concern about the difficulties in adducing evidence of non-compliances with vessel speed control, the Administration has advised that radar systems are commonly deployed to monitor vessel speed. Data/images obtained from radars and other relevant devices have served as evidence in past cases of successful convictions for exceedance of vessel speed limit in marine parks. Moreover, if there are reasons to believe that a person has committed an offence under the Regulation, the Authority or an authorized officer has the power to seize the relevant item (e.g. trawling devices which are prohibited to be used in Hong Kong waters following implementation of the trawl ban since December 2012) and produce the item as evidence before the Court. The penalty for offences under the Regulation will be determined by the Court having regard to the circumstances of individual cases (e.g. whether it is a first conviction or second/subsequent conviction). Currently, the maximum penalty prescribed by the Regulation is a fine of \$25,000 and imprisonment for one year. If the offenders are marine park fishing permit holders, the cases will be put to the Working Group on Fishing Permit under the Marine Parks Committee for consideration of whether the permits should be suspended or cancelled.

Fisheries management measures

18. Mr Steven HO expresses grave concern about the cumulative impacts of designation of marine parks including BMP on the sustainable development of the fisheries industry. According to his observation, the number of marine park fishing permits has dwindled from 860 to 350 over the past twenty years, reflecting that the number of fishermen allowed to operate in marine parks has been decreasing significantly. Mr HO conveys concerns from the industry that AFCD has been too stringent in vetting and approving applications for (a) transfer of marine park fishing permits or (b) inclusion of persons who are not immediate family members (e.g. employees) as authorized persons in the fishing permits issued. Mr HO is also concerned about the long time taken by AFCD to process the applications.

19. Mr Steven HO also points out that after enactment of the Fisheries Protection (Amendment) Ordinance 2012, a series of measures have been introduced to regulate fishing activities in Hong Kong, including prohibition of fishing activities by non-local fishing vessels and a certification system for

⁵ Paragraph 2(b) of the Administration's written response to issues arising from the meeting of the Subcommittee held on 22 November 2016 (LC Paper No. CB(1)222/16-17(02) issued on 30 November 2016).

registering local fishing vessels, in order to limit the entry of new fishing vessels and maintain an appropriate level of fishing efforts in Hong Kong waters. The imposition of a "double control", i.e. the certification system under the Fisheries Protection Ordinance (Cap. 171) and the marine park fishing permit system under the Regulation, has been putting immense pressure on the sustainability of the fisheries industry. He urges the Administration to face up to the genuine concerns of the industry by reviewing the relevant legislations, and consider dispensing with the homeport system in issuing marine park fishing permits (i.e. homeport of the applicants' vessels must be associated with the affected fishing areas), and/or relaxing the restrictions on the succession and transfer of marine park fishing permits. Mr HO has indicated that he will take into account the Administration's responses to his views and suggestions, and consider whether to propose amendments to the Amendment Order.

20. The Administration has advised that to address concerns about fisheries operations in BMP, and to alleviate the impact on the livelihood of bona fide fishermen, the Administration has reduced the size of the Core Area (where no fishing activities are allowed) of BMP. Furthermore, the requirements for the succession and transfer of fishing permits have been appropriately relaxed, thereby allowing permit holders' immediate family members to apply for succession to fishing permits and restricted transfer of fishing permits to authorized persons of other fishing permit holders in the same marine park. The relaxation measures have been in place since July 2015 and they will be applicable to BMP. The Administration will keep track of the operation of the above measures and review the arrangements on succession and restricted transfer of marine park fishing permits as and when necessary.

21. The Administration has further advised that during the public consultation on the establishment of BMP, fishermen's organizations expressed worries and concerns over the establishment of new marine parks. They were of the view that the practice of issuing permits only to fishermen from eligible homeports under the existing fishing permit system would result in polarization of fishermen. They were also concerned that the existing fishing permit system would result in a decrease in the number of fishermen, thereby downsizing the fisheries industry gradually. In this connection, the Administration has launched a review exercise on the fisheries management measures of marine parks and will consider enhancing such measures with a view to addressing fishermen's concerns and promoting the sustainable development of the fisheries industry, without compromising the conservation objectives of marine parks. The review exercise may involve legislative amendments. During the review, the Administration will maintain communication with stakeholders and consult them on the enhancement option(s).

22. As regards the processing time of applications for renewal, succession or transfer of marine park fishing permits, the Administration has pointed out that the fishing operations of some 90% of the approved marine park fishing permit holders are carried out on a small scale or as family businesses with relatively small fishing vessels. These applications usually involve renewal of permits or transfer of the permits to the next generation, which can be approved in a few working days, subject to fulfillment of the specified criteria and submission of the necessary supporting documents.

Recommendation

23. Subcommittee members in general have no objection to the Amendment Order. The Subcommittee and the Administration will not move any amendment to the subsidiary legislation.

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
15 December 2016

Subcommittee on Marine Parks (Designation)(Amendment) Order 2016

Membership list

Chairman Hon Tanya CHAN

Members Hon Steven HO Chun-yin, BBS
 Hon YIU Si-wing, BBS
 Ir Dr Hon LO Wai-kwok, SBS, MH, JP
 Dr Hon Junius HO Kwan-yiu, JP
 Hon SHIU Ka-fai
 Hon HUI Chi-fung
 Hon Jeremy TAM Man-ho
 Dr Hon YIU Chung-yim

(Total: 9 members)

Clerk Ms Angel SHEK

Legal Adviser Miss Rachel DAI

Date 22 November 2016