

## **LEGISLATIVE COUNCIL BRIEF**

Public Health and Municipal Services Ordinance (Cap 132)

### **FOOD BUSINESS (AMENDMENT) REGULATION 2009**

#### **INTRODUCTION**

In exercise of the power under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO), the Director of Food and Environmental Hygiene (DFEH) has made the Food Business (Amendment) Regulation 2009 (“the Amendment Regulation”), at Annex A, to prohibit the extraction of seawater from specified prohibited areas for keeping live fish and live shell fish intended for sale for human consumption.

#### **BACKGROUND AND JUSTIFICATIONS**

2. At present, the Food and Environmental Hygiene Department (FEHD) adopts a number of measures to control the quality of water used for keeping live fish and shell fish intended for sale for human consumption. These measures are explained in paragraphs 3 – 6 below.

##### ***Existing Legislative Control***

3. Section 10A of the Food Business Regulation (Cap. 132X) (FBR) stipulates that no person shall, in the course of any food business, keep any live fish or shell fish intended for human consumption in water of a quality below the standard specified by DFEH by notice published in the Gazette, which is “*E. coli* less than 610 per 100 ml and absence of pathogenic organisms”. Anyone in breach of the provision is liable to a maximum fine of \$10,000 and imprisonment for three months upon conviction.

##### ***Administrative Requirements and Conditions***

4. Licensed / permitted food premises and public market stalls selling live seafood are also required by licensing requirements / conditions and market tenancy conditions to install and maintain proper filtration and disinfection facilities. Operators who fail to comply may be issued with warning letters, the accumulation of which within a specified period may lead to cancellation of licence / permit, or termination of market stall tenancy.

## ***Inspections and Water Sampling***

5. FEHD regularly inspects licensed / permitted food businesses and public market stalls to ensure that operators comply with all legislative and administrative requirements. Since 2004, FEHD takes fish tank water samples from food premises and market stalls selling live fish or shell fish for *E. coli* testing once every eight weeks. In case the *E. coli* count exceeds 180 per 100 ml (known as the “action level”), FEHD provides hygiene advice to the operators on matters such as proper maintenance of the filtration and disinfection facilities. Further fish tank water samples are then taken for tests until the quality of the fish tank water becomes satisfactory again. This mechanism provides an early alert to enable timely remedy by operators before fish tank water quality deteriorates below the statutory standard. From 2006 to 2008, of 26 763 samples tested, 350 were found to contain *E. coli* count exceeding the action level, and seven premises were prosecuted for failing to meet the statutory standard of “*E. coli* less than 610 per 100 ml”.

6. In addition, given the highly infectious nature of pathogenic *Vibrio cholerae* and its immediate threat to human health if found in fish tank water of food business premises, FEHD has stepped up surveillance in recent years by taking at least one separate sample from each premises for *Vibrio cholerae* testing between May and September every year. In case highly infectious *Vibrio cholerae* is detected in a water sample, DFEH may exercise power under section 128C of PHMSO to close the premises concerned to remove an immediate health hazard to the public. From 2006 to 2008, three food premises, including one fresh provision shop and two market stalls, were closed because of the presence of highly infectious *Vibrio cholerae* in fish tank water samples.

## ***Limitations of the Existing Regime***

7. Despite the statutory and administrative controls, from time to time in the past few years, fish tank water was found to contain *E. coli* count exceeding the statutory limit or even highly infectious *Vibrio cholerae*. The breaches might be attributable to failure on the part of the operators to maintain the filtration and disinfection facilities in good working order, or to the use of seawater from sources of a substandard quality. To enhance the existing regulatory regime, we need to introduce more effective measures to control the source of fish tank water in order to strengthen the protection for public health.

8. To this end, the Administration has considered various options such as centralising seawater supply for the food trade, designating seawater abstraction spots for seawater suppliers, and regulating or licensing seawater suppliers and trucks used for the delivery of seawater. The assessment is that

they are not financially viable or they involve significant resource implications or enforcement difficulties. The more effective and preferable option is to amend the FBR to prohibit the extraction of seawater from specified prohibited areas for keeping live fish and live shell fish intended for sale for human consumption. The impact of the Amendment Regulation on the trade has been assessed and is considered acceptable as the trade has other viable means of obtaining quality seawater as detailed in paragraph 13 below.

## THE PROPOSAL

9. The Administration proposes to introduce new provisions to the FBR to prohibit the extraction, use, supply and delivery of seawater from certain prohibited areas with consistently unsatisfactory water quality for keeping live fish or shell fish intended for sale for human consumption. We intend to make the act of seawater extraction from prohibited areas and the intentional use and supply of such seawater for the aforesaid purpose an offence. This is because, in reality, it is possible that many different parties are involved in the supply chain of seawater, and we need to ensure that the proposed regulatory scheme is capable of covering all of them. We are mindful that an operator may genuinely be unaware of the source of the seawater supplied or delivered to him. Therefore, the operator will only be held responsible if it can be proved that he knows or has reason to believe that such seawater is extracted from a prohibited area but continues to use it for keeping live fish or shell fish in the course of food business.

10. With reference to marine water quality data collected by the Environmental Protection Department (EPD) over the past years, we propose to demarcate areas with a consistently high level of *E. coli* as prohibited areas. More specifically, they include -

- (i) the Victoria Harbour;
- (ii) the 14 typhoon shelters specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548E);
- (iii) areas along the shoreline<sup>1</sup> of Hong Kong Island (including Ap Lei Chau); and
- (iv) areas along the western shoreline of the New Territories (including Tsing Yi).

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<sup>1</sup> Areas along the shoreline include areas that are (a) between the high water level and low water level of the shoreline and (b) within 50 metres seaward from the low water level of the shoreline.

11. We propose that any breach of the new provisions may attract a maximum penalty which is the same as that for contravening the existing section 10A, that is, a fine of \$10,000 and imprisonment for three months. The proposed prohibited areas are shown on the map at Annex B.

### *Addressing the Concerns of the Trade*

12. Recognising the possible implications of the new proposal on the seafood trade, the Administration has carried out extensive consultation as set out in paragraphs 21 to 23 below, and implemented a voluntary Quality Seawater Assurance Scheme (QSAS) with the assistance of Hong Kong Productivity Council since 2006 to help operators attain better control of the quality of seawater they use for keeping live seafood.

13. Under QSAS, various operators in the seafood trade can apply for different types of accreditation status. Seawater suppliers may apply to become Accredited Quality Seawater Suppliers (AQSS) if the seawater they supply is either extracted from clean sources, or is made up of marine salt and tap water. At present, there are a total of 18 accredited AQSSs, including the outlets of Fish Marketing Organisation at Aberdeen, Cheung Sha Wan and Kwun Tong, which supply seawater extracted from clean sources at \$27 per tonne. The QSAS has so far been operating smoothly and the seafood trade has generally established a good business practice in using quality seawater for keeping seafood. With readily available quality seawater from different suppliers in the market and an alternative means of making synthetic seawater from marine salt and tap water, the supply of quality seawater should not pose a constraint to the implementation of the new proposal.

14. Notwithstanding the general support expressed by the majority of seawater suppliers and food businesses selling live fish or shell fish at the two rounds of trade consultation conducted in 2006 and 2008, some seafood traders at the Lei Yue Mun (LYM) area expressed different views on the demarcation of the proposed prohibited areas. They claimed that the water quality of the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter where they usually obtained seawater for keeping their seafood was satisfactory and should therefore be excluded from the proposed prohibited areas. To follow up, FEHD engaged a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme (HKLAS) in 2008 to ascertain the water quality of that coastal strip in accordance with the general protocol for marine water testing adopted by EPD. Laboratory findings were that the average *E. coli* count of most of the locations tested exceeded the statutory limit for fish tank water. The *E. coli* counts at the remaining locations were found close to the statutory limit and were significantly above the action level. On this basis,

the Administration maintains the view that the proposed prohibited areas mentioned in paragraph 10 should remain unchanged. Also, of the 7 cases of prosecution against food premises for failing to meet the statutory standard of *E. coli* count in 2006 – 08, three cases involved food premises in Lei Yue Mun.

### ***Education and Enforcement***

15. FEHD will issue advisory letters and distribute publicity materials to the trade before and after enactment of the legislative amendments to remind them of the prohibition to be implemented. Signs will be erected at extraction black spots to warn against illegal seawater extraction. Surveillance and surprise checks will be conducted and enforcement actions taken on detection of offences.

## **THE AMENDMENT REGULATION**

16. The Amendment Regulation will –

- (i) add a new section 10AB to the FBR and make it an offence for a person to do any of the following –
  - (a) extract seawater from a prohibited area for the purpose of keeping by him, in the course of any food business, any live fish or shell fish that is intended for human consumption;
  - (b) use for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption seawater knowing or having reason to believe that it is extracted from a prohibited area;
  - (c) extract seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption; or
  - (d) supply, deliver or caused to be delivered to another person seawater knowing or having reason to believe that it is extracted from a prohibited area and it is to be used for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption;

- (ii) add a new Schedule 1A to the FBR to define the prohibited areas, which have been described in paragraph 10 above and illustrated in Annex B, from which extraction of seawater for the purpose of keeping live fish or shell fish in the course of any food business would be prohibited.

## **LEGISLATIVE TIMETABLE**

17. The legislative timetable is as follows:-

Publication in the Gazette	8 May 2009
Tabling at LegCo	13 May 2009

18. Subject to negative vetting, the Amendment Regulation shall come into operation on 1 August 2009.

## **IMPLICATIONS OF THE PROPOSAL**

19. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the FBR and PHMSO, the principal ordinance. Additional staffing and funding requirements, if any, arising from the implementation of the proposal would be absorbed from within the existing manpower and financial resources of the Food and Health Bureau and FEHD. There are also no economic, productivity or environmental implications.

20. In line with the sustainability principle of pursuing policies which promote and protect the physical health and safety of the people of Hong Kong, the Amendment Regulation would enhance food safety and help reduce food-borne diseases.

## **PUBLIC CONSULTATION**

21. Two rounds of trade consultation were conducted in 2006 and 2008 with representatives of seawater suppliers and food businesses selling live fish or shell fish. The Administration also arranged a number of district consultation fora and invited members of the District Councils and Area Committees to express their views. There was general support for the proposal.

22. The Legislative Council Panel on Food Safety and Environmental Hygiene was last consulted on the proposal in January 2009. Members gave their support for the Administration to proceed with the legislative exercise.

23. To ensure that the requirements of the legislative proposal would be fully understood by the seafood trade and seawater suppliers, FEHD arranged another briefing session for them in February 2009. There was general support from the trade. Once again, the LYM seafood traders raised objection to the proposed legislative amendment, reiterating their views that the quality of seawater from their present abstraction points was acceptable, the supply of seawater from other sources would be insufficient to meet their operational needs, the passageways in the LYM area were too narrow for seawater transportation, and the proposal would incur significant financial implications on them. In reply, we explained again the public health objective of the proposal and the considerations discussed in paragraphs 13 and 14 above. Furthermore, our observation is that the passageways are not so narrow as to pose hurdle for transporting quality seawater from outside source as there is routine transportation of foodstuffs and other things to and from the restaurants and fresh provision shops therein.

## **PUBLICITY**

24. Targeted publicity will be arranged for the seafood trade, in particular operators of restaurants and fresh provision shops, and seawater suppliers, on the new requirements. A spokesman will be made available to answer media enquiries.

## **ENQUIRIES**

25. Any enquiry on this brief can be addressed to Mr Owin Fung, Principal Assistant Secretary for Food and Health (Tel: 2973 8148).

**Food and Health Bureau**  
**May 2009**

## **FOOD BUSINESS (AMENDMENT) REGULATION 2009**

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

### **1. Commencement**

This Regulation comes into operation on 1 August 2009.

### **2. Section added**

The Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding –

#### **“10AB. Seawater extracted from prohibited areas**

(1) In this section –

“food business” (食物業) has the same meaning as in section 10A(3);

“prohibited area” (禁區) means an area specified in Schedule 1A.

(2) A person shall not extract seawater from a prohibited area for the purpose of keeping by that person, in the course of any food business, any live fish or shell fish that is intended for human consumption.

(3) A person shall not use for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption seawater knowing or having reason to believe that it is extracted from a prohibited area.

(4) A person shall not extract seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption.

(5) A person shall not supply, deliver or cause to be delivered, to another person seawater knowing or having reason to believe that –

(a) it is extracted from a prohibited area; and



- (b) it is to be used for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption.”.

### 3. Offences and penalties

Section 35(1)(a) is amended by adding “10AB(2), (3), (4) or (5),” after “10A(1),”.

### 4. Schedule 1A added

The following is added –

“SCHEDULE 1A [s. 10AB]

PROHIBITED AREAS FOR EXTRACTION OF SEAWATER FOR  
PURPOSE OF KEEPING LIVE FISH OR SHELL FISH INTENDED FOR  
HUMAN CONSUMPTION

1. Any area within the typhoon shelters specified in column 2 of the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E).
2. Any area within the following boundaries –
  - (a) on the north – the shoreline of Kowloon and the New Territories;
  - (b) on the east – a straight line drawn from the northern shore of A Kung Ngam at position 22°17.058' north 114°14.027' east to the southern shore of Lei Yue Mun at position 22°17.273' north 114°14.192' east;
  - (c) on the south – the shoreline of Hong Kong Island; and

- (d) on the west – a straight line drawn from the westernmost point of Hong Kong Island to the westernmost point of Green Island, from there a straight line drawn from the westernmost point of Green Island to the southern shore of Tsing Yi at position 22°19.623' north 114°06.400' east, from there along the southern, eastern and northern shorelines of Tsing Yi to the westernmost extremity of Tsing Yi and from there a straight line drawn true north therefrom to the mainland.

3. Any area –

- (a) between the high water level and low water level of the shoreline along Hong Kong Island; and
- (b) within 50 m seaward from the low water level of the shoreline along Hong Kong Island.

4. Any area –

- (a) between the high water level and low water level of the shoreline along Ap Lei Chau; and
- (b) within 50 m seaward from the low water level of the shoreline along Ap Lei Chau.

5. Any area –

- (a) between the high water level and low water level of the shoreline along the New Territories from the western mouth of the Shenzhen River at Deep Bay (Shenzhen Bay) southerly to Ting Kau at position 22°22.031' north 114°04.739' east; and

- (b) within 50 m seaward from the low water level of the shoreline along the New Territories from the western mouth of the Shenzhen River at Deep Bay (Shenzhen Bay) southerly to Ting Kau at position 22°22.031' north 114°04.739' east.

6. Any area –

- (a) between the high water level and low water level of the shoreline along Tsing Yi; and
- (b) within 50 m seaward from the low water level of the shoreline along Tsing Yi.”.

Director of Food and Environmental  
Hygiene

4 May 2009

### **Explanatory Note**

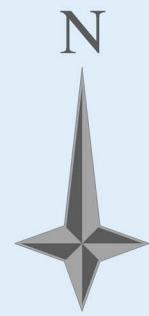
The purpose of this Regulation is to amend the Food Business Regulation (Cap. 132 sub. leg. X) (“principal Regulation”) to better control the source of seawater used for keeping, in the course of any food business, live fish or shell fish that is intended for human consumption.

2. Section 2 adds a new section 10AB to the principal Regulation for the above purpose. New section 10AB (read with section 35 of the principal Regulation) creates offences with reference to seawater extracted from a “prohibited area”. New section 10AB(1) defines “prohibited area” to be an area specified in new Schedule 1A to the principal Regulation. The offences are –

- (a) extracting seawater from a prohibited area to keep, in the course of any food business, any live fish or shell fish that is intended for human consumption;
- (b) using for the purpose of keeping, in the course of any food business, such live fish or shell fish seawater knowing or having reason to believe that it is extracted from a prohibited area;
- (c) extracting seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, such live fish or shell fish; and
- (d) supplying, delivering or causing to be delivered, to another person seawater knowing or having reason to believe that it is extracted from a prohibited area and it is to be used for the purpose of keeping, in the course of any food business, such live fish or shell fish.

# Proposed prohibited area for the abstraction of seawater

Annex B



DEEP BAY  
(Shenzhen Wan)

MIRS BAY  
(Dapeng Wan)

SHEKOU

SHENZHEN SHI

TSIM BEI  
TSUI

LAU FAU  
SHAN

PLOVER COVE

TOLO HARBOUR

BLACK  
POINT

TUEN MUN

TAP SHEK  
KOK

URRISTON ROAD

PILLAR  
POINT

PEARL  
ISLAND

TSING  
LUNG TAU

SHAM  
TSENG

TING KAU

TSUEN  
WAN

TSING YI

KWAI  
CHUNG

KOWLOON

SHAM  
SHUI PO

STONECUTTERS  
ISLAND

YAU MA  
TEI

TO KWA  
WAN

HUNG  
HOM

TSIM SHA  
TSUI

KWUN  
TONG

YAU  
TONG

GREEN  
ISLAND

SULPHUR  
POINT

SAI WAN

CENTRAL  
DISTRICT

WAN  
CHAI

CAUSEWAY  
BAY

NORTH  
POINT

QUARRY  
BAY

A KUNG  
NGAM

CHAI  
WAN

SIU SAI  
WAN

LANTAU ISLAND

Hei Ling  
Chau

Cheung Chau

POK FU  
LAM

CYBERPORT

ABERDEEN

WONG CHUK  
HANG

AP LEI  
CHAU

STANLEY

TAI TAM  
BAY

SHEK O

Boundary of Special Administrative Region

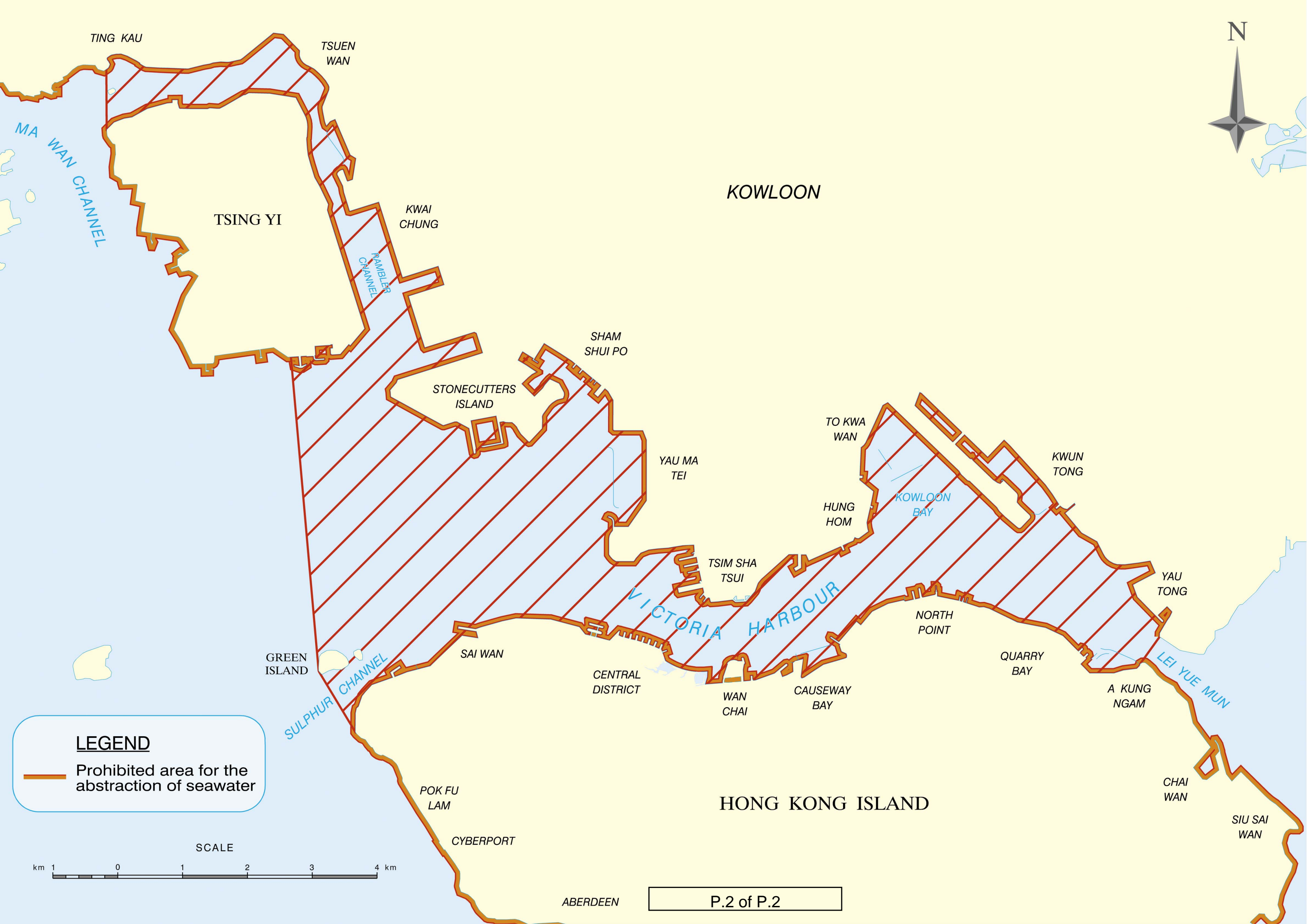
## LEGEND

Prohibited area for the abstraction of seawater

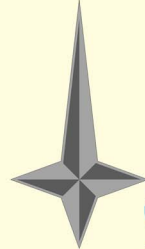
Scale

km 2 0 2 4 6 8 10 12 km





N



TING KAU

TSUEN WAN

KOWLOON

TSING YI

KWAI CHUNG

RAMBLER CHANNEL

SHAM SHUI PO

STONECUTTERS ISLAND

YAU MA TEI

TO KWA WAN

KWUN TONG

KOWLOON BAY

HUNG HOM

TSIM SHA TSUI

YAU TONG

CENTRAL DISTRICT

NORTH POINT

QUARRY BAY

A KUNG NGAM

CHAI WAN

SIU SAI WAN

HONG KONG ISLAND

POK FU LAM

CYBERPORT

ABERDEEN

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### LEGEND

Prohibited area for the abstraction of seawater

SCALE

km 1 0 1 2 3 4 km