

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1549/11-12  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/1/11

**Bills Committee on Fisheries Protection (Amendment) Bill 2011**

**Minutes of the fourth meeting**  
**held on Wednesday, 22 February 2012, at 8:30 am**  
**in Conference Room 2B of the Legislative Council Complex**

**Members present** : Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)  
Hon Fred LI Wah-ming, SBS, JP  
Hon WONG Yung-kan, SBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon CHAN Hak-kan  
Hon Alan LEONG Kah-kit, SC  
Hon Albert CHAN Wai-yip

**Public Officers attending** : Item I

Ms Kitty CHOI, JP  
Deputy Secretary for Food and Health (Food) 1  
Food and Health Bureau

Miss Diane WONG Shuk-han  
Principal Assistant Secretary for Food and Health (Food) 2  
Food and Health Bureau

Dr SO Ping-man  
Assistant Director (Fisheries)  
Agriculture, Fisheries and Conservation Department

Mr Mickey LAI Kin-ming  
Senior Fisheries Officer (Management)  
Agriculture, Fisheries and Conservation Department

Mr SUEN Wai-chung  
Senior Assistant Law Draftsman (Professional Development)  
Department of Justice

Ms Carmen CHAN Ka-man  
Government Counsel  
Department of Justice

Mr CHAN Hon-bun  
Senior Marine Officer/Licensing and Port Formalities  
Marine Department

Mr TAM Wai-man  
Marine Officer/Licensing and Port Formalities (Ag)  
Marine Department

**Clerk in Attendance** : Miss Betty MA  
Chief Council Secretary (2) 4

**Staff in Attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Candice LAM  
Senior Council Secretary (2) 4

Miss Maggie CHIU  
Legislative Assistant (2) 4

Action

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**I. Meeting with the Administration**

[The Bill, Legislative Council Brief, LC Paper Nos. LS5/11-12, CB(2)628/11-12(02), CB(2)976/11-12(01) and CB(2)1134/11-12(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

2. Members noted the Administration's responses to issues raised by members at the meeting held on 10 February 2012.
3. The Bills Committee commenced the clause-by-clause examination of the Bill.
4. The Administration was requested to consider the following drafting issues -
  - (a) consider improving the Chinese rendition of the term "impoundment"; and
  - (b) examine the need for the punctuation "、" appeared before "或易毀消物件" in the Chinese text of proposed section 6(2).

**II. Any other business**

5. Members noted that the next meeting had been scheduled for 15 March 2012 at 10:45 am.

*(Post-meeting note: With the concurrence of Chairman of the Bills Committee, the next meeting of the Bills Committee would be advanced to start at 8:30 am.)*

6. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2  
Legislative Council Secretariat  
28 March 2012

**Proceedings of the fourth meeting of the  
Bills Committee on Fisheries Protection (Amendment) Bill 2011  
on Wednesday, 22 February 2012, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000128 - 000329	Chairman	Opening remarks.	
000330 - 000840	Administration	Briefing by the Administration on its response to issues raised by members at the meeting held on 10 February 2012 [LC Paper No. CB(2) 1134/11-12(01)].	
000841 - 001741	Chairman Administration	Briefing by the Administration on the salient features of the Bill.  <u>Clause-by-clause examination of the Bill</u>  <u>Clauses 1 to 3</u>  Members raised no questions on clauses 1 to 3.	
001742 - 005510	Chairman Administration Mr TAM Yiu-chung Mr WONG Yung-kan Mr Albert CHAN	<u>Clause 4 - Section 2 amended (interpretation)</u>  Mr TAM Yiu-chung's enquiry about the meaning of "捕捉" and "捕取" in the definition of "fishing".  The Administration's clarification -  (a) "捕取" meant "taking" while "捕捉" meant "capture";  (b) the policy intention was to regulate fishing activities, including any attempt to do so; and  (c) the onus of proof was on the prosecution.  Mr WONG Yung-kan's concern -  (a) it would sometimes be difficult to prove an attempt to take fish underneath the sea; and  (b) whether sea urchin collection was permissible after the commencement of the Bill. If so, he was concerned that Mainland vessel owners could engage Hong Kong residents to carry out such activities extensively in Hong Kong waters which would undermine the marine resources.	

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		<p>The Administration's response -</p> <p>(a) sea urchin collection by registered fishing vessels was permitted after the commencement of the Bill, whereas dredging was not permitted under the existing Fisheries Protection Ordinance (Cap. 171) ("the Ordinance");</p> <p>(b) one of the objectives of the Bill was to prohibit fishing activities of non-local fishing vessels in Hong Kong waters, and it was not the policy intention to prohibit fishing activities of local fishing vessels in Hong Kong waters; and</p> <p>(c) currently, there was no restriction under the Ordinance on fishing activities by non-local fishing vessels in Hong Kong waters and the Bill seeks prohibition on this front. At present, Mainlanders entering into Hong Kong waters to fish without applying through the Mainland Fishermen Deckhand Scheme (the Scheme) violate the Immigration Ordinance. If such Mainland deckhands, upon being hired, conduct fishing activities in Hong Kong waters beyond those conditions stipulated under the Scheme, they are also in breach of the conditions of stay under the Immigration Ordinance.</p> <p>Mr WONG Yung-kan remained concerned about hiring divers to capture fish after the commencement of the Bill. The Administration explained that it was spelt out in section 3 of Schedule 2 to the Bill that fishing during diving supported through a hose from a support vessel for the diver to breathe was not permitted.</p> <p>The Chairman's enquiry about the viability of prescribing the maximum catches from fishing activities permitted under Schedule 2.</p> <p>The Administration's response -</p> <p>(a) it would be difficult to set limits on the amounts of catches for different fish species in the Ordinance as there were many species of fish in Hong Kong. However, the proposed section 16 provided for conditions to be imposed by the Director of Agriculture, Fisheries and Conservation ("DAFC") in respect of the use of registered</p>	

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		<p>vessels for fishing; and</p> <p>(b) currently, there were no specific regulations against fishing for commercial purposes only.</p> <p>Mr TAM Yiu-chung asked whether DAFC would consider spelling out clearly the maximum amount of fish catches to be captured by divers carrying out permitted fishing activities in the conditions to be imposed by DAFC in respect of the use of registered vessels for fishing in accordance with the proposed section 16.</p> <p>The Administration advised that DAFC would take note of members' concern, such as the amount of fish catches to be captured in specified areas and periods, when imposing conditions in respect of the use of registered vessels for fishing was required.</p> <p>Mr Albert CHAN's enquiry about the meaning of "dredging device".</p> <p>The Administration advised that the meaning of "dredging device" was stipulated in the Fisheries Protection (Specification of Apparatus) Notice (Cap. 171B).</p>	
005511 - 010914	Chairman Mr WONG Yung-kan	<p>Responding to Mr WONG Yung-kan, the Administration advised that "trawl net" was within the definition of "fishing gear", and trawling would be banned after the coming into effect of the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 . The definition of "fishing gear" provided for a generic description of the term, and the Administration would consider spelling out specific classes of fishing gear in the conditions to be imposed by DAFC in respect of the use of registered vessels for fishing.</p> <p>Mr WONG Yung-kan urged the Administration to consult the trade on the specifications of fishing gear and regulatory measures to be adopted.</p>	
010915 - 012055	Chairman Mr Albert CHAN Administration Mr WONG Yung-kan ALA10	<p>Mr Albert CHAN's requested the Administration to -</p> <p>(a) spell out explicitly the specification of fishing gear for the purpose of the Bill; and</p> <p>(b) consider improving the drafting of Chinese rendition of the term "impoundment".</p>	

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		<p>The Administration responded that the classes of apparatus prohibited for use for fishing were listed in the Fisheries Protection (Specification of Apparatus) Notice (Cap. 171B), and ALA would liaise with the Administration on the drafting of Chinese rendition of the term "impoundment".</p>	<p><b>Admin/ ALA</b></p>
012056 - 012250	Chairman	Members raised no questions on clauses 5 and 6.	
012251 - 012631	<p>Chairman Mr TAM Yiu-chung Administration Mr Albert CHAN ALA10</p>	<p><u>Clause 7 - Sections 4A and 4B added</u></p> <p>Mr TAM Yiu-chung's enquiry whether the orders made under the proposed new section 4A would be subject to the scrutiny of the Legislative Council ("LegCo").</p> <p>The Administration advised that the orders so made would be published in the Gazette and be subject to the negative vetting of LegCo.</p> <p>Responding to Mr Albert CHAN, ALA advised that as stipulated in the Interpretation and General Clauses Ordinance (Cap. 1), an item of subsidiary legislation would be subject to LegCo's scrutiny under the positive vetting procedure or the negative vetting procedure.</p>	
012632 – 013426	<p>Chairman Mr WONG Yung-kan</p>	<p>Mr WONG Yung-kan enquired about the specific person to be appointed as the Authority for the purpose of the Bill.</p> <p>The Administration advised that the policy intention was to appoint DAFC to be the Authority. The appointment and designation of fisheries protection areas would be subject to the negative vetting of LegCo.</p> <p>The Chairman's view that the Administration should explain clearly its policy intention and consider spelling out explicitly that the ranking of the Authority to be appointed for the purpose of the Bill would not be lower than DAFC.</p>	
013427 - 013456	Chairman	Members raised no question on clause 8.	
013457 - 015125	<p>Chairman Mr Albert CHAN Administration ALA10</p>	<p><u>Clause 9 - Section 5 substituted</u></p> <p>Mr Albert CHAN sought clarification about the meaning of "premises" in the proposed section 5.</p> <p>The Administration advised that clause 9 substituted a new section 5 for the existing section 5 to make better provision for search of</p>	

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		<p>places and seizure of items, and impose more restrictions on the power of search and seizure than the existing section 5.</p> <p>Responding to Mr Albert CHAN's concern about the application of section 5(3) in relation to "premises", ALA advised that the authorized person might exercise the power of search and seizure without a search warrant under section 5(3) only if all the requirements provided under section 5(3) were satisfied.</p>	
015126 - 015736	Chairman ALA10 Mr WONG Yung-kan	<p>Clause 10 - Section 6 amended (forfeiture of things in respect of which offences are committed)</p> <hr/> <p>Concern raised by ALA -</p> <p>(a) the need for the punctuation "、" appeared before "或易毀消物件" in the Chinese text of the proposed section 6(2); and</p> <p>(b) whether the term "該等" should be added before the term "售賣" in the Chinese text of section 6(3) so that it would tally with the English version of the term "such sale".</p> <p>On (b) above, the Administration advised that the term "該等" might imply more than one transaction, it therefore considered unnecessary to add the term to the Chinese text of section 6(3). It would consider (a) above and revert to the Bills Committee.</p> <p>Mr WONG Yung-kan sought clarification on the meaning of "proceeds" in section 6(3) and ways to deal with the fish or things seized under section 5.</p> <p>The Administration advised that not all fish or things seized would be disposed of by selling. In case any fish or any other article or thing seized was sold according to the provisions of Cap.171, the proceeds would be credited to the general revenue of the Government.</p>	<b>Admin</b>
015137 - 015854	Chairman ALA10	ALA advised that reference could be made to the Chinese rendition of the term "impoundment" in the Marine Fish Culture Ordinance (Cap. 353) in considering improving the drafting of the Chinese rendition of the term used in the Bill.	



<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda item II – Any other business</i>			
015855 - 015911	Chairman	Date of next meeting.	

Council Business Division 2  
Legislative Council Secretariat  
28 March 2012