

立法會
Legislative Council

LC Paper No. CB(2)2136/11-12
(These minutes have been
seen by the Administration)

Ref : CB2/BC/1/11

Bills Committee on Fisheries Protection (Amendment) Bill 2011

**Minutes of the sixth meeting
held on Tuesday, 27 March 2012, at 8:30 am
in Conference Room 2A 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
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip

Members absent : Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHAN Hak-kan

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

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

I. Meeting with the Administration

[The Bill, LC Paper Nos. LS49/11-12, CB(2)628/11-12(02) and CB(2)1493/11-12(01)]

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

2. Members noted the Administration's responses to issues raised by members at the meeting held on 15 March 2012.

3. The Bills Committee continued the clause-by-clause examination of the Bill from the proposed section 25 in clause 15 onwards.

Action

4. The Administration was requested to provide the following information -

- (a) the statistics on recent cases handled by the Administrative Appeals Board; and
- (b) fishermen approached by officers of the Agriculture, Fisheries and Conservation Department ("AFCD") on Cheung Chau and Peng Chau subsequent to the meeting on 15 March 2012 on the fishing operations in the area.

5. The Administration was requested to consider the following -

- (a) setting a limit on the number and/or size of cage traps in the proposed Schedule 2;
- (b) improving the drafting of the Chinese text of the proposed section 16(1);
- (c) giving an undertaking during the resumption of Second Reading debate of the Administration's intention to send notice of cancellation of a registration or a research fishing permit by registered mail;
- (d) establishing an appeal mechanism under AFCD for applicants who were dissatisfied with the decisions made by the Director of Agriculture, Fisheries and Conservation in relation to the granting of or refusal to grant a licence or permit; and
- (e) reviewing the notification period for change of address in the proposed section 37(3).

II. Any other business

6. Members agreed that the next meeting would be scheduled for 10 April 2012 at 10:45 am.

7. The Chairman added that the Bills Committee would consider Committee Stage amendments ("CSAs") to be proposed by individual members at the next meeting. These members were invited to forward their CSAs, if any, to the Bills Committee before the next meeting.

Action

8. There being no other business, the meeting ended at 12:28 pm.

Council Business Division 2
Legislative Council Secretariat
23 May 2012

**Proceedings of the sixth meeting of the
Bills Committee on Fisheries Protection (Amendment) Bill 2011
on Tuesday, 27 March 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000449 - 000730	Chairman	Opening remarks.	
000731 - 001340	Administration	Briefing by the Administration on its responses to issues raised by members at the meeting held on 22 February 2012 [LC Paper No. CB(2) 1493/11-12(01)].	
001341 - 001651	Chairman Mr Albert CHAN	In relation to the Administration's responses to concerns about the deployment of rabbitfish traps and fishing activities with the use or aid of vessels not licensed under the Merchant Shipping (Local Vessel) Ordinance (Cap. 548), Mr Albert CHAN requested the Administration to provide information on the fishermen, who conducted small scale fishing operations near Cheung Chau and Peng Chau, it had contacted.	Admin
001652 - 005040	Chairman Mr WONG Yung-kan Administration Mr Albert CHAN ALA Mr TAM Yiu-chung	<p>Mr WONG Yung-kan was concerned about the impact of restricting the use of cage traps on recreational fishers. Consideration should be given to permitting the use of cage traps by recreational fishers, for example, setting a limit on the number and/or size of the cage traps in the proposed Schedule 2.</p> <p>Mr Albert CHAN agreed with Mr WONG's view, and suggested that amendments should be proposed to the Bill in this respect.</p> <p>The Chairman's advice that individual members might wish to put forward their proposed amendments to the Bill for the consideration of the Bills Committee at the next meeting.</p> <p>Responding to Mr TAM Yiu-chung's enquiry on the viability of Mr Albert CHAN and Mr WONG Yung-kan's proposal, ALA advised that the Legal Service Division ("LSD") would provide further views on the proposed amendments to Schedule 2, if any, when more details were available.</p> <p>The Administration advised that the definition of fishing gear was laid down in the Bill. The Bill sought to protect marine and fisheries resources, and strike a balance between regulating fishing activities with the use or aid of vessels which</p>	Admin

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		depleted fisheries resources and minimizing the impact of the proposed measures on recreational fishing. Common fishing methods used by the public in recreational fishing had already been specified in the new Schedule 2. Enforceability and the impact on fisheries resources of any proposed amendment to the schedule should be carefully examined. The Administration would not rule out the possibility of regulating recreational fishing in the future when more information on the impact of recreational fishing on fisheries resources and the effectiveness of the proposed measures was available. In addition, the Administration had extensively consulted the fisheries industry which expressed support for the proposed measures.	
005941 - 014434	Chairman ALA Administration Mr WONG Yung-kan Mr TAM Yiu-chung	Discussion on the Administration's proposed amendments to the Chinese text of the proposed section 16(1) and the option proposed by LSD vide LC Paper No. LS49/11-12. The Administration and ALA would take into account members' views and further discuss the Chinese text of the proposed section 16(1).	Admin/ ALA
014435 - 020200		10-minute break	
020201 - 020556	Chairman Mr WONG Yung-kan Administration	<u>Continuation of clause-by-clause examination of the Bill</u> <u>Proposed Part 6 Research Fishing Permits</u> <u>Proposed section 25</u> In response to Mr WONG Yung-kan's enquiry, the Administration advised that "areas" in the proposed section 25(3)(a) meant areas within the waters of Hong Kong and the applicant might specify whether he applied for a research fishing permit for the entire Hong Kong waters or at specified areas only.	
020557 - 021424	Chairman Mr Albert CHAN Administration Mr WONG Yung-kan ALA	<u>Proposed section 26</u> In response to Mr Albert CHAN's enquiry about the applicability of the proposed section 26(1)(b), the Administration advised that the Director of Agriculture, Fisheries and Conservation ("DAFC") would refuse an application made under the proposed section 25 for issue or renewal of a research fishing permit if the applicant failed to produce the vessel concerned for inspection on request. In response to Mr WONG Yung-kan, the	

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		Administration explained that "such other matters as the Director thinks fit" under the proposed section 26(3) referred to matters related to the applications for issue or renewal of research fishing permit, for example, conducting research studies relating to environmental impact assessments.	
021425 - 022518	Chairman Mr WONG Yung-kan Administration Mr TAM Yiu-chung	<p><u>Proposed sections 27 to 29</u></p> <p>Responding to Mr WONG Yung-kan, the Administration advised that "not in the best interests of promoting the sustainability of fisheries resources of the waters of Hong Kong" under the proposed section 29(1)(b) referred to those researches on fishing and scientific monitoring activities which were not conducive to the sustainability of fisheries resources and DAFC might cancel the research fishing permit in relation to such research activities. DAFC would monitor the fisheries resources in areas where such activities were carried out.</p> <p>Mr TAM Yiu-chung was concerned that the threshold in respect of the best interests in considering applications for research fishing permits. The Administration advised that prior application for a research fishing permit for fishing activities in relation to research purposes was required after the enactment of the Bill, and DAFC would issue the research fishing permit after taking into account the purpose and nature of fishing activities, and the possible impact on fisheries resources, if any.</p>	
022519 - 022950	Chairman Mr TAM Yiu-chung Administration ALA Mr WONG Yung-kan	<p><u>Proposed Part 7 Change of particulars and production of certificate or permit, etc.</u></p> <p><u>Proposed section 30</u></p> <p>Responding to Mr TAM Yiu-chung, the Administration and ALA advised that being unaware of the obligatory requirements of notifying DAFC of change of particulars would normally not be acceptable as a reasonable excuse under the proposed section 30(4). However, the onus of proof for contravening the proposed section 30(4) would be on the prosecution.</p> <p>Responding to Mr WONG Yung-kan, the Administration advised that a penalty of level 3 would be a fine ranged from \$5,000 to \$10,000, and no imprisonment would be imposed.</p>	

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022951 - 023100	Chairman	<p><u>Proposed sections 31 and 32</u></p> <p>Members raised no questions.</p>	
023101 - 031306	Chairman Mr TAM Yiu-chung Admin ALA Mr Albert CHAN Mr WONG Yung-kan	<p><u>Proposed Part 8 Appeals</u></p> <p><u>Proposed section 33</u></p> <p>Mr TAM Yiu-chung expressed concern whether the Administration would ascertain that the vessel holder had received the notice of DAFC's decision to cancel the registration.</p> <p>Expressing a similar concern, Mr Albert CHAN took the view that an applicant should be allowed to make an appeal within 21 days from the date of receiving DAFC's notice of cancellation.</p> <p>The Administration advised that DAFC was obliged to send out any notice, document or information pursuant to the proposed section 42. The notice of cancellation of a registration or a research fishing permit would be sent by registered mail administratively. Flexibility had already been taken into account when it was decided that 21 days would be the period for aggrieved persons to make an appeal. DAFC might suspend the operation of his decision or action until the result of appeal was available.</p> <p>Mr WONG Yung-kan advised that it was a common practice for AFCD to send important notice to the fisheries industry by registered mail.</p> <p>The Chairman's advice that the Administration should consider giving an undertaking during the resumption of the Second Reading debate on the Bill that the notice of cancellation of a registration or a research fishing permit would be sent by registered mail.</p> <p>Mr Albert CHAN remained of the view that the Administration should spell out in the Bill the intention of sending the notice of cancellation of a registration or a research fishing permit by registered mail.</p> <p>In response to Mr WONG Yung-kan's question, the Administration advised that persons aggrieved by the decisions of DAFC might appeal to the Administrative Appeals Board ("AAB") set up under the Administrative Appeals Board Ordinance.</p> <p>Mr WONG Yung-kan and Mr Albert CHAN</p>	<p>Admin</p>

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		<p>considered that establishing an appeal mechanism in AFCD, which was similar to the one for marine park fishing permits, for handling appeals in relation to the proposed registration system would be a better approach. The Administration advised that AAB would be more appropriate than an appeal board under DAFC, as it would be handling appeal cases aggrieved by decision(s) of DAFC. At present, there was no appeal board established in AFCD to handle appeals in relation to fishing permits granted under the Marine Parks Ordinance (Cap.476). The Administration would provide statistics on appeals handled by AAB for further consideration of the Bills Committee.</p>	Admin
031307 - 031404	Chairman	<p><u>Proposed section 34</u></p> <p>Members raised no questions.</p>	
031405 - 031646	Chairman Mr TAM Yiu-chung	<p><u>Part 9 Information</u></p> <p><u>Proposed section 35</u></p> <p>Mr TAM Yiu-chung sought clarification about the meaning of "any purpose in connection with" in the proposed section 35. The Administration advised that the purpose of obtaining information from the Director of Marine by DAFC should be related to fishing, registration of local fishing vessels or research fishing permit.</p>	
031646 - 031737	Chairman	<p><u>Proposed section 36</u></p> <p>Members raised no questions.</p>	
031338 - 032944	Chairman Mr WONG Yung-kan Administration	<p><u>Proposed section 37</u></p> <p>Mr WONG Yung-kan expressed concern that the 7-day notification period for change of address in the proposed section 37(3) was too short. The Administration advised that under the proposed section 37(5), only if a person who without reasonable excuse would contravene the proposed section. The 7-day notification period was also in place in Cap. 548 for handling of vessel operating licences. In the light of members' view, the Administration would review the notification period for change of address in the proposed section 37(3) and revert to the Bills Committee if necessary.</p>	Admin

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032945 - 033534	Chairman	<p><u>Proposed Part 10 Miscellaneous</u></p> <p><u>Proposed sections 38 to 45</u></p> <p>Members raised no questions.</p>	
033535 - 033625	Chairman	<p><u>Clause 16 Schedule amended (toxic substance)</u></p> <p>Members raised no questions.</p>	
033626 - 034649	Chairman Mr WONG Yung-kan Administration	<p><u>Clause 17 Schedules 2 and 3 added</u></p> <p><u>Proposed Schedule 2</u></p> <p>Mr WONG Yung-kan reiterated his concern that recreational fishing and dive-fishing activities should be regulated so as to better protect the marine and fisheries resources.</p> <p>The Administration assured members that it would continue to monitor closely the impact of such activities on the fisheries resources, and it did not rule out the possibility of regulating recreational fishing in the future.</p>	
034650 - 034904	Chairman Mr WONG Yung-kan Administration	<p><u>Proposed Schedule 3</u></p> <p>The Administration advised that the fees payable for local fishing vessel registration under the enacted Bill were one-off and payable on making applications, and no renewal fees were needed.</p>	
034905 - 035348	Chairman ALA Administration	<p><u>Part 3 Amendments to Other Legislation</u></p> <p><u>Division 1 – Amendment to Fisheries Protection Regulations (Cap. 171 sub. leg. A)</u></p> <p><u>Clause 18 - Regulation 6 amended (exemption)</u></p> <p>ALA sought clarification on the discrepancies between using the word "and" in the phrase "environmental monitoring and related purposes" in regulation 6 (a) of Cap. 171A, and the use of the word "or" in the phrase appeared in the proposed section 25(1).</p> <p>The Administration advised that the scope of the proposed sections 25 and 26 was wider than that under regulation 6(a) of Cap. 171A.</p>	
035349 - 035620	Chairman	<p><u>Division 2 – Consequential Amendments</u></p> <p><u>Subdivision 1 – Amendment to Waterworks Regulations (Cap.102 sub. leg. A)</u></p>	

Time marker	Speaker(s)	Subject(s)	Action required
		Subdivision 2 – Amendment to Administrative Appeals Board Ordinance (Cap.442) Members raised no questions on clauses 19 and 20.	
<i>Agenda item II – Any other business</i>			
035621 - 035708	Chairman	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
23 May 2012