
Fisheries Protection (Amendment) Bill 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—

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- (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.
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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;

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- (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—

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- (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.
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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.
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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.
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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 Ordinances 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 20 or 30	On issue of the certificate	165

Fisheries Protection (Amendment) Bill 2011

Part 2

Clause 17

C4203

Item	Particular	When payable	Fee \$
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 Ordinance (Cap. 171)

A decision of the Director of 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.”
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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.

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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.