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**Report of the Bills Committee on Fisheries Protection
(Amendment) Bill 2011**

Purpose

This paper reports on the deliberations of the Bills Committee on Fisheries Protection (Amendment) Bill 2011.

Background

2. According to the Administration, fish catch and fishing effort in Hong Kong waters have far exceeded the maximum sustainable yield and optimal fishing effort as assessed by experts. The Committee on Sustainable Fisheries ("the Committee") was established in December 2006 to study the long term goals, the direction and feasible options for the sustainable development of the local fisheries industry. The Committee submitted the report for the Government's consideration in April 2010, recommending a ban on trawling, and a suite of fisheries management measures to control the fishing effort in Hong Kong waters and protect important fish spawning and nursery grounds. The key measures proposed by the Committee included –

- (a) limiting the entry of new fishing vessels and maintaining an appropriate level of fishing effort;
- (b) prohibiting fishing activities with the use or aid of non-local fishing vessels;
- (c) restricting fishing activities with the use or aid of non-fishing vessels; and
- (d) designation of fisheries protection areas ("FPAs").

3. The Administration agreed with the Committee's recommendations in paragraph 2 above. In order to help bring the fisheries industry back to a sustainable path, as a first step, a trawl ban will come into operation on 31 December 2012. The Administration would also need to follow through with amendments to the Fisheries Protection Ordinance (Cap. 171) to implement a series of complementary fisheries management measures to regulate fishing activities.

The Fisheries Protection (Amendment) Bill 2011 ("the Bill")

4. To tie in with the Administration's policy intent to pursue sustainable fisheries development in Hong Kong, the Bill seeks to amend Cap. 171 to provide for –

- (a) the registration of local fishing vessels;
- (b) the regulation of fishing within the waters of Hong Kong;
- (c) the designation of FPAs and appointment of an authority to manage and control fishing in those areas; and
- (d) incidental and connected matters.

5. Under the Bill, no person may be engaged in fishing with the use or aid of a vessel in Hong Kong waters, unless –

- (a) the vessel is a registered vessel and the fishing is either in accordance with conditions imposed in the registration or falls under the list of permitted fishing activities;
- (b) the person is so engaged under and in accordance with a valid research fishing permit; or
- (c) the fishing is one that falls under the list of permitted fishing with the use or aid of non-fishing vessels or local fishing vessels which have not been registered.

The Bills Committee

6. At the House Committee meeting on 11 November 2011, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of

Hon Tommy CHEUNG, the Bills Committee held seven meetings with the Administration. The membership of the Bills Committee is in **Appendix I**. The Bills Committee has also received views from 24 deputations at one of its meetings. The list of deputations which have given written and/or oral views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

7. Members support the policy intent to pursue sustainable fisheries development in Hong Kong through regulating fishing practices and preventing activities detrimental to the fisheries industry. All the deputations which have given views to the Bills Committee also express support on the said policy intent of the Administration. In the course of deliberations, members have examined issues relating to the registration system for local fishing vessels, the proposal to limit new entrants, prohibition of fishing with the use or aid of non-local fishing vessels, restriction of fishing with the use or aid of non-fishing vessels and the proposed fisheries management measures to be imposed in FPAs. The deliberations of the Bills Committee are set out in the ensuing paragraphs.

Registration system for local fishing vessels

8. To control the fishing effort so as to enable the marine environment to rehabilitate, members recognise the need to limit the number of fishing vessels and the total engine power of these vessels. Part 5 (proposed sections 13 to 24) under the Bill provides for the introduction of a registration system for local fishing vessels, with the Director of Agriculture, Fisheries and Conservation ("DAFC") as the authority for registration. The Bill stipulates that owners of existing local fishing vessels must apply for registration on or before the expiry of a period of 12 months from the commencement date of the Bill. DAFC will not entertain any applications for registration after the 12-month period unless the applicant shows to the satisfaction of DAFC any circumstances set out in the proposed section 14(3). DAFC is required under the proposed section 13 to keep a register of local fishing vessels. A certificate of registration containing specifications of engine powers of the registered vessel and the number of its ancillary vessels will be issued to the successful applicant. No fishing may be carried out if the engine power of the vessel or the maximum number of ancillary vessels exceeds that specified in the certificate of registration.

Application for registration

9. According to the Administration, the registration system for local fishing

vessels pursuant to the proposed section 14 of the Bill is simple. An owner of a local fishing vessel, who possesses a valid operating licence issued under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) by the Marine Department ("MD") on or before the commencement date of the Bill, may apply for registration if the vessel is to be used primarily for fishing in Hong Kong waters. A vessel constructed or acquired after the commencement date will also be eligible for registration if its owner possesses a valid Approval-in-Principle ("AIP") letter issued by MD as provided in the proposed section 14. For a successful application, a certificate of registration will be issued to the owner of the registered vessel. Details such as engine power and number of ancillary vessels of the registered vessel, the period during which and area(s) of the waters of Hong Kong within which fishing may be carried out, or fishing method(s) that may be employed and the fishing gears that may be used may be specified as conditions in the registration. The registered vessel will be required to operate in accordance with the conditions imposed and the specification made. The registration will remain valid throughout the life span of the vessel and no renewal of registration will be required. DAFC may approve subsequent applications for replacement of registered vessels without any increase in engine power.

10. Some members have asked about the criteria adopted by MD for issuing operating licences under Cap. 548 and the cooperation between the Agriculture, Fisheries and Conservation Department ("AFCD") and MD in maintaining the registration system. The Administration has advised that operating licences are issued to local vessels by MD, which classifies vessels into different types, of which include fishing vessels. The proposed registration system is applicable to all existing local fishing vessels with valid operating licences. The requirement of having a valid operating licence issued by MD will limit registration eligibility to local vessels only. In processing the application for an operating licence and renewal of licence, MD will primarily consider the safety and seaworthiness of the vessel. Upon the Bill coming into force, DAFC will be empowered to obtain the relevant information on the vessels in relation to the application from MD direct, and inspect the vessel and fishing gear on board, as DAFC considers it necessary.

11. The Administration has further advised that the Bill also provides for a period of 12 months from the commencement of the Bill for existing local fishing vessels to register with DAFC. For cases where the fishing vessels are used for both fishing and transportation of catch, the vessel owners can have time to decide whether to use the vessels for fishing or transportation purpose.

12. While supporting the Administration's effort to preserve local fisheries resources, some members have pointed out that it is unfair to blame local

fishermen for their fishing practices and activities leading to a depletion of local fisheries resources. Some local fishing vessels operating in Hong Kong waters are actually owned by Mainlanders but the licences of such vessels were in fact held in the name of Hong Kong residents.

13. According to the Administration, it is aware of the concerns about the operation of Mainland fishing vessels in Hong Kong waters. Upon the Bill coming into operation, Mainland fishing vessels and all other non-local fishing vessels, will be prohibited from engaging in fishing in Hong Kong waters.

Refusal of registration

14. Members note that the proposed section 18 in the Bill provides for refusal of registration by DAFC if the vessel concerned is not made available for inspection upon request or DAFC is not satisfied that the vessel is designed and equipped to be used primarily for fishing. The applicant must be able to provide the vessel concerned for the inspection of DAFC on request.

Limiting new entrants

15. Whether limiting new entrants will give rise to speculation of registered fishing vessels has been of concern to some members. The Administration takes the view that as the fisheries industry requires specialised skills and investment, it does not envisage the registration exercise will give rise to speculation of registered fishing vessels.

16. While reckoning the need to control the fishing effort to enable the restoration of marine resources, Hon WONG Yung-kan appeals to the Administration to set a concrete target for a sustainable level of fisheries resources such that new entrants will be permitted once the target has been achieved, with a view to fostering the sustainable development of the fisheries industry. The Administration has assured members that it will closely monitor the effectiveness of the proposed fisheries management measures in restoring the fisheries resources after the enactment of the Bill.

Registration of former trawler vessels

17. The proposed section 21 of the Bill provides for an enabling provision to allow an existing trawler owner an option of registering a non-trawler by modifying his/her existing trawler or by acquiring a new vessel beyond the 12-month period after the commencement of the Bill, on condition that the engine power of the non-trawler is no higher than the trawler to be replaced. According to the Administration, the registration period for existing trawler

owners will be determined after consultation with the trade. Noting that trawler owners have expressed grave concern about the registration arrangement for existing trawler owners, members have called on the Administration to make clear the registration period and consider adopting a longer registration period for existing trawler owners.

18. The Administration has stressed that following the passage of the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 on 18 May 2011 to ban trawling in Hong Kong waters with effect from 31 December 2012, it is not the policy intent to register trawler vessels under the registration system. As the registration system aims to complement the legislation on trawl ban, it is provided in the proposed section 21(3) of the Bill that DAFC must not register a vessel unless he is satisfied that trawling with the use or aid of the vessel is unlikely. While it is not the policy intent to register trawler vessels, the Administration is mindful that trawler owners may choose to continue with their trawling operations outside Hong Kong waters for some time before coming back and pursue their fishing business using non-trawling fishing methods in Hong Kong waters. Further, they will require more time than their counterparts using other fishing modes in coming forward for registration. Therefore, the Administration is prepared to allow them a longer period for registration and DAFC will be issuing such trawler owners with a "certificate of eligibility for registration" of converted or newly purchased non-trawlers.

19. In the view of the Administration, the special arrangements provided under the proposed section 21 will meet the need of existing trawler owners when they choose to return to Hong Kong waters to operate non-trawling fishing business in the future. While the Bill allows these owners to exercise the registration option beyond the 12-month period, the Administration considers that the period should not be indefinite as it would not be desirable from both the legislation and policy points of view to enact a legal provision without certainty on its applicability to a major group of stakeholders. With an open-ended period of eligibility for registration, it will render the policy objective of limiting the number of fishing vessels and the total engine power of these vessels impossible to be achieved, hence defeating the key purpose of the Bill. The Administration has assured members that upon the enactment of the Bill, it will work out the detailed administrative arrangements after consultation with the trade to determine the registration period.

Capping engine power of registered fishing vessels

20. Members have sought information on the basis for determining the optimal engine power of 140 000 kW in Hong Kong waters. According to the

Administration, the maximum sustainable yield and optimal fishing effort were assessed in a study conducted by the Mainland experts in 2006. In 2010, the total engine power was 220 000 kW which had exceeded the optimal level of 140 000 kW as assessed by the experts.

21. Concern has been raised as to how the Administration will deal with the exceeded engine power in the event that the actual total engine power of all registered fishing vessels has exceeded the optimal level, and whether new entrants will be permissible after the total engine power of registered fishing vessels have decreased to a level below the optimal level.

22. The Administration has explained that it has no intention to proactively reduce the total engine power of registered fishing vessels, but to contain the total engine power of these vessels, with a view to bringing the total engine power to an optimal level through natural wastage. All existing local fishing vessels (about 5 000 vessels) including existing trawlers after modification or replacement will be eligible for registration. The maximum number of fishing vessels to be registered and the engine power of these vessels are estimated on the assumption that all the existing fishing vessels will apply for registration. As existing trawler owners will be provided with an option of registering a non-trawler by modifying the existing trawlers or by acquiring a new vessel, it will be more practical to assess the number of existing trawlers that will switch to non-trawling fishing methods in Hong Kong waters after the commencement of the trawl ban in December 2012, and its contribution to the total engine power of vessels registered.

23. Another concern of members is the arrangements for the transfer of engine power of local fishing vessels under the registration system. Specifically, members note the concern of some fishermen about the outboard open sampans (commonly referred in the trade as P4 sampans) licensed as Class III type (d) and fishing sampans of higher engine power are licensed as Class III type (b) under the Merchant Shipping (Local Vessels) Certification and Licensing Regulation (Cap. 548D). These fishermen consider it unfair to P4 sampan owners if they are not allowed to upgrade the engine power of their vessels to that of fishing sampans after the introduction of registration system for local fishing vessels. There is a view that a certain level of engine power should be reserved for future upgrading of P4 sampans after the commencement of the Bill.

24. The Administration has advised that generally speaking, the engine power of a registered vessel can be transferred to a replacement vessel under the registration system provided that the engine power of that vessel is not greater than that of the original registered vessel (or the total engine power of the two

original registered vessels if supported by two notices of cancellation) as stipulated in the proposed section 19(3) of the Bill. The Bill stipulates that owners of local fishing vessels including P4 sampans have to make applications for registration within 12 months from the commencement of the Bill, except for existing trawler owners. Owners of existing P4 sampans who have a genuine need to upgrade their vessels can convert their vessels to fishing sampans, subject to the requirements of Cap. 548, before the commencement date which is stated in the enacted Bill. As the Bill seeks to cap the total engine power of registered fishing vessels, it will depart from the policy intent if a certain level of engine power is reserved for future upgrading of P4 sampans.

25. Members note from the Administration that the upgrading of P4 sampans by their owners has been ongoing since the coming into force of Cap. 548 in 2007. Owners of P4 sampans who have obtained an AIP Letter issued by MD on or before the commencement date of the Bill in respect of their applications for conversion of their vessels to fishing sampans with higher engine power can apply for registration under the proposed section 14(1)(b) of the Bill when their newly converted vessels are issued with valid operating licences. As the validity of an AIP Letter is normally one year, P4 sampan owners who have successfully applied for the AIP Letter can make their applications under the proposed section 14(2) to register their converted vessels within 12 months after the commencement of the Bill.

Enforcement against illegal fishing activities

26. Members have noted that destructive fishing activities, including those involving the use of explosive, toxic substances, electricity, dredging and suction devices, are detrimental to fisheries and the marine ecosystems and are currently prohibited under Cap. 171. The Bill proposes to prohibit all fishing with the use or aid of non-local fishing vessels with a view to further protecting the marine environment from illegal fishing operations by such vessels. It provides for a legal framework for combating any illegal fishing activities by non-local fishing vessels.

27. Members have pointed out that it was not uncommon for Mainland fishing vessels to engage actively in fishing activities in Hong Kong waters. Members have expressed grave concern about the effectiveness of enforcement action against fishing activities by Mainland vessels. The Administration has highlighted that there are currently no specific regulations against fishing activities by non-local fishing vessels, and the Marine Police will continue to combat the illegal entry of the Mainland vessels. Upon the commencement of the enacted Bill, AFCD will take the leading role in the enforcement of the Bill, with the continued assistance from the Marine Police in taking joint operations.

Marine Police patrols the waters of Hong Kong 24 hours a day and will intercept any vessels suspected to be engaged in illegal activities, including illegal fishing within Hong Kong waters. Marine Police has all along undertaken enforcement actions either to combat illegal fishing activities in Hong Kong waters, either during joint operations with AFCD or when this comes to its attention in the Marine Police's own operations. The entry of Mainlanders into Hong Kong waters to fish without entry permits or the employment of Mainlanders to conduct fishing activities in Hong Kong waters contravene the provisions of the Immigration Ordinance (Cap. 115). The Administration has assured members that AFCD and Marine Police will continue to conduct joint operations where required.

Level of offence

28. Members note that upon the enactment of the Bill, it is an offence for any person who is engaged in fishing in Hong Kong waters –

- (a) with the use or aid of a registered vessel and not in accordance with the conditions imposed by DAFC in the certificate of registration or research fishing permit or engage in any fishing activity that is not specified in Schedule 2;
- (b) with the use or aid of a local fishing vessel which has *not* been registered and not in accordance with conditions stated in the research fishing permit as imposed by DAFC or engages in any fishing activity not specified in Schedule 2;
- (c) with the use or aid of a non-fishing vessel and engages in any fishing activity not specified in Schedule 2; or
- (d) with the use or aid of a non-local fishing vessel.

The list of offences together with the penalty levels under the Bill is set out in **Appendix III**.

Appeal mechanism

29. Part 8 of the Bill provides for an avenue of appeal against the decisions of DAFC to the Administrative Appeals Board ("AAB") set up under the Administrative Appeals Ordinance (Cap. 442). Under the proposed section 33, a person who is aggrieved by any decisions of DAFC to refuse an application for registration or an application for the issue or renewal of a research fishing permit, to impose or alter conditions of registration and to cancel a registration

or a research fishing permit may appeal to AAB within 21 days from the date of the notice of decision of DAFC.

30. While welcoming the availability of a channel for appeals against the decisions of DAFC to AAB, some members have expressed reservations about the proposed arrangement for handling appeals by AAB on the ground that members of AAB may not be well versed in the operation and practices of the fisheries industry. Members consider that establishing an appeal mechanism in AFCD, which is similar to the one for marine park fishing permits, should be a better approach. The Administration has advised that there is no appeal board established in AFCD for handling cases in relation to fishing permits issued under the Marine Parks Ordinance (Cap. 476). Similar to the proposed arrangements set out in the Bill, under Cap. 476, any person aggrieved by the decision of the Authority (which is DAFC) in relation to granting of or refusal to grant a licence or permit under Cap. 476 may, within 21 days of being notified of the decision, appeal to AAB.

31. Noting that an administrative Working Group on Fishing Permit, comprising AFCD officers and experts, is established under the Country and Marine Parks Board to consider the criteria and guidelines in granting and renewing marine park fishing permits, Hon WONG Yung-kan takes the view that the Administration should consider establishing a similar working group under the proposed registration system. The Administration has undertaken to discuss with the fisheries industry on the establishment of a similar working group for the purpose of the registration system after the coming into force of the Bill.

Sending of documents

32. Members consider that a number of decisions made by AFCD are important decisions which may have far-reaching implication on the livelihood of the vessel owner. One of those decisions that members concerned is the cancellation of a registration made by DAFC. As applicants are, under the proposed section 33, required to appeal to AAB within 21 days from the date of the notice of the decision of DAFC, members have expressed concern that the Administration should ascertain that vessel owners have received the notification. Members have sought clarification as to whether such notification under the proposed section 24(1) of the Bill will be sent by registered mail. The Administration has confirmed that the notice of cancellation of a registration or a research fishing permit will be sent by registered mail administratively.

33. Hon Albert CHAN has requested the Administration to spell out explicitly the above arrangement in the Bill. The Administration considers it unnecessary to set out the administrative arrangement in the Bill as the current drafting of the proposed section 42 is commonly adopted in other ordinances and will allow flexibility for AFCD to decide on the appropriate methods for sending of notice, document or information, which include ordinary mail, registered mail, delivery in person and electronic mail transmission. To address members' concern, the Administration has agreed to give 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 will be sent by registered mail. Notwithstanding the Administration's undertaking, Hon Albert CHAN remains of the view that to put it beyond doubt, the Administration should spell out clearly its intention in the Bill. He will consider moving a Committee Stage amendment ("CSA") to this effect.

Change of Address

34. Members note with concern that holders of certificates of registration or research permits are obliged under the proposed section 37(3) to notify DAFC by notice in writing of their change of addresses within seven days of the change. The Administration has advised that that the notification period for change of address in the proposed section 37(3) of the Bill simply seeks to impose a statutory obligation that an applicant should inform DAFC by notice in writing of his change of address within seven days of the change. No penalty is imposed for a breach of this statutory obligation. AFCD will work out with MD to obtain information on the particulars of vessel owners, including their addresses, where required, under the proposed section 35 of the Bill.

Research fishing permits

35. Members note that new Part 6 (proposed sections 25 to 29) in the Bill makes provisions for research fishing permits, under which DAFC may on application grant a research fishing permit, upon such conditions as he thinks fit, for fishing with the use or aid of a local fishing vessel for necessary scientific, environmental monitoring or related purposes. These may include fishing surveys using trawling methods which will be banned after 31 December 2012.

Restriction of fishing with the use or aid of non-fishing vessels

36. The proposed Schedule 2 under the Bill specifies permitted fishing with the use or aid of vessels other than non-local fishing vessels. According to the

Administration, instead of an outright prohibition of fishing with the use or aid of non-fishing vessels, the Bill will allow fishing by specified fishing methods which will not adversely impact on the fisheries resources. For example, fishing by hand-lining or without any fishing gear with the use or aid of a non-fishing vessel (whether local or otherwise) will not be subject to restriction. To cater for future changes, the above methods are specified in the proposed Schedule 2, and DAFC will be empowered to amend the Schedule by notice in the Gazette.

37. Concerns have been raised about whether inflatable boats, fish collectors or transportation sampans are within the meaning of local fishing vessels for the purpose of the Bill. The Administration has explained that fishing vessels which are licensed as Class III types (b), (c) and (d) under Cap. 548D (namely, fishing sampan, fishing vessel and outboard open sampan) may apply for registration after the commencement of the Bill. Inflatable boats are classified as local non-fishing vessels and the proposed Schedule 2 is applicable to fishing activities carried out with inflatable boats, irrespective of whether the inflatable boats are fitted with engine.

Permitted fishing activities

Recreational fishing

38. Some members are of the view that recreational fishing should be included in the list of permitted fishing activities under the proposed Schedule 2. Members have examined as to whether recreational fishing along the promenade falls within the scope of Cap. 171 or the Bill.

39. The Administration has explained that under the existing proposal, common recreational fishing activities are specified in the proposed Schedule 2 and they are permitted with the use or aid of vessels other than non-local fishing vessels. It is not the policy intent of the Bill to regulate recreational fishing along the harbour promenade without the use or aid of vessels. The number of catches by recreational fishing (e.g. by means of hand-lining) is far smaller than that of commercial fishing using fishing vessels. With reference to the long title of the Bill, while it is possible that taken independently "fishing" may mean any form of fishing activity, whether commercial or recreational, it is clearly stated in the Legislative Council ("LegCo") Brief on the Bill, the Bill and its Explanatory Memorandum and other relevant information, that the main purpose of the Bill is to restrict commercial fishing carried out with the use or aid of vessels.

40. While acknowledging that the Bill does not seek to regulate recreational fishing along the harbour promenade, members and some deputations giving views to the Bills Committee have called on the Administration to play an active role to promote recreational fishing and marine ecotourism activities. The Administration has advised that AFCD will monitor the situation of fisheries resources after the commencement of the Bill and the implementation of the fisheries management measures in paragraphs 58 to 61 below. Regulation of recreational fishing can be considered when more information on the fisheries resources situation becomes available.

41. To allow the restoration of fisheries resources in Hong Kong waters, some members take the view that the Administration should introduce recreational fishing permit system for recreational fishing which is in line with the international trend of regulating recreational fishing. The Administration has stressed that as the first step, commercial fishing will be regulated through the enactment of the Bill. Nonetheless, AFCD will constantly monitor the impact of recreational fishing on fisheries resources, and the Administration does not rule out the possibility of regulating recreational fishing in future.

Whether sea urchin collection is permissible under the proposed Schedule 2

42. Hon WONG Yung-kan has sought clarification as to whether sea urchin collection is permissible after the commencement of the Bill, having regard to the fact that Mainlanders may engage Hong Kong residents as local fishing vessel owners to carry out such activities extensively in Hong Kong waters which will deplete the marine resources.

43. According to the Administration, subject to the conditions on fishing methods, sea urchin collection by registered local fishing vessels is permitted after the commencement of the enacted Bill, but dredging is not permitted under Cap. 171. It is not the policy intent to prohibit fishing activities with the use of aid of local fishing vessels in Hong Kong waters. Currently, there is no restriction under Cap. 171 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 entry permits contravene the provisions of the Immigration Ordinance. For the Mainland deckhands employed by local fishing vessel owners under the Mainland Fishermen Deckhand Scheme, they are also in breach of the conditions of stay under the Immigration Ordinance if they conduct fishing activities in Hong Kong waters not in accordance with the conditions stipulated under the Scheme.

Whether engaging divers to capture fish is permissible under the proposed Schedule 2

44. Hon WONG Yung-kan has pointed out that it is not uncommon for some owners of local fishing vessels to hire divers to capture fish with the use of toxic substance, which is detrimental to the marine environment. This will depart from the intent of the Bill to conserve fisheries resources if such acts are permitted. The Administration has explained that the use of toxic substances is prohibited under the Fisheries Protection Regulations (Cap. 171A). The proposed Schedule 2 stipulates, among others, that fishing 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 is allowed, if it is carried out with the use or aid of any vessel other than a non-local fishing vessel, even if the vessel is not registered under the Bill.

With the use or aid of fishing gear

45. Hon Albert CHAN has expressed grave concern about restricting the use of fishing gear, notably, rabbitfish traps and hand nets, by the public for recreational fishing. The Administration has explained that under the Bill, fishing by cage trapping, including rabbitfish traps, with the use or aid of a vessel in Hong Kong waters, is only permitted –

- (a) if the vessel is a registered vessel and if it is in accordance with conditions imposed by DAFC in the certificate of registration; or
- (b) if it is carried out in accordance with conditions imposed in a valid research fishing permit.

The Administration has pointed out that common fishing methods used by the public on board non-fishing vessels for recreational purposes are already permitted under the proposed Schedule 2. Given that cage trapping can adversely impact on the fisheries resources in Hong Kong waters if left unregulated, the proposed restrictions imposed by the Bill seek to regulate fishing activities which add pressure to the depleted fisheries resources while keeping the impact on public enjoyment of recreational fishing as a leisure activity by the Bill to a minimum.

46. The Administration has pointed out that the use of cage traps (including rabbitfish traps) is an effective way of capturing fish and is commonly used for commercial fishing, but is uncommon among recreational fishers. Some fishermen who are actively engaging in recreational fishing business also

confirm that the deployment of rabbitfish traps on board pleasure crafts is rare, because rabbitfish traps generate a smell which is not appealing to passengers on board. As such, the Administration believes that restricting the deployment of rabbitfish traps on board non-fishing vessels would unlikely to have much impact on the range of recreational fishing activities being enjoyed by the public.

47. In the light of the minimal impact of deployment of rabbitfish traps on board pleasure crafts, some members, including Hon Tommy CHEUNG, Hon WONG Yung-kan and Hon TAM Yiu-chung, have requested the Administration to consider permitting the deployment of cage traps for recreational fishing under the Bill by setting a limit on the number and/or the size of cage traps for fishing onboard pleasure crafts in the proposed Schedule 2.

48. After considering members' request, the Administration has advised that the suggestion is not feasible. The reasons are three-fold. First, there is a wide variety of cage traps and it is difficult to define rabbitfish traps as such. It is also difficult to ascertain whether rabbitfish traps are just being used to capture rabbitfish but not other species. Secondly, there is enforcement difficulty in tracking the recreational fishers who deploy cage traps beyond what is permitted on board the vessels. It is also difficult to ascertain the number of cage traps deployed by any particular person, when there is more than one person on board a vessel. Thirdly, the Administration also anticipates a lot of problems in enforcing the limit on the number of cage traps on vessels if such a number is set, as it will be difficult for the enforcement agent to ascertain the number of cage traps used for fishing by a particular person on vessels when the traps have already been deployed underwater and the activity is conducted in open waters.

49. In the light of the Administration's advice, Hon WONG Yung-kan has consulted the industry on the suggestion of setting a limit on the number and/or the size of cage traps for fishing on board pleasure crafts. The industry does not support the suggestion as this will depart from the policy intent of the Bill to restore the fisheries resources in Hong Kong waters. Moreover, pleasure crafts operated by local fishermen for recreational fishing are mainly P4 sampans, which are licensed under Cap. 548 and will be registered after the commencement of the enacted Bill. Hon TAM Yiu-chung acknowledges the views of the industry and considers the Administration's explanation acceptable.

50. Hon Albert CHAN remains unconvinced of the Administration's explanation. To his knowledge, the use of cage traps and hand nets by the public for recreational fishing is not uncommon. In order not to stifle the

development of recreational fishing business and undermine public enjoyment of leisure activity, he has indicated his intention to add new sections to the proposed Schedule 2 to the effect that the following fishing methods and fishing gear would be included into the list of permitted fishing in the proposed Schedule 2 –

- (a) fishing with the use or aid of not more than three cage traps on board a vessel, and each cage trap must not exceed one cubic metre;
- (b) fishing with the use or aid of not more than two nets operated from a vessel (except with a net in a bag shape and is towed on the seabed or dragged through the waters), and each net must not exceed 80 square metres; and
- (c) fishing with the use or aid of a hand net on board a vessel.

The letter dated 3 April 2012 issued by Hon Albert CHAN with the proposed amendments is in **Appendix IV**.

51. The Administration has agreed to take on board Hon Albert CHAN's proposed amendment to permit fishing with the use or aid of a hand net on board a vessel and will move a CSA to the proposed Schedule 2. The Bills Committee supports the Administration's proposed amendment.

52. The Administration has however expressed great reservations with the other two amendments proposed by Hon Albert CHAN in paragraph 50 (a) and (b) above. According to the Administration, cage trapping is a common type of fishing method used by local fishermen, which is an effective way of capturing fish and can adversely impact on the fisheries resources in Hong Kong waters if left unregulated. Similar to other fishing methods used by local fishermen, the fishing effort by cage trapping exploits the fisheries resources in Hong Kong. In end 2011, there were around 60 vessels specialised in cage trapping and some 2 260 sampans which may also fish with cage traps. After the enactment of the Bill and upon registration of local fishing vessels, cage traps that go with local fishing vessels will be reflected under the conditions of the registration pursuant to the proposed section 16(1) under the Bill. In the view of the Administration, if the deployment of cage traps is allowed on board non-fishing vessels as proposed by Hon Albert CHAN, this will largely defeat the purpose of the Bill to regulate fishing activities which add pressure to the depleted fisheries resources, as there were over 7 000 pleasure vessels as compared with only 5 849 fishing vessels according to the licensing records of MD as at end of 2011.

53. As regards Hon Albert CHAN's proposed amendment to permit fishing with the use or aid of no more than two nets on board a vessel, the Administration has explained that trammel net is a common type of fishing gear used by local fishermen to capture fish for commercial fishing and can adversely impact on the fisheries resources in Hong Kong waters. Similar to the considerations for restricting the deployment of cage traps on board non-fishing vessels, the Administration takes a strong view that fishing with the use or the aid of trammel net should be regulated and restricted to registered vessels only. The majority of members accept the Administration's explanation.

54. Hon Albert CHAN has clarified that he objects to the use of trammel net for fishing. His proposed amendment seeks to permit the use of fishing methods including purse seining and gillnetting on board a vessel by the public for recreational fishing. He will refine the drafting of his proposed amendments to reflect his intention more clearly and move the two amendments.

Fishing activities with the use or aid of non-fishing vessels

55. Hon Albert CHAN notes that some fishermen on Cheung Chau and Peng Chau have been occasionally engaging in fishing activities with the use or aid of non-fishing vessels which are mainly used for transportation. The prohibition of fishing with the use or aid of non-fishing vessels is too stringent for these fishermen as they will commit an offence upon the commencement of the Bill. To his knowledge, a large number of these fishermen are not aware of the legislative proposals.

56. The Administration has advised that AFCD has conducted over 40 consultation sessions with the fisheries industry on the legislative proposals, including those on Cheung Chau. In the light of Hon Albert CHAN's concern, officers of AFCD have contacted some fishermen again and collected information on the fishing operations in the area where inshore fishermen are engaging in small scale fishing methods including purse seining, longlining and gillnetting in waters such as Sai Wan and Pak Tso Wan. They have found that these fishermen fish with the use or aid of fishing vessels licensed under Cap. 548. Upon the enactment of the Bill, these vessels will be eligible for registration. It is the Administration's intention to register all existing local fishing vessels. Under the proposed section 14(1)(a), DAFC may, on application by an owner of a local vessel which is used mainly for fishing purposes in respect of which there is a valid operating licence on the commencement date, register the vessel and issue a certificate of registration to

the applicant. The Administration has stressed that if fishing activities other than those permitted in the proposed Schedule 2 are allowed, this will mean that fishing will be allowed to be carried out by all non-fishing vessels (be these local or non-local) in Hong Kong waters, thereby defeating the purpose of the Bill.

57. Members note from the Administration that only a few non-mechanised sampans which are not licensed under Cap. 548 are found engaging in fishing activities by hand-lining. Under the existing proposal of the Bill, hand-lining with the use or aid of these vessels will be allowed without the need to register with DAFC.

Designation and management of FPAs

58. The proposed sections 4A and 4B of the Bill provide for the Secretary for Food and Health ("SFH") to designate FPAs 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 FPAs.

59. According to the Administration, the designation of FPAs will help protect fish fry, juvenile and spawning fish, help restore fisheries resources in Hong Kong waters, and promote sustainable fisheries development in the long run. The proposed FPAs being contemplated at this stage are the Tolo Channel and Long Harbour and the Port Shelter which are important fish spawning and nursing grounds in Hong Kong waters. The designation of such areas and the size of such FPAs will be decided after consultation with the trade.

60. Members have sought information on the details of the fisheries management measures to be devised for an FPA. The Administration has explained that as the main objective of FPAs is to enhance fisheries resources for the sustainable development of fisheries, fishing will not be banned or regulated across the board in FPAs. Instead, a tailored approach will be adopted to devise the management measures to be implemented in FPA. Fisheries management measures being contemplated for FPAs may include the following –

- (a) restricting or prohibiting the use of certain fishing methods and gear;
- (b) restricting the capture of species of certain size;

- (c) designating "no-take" zone in FPAs (such as in areas where deployment of artificial reefs and restocking will be carried out); and
- (d) implementing "closed season" to protect spawning fish and fry from fishing during certain periods of a year.

The Administration expects that the area of the "no-take" zone to be only around 10% to 15% of the whole FPA area.

61. The Administration has stressed that AFCD will conduct detailed research before proposing locations for designation as FPAs and corresponding fisheries management measures. AFCD will consult the relevant bureaux/departments, the fishing community and other stakeholders on the proposals. Where "no-take zones" are to be designated within FPAs, the area will also be clearly identified. Moreover, the orders and rules are pieces of subsidiary legislation subject to the negative vetting of LegCo. The Administration has assured members that it will take into account views collected in the consultation before finalising the proposals and introducing the subsidiary legislation into LegCo.

Authority for management and control of fishing in FPAs

62. Noting that SFH is empowered to appoint a person to be the Authority who may make rules for the management and control of fishing in any FPAs, some members have expressed concern about the ranking of the Authority to be appointed for the purpose of the Bill.

63. The Administration has advised that the policy intent is to appoint DAFC, who takes charge of fisheries matters in Hong Kong, to be the Authority when FPAs are designated. Since the Authority will be responsible for the management and control of fishing in FPAs which have yet to be designated by SFH, it is more logical that the Authority be appointed at the time when FPAs are designated. The Administration has stressed that the appointment and designation of FPAs will be subject to the negative vetting of LegCo.

Consequential amendments

64. Members note that Part 3 (clauses 19 and 20) of the Bill contains consequential and related amendments to other legislation, and have raised no objection to the proposed consequential amendments.

Committee Stage amendments

65. Apart from the CSA to the proposed Schedule 2 highlighted above, the Administration will, in the light of the views of members and the legal adviser to the Bills Committee, move amendments to the proposed definition of the term "impoundment" in clause 4(5), the amendments proposed to be made to the Chinese text of section 6 in clause 10(1) and the proposed section 16(1) to improve their clarity. A full set of CSAs to be moved by the Administration and agreed to by the Bills Committee is in **Appendix V**. The Bills Committee notes that Hon Albert CHAN has indicated his intention to move amendments to the Bill in relation to the sending of documents and permitted fishing activities in the proposed Schedule 2.

Resumption of Second Reading debate

66. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 9 May 2012.

Advice sought

67. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
19 April 2012

Bills Committee on Fisheries Protection (Amendment) Bill 2011

Membership List

Chairman Hon Tommy CHEUNG Yu-yan, SBS, JP

Members 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

(Total : 10 Members)

Clerk Miss Betty MA

Legal adviser Miss Evelyn LEE

Date 20 December 2011

Bills Committee on Fisheries Protection (Amendment) Bill 2011

List of deputations/individual which/who have given written and/or oral views to the Bills Committee

1. Dr LAU Chee-shing, Member of Tai Po District Council
2. HK & KLN Fishermen Association Ltd
3. Hong Kong Fishery Alliance
4. Hong Kong Fishermen's Association
5. Hong Kong Fishermen Consortium
6. Hong Kong Fishing Vessel Owners Association Ltd
7. Hong Kong Trawler Association
8. International Fisheries Alliance
9. Living Seas Hong Kong
10. Sam Mo Shek Wan (Hoi Ha) Fishermen Association
11. Tai O Fishermen (Coastal Fishery) Association
12. The Castle Peak Fishermen's Credit Co-operative Society Unlimited
13. The Castle Peak Mechanized Trawler Fishermen's Credit Co-operative Society Unlimited
14. The NT Tap Mun Marine Fish Culture Association
15. The Tuen Mun Mechanized Fishing Boat Fishermen's Credit Co-operative Society Unlimited
16. WWF-Hong Kong
17. 大埔漁民近岸作業協會
18. 香港漁民魚商會

19. 港九水上漁民福利促進會
20. 香港仔近岸漁業協會
21. 新界漁民聯誼會
22. 港九漁民促進會
23. 香港仔漁民總社
24. 香港釣網養殖漁民聯會

Written submissions only

1. BLOOM Association
2. Designing Hong Kong Limited
3. Marine Biological Association of Hong Kong
4. Professor Nora Fung-yee TAM, JP, Chair Professor in Biology of the Department of Biology and Chemistry of the City University of Hong Kong
5. Professor Yvonne Sadovy, School of Biological Sciences of The University of Hong Kong

Key Offences and penalty levels

General Heading	Offences	Proposed Penalties	Remarks
Management and control of fisheries protection areas	Any notices made under this section may provide that any contravention of any provisions of the notice constitutes an offence.	\$200,000 and imprisonment for 6 months	Ref: Section 4B(2)
Obstruction	<p>It is an offence if any person without reasonable excuse –</p> <p>(a) obstructs the Director of Agriculture, Fisheries and Conservation (the Director), a fisheries inspector or an authorised officer in the exercise of any power or the performance of any duty or function conferred or imposed on the Director, a fisheries inspector or an authorised officer under this Ordinance; or</p> <p>(b) fails to comply with any instruction given under this Ordinance.</p>	Level 5 (\$50,000) and imprisonment for 3 months	Ref: Section 7C

<p>General control on fishing activities in Hong Kong waters</p>	<p>It is an offence if any person without reasonable excuse is 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 –</p> <ul style="list-style-type: none"> (a) the vessel is a registered fishing vessel and the fishing is in accordance with any conditions relating to the registration of the vessel or falls under the list of permitted fishing activities specified in Schedule 2; (b) the person is so engaged under and in accordance with a valid research fishing permit; or (c) the vessel is a non-fishing vessel or a local fishing vessel which has not been registered and the fishing is an activity specified in Schedule 2. 	<p>Level 6 (\$100,000) and imprisonment for 6 months</p>	<p>Ref: Sections 11(2) and 12</p>
<p>Notification of cancellation of a registered vessel</p>	<p>It is an offence if the certificate holder of a registered fishing vessel without reasonable excuse fails to notify the Director within 14 days after the occurrence of any of the following in respect of the vessel–</p>	<p>Level 3 (\$10,000)</p>	<p>Ref: Section 22(4)</p>

	<p>(a) the vessel is dispatched permanently from Hong Kong;</p> <p>(b) the vessel is lost or destroyed;</p> <p>(c) the operating licence is cancelled;</p> <p>(d) the vessel ceases to be one that is designed for and equipped to be used primarily for fishing.</p>		
Cancellation of registration	It is an offence if the certificate holder of a registered vessel without reasonable excuse fails to return the certificate of registration to the Director within 21 days from the date of sending of a notice of cancellation.	Level 3 (\$10,000)	Ref: Section 24(3)
Change of particulars	The holder of a certificate of registration or research permit commits an offence if he/she without reasonable excuse fails to notify the Director the change in the particulars specified in the certificate or permit in writing within 7 days, or provide the information as may be necessary for enabling the	Level 3 (\$10,000)	Ref: Section 30(4)

	Director to verify the change so notified, or deliver to the Director the certificate or permit.		
Production of certificate and permit	It is an offence if the certificate holder of a registered vessel or a permit holder without reasonable excuse fails to ensure that the valid certificate of registration or research fishing permit is produced on demand by the Director, a fisheries inspector or an authorised officer.	Level 3 (\$10,000)	Ref: Section 31(2)
False statement and information	It is an offence for any person to make a declaration or statement, or furnish any information or document, knowing it to be false or misleading as to a material particular for the purpose of procuring the registration of a fishing vessel, alteration to any vessel particulars or conditions for registration, or the issue or renewal of a research fishing permit under this Ordinance.	Level 5 (\$50,000) and imprisonment for 3 months	Ref: Section 36
Director may require information	It is an offence if any person without reasonable excuse fails to comply with a requirement of a notice sent by the Director to furnish to the Director any information or document for the purpose of ascertaining whether this Ordinance is complied with in respect of a vessel.	Level 3 (\$10,000)	Ref: Section 37(5)

Power of inspection and arrest	It is an offence if a person without reasonable excuse fails to give the person's name and address or produce his proof of identity; gives a false or misleading name or address; or fails to produce the certificate of registration or research fishing permit on request by the Director, a fisheries inspector or an authorised officer.	Level 3 (\$10,000)	Ref: Section 7A(2)
No unauthorised alteration to certificate of registration or research fishing permit	It is an offence if any person without reasonable excuse makes any alteration to or obliteration or defacement of a certificate of registration or research fishing permit.	Level 3 (\$10,000)	Ref: Section 38
Cancellation of permit	It is an offence if any person without reasonable excuse fails to return the research fishing permit to the Director within 21 days from the date of cancellation.	Level 3 (\$10,000)	Ref: Section 29(4)



立法會陳偉業議員辦事處

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《2011年漁業保護(修訂)條例草案》委員會秘書

馬淑霞小姐

傳真：2509 9055 電話：3919 3204

馬小姐：

建議就《2011年漁業保護(修訂)條例草案》提出的修訂

就政府為規管本地商業捕魚而提出的《2011年漁業保護(修訂)條例草案》事宜，政府建議引入本地漁船登記制度，所有在本港水域內使用捕魚工具(魚鈎及手鈎鈎除外)的船隻，均須向當局登記。然而，政府規管本地商業捕魚的同時卻誤中副車，令休閒船隻同被規管。日後在沒有向當局登記的情況下，於休閒船隻上使用魚籠(如泥魷籠)及小型漁網將屬違法，最高刑罰為罰款10萬元及監禁6個月。

據本人了解，休閒船隻的捕魚活動，對海洋生態完全沒有影響，當局把在休閒船隻上使用小型魚籠及小型魚網捕魚的行為刑事化是極不公平，更可能令處於萌芽階段的休閒漁業受到重大打擊。基於上述原因，本人建議修訂該條例草案的附表二，在第3條之後加入第4條：「在一艘船上以不多於3個魚籠捕魚，每個魚籠的體積不得多於1立方米」、第5條：「在一艘船上以不多於2個漁網捕魚，每個漁網的面積不得多於80平方米(以袋形漁網在海床或水中拖曳的捕魚活動除外)。」及第6條「在一艘船上以手抄網捕魚」，令載有該等小型魚籠及小型漁網的休閒船隻豁免於本地漁船登記制度之外，而在休閒船隻上使用小型魚籠或小型漁網捕魚的市民亦無須承擔刑事責任。

本人相信若作出上述修訂，市民便可繼續在休閒船隻上以小型魚籠或小型漁網捕足小量魚類，休閒漁業亦不會因當局訂定的《2011年漁業保護(修訂)條例草案》而受到重大損害。專此函達。

人民力量立法會議員陳偉業  謹啟

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Fisheries Protection (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
4(5)	In the proposed definition of <i>impoundment</i> , by deleting “removable or” and substituting “removable and”.
10(1)	In the Chinese text, by deleting “、”.
15	In the proposed section 16(1), in the Chinese text, by deleting “署長可按其認為合適而施加符合以下說明的條件：任何人可按照該等條件，使用或借助任何已登記船隻而捕魚。該等” and substituting “署長可就使用或借助已登記船隻捕魚施加署長認為合適的條件，如署長有施加該等條件，則使用或借助該船隻捕魚須按照該等條件進行。署長可施加的”.
15	In the proposed section 42(1), in the English text, by adding “is” before “required”.
17	In the proposed Schedule 2, by adding – “1A. Fishing with the use or aid of a hand net.”.