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Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 5 February 2013**

Ex-gratia allowance for trawler owners affected by the trawl ban

Purpose

This paper summarizes the concerns raised by relevant committees of the Legislative Council ("LegCo") in respect of the ex-gratia allowance for trawler owners affected by the trawl ban.

Background

The trawl ban

2. Trawling is a non-selective fishing operation capturing fish of all sizes irrespective of their commercial and ecological value. The damage caused to the seabed by trawling is detrimental to the marine ecosystems and have an adverse impact on the catch value of the fisheries sector in the longer run. The Chief Executive announced in the 2010-2011 Policy Address the Administration's plan to ban trawling in Hong Kong waters. The legislation for the trawl ban was passed by LegCo in May 2011 and came into effect on 31 December 2012.

3. As the trawl ban would impact on the livelihood of trawler fishermen who would lose part of their fishing grounds, the Administration has introduced a one-off assistance scheme ("the Scheme") to those affected by the trawl ban, as follows -

- (a) ex-gratia allowance ("EGA") for the affected trawler owners for permanent loss of fishing grounds arising from the trawl ban;
- (b) buying out of the affected trawler vessels for those trawler owners who volunteer to surrender their vessels; and
- (c) one-off grants to assist the affected local deckhands employed by the trawler owners who volunteer to surrender their trawler vessels.

4. The Finance Committee ("FC") of LegCo approved at its meeting on 10 June 2011 a new commitment of \$1,726.8 million for implementing the Scheme and other related measures. An inter-departmental working group ("IWG"), comprising representatives from the Agriculture, Fisheries and Conservation Department ("AFCD"), the Marine Department and the Home Affairs Department, was set up by the Administration in August 2011 to process applications under the Scheme.

EGA for inshore trawlers

5. According to the Administration, there are about 400 inshore trawlers operating wholly or partly in Hong Kong waters. A total amount of \$1,190 million of EGA would be fully disbursed to, and apportioned amongst, the successful applicants in accordance with the decisions of IWG. Taking into account the impact on the livelihood of fishermen caused by the trawl ban and making reference to the formula for calculating EGA for fishermen affected by marine works projects, the formula for calculating EGA for affected inshore trawler owners is set as follows -

a notional value of 11 years' fish catch in Hong Kong waters by all trawlers based on the data from the Port Survey conducted by AFCD in 1989-1991 (i.e. \$66.3 million a year) and adjusted with a "fish price movement" multiplier (i.e. 1.63)

6. The actual EGA payable to individual trawler owners would also depend on the number of successful applications as well as other apportionment criteria such as vessel type, vessel length, engine power, equipment on board, the percentage of time spent on trawling and/or production in Hong Kong waters.

EGA for larger trawlers

7. According to the Administration, there are around 700 larger trawlers which generally do not operate in Hong Kong waters. However, owners of these larger trawlers would lose the opportunity to move back to Hong Kong waters for operation after the trawl ban. Since the impact of the trawl ban on owners of larger trawlers is smaller when compared with inshore trawlers, a lump sum EGA of \$150,000 will be given to each eligible owner of such larger trawler. The total lump sum payable under this category is estimated to be around \$110 million.

Deliberations of the relevant committees

8. Issues relating to the trawl ban were discussed at meetings held by the Panel on Food Safety and Environmental Hygiene ("the Panel"), the Subcommittee on Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 and FC in 2011. The Panel also received views of depositions on the subject at one of its meetings. The deliberations and concerns of Members on EGA for trawler owners under the Scheme are summarized below.

Eligibility for EGA

9. While supporting the introduction of the trawl ban in Hong Kong waters to restore the marine resources, Members were gravely concerned about the livelihood of the fishermen affected by the trawl ban. Since the trawl ban would cover the entire Hong Kong waters, they urged the Administration to adopt a lenient approach in setting the eligibility criteria for EGA.

10. Members also expressed concern on the impact of the trawl ban on the directly related trades, such as fish collectors and ice supply. They called on the Administration to consider granting EGA or some form of assistance to the related trades.

11. According to the Administration, there were insufficient justifications in support of the requests for EGA payment to the related trades. The Administration was of the view that some of the inshore trawlers might switch to operate outside Hong Kong waters and would thus require services from the fish collectors, ice suppliers, fuel suppliers and vessel repairers. As a result, the fisheries-related trades should not be significantly affected by the trawl ban.

12. Members maintained the view that the Administration should address the concern of the related trades and relax the eligibility criteria of EGA. At the FC meeting on 10 June 2011, members were advised that the Administration would assess the extent of impact of the trawl ban on fish collector owners. Necessary assistance would be provided under the Scheme through loans to enable fish collector owners to convert their vessels to collect fish produce from larger trawlers or shift to other business modes. As regards ice suppliers, the Administration would provide them with technical and other non-pecuniary assistance to facilitate their continued operation after the trawl ban. Members were also advised that the actual impact of the trawl ban on vessel repairers would have to be further observed and the Administration would continue to consider appropriate support to the trade as necessary.

Calculation of EGA

13. Some Members pointed out the views of the fisheries trade that the EGA payment to the fishermen affected by the trawl ban should be raised to the notional value of 15 years' fish catch in the affected area. They were also of the view that instead of adopting the Port Survey conducted in 1989-1991 as the basis for calculating EGA, the Administration should make reference to a more recently conducted survey. The Administration should also take into account the income of fishermen derived from the daily operations of their fishing vessels when determining the notional fish catch value.

14. According to the Administration, the data on fish catch value were collected regularly by AFCD through surveys with fishermen. The methodology adopted to obtain the data was also scientific and objective. Data from the 1989-1991 Port Survey were adopted as the basis for calculating EGA because they were considered more favourable to the affected fishermen having regard to the abundant fisheries resources and productive marine system at that time. Since then, the local fish catch had declined in both quality and quantity with the deterioration of the marine environment in the past two decades.

15. Members noted with concern that some fishermen groups had strong views on the formula for calculating the amount of EGA, particularly on the setting of the "fish price movement" multiplier at 1.63. There was a view that the Administration should consider revising the EGA formula if the fisheries sector could provide documentary evidence to prove that their actual loss exceeded the amount calculated from the formula.

16. The Administration explained that the fish price movement factor represented the variation in fish price collected regularly by AFCD staff. The formula was based on the one endorsed by FC at its meeting on 1 December 2000 on EGA for fishermen affected by marine works projects resulting in permanent loss of fishing grounds in Hong Kong waters.

17. Some Members were concerned that the wide difference of EGA payable to inshore trawlers vis-à-vis larger trawlers would likely lead to disputes about the definition of the different types of trawlers. Members were of the view that IWG should develop clear criteria and guidelines in classifying trawlers.

18. Members also noted that the actual amount of EGA payable to individual inshore trawler owners would depend, among others, on the number of successful applications, and that the funding proposal was premised on the assumption that there were about 400 eligible inshore trawlers. Some Members expressed concern that the trawler owners might receive less than the amount calculated from the formula if the number of successful applications exceeded 400.

Appeal mechanism

19. Members noted that a Fishermen Claims Appeal Board ("Appeal Board") would be formed to hear appeals against decisions of IWG. Some Members expressed grave concern about the transparency of IWG and the Appeal Board in respect of their membership and operation. They considered that representatives from the fisheries sector should be invited to participate in the work of IWG and the Appeal Board. Consideration should also be given to appointing mediators/arbitrators to resolve disputes between the applicants and IWG. There was also a view that a performance pledge for processing an appeal should be set.

20. According to the Administration, IWG would comprise professional staff in AFCD and representatives from relevant departments such as the Marine Department. The Appeal Board would comprise non-official, non-partisan individuals with professional or legal background. The Administration advised that both IWG and the Appeal Board would maintain close dialogue with the fisheries sector as necessary. It was expected that all applications could be processed before the trawl ban came into operation.

Assistance to the affected trawler fishermen

21. Members urged the Administration to provide adequate support, such as relevant vocational training programmes, to the affected trawler fishermen for switching to other sustainable fisheries operations. Some Members also suggested the provision of interest-free loans by the Government to help the affected trawler owners to shift to other business.

22. The Administration advised that it had injected \$190 million into the Fisheries Development Loan Fund to provide low-interest loans to help fishermen to restructure or change their business. To address the fishermen's need, the Administration would consider lowering the interest rates. The Administration also advised that it would provide suitable training and job-matching assistance to the affected deckhands and fishermen to enable them to change to fields related to the marine environment. The Administration would consider the views and requests of the fisheries sector in developing other training programmes.

Recent development

23. Hon Steve Ho raised an oral question in relation to the trawl ban at the Council meeting of 9 January 2013. According to the Administration's reply, the eligibility criteria and other relevant requirements for EGA were set out in Guidance Notes for Registration to applicants. IWG had largely completed the assessment of the applications for EGA and had informed eligible applicants of the results and the amount of EGA payable to them. Applicants could lodge appeals within one month with the Appeal Board if they were aggrieved by the decisions of IWG.

24. The Administration also reiterated that the trawl ban would not have significant impact on the related trades. Ancillary services would still be required by local non-trawling vessels, fishing vessels operating outside Hong Kong, as well as some inshore trawlers that might operate in the nearby waters outside Hong Kong after the implementation of the trawl ban. Nevertheless, IWG would consider providing appropriate assistance to those fish collectors that were directly affected by the trawl ban. The Administration would also provide assistance for the only one vessel in Tuen Mun that engaged in making ice to move the operation ashore. Mr HO's question and the Administration's reply are in **Appendix I**.

Relevant papers

25. A list of the relevant papers on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
4 February 2013

Press Releases 9 January 2013

LCQ3: Trawl ban

Following is a question by the Hon Steven Ho and a reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (January 9):

Question:

The subsidiary legislation which bans trawling activities in Hong Kong waters (the legislation on trawl ban) came into operation on December 31, 2012. In this connection, the Government has introduced a one-off assistance scheme for the affected fishermen, including making ex-gratia payments and providing loans through the Fisheries Development Loan Fund to them. However, quite a number of people have pointed out that the assistance scheme cannot provide concrete assistance to those affected. Moreover, although some affected owners of trawler vessels wish to apply for loans so as to switch to fishing in the mainland waters, the mainland authorities have long ago implemented "double control" policies for the floating fishing vessels of Hong Kong and Macao, which impose restrictions on the number of such vessels and their engine power. In addition, some practitioners of related trades have told me that their trades are also affected by the legislation on trawl ban. For instance, the fish farming industry can no longer obtain the supply of trash fish from trawler vessels as quality feed for mariculture, whilst fish collectors and ice-maker vessels have lost their businesses on delivering fish for trawler vessels and supplying ice to them respectively. In this connection, will the Government inform this Council:

(a) of the latest progress of the Government's disbursement of ex-gratia payments to the owners of the approximately 1 100 trawler vessels affected by the legislation on trawl ban; the criteria adopted by the Fishermen Claims Appeal Board for handling appeals relating to applications for ex-gratia payments; whether the Government has explained comprehensively to the fishermen the criteria adopted by the inter-departmental working group for vetting their applications and those adopted by the Appeal Board for handling their appeals; if so, of the details; if not, the reasons for that;

(b) of the current progress of the discussions between the Government and the relevant mainland authorities about trawlers operating in the mainland waters; and the policies and means employed to help resolve the problems concerned; if such policies or means are not available, of the reasons for that; and

(c) whether the Government has any concrete assistance measures to help practitioners of the related trades to maintain their livelihood; if it has, of the details; if not, the reasons for that?

Reply:

President,

In order to restore our damaged seabed and the depleted marine resources as early as possible and put the further

development of our marine ecosystems and fisheries industry on a sustainable footing, the Government proposed and the Legislative Council (LegCo) enacted in May 2011 the relevant subsidiary legislation that clears the way for us to implement a trawl ban in Hong Kong waters (the trawl ban) with effect from December 31, 2012. The LegCo Finance Committee (FC) also approved, in June 2011, funds for an one-off assistance package to trawler vessel owners, local deckhands and fish collector owners affected by the trawl ban and other related measures. As part of the package, the disbursement of ex-gratia allowance (EGA) to affected trawler owners for loss of fishing grounds as a result of the trawl ban is nearing completion.

In carving up the EGA payable to different groups of claimants, we work to ensure that the allowance paid would be proportional to the impact of the trawl ban on them. FC has approved the payment of two types of EGA which are based on the following guiding principles and to be processed as such:

(1) For inshore trawlers which operate wholly or partly in Hong Kong waters, their owners will be most affected when the statutory trawl ban takes effect as they will lose their fishing grounds in Hong Kong waters. The EGA payable to individual inshore trawler owners will depend on the number of successful applications as well as other apportionment criteria (such as vessel type, vessel length, engine power, equipment on board, the time spent on trawling in Hong Kong waters and/or the amount of production); and

(2) Apart from the most affected inshore trawlers, there are also larger trawlers which generally do not operate in Hong Kong waters. This group of trawlers may lose the opportunity of trawling the fishing grounds in Hong Kong water on their return journeys. Relatively speaking, the impact of the trawl ban on these larger trawlers is far less than that facing the inshore trawlers. Having taken into account the need to maintain relativity with inshore trawlers which will be affected most, FC approved that a lump sum EGA of \$150,000 should be paid to each larger trawler, if the relevant application is successful.

My reply to the question is as follows:

(a) Upon its establishment in August 2011, the inter-departmental working group (IWG) started forthwith its work relating to the applications for EGA. Guided by the FC Paper pertaining to the assistance package, the IWG mapped out the eligibility criteria and other relevant requirements that EGA applicants have to meet. These criteria and requirements had been clearly set out in the Guidance Notes for Registration that were distributed to applicants. The IWG went about processing each application in accordance with the established procedures, on the basis of the information furnished by the applicant and other data relating to the application, including details of vessel inspection on the date of registration and information obtained from other departments/organisations.

After making its initial decisions, the IWG wrote to each individual applicant, stating clearly the information and relevant justifications that the IWG had taken into consideration. Should the applicants have any objection to the initial decisions, they may submit further justifications or representations. The IWG made its final decisions after considering the further justifications furnished by the applicants, if any. At present, the IWG has largely completed

its assessment of the applications for EGA. The IWG has informed eligible applicants of the results and the amount of EGA payable to them. Some eligible applicants have already received the EGA.

Should an applicant be aggrieved by the formal decision of the IWG, the applicant may lodge an appeal with the Fishermen Claims Appeal Board (FCAB) within one month. The Government set up an FCAB on November 5, 2012 for processing the appeals. The annex gives its terms of reference. The FCAB is made up of a non-official chairman and four non-official members. Its tenure of office will last until work on all the appeal cases has been completed. The secretariat of the FCAB is attached to the Food and Health Bureau.

(b) The policy of the Mainland Government to control the growth in the number and total engine power of capture vessels operating in Mainland waters (the "double control policy") has been in place for some years. The policy applies to Mainland-based fishing vessels as well as "mobile fishing vessels" in Hong Kong/Macao. The Agriculture, Fisheries and Conservation Department (AFCD) has been liaising closely with the Mainland Government. We have conveyed to them the concerns expressed by Hong Kong fishermen about the policy, and made arrangements for representatives of relevant Mainland authorities to meet with local fishermen in Hong Kong and brief them on the related policy requirements. AFCD paid a visit to the Hong Kong and Macao Floating Fishermen's Business Office of Guangdong Province with our fishermen representatives on December 12, 2012 for an exchange of views with Mainland authorities on matters related to mobile fishing vessels.

At present, most Hong Kong trawlers have already obtained capture permits issued by the Mainland Government to operate in Mainland waters from time to time. AFCD is given to understand that the Mainland allows owners of mobile fishing vessels holding valid capture permits to upgrade their vessels as long as there is no increase to the engine power of the vessels. As such, trawler owners affected by the trawl ban in Hong Kong waters may upgrade their vessels to suit the requirements for operating in Mainland waters outside Hong Kong. They may also consider forming a fishing fleet or switching to non-trawling operations should they wish to pursue fishery activities of a sustainable nature in Mainland waters. Trawler owners may apply for loans under the Fisheries Development Loan Fund (FDLF) for financing uses such as upgrading their vessels to meet requirements for operating outside Hong Kong waters.

(c) We believe that the trawl ban would not have significant impact on related trades. It is because ancillary services would still be required by the remaining fishing vessels, including those operating outside Hong Kong and local non-trawling vessels. Following implementation of the trawl ban, some trawlers that used to operate mainly in Hong Kong waters may also operate in the nearby waters outside Hong Kong. They will continue to require the service of the related trades.

At present, the majority of fish collectors receive fish from fishing vessels operating in Mainland waters. The IWG will assess if any bona fide fish collectors have genuinely been affected by the trawl ban after its implementation. Depending on the result of its assessment, the IWG will consider providing appropriate assistance to those fish collectors that are directly affected by the trawl ban.

As we understand it, there is at present only one vessel in Tuen Mun that engages in making ice. AFCD has already contacted the owner of the ice maker to understand his situation. The owner has asked the Government to provide assistance for him to move the operation ashore. We will continue to keep in view the impact of the trawl ban on his operation and explore appropriate support measures accordingly.

Upon implementation of the trawl ban, the supply of trash fish (fish in small size), may be reduced. However, we believe that the impact on fish farming would not be significant. AFCD will continue to promote the use of pellet feed to replace the trash fish that is traditionally used as feed for aquaculture.

Apart from implementing the trawl ban and a series of fisheries management measures such as registration of local fishing vessels and prohibiting non-local fishing vessels from fishing in Hong Kong waters, the Government will continue to explore other practicable measures to promote the sustainable development of the fisheries industry.

Thank you.

Ends/Wednesday, January 9, 2013
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**Relevant papers on the ex-gratia allowance for trawler owners
affected by the trawl ban**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	8.3.2011 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	15.3.2011 (Item I)	Agenda Minutes
Subcommittee on Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011	--	Report of the Subcommittee on Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 to House Committee on 13 May 2011
Panel on Food Safety and Environmental Hygiene	17.5.2011 (Item VI)	Agenda Minutes
Finance Committee	10.6.2011	Agenda Minutes
Legislative Council	9.1.2013	Question 3