

立法會
Legislative Council

LC Paper No. CB(2)1157/17-18(09)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 10 April 2018**

**Proposed legislation for implementing the Convention on the
Conservation of Antarctic Marine Living Resources in Hong Kong**

Purpose

This paper provides background information on the Administration's proposal to introduce a control scheme for the trading of toothfish by way of a new piece of legislation to implement in Hong Kong the Convention on the Conservation of Antarctic Marine Living Resources ("CCAMLR"), and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the subject.

Background

CCAMLR

2. According to the website of the Commission for the Conservation of Antarctic Marine Living Resources ("the Commission"), CCAMLR is an international convention that entered into force in 1982 with the objective of conserving¹ Antarctic marine living resources, which cover the populations of fin fish, molluscs, crustaceans and all other species of living organisms found south of the Antarctic Convergence. The Commission, established under CCAMLR, adopts a set of measures to support the conservation of Antarctic marine living resources and the management of fisheries in the Convention Area². The conservation measures are reviewed and developed at each annual meeting of the Commission, and are bound by all its members. As at 31 March 2014, the

¹ Paragraph 2 of Article II of CCAMLR states that for the purposes of the Convention, the term "conservation" includes rational use.

² CCAMLR applies to the Antarctic marine living resources of the area south of 60° South latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem.

Commission has 25 members³. The Government of the People's Republic of China acceded to CCAMLR in 2006, but the Convention has not been extended to the Hong Kong Special Administrative Region ("HKSAR") yet.

Conservation measure in relation to toothfish

3. Toothfish inhabiting the Antarctic waters (including Antarctic toothfish, *Dissostichus mawsoni* and Patagonian toothfish, *D. eleginoides*) are harvested and traded internationally. The biological characteristics of toothfish (such as longevity, large size, slow growth and late maturation) make them highly vulnerable to overfishing and long-term detrimental impact. With toothfish being highly sought after as a table fish in some overseas countries, the toothfish resources have been experiencing significant levels of exploitation and illegal, unreported and unregulated ("IUU") fishing. In order to protect toothfish from IUU fishing internationally, the Commission adopted in 2000 a conservation measure called "Catch Documentation Scheme".

Proposed extension of CCAMLR to HKSAR

4. According to the Administration, no fishing vessels from Hong Kong have engaged in harvesting activities in the Convention Area. In the past, the volume of toothfish traded in Hong Kong used to be relatively small. Nonetheless, the trade volume and commercial activities in relation to toothfish in Hong Kong has increased in the course of time and Hong Kong is becoming one of the major importing economies of toothfish. To contribute to the international concerted efforts in the protection and sustainable use of marine resources, the HKSAR Government has, in consultation with the Central People's Government ("CPG"), decided to extend application of CCAMLR to HKSAR.

CCAMLR requirements and the proposed legislation

5. CCAMLR's conservation measures applicable to HKSAR are set out in **Appendix I**. According to the Administration, to implement the requirements of those conservation measures relevant to the context of Hong Kong, it is necessary to devise a new control scheme for the trading of toothfish in Hong Kong with legislative backing. The Administration's preliminary proposal is to put the control scheme under the charge of the Agriculture, Fisheries and Conservation Department through a new piece of legislation. Upon enactment of the relevant legislation, CCAMLR will formally apply to HKSAR. The proposed control scheme will have the key elements as set out in **Appendix II**.

³ The 25 members include Argentina, Australia, Belgium, Brazil, Chile, China, European Union, France, Germany, India, Italy, Japan, the Republic of Korea, Namibia, New Zealand, Norway, Poland, Russian Federation, South Africa, Spain, Sweden, Ukraine, the United Kingdom, the United States of America and Uruguay.

Members' concerns

6. Members' major views and concerns over the proposed introduction of a control scheme for the trading of toothfish are summarized below.

Impact on the trade

7. While supporting the proposed extension of CCAMLR to HKSAR, some members were concerned about the impact of the control scheme on the trade and the retail price of toothfish. Enquiring about the annual trade volume of toothfish in Hong Kong, members also sought information on whether the imported toothfish was for local consumption or re-export to other countries/ places and whether toothfish constituted a significant proportion of the total consumption of fisheries produce in Hong Kong.

8. The Administration advised that as there was no legal requirement mandating the recording of transactions of toothfish in Hong Kong, it did not have readily available statistics on the trade or import volume of toothfish. According to the Commission, more than 2 000 tonnes of toothfish were imported into Hong Kong or re-exported in 2012; while the statistics compiled by the Census and Statistics Department recorded an import volume of some 500 tonnes only in the same year. That said, the trade volume and commercial activities in relation to toothfish in Hong Kong had been increasing and Hong Kong was becoming one of the major importing economies of toothfish. After the extension of CCAMLR to HKSAR and with the introduction of a control scheme for the trading of toothfish, the Administration would be able to collect more accurate data regarding the trade volume of toothfish in Hong Kong.

9. The Administration further advised that toothfish only constituted a small proportion of the fisheries produce trade which accounted for less than 0.5% of the total consumption of fisheries produce. It did not envisage any significant change in the trade volume of toothfish in Hong Kong after the extension of application of CCAMLR to HKSAR. As toothfish obtained in the Convention Area in compliance with the relevant conservation measures should have the necessary documents as required by the harvesting/exporting contracting parties, the additional cost to be incurred on the trade in meeting the relevant documentation requirements was expected to be minimal.

10. There were views that the Administration should conduct a business impact assessment on the proposed control scheme to study its implications on the trading activities of toothfish in Hong Kong. Besides, comprehensive consultation with traders, regardless of whether they imported toothfish from contracting or non-contracting parties, should be carried out. According to the Administration, it would gauge the views of relevant stakeholders, including seafood traders and importers, environmental concern groups and the relevant advisory committees, on the proposed control scheme. The Administration

would take into consideration the views collected before finalizing the proposed legislation.

Applicability of CCAML to HKSAR

11. In response to members' concern over the legal basis for the HKSAR Government's proposal to implement CCAML in Hong Kong, the Administration advised that the Government of the People's Republic of China acceded to CCAML in 2006. It was noteworthy that the trade volume and commercial activities in relation to toothfish in Hong Kong had been increasing significantly in recent years. With a view to making a fair share of contributions to the concerted efforts being pursued by the international community to promote the protection and sustainable use of marine resources, the HKSAR Government had consulted CPG on the application of CCAML to HKSAR. Upon enactment of the relevant legislation, the HKSAR Government would formally request CPG to complete the formalities for extending the application of CCAML to Hong Kong.

Recent development

12. The Administration will update the Panel on the subject at the meeting on 10 April 2018.

Relevant papers

13. A list of the relevant papers on the website of the Legislative Council is in **Appendix III**.

CCAMLR Conservation Measures Applicable to HKSAR

Conservation Measure (CM)		
Relevant CMs	Title	Details
CM 10-03	Port inspections of vessels carrying toothfish	<p>The Conservation Measure requires Contracting parties to undertake inspections of ALL fishing vessels carrying <i>Dissostichus</i> spp. entering their ports to ensure that the fishing activities were carried out in accordance with CCAMLR conservation measures and the catch is accompanied by a valid <i>Dissostichus</i> catch document (DCD).</p> <p>Contracting Parties shall require vessels to provide advance notice of their entry in a specified form and convey a written declaration that they have not engaged in or supported illegal, unreported and unregulated (IUU) fishing in the Convention Area and have complied with relevant CCAMLR requirements. Vessels failing to do so will be denied port access. Inspection of the vessel concerned shall be conducted within 48 hours of port entry. The outcome of each inspection needs to be provided to the Secretariat within 30 days of the port inspection.</p> <p>Catches that are caught in contravention of CCAMLR conservation measures shall not be landed or transhipped. The Contracting Party will inform the Flag State of the vessel and, if necessary, apply appropriate sanctions in accordance with national legislation.</p> <p>Container vessels and Members' marine science research vessels are excluded from the inspections. Carrier vessels equipped for transportation of fishery products may be subject to a preliminary assessment of the relevant documentation.</p>
CM 10-04	Automated satellite-linked Vessel Monitoring Systems (VMS)	Fishing vessels of Contracting Parties should be equipped with satellite-linked, tamper-proof, vessel monitoring devices which automatically communicate at least every four hours to a land-based fisheries monitoring centre of the Flag State.

Conservation Measure (CM)

Relevant CMs	Title	Details
		<p>The Masters and owners/licensees of fishing vessels should ensure that the VMS is functional and active according to the requirements of CCAMLR. Contracting Parties are required to report movement of the licensed fishing vessels and irregularities of the VMS reported to the CCAMLR Secretariat at the specified time. The Flag State will be requested to provide an explanation for failure in data transmission, or entry of its flag vessels without prior notification.</p> <p>VMS reports will be treated in a confidential manner and limited to be used for compliance and inspection purposes only. A list of vessels submitting VMS reports will be listed on a password-protected section of the CCAMLR website.</p> <p>A Contracting Party may request the CCAMLR Secretariat to check VMS data or actual VMS reports and messages from a vessel against the claims on a DCD.</p> <p>The CCAMLR Secretariat shall annually, before 30 September, report on the implementation of and compliance with this conservation measure to the Commission.</p>
10-05	Catch Documentation Scheme for <i>Dissostichus</i> spp.	<p>Contracting parties shall require each landing and transshipment of <i>Dissostichus</i> spp. be accompanied by a completed valid DCD.</p> <p>Contracting Party and non-Contracting Party participating in the CDS shall require that each shipment of <i>Dissostichus</i> spp. imported into, or exported or re-exported from, its territory be accompanied by the export/re-export document and ensure that its customs government authorities or other appropriate government officials request and examine the documentation of each shipment of <i>Dissostichus</i> spp. imported into, or exported from, its territory to verify that it includes the export document and, where appropriate, validated re-export document(s) and verify the validity of the DCDs in the CDS system online. The import, export and re-export of</p>

Conservation Measure (CM)

Relevant CMs	Title	Details
		<p><i>Dissostichus</i> spp. without an export/re-export document is prohibited.</p> <p>All catch, export and re-export documents created using the CDS will be available to the CCAMLR Secretariat as well as any Member who has had a role in the completion of such documents, including the importing State.</p>
CM 10-06	<p>Scheme to promote compliance by Contracting Parties with CCAMLR conservation measures</p>	<p>A CP-IUU Vessel List will be established and documented to identify vessels which have engaged in fishing activities in the Convention Area contravening the conservation measures in force. Contracting Parties may communicate any information regarding vessels engaging in such activities.</p> <p>The Contracting Parties are considered as having carried out fishing activities that have diminished the effectiveness of the conservation measures adopted by the Commission if the Parties do not ensure compliance by their vessels with the conservation measures or their vessels are repeated included in the CP-IUU Vessel List.</p> <p>The criteria for vessels to be included in the CP-IUU Vessel list are described.</p> <p>The Secretary's actions to create a draft, provisional CP-IUU Vessel List, proposed and final CP-IUU Vessel List are detailed. The corresponding actions to be taken by non-Contracting Parties cooperating with the Commission and Contracting Parties regarding vessels engaging in IUU activities are set out. The procedures taken by the Standing Committee on Implementation and Compliance to adopt a proposed CP-IUU Vessel List or remove vessels from the CP-IUU Vessel List are listed. The Executive Secretary shall make the List available to parties concerned and on the CCAMLR website.</p> <p>Contracting Parties shall take necessary actions to regulate the activities of vessels listed in the CP-IUU Vessel List. However, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations.</p>

Conservation Measure (CM)

Relevant CMs	Title	Details
CM 10-07	Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures	<p>A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area, which has been denied port access, landing or transshipment is presumed to be undermining the effectiveness of CCAMLR conservation measures. The vessel will be listed in the NCP-IUU Vessel List.</p> <p>The listed non-Contracting Party vessels would not be allowed to land or tranship any fish species subject to CCAMLR conservation measures unless the fish were caught in compliance with all requirements under CCAMLR.</p> <p>A Contracting Party will report to the Commission on sightings, denial or port access, landings or transshipment and the results of inspections and actions conducted by the Contracting Party. The Commission will disseminate the information and request follow up action from the Flag State concerned.</p> <p>The criteria for vessels to be included in the NCP-IUU Vessel list are described.</p> <p>The Secretary's actions to create a draft, provisional NCP-IUU Vessel List, proposed and final NCP-IUU Vessel List are detailed. The corresponding actions to be taken by non-Contracting Parties cooperating with the Commission and Contracting Parties regarding vessels engaging in IUU activities are set out. The procedures taken by the Standing Committee on Implementation and Compliance to adopt a proposed NCP-IUU Vessel List or remove vessels from the NCP-IUU Vessel List are listed. The Executive Secretary shall make the List available to parties concerned and on the CCAMLR website. The Commission and Contracting Parties shall request non-Contracting Parties with vessels engaged in IUU activities to take necessary measures to avoid diminishing the effectiveness of conservation measures adopted by CCAMLR.</p> <p>Contracting Parties and non-contracting Parties cooperating with the Commission shall take necessary actions to regulate the activities of vessels listed in the CP-IUU Vessel List. However, Contracting Parties should not take any trade measures or other sanctions which are inconsistent with their international obligations.</p>

Conservation Measure (CM)

Relevant CMs	Title	Details
CM 10-08	Scheme to promote compliance by Contracting Parties with CCAMLR conservation measures	Contracting Parties should take measures to verify if any of their nationals, natural or legal persons are engaged in, responsible for or benefit from IUU activities for toothfish, and take appropriate action to deprive the benefits obtained and dissuade the actors of further illegal activities. A contact point is designated for exchange of information for the purpose of implementing this conservation measure.

The proposed control scheme would have the following key elements:

- (a) prohibiting the landing, importation or transshipment of toothfish without catch documents;
- (b) prohibiting the export or re-export of toothfish without valid documents;
- (c) empowering the enforcement agency to obtain relevant information for validation of export/re-export documents for toothfish, search vessels, inspect, seize or confiscate consignments without valid catch or export/re-export documents, and dispose of the confiscated items;
- (d) requiring fishing vessels carrying Antarctic marine living resources to provide advance notice of entry into Hong Kong, and conducting inspections on these vessels;
- (e) requesting for verification of Vessel Monitoring System reports of fishing vessels engaged in fishing in the Convention Area;
- (f) issuing and validation of catch and export/re-export documents for toothfish;
- (g) denying port access of illegal, unreported and unregulated ("IUU") fishing vessels and prohibiting the resupplying of these fishing vessels;
- (h) communicating the information of fishing vessels suspected to be engaged in IUU activities and Catch Documentation Scheme-related information to relevant overseas authorities e.g. the Commission Secretariat and the Contracting Parties; and
- (i) providing the enforcement agency other powers for carrying out their duties effectively, e.g. to stop, search and detain vessels and persons in connection with contravention of the legislation.

(Source: Extract from the Administration's paper (LC Paper No. CB(2)992/13-14(05)) provided for the meeting of the Panel on Food Safety and Environmental Hygiene held on 11 March 2014.)

Appendix III

Relevant papers on

Proposed legislation for implementing the Convention on the Conservation of Antarctic Marine Living Resources in Hong Kong

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	11.3.2014 (Item V)	<u>Agenda</u> <u>Minutes</u> Administration's reply letter dated 23 May 2014 on the implementation of the Convention on the Conservation of Antarctic Marine Living Resources in Hong Kong (<u>LC Paper No. CB(2)1611/13-14(01)</u>)

Council Business Division 2
Legislative Council Secretariat
3 April 2018