

LEGISLATIVE COUNCIL BRIEF

Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635)

**Legislative Proposals to Implement Requirements under the
Convention on Conservation of Antarctic Marine Living Resources**

INTRODUCTION

The Secretary for Food and Health (“SFH”) has made the following regulations under section 4(1) of the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635) (“Ordinance”) —

- (a) Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation (“TCDS Regulation”) at **Annex A**; and
- (b) Conservation of Antarctic Marine Living Resources (Port Inspection and Control) Regulation (“PI Regulation”) at **Annex B**.

2. The TCDS Regulation provides for a licensing regime for regulating toothfish movement, whereas the PI Regulation empowers the Director of Agriculture, Fisheries and Conservation (“DAFC”) to inspect fishing vessels carrying toothfish or other Antarctic marine living resources and to deny entry to Hong Kong waters of vessels engaged in illegal, unreported and unregulated (“IUU”) fishing activities.

3. A decision of DAFC to attach conditions to a licence, refuse an application for a licence or cancel a licence under the TCDS Regulation is appealable to the Administrative Appeals Board (“AAB”). At the meeting of the Executive Council on 9 April 2019, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Administrative Appeals Board Ordinance (Amendment of Schedule) (No. 2) Order 2019 (“Order”), at **Annex C**, should be made under section 4 of the Administrative Appeals Board Ordinance (Cap. 442) (“AABO”), to include references to the TCDS Regulation.

4. SFH has also made the Conservation of Antarctic Marine Living Resources Ordinance (Commencement) Notice (“Commencement Notice”) at **Annex D** under section 1(2) of the Ordinance to specify that the Ordinance will commence on 1 July 2020. The TCDS Regulation, the PI Regulation and the Order will come into operation on the same day.

JUSTIFICATIONS

5. The Ordinance provides the legal basis for implementing the Convention on Conservation of Antarctic Marine Living Resources (“CCAMLR”). The TCDS Regulation and the PI Regulation serve to implement two of the Conservation Measures (“CMs”)¹ relevant to Hong Kong.

SALIENT FEATURES OF THE LEGISLATIVE PROPOSALS

TCDS Regulation

Toothfish Licensing Regime

6. The TCDS Regulation aims to implement the Catch Documentation Scheme for toothfish set up under CM 10-05 “Catch Documentation Scheme for *Dissostichus* spp.” (“CDS”) under CCAMLR. A licensing regime will be introduced to regulate the movement of toothfish, whose import, export or re-export will be prohibited unless it is accompanied by an import / export / re-export licence issued by DAFC.

7. All applications for the said licences must be made to DAFC in a specified form, together with payment of a prescribed fee as specified in the Schedule to the TCDS Regulation, and accompanied by the relevant documents².

¹ CMs are adopted by the Commission for the Conservation of Antarctic Marine Living Resources (“Commission”) to support the conservation of Antarctic marine living resources and the management of fisheries in the Convention Area. CMs may set out the requirements on compliance with the conservation of various species under CCAMLR, gear regulations, data reporting, research and experiment, environmental protection, etc. They will be updated and expanded from time to time. As at end September 2019, there were a total of 69 CMs. Six CMs, set out in **Annex E**, have been identified to be relevant to Hong Kong.

² Under CM 10-05, the relevant documents in relation to the catch/export/re-export of toothfish generated by an electronic CDS (“e-CDS”) system under CCAMLR are referred to as a *Dissostichus* Catch Document, a *Dissostichus* Export Document and a *Dissostichus* Re-Export Document respectively.

Transshipment of non-landed toothfish

8. Transshipment of any non-landed toothfish items in Hong Kong is prohibited unless the concerned toothfish items are covered by a valid *Dissostichus* Catch Document. In addition, the TCDS Regulation also governs transshipment activities occurring outside Hong Kong if Hong Kong vessels are involved.

PI Regulation

Vessel Inspection

9. Fishing vessels carrying toothfish or other Antarctic marine organisms entering Hong Kong will be inspected by authorized officers as provided in the PI Regulation to check whether harvesting activities in the Convention Area are carried out in accordance with CMs.

Declaration and Notification Requirement for Entry

10. In accordance with the requirements set out in CM 10-03 “Port inspections of fishing vessels carrying Antarctic marine living resources”, the master or the owner or an agent of the owner of the vessel carrying toothfish or other Antarctic marine living resources seeking to enter Hong Kong waters will need to notify DAFC at least 48 hours before their expected arrival; to provide the requested information of the vessel and the catch; and to give a written declaration that the vessel has not engaged in IUU fishing activities.

11. A fishing vessel will be denied entry to Hong Kong waters³ if (i) it is on a list of IUU vessels published by the Commission; (ii) the vessel has been involved in IUU fishing; or (iii) there is a failure to provide the advance notification, information or declaration mentioned in paragraph 10 above.

The Order

12. The Order provides that a decision of DAFC to attach conditions to a licence, refuse an application for a licence or cancel a licence in relation to the movement of toothfish under the TCDS Regulation is appealable to the AAB. No decision under the PI Regulation is appealable to AAB.

³ Except for the purposes of inspection, emergency or enforcement action.

Commencement Notice

13. To allow sufficient time for the Central People’s Government (“CPG”) to complete the formalities for extending CCAMLR to the Hong Kong Special Administrative Region (“HKSAR”) and for the trade dealing in toothfish to adapt to the new legislative requirements, the new requirements will be implemented starting from 1 July 2020.

LEGISLATIVE TIMETABLE

14. The legislative timetable is as follows:

Publication of the TCDS Regulation, the PI Regulation, the Order and the Commencement Notice (together referred to as “Subsidiary Legislation”)	25 October 2019
Tabling of the Subsidiary Legislation at the Legislative Council (“LegCo”) for negative vetting	30 October 2019
Commencement Date of the Ordinance, the TCDS Regulation, the PI Regulation and the Order	1 July 2020

IMPLICATIONS OF THE PROPOSALS

15. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance. Besides, the Order will not affect the current binding effect of the AABO.

16. The financial, civil service, economic, environmental and sustainability implications of the proposals are set out at **Annex F**. The proposals have no productivity, family or gender implication.

PUBLIC CONSULTATIONS

17. To gauge the views of relevant stakeholders on the implementation of CCAMLR in Hong Kong, we organised meetings and

engagement forums with trading companies, importers, wholesalers, retailers, representatives of seafood trade and catering associations, environmental groups and a Government advisory body (the Fish Marketing Advisory Board) from January to March 2018. The implementation of CCAMLR was welcome by all the parties consulted. The trade considered that the proposed licensing regime would not cause significant burden on their operations. We consulted the LegCo Panel on Food Safety and Environmental Hygiene on 10 April 2018 on the Conservation of Antarctic Marine Living Resources Bill (“CAMLR Bill”) together with the proposals to implement the CMs relevant to Hong Kong. Members in general supported the proposals.

18. Furthermore, AFCD held a briefing session with trading companies, importers, wholesalers, retailers, and representatives from seafood trade and catering association in end March 2019 to keep the trade informed of the new legislative requirements.

PUBLICITY

19. We will issue a press release and a government spokesperson will be available to answer media and public enquiries. We will also issue letters to relevant stakeholders to facilitate the trade’s compliance.

ENQUIRIES

20. For enquiries about this brief, please contact Mr Amor Wong, Principal Assistant Secretary for Food and Health (Food)3, at 3509 8927.

BACKGROUND

21. The CAMLR Bill, which provides for the legal basis for implementing CCAMLR in Hong Kong, was passed by the LegCo on 23 January 2019. CCAMLR is an international convention entered into force in 1982 with the objective of conserving Antarctic marine living resources. Currently there are a total of 36 Contracting Parties, comprising 26 members and 10 acceding states, which are committed to be bound by CCAMLR and its CMs.

22. The People's Republic of China acceded to CCAMLR in 2006, and in a note attached to its Instrument of Accession, stated that CCAMLR shall not apply to the HKSAR unless otherwise notified. The CPG, upon consultation with the HKSAR Government, has agreed in principle to extend the application of CCAMLR to the HKSAR.

**Food and Health Bureau
Agriculture, Fisheries and Conservation Department
October 2019**

Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation

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**Conservation of Antarctic Marine Living Resources
(Toothfish Catch Documentation Scheme) Regulation**

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Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation

(Made by the Secretary for Food and Health under section 4 of the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635) comes into operation.

2. Interpretation

(1) In this Regulation—

CDS (產品證書制度) means the Catch Documentation Scheme for *Dissostichus* spp. implemented by the Commission for tracking the movement of toothfish items;

CDS document (制度證書) means a DCD, DED, DRED or any other document generated, validated and completed by using the e-CDS;

CM10-03 (《10-03 措施》) means Conservation Measure 10-03 adopted by the Commission for port inspections of fishing vessels carrying AMOs, as revised or substituted from time to time and as applied to Hong Kong;

CM10-05 (《10-05 措施》) means Conservation Measure 10-05 adopted by the Commission for the CDS, as revised or substituted from time to time and as applied to Hong Kong;

DCD (產品證書) means a *Dissostichus* catch document;

DED (出口證書) means a *Dissostichus* export document;

despatching vessel (原載船隻), in relation to a transshipment of a non-landed toothfish item, means the vessel from which the item is transhipped;

Dissostichus catch document (犬牙南極魚產品證書) means a document that—

(a) is generated by using the e-CDS; and

(b) contains information relating to the harvest, transshipment and landing of *Dissostichus* spp. as described in CM10-05;

Dissostichus export document (犬牙南極魚出口證書) means a document that—

(a) is generated by using the e-CDS; and

(b) contains information relating to the export of *Dissostichus* spp. as described in CM10-05;

Dissostichus re-export document (犬牙南極魚再出口證書) means a document that—

(a) is generated by using the e-CDS; and

(b) contains information relating to the re-export of *Dissostichus* spp. as described in CM10-05;

DRED (再出口證書) means a *Dissostichus* re-export document;

e-CDS (網上系統) means the web-based application implemented by the Commission to support the CDS for the generation, validation, completion and storage of documents under the CDS;

export licence (出口許可證) means a licence granted under section 12(1);

fishing vessel (漁船) means a fishing vessel within the meaning of CM10-03;

import licence (進口許可證) means a licence granted under section 11(1);

licence (許可證) means—

- (a) an import licence;
- (b) an export licence; or
- (c) a re-export licence;

non-landed toothfish item (未上陸犬牙魚產) means a toothfish item that is not indicated by the e-CDS to have been certified as landed, within the meaning of CM10-05, by a competent authority of a place;

receiving vessel (接魚船隻), in relation to a transshipment of a non-landed toothfish item, means the vessel to which the item is transhipped;

re-export licence (再出口許可證) means a licence granted under section 12(2);

toothfish (犬牙魚) means any fish that belongs to *Dissostichus* spp.;

toothfish item (犬牙魚產) means any toothfish (live or dead), including any flesh or other part (whether raw, or in any way processed or preserved) of any toothfish;

transshipment (轉船), in relation to a non-landed toothfish item on a vessel—

- (a) means the transfer of the item from the vessel directly to another vessel, whether at sea or in port; but
- (b) does not include the act mentioned in paragraph (b) of the definition of **unload**,

and **tranship** (轉船) is to be construed accordingly;

unload (卸下), in relation to a non-landed toothfish item on a fishing vessel, means—

- (a) unloading or transferring the item in Hong Kong, in any form, from the vessel to dockside, whether or not the item is subsequently transferred to another vessel; or
- (b) offloading or transferring the item in Hong Kong, in any form, in port from the vessel to a container vessel.

(2) In this Regulation—

- (a) a reference to bringing a toothfish item into Hong Kong includes causing the item to be brought into Hong Kong; and
- (b) a reference to taking a toothfish item out of Hong Kong includes causing the item to be taken out of Hong Kong.

Part 2

Movement of Toothfish Items

Division 1—Control of Movement

3. Import of toothfish items

- (1) This section does not apply to a non-landed toothfish item on a fishing vessel that enters Hong Kong waters.
- (2) A person must not import a toothfish item except under and in accordance with an import licence.
- (3) Subsection (2) does not apply to a toothfish item if the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for another place outside Hong Kong.
- (4) If required by an authorized officer, a person who imports a toothfish item must—
 - (a) produce the import licence that covers the item to the officer for inspection; or
 - (b) if the item falls within subsection (3), produce the DED or DRED mentioned in that subsection to the officer for inspection.
- (5) A person who without reasonable excuse contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (6) A person who without reasonable excuse contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 3.

4. Unloading non-landed toothfish items from fishing vessel

- (1) A non-landed toothfish item that is not covered by a valid DCD must not be unloaded from a fishing vessel.
- (2) If a non-landed toothfish item is unloaded from a fishing vessel, the master or the owner of the vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection.
- (3) If, without reasonable excuse, subsection (1) is contravened in relation to a non-landed toothfish item on a fishing vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (4) A person who without reasonable excuse contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3.

5. Taking toothfish items out of Hong Kong

- (1) A person must not take a toothfish item out of Hong Kong except under and in accordance with an export licence or a re-export licence.
- (2) Subsection (1) does not apply to a toothfish item if—
 - (a) the item is a non-landed toothfish item and—
 - (i) is covered by a valid DCD;
 - (ii) was transhipped in Hong Kong; and
 - (iii) is taken out of Hong Kong by the relevant receiving vessel after the transhipment; or
 - (b) the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for another place outside Hong Kong.

- (3) If a toothfish item that is taken out of Hong Kong—
- (a) falls within subsection (2)(a), the master or the owner of the relevant receiving vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection;
 - (b) falls within subsection (2)(b), the person who takes the item out of Hong Kong must, if required by an authorized officer, produce the DED or DRED mentioned in that subsection to the officer for inspection; or
 - (c) neither falls within subsection (2)(a) nor falls within subsection (2)(b), the person who takes the item out of Hong Kong must, if required by an authorized officer, produce the export licence or re-export licence that covers the item to the officer for inspection.
- (4) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (5) A person who without reasonable excuse contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3.

6. Transhipment of non-landed toothfish items

- (1) A non-landed toothfish item that is not covered by a valid DCD must not be transhipped in Hong Kong.
- (2) A non-landed toothfish item that is not covered by a valid DCD must not be transhipped outside Hong Kong if a Hong Kong vessel is the despatching vessel or the receiving vessel.
- (3) If a non-landed toothfish item is transhipped in Hong Kong, the master or the owner of each of the despatching vessel and the receiving vessel must, if required by an authorized officer,

- produce the DCD that covers the item to the officer for inspection.
- (4) If a Hong Kong vessel is the despatching vessel or the receiving vessel in a transhipment of a non-landed toothfish item outside Hong Kong, the master or the owner of the vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection.
- (5) If, without reasonable excuse, subsection (1) is contravened, each of the following persons commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year—
- (a) the master of each of the despatching vessel and the receiving vessel;
 - (b) the owner of each of the despatching vessel and the receiving vessel.
- (6) If, without reasonable excuse, subsection (2) is contravened in relation to a Hong Kong vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (7) A person who without reasonable excuse contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 3.

Division 2—Exemption from Control of Movement

7. Personal baggage

Sections 3 and 5 do not apply to a toothfish item that is in the accompanied personal baggage of a person entering or leaving Hong Kong if—

- (a) the item is for the person's personal use or is a gift to another person; and
- (b) the total net weight of all toothfish items in the baggage does not exceed 15 kg.

8. Persons in transit

Sections 3 and 5 do not apply to a toothfish item that is in the accompanied personal baggage of a person who—

- (a) enters Hong Kong via the Hong Kong International Airport from a place outside Hong Kong and then leaves Hong Kong via the Hong Kong International Airport; and
- (b) while in Hong Kong, does not pass through any immigration control between the entry time and the leaving time.

9. Articles in transit

Sections 3 and 5 do not apply to a toothfish item that is an article in transit as defined by section 2 of the Import and Export Ordinance (Cap. 60).

10. Air transshipment cargo

- (1) Subject to subsection (2), sections 3 and 5 do not apply to a toothfish item that is an air transshipment cargo.
- (2) If at any time between the item's being brought into and taken out of Hong Kong, the item is removed from the air cargo transshipment area (other than for its being taken out of Hong Kong by an aircraft)—
 - (a) for the purposes of section 3—

- (i) the item is deemed to be imported, at the time of the removal, by the person who brought the item into Hong Kong as an air transshipment cargo; and
- (ii) except to the extent mentioned in subparagraph (i), that section applies to the item; and

(b) section 5 applies to the item.

- (3) It is a defence for a person charged under section 3(5) or 5(4) in relation to a toothfish item mentioned in subsection (2) (*defendant*) to show that the defendant—

(a) took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in that subsection; or

(b) did not know, and had no reasonable ground for believing, that the removal had occurred.

- (4) Subsection (5) applies if the defence under subsection (3) involves an allegation that the offence was committed due to—

(a) another person's act or default; or

(b) the defendant's reliance on information given by another person.

- (5) The defendant may not, without the leave of the court, rely on the defence under subsection (3) unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving the particulars of—

(a) the alleged act, default or information; and

(b) the person who is alleged to have committed the act or default or given the information,

of which the defendant is aware at the time of service.

- (6) The defendant may not rely on the defence under subsection (3) because of the defendant's reliance on information given by another person unless the defendant shows that the reliance was reasonable in all the circumstances, having regard in particular to—
- (a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
 - (b) whether the defendant had any reason to disbelieve the information.

- (7) In this section—

air cargo transshipment area (機場轉貨區) means the cargo transshipment area of Hong Kong International Airport as defined by section 2 of the Import and Export Ordinance (Cap. 60);

air transshipment cargo (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60).

Part 3

Licence and Related Matters

Division 1—Grant of Licence

11. Import licence

- (1) On application in the specified form, the Director may grant a licence to the applicant for importing a toothfish item if—
 - (a) the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for Hong Kong; and
 - (b) the application fee prescribed in column 3 of item 1 of the Schedule is paid.
- (2) For making a decision under subsection (1), the Director may request the applicant to provide further information or other documents to support the application.

12. Export licence and re-export licence

- (1) On application in the specified form, the Director may grant a licence to the applicant for taking a toothfish item out of Hong Kong if—
 - (a) the item is covered by a valid DCD; and
 - (b) the application fee prescribed in column 3 of item 2 of the Schedule is paid.
- (2) On application in the specified form, the Director may grant a licence to the applicant for taking a toothfish item out of Hong Kong if—

- (a) the item is covered by a valid DED or DRED that indicates that the item was destined, from a place outside Hong Kong, for Hong Kong; and
 - (b) the application fee prescribed in column 3 of item 3 of the Schedule is paid.
- (3) For making a decision under subsection (1) or (2), the Director may request the applicant to provide further information or other documents to support the application.

Division 2—Licence: Form, Conditions, Refusal of Application and Cancellation

13. Form of licence

A licence is to be in a form specified by the Director, and must contain—

- (a) the name and address of the licence holder;
- (b) the expiry date of the licence; and
- (c) the conditions, if any, attached under section 14(1).

14. Conditions of licence

- (1) The Director may attach conditions to a licence.
- (2) If, without reasonable excuse, a condition attached to a licence is contravened, the licence holder commits an offence and is liable on conviction to a fine at level 3.

15. Refusal of licence application

- (1) The Director may refuse an application for a licence if—
 - (a) any information provided by the applicant is incomplete or incorrect;

- (b) the applicant fails to comply with a request made under section 11(2) or 12(3); or
 - (c) granting the licence would be inconsistent with the Convention or any Conservation Measure.
- (2) If the Director decides to refuse an application for a licence, the Director must give a written notice to the applicant stating the decision and the reason for the decision.

16. Cancellation of licence

- (1) The Director may cancel a licence—
 - (a) on the request of the licence holder;
 - (b) if a condition attached to the licence under section 14(1) is contravened;
 - (c) if the Director is satisfied that the licence was granted as a result of a false representation of any fact made by the applicant or an unlawful act of the applicant;
 - (d) if a CDS document submitted in support of the application for the licence is no longer valid; or
 - (e) if granting the licence was inconsistent with the Convention or any Conservation Measure.
- (2) If the Director decides to cancel a licence, the Director must give a written notice to the licence holder stating the decision and—
 - (a) the reason for the decision; and
 - (b) the effective date of the cancellation.
- (3) If a licence is cancelled, the licence holder must surrender the licence to the Director within 14 days after receipt of the written notice.

- (4) A person who without reasonable excuse contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3.

17. Appeals to Administrative Appeals Board

(1) If—

- (a) an applicant is aggrieved by a decision of the Director to refuse an application for a licence under section 15(1); or
- (b) a licence holder is aggrieved by a decision of the Director—
- (i) to attach a condition to a licence under section 14(1); or
- (ii) to cancel a licence under section 16(1)(b), (c), (d) or (e),

the applicant or licence holder may appeal to the Administrative Appeals Board against the decision.

- (2) If the appeal is against a decision to attach a condition to a licence, the condition is not to be cancelled or varied pending the determination of the appeal by the Administrative Appeals Board.
- (3) If the appeal is against a decision to cancel a licence, the appeal does not suspend the decision pending the determination of the appeal by the Administrative Appeals Board, and accordingly does not affect the operation of section 16(3) and (4).

Division 3—Offence Relating to CDS Document or Licence

18. Alteration, etc. of CDS document or licence prohibited

- (1) A person must not alter, obliterate, deface or render illegible a CDS document or licence.
- (2) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.

Schedule

[ss. 11 & 12]

Prescribed Fees for Licence Application

Column 1	Column 2	Column 3
Item	Licence	Application fee
1.	Import licence	\$375
2.	Export licence	\$410
3.	Re-export licence	\$410

Secretary for Food and Health

3 April 2019

Explanatory Note

The purpose of this Regulation is to implement Conservation Measure 10-05 (*CM10-05*) adopted by the Commission for the Conservation of Antarctic Marine Living Resources under the Convention on the Conservation of Antarctic Marine Living Resources. *CM10-05* provides for the Catch Documentation Scheme for *Dissostichus* spp. for tracking the movement of toothfish items.

2. Part 1 (sections 1 and 2) provides for commencement and defines terms and expressions for the interpretation of the Regulation.
3. Part 2 (sections 3 to 10) contains provisions for controlling the movement of toothfish items and provides for exemptions.
4. Part 3 contains 3 Divisions, as follows—
 - (a) Division 1 (sections 11 and 12) provides for the grant of licences for the import, export and re-export of toothfish items;
 - (b) Division 2 (sections 13 to 17)—
 - (i) provides for the form of licences;
 - (ii) empowers the Director of Agriculture, Fisheries and Conservation (*Director*) to attach conditions to licences, refuse licence applications and cancel licences; and
 - (iii) provides for appeals to the Administrative Appeals Board against certain decisions of the Director;
 - (c) Division 3 (section 18) prohibits the alteration, etc. of CDS documents and licences.

Conservation of Antarctic Marine Living Resources (Port Inspection and Control)
Regulation

i

**Conservation of Antarctic Marine Living Resources
(Port Inspection and Control) Regulation**

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Conservation of Antarctic Marine Living Resources (Port Inspection and Control)
Regulation

Part 1
Section 1

1

**Conservation of Antarctic Marine Living Resources
(Port Inspection and Control) Regulation**

(Made by the Secretary for Food and Health under section 4 of the
Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635))

Part 1

Preliminary

1. **Commencement**
This Regulation comes into operation on the day on which the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635) comes into operation.
2. **Interpretation**
In this Regulation—
 - CM10-03* (《10-03 措施》) means Conservation Measure 10-03 adopted by the Commission for port inspections of fishing vessels carrying AMOs, as revised or substituted from time to time and as applied to Hong Kong;
 - CM10-06* (《10-06 措施》) means Conservation Measure 10-06 adopted by the Commission to promote compliance by CP vessels with Conservation Measures, as revised or substituted from time to time and as applied to Hong Kong;
 - CM10-07* (《10-07 措施》) means Conservation Measure 10-07 adopted by the Commission to promote compliance by non-CP vessels with Conservation Measures, as revised or substituted from time to time and as applied to Hong Kong;

CP vessel (締約方船隻) means a vessel flying the flag of a place to which the Convention applies;

fishing vessel (漁船) means a fishing vessel within the meaning of CM10-03;

IUU fishing (違規捕撈)—see section 3;

IUU vessel (違規船隻) means a vessel included—

- (a) in the list established by the Commission under CM10-06; or
- (b) in the list established by the Commission under CM10-07;

non-CP vessel (非締約方船隻) means a vessel that is not a CP vessel.

3. Meaning of *IUU fishing*

If a fishing vessel meets the criteria for being included—

- (a) for a CP vessel—in the list established by the Commission under CM10-06; or
- (b) for a non-CP vessel—in the list established by the Commission under CM10-07,

the vessel is treated as engaged in *IUU fishing*, whether or not the vessel has been included in the list.

Part 2

Fishing Vessel Entering Hong Kong Waters

4. Pre-arrival notification of fishing vessel carrying AMO

- (1) A fishing vessel carrying any AMO must not enter Hong Kong waters, unless a notification of the intended entry is given to the Director not less than 48 hours before the entry.
- (2) If, due to an emergency, a fishing vessel carrying any AMO enters Hong Kong waters in contravention of subsection (1)—
 - (a) subsection (1) does not apply to the entry; and
 - (b) subsection (3) applies to the entry.
- (3) For a vessel mentioned in subsection (2), a notification of the intended entry must be given to the Director as early as practicable before the intended entry or, if that is impracticable, a notification of the entry must be given to the Director as soon as practicable after the entry.
- (4) A notification under subsection (1) or (3) must—
 - (a) be in the specified form; and
 - (b) contain all information required by the specified form.
- (5) If, without reasonable excuse, subsection (1) or (3) is contravened in relation to a fishing vessel, each of the following persons commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months—
 - (a) the master of the vessel;
 - (b) the owner of the vessel;

- (c) a person acting as agent for the owner for the handling of vessel pre-arrival notification matters.
- (6) To avoid doubt, the application of this section in relation to a vessel does not preclude the application of any provision of any Ordinance in relation to the vessel.

5. Power to deny entry of fishing vessel

- (1) Subject to subsection (2), the Director may, by giving a direction to the master or the owner of a fishing vessel that is not a Hong Kong vessel, deny the entry into Hong Kong waters of the vessel if—
 - (a) the vessel is an IUU vessel;
 - (b) section 4(1) is not complied with in relation to the vessel; or
 - (c) the information provided to the Director under section 4(4)(b) shows that the vessel has been involved in IUU fishing.
- (2) However, the Director may permit a vessel falling within subsection (1) to enter Hong Kong waters—
 - (a) for inspection under section 7;
 - (b) for performing, in relation to the vessel, any function of the Director or an authorized officer under the Ordinance; or
 - (c) in a case of emergency.
- (3) If, without reasonable excuse, a fishing vessel that is denied entry under subsection (1) enters Hong Kong waters, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year, and a further fine of \$10,000 for

each day during which the vessel remains in Hong Kong waters.

- (4) The Director's power under this section does not affect any other power to refuse to permit a vessel to enter Hong Kong waters under any Ordinance.

6. Direction to fishing vessel

- (1) The Director may give a direction to the master or the owner of a fishing vessel—
 - (a) as to the place and way in which the vessel is to be berthed, moored, anchored or secured; and
 - (b) for the removal of the vessel from any berth, mooring or anchorage to another berth, mooring or anchorage.
- (2) If, without reasonable excuse, a direction under subsection (1) is not complied with in relation to a fishing vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

7. Inspection of fishing vessel

- (1) An authorized officer may—
 - (a) board a fishing vessel; and
 - (b) conduct inspection on board the vessel in accordance with CM10-03.
- (2) If an authorized officer is to exercise the power under subsection (1), the master or the owner of the vessel must provide the officer any reasonable assistance that is necessary for the exercise of the power.
- (3) If, without reasonable excuse, subsection (2) is contravened in relation to a fishing vessel, the master and the owner of the

vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

8. Removal of AMO from fishing vessel restricted

- (1) Except for performing a function of the Director or an authorized officer under the Ordinance, an AMO must not be removed from a fishing vessel if the vessel—
 - (a) is an IUU vessel; or
 - (b) has been used to fish in contravention of any Conservation Measure.
- (2) If, without reasonable excuse, subsection (1) is contravened in relation to an AMO removed from a fishing vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.



Secretary for Food and Health

3 April 2019

Explanatory Note

Purpose

1. The main purpose of this Regulation is to implement Conservation Measure 10-03 (*CM10-03*) adopted by the Commission for the Conservation of Antarctic Marine Living Resources (*Commission*) under the Convention on the Conservation of Antarctic Marine Living Resources (*Convention*).
2. To determine whether harvesting activities in the Convention Area were carried out in accordance with Conservation Measures adopted by the Commission, a Contracting Party of the Convention (*CP*) has obligations to conduct certain port inspections of fishing vessels.
3. *CM10-03* also requires a *CP* to take measures to deny port access to certain fishing vessels, and to restrict the removal of Antarctic marine organisms (*AMOs*) from certain fishing vessels.

Regulation

4. Part 1 provides for commencement and defines terms and expressions for the interpretation of the Regulation.
5. Part 2 regulates the entry into Hong Kong waters of fishing vessels carrying AMOs, and includes provisions concerning—
 - (a) a pre-arrival notification to be given to the Director of Agriculture, Fisheries and Conservation (*Director*);
 - (b) the Director's power to deny certain fishing vessels to enter Hong Kong waters;
 - (c) the Director's power to give directions to fishing vessels;

Conservation of Antarctic Marine Living Resources (Port Inspection and Control)
Regulation

Explanatory Note
Paragraph 5

8

- (d) authorized officers' powers to inspect fishing vessels;
and
- (e) the restriction of the removal of AMOs from fishing vessels engaged in illegal, unreported and unregulated fishing or fishing vessels that have been used to fish in contravention of any Conservation Measure adopted by the Commission.

Administrative Appeals Board Ordinance (Amendment of Schedule) (No. 2) Order
2019

Section 1

1

**Administrative Appeals Board Ordinance (Amendment
of Schedule) (No. 2) Order 2019**

(Made by the Chief Executive in Council under section 4 of the
Administrative Appeals Board Ordinance (Cap. 442))

1. Commencement

This Order comes into operation on the day on which the
Conservation of Antarctic Marine Living Resources Ordinance
(Cap. 635) comes into operation.

2. Administrative Appeals Board Ordinance amended

The Administrative Appeals Board Ordinance (Cap. 442) is
amended as set out in section 3.

3. Schedule amended

The Schedule—

Add

“76. Conservation of
Antarctic Marine
Living Resources
(Toothfish Catch
Documentation
Scheme) Regulation

A decision of the Director of
Agriculture, Fisheries and
Conservation—

- (a) to attach a
condition to a
licence under
section 14(1);
- (b) to refuse an
application for a
licence under
section 15(1); or

Administrative Appeals Board Ordinance (Amendment of Schedule) (No. 2) Order
2019

Section 3

2

- (c) to cancel a licence
under section
16(1)(b), (c), (d) or
(e).”.



Clerk to the Executive Council

COUNCIL CHAMBER

9 April 2019

Explanatory Note

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) sets out the decisions under various Ordinances against which an appeal may be made to the Administrative Appeals Board. This Order amends that Schedule to make appealable to the Board the following decisions of the Director of Agriculture, Fisheries and Conservation under the Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation—

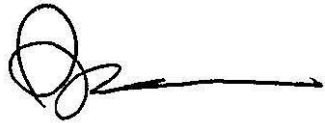
- (a) a decision to attach a condition to a licence;
- (b) a decision to refuse an application for a licence;
- (c) a decision to cancel a licence.

Conservation of Antarctic Marine Living Resources Ordinance (Commencement)
Notice

1

**Conservation of Antarctic Marine Living Resources
Ordinance (Commencement) Notice**

Under section 1(2) of the Conservation of Antarctic Marine Living Resources Ordinance (Cap. 635), I appoint 1 July 2020 as the day on which the Ordinance comes into operation.



Secretary for Food and Health

18 October 2019

**Conservation Measures (“CMs”) Relevant to
the Hong Kong Special Administrative Region**

- (a) **CM 10-03** - “Port inspections of fishing vessels carrying Antarctic marine living resources”, which sets out requirements in respect of the entry and inspections of fishing vessels carrying toothfish or other Antarctic marine living resources;
- (b) **CM 10-04** - “Automated satellite-linked Vessel Monitoring Systems (VMS)”, which sets out requirements in respect of the installation of satellite-linked vessel monitoring devices and monitoring of the movements of such vessels, and the use of VMS data in compliance and inspection purposes;
- (c) **CM 10-05** - “Catch Documentation Scheme for *Dissostichus* spp.” (“CDS”), which provides for a basis for identifying the origins of toothfish imports and determining if the toothfish were caught in accordance with the requirements of relevant CMs;
- (d) **CM 10-06** - “Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures”, which aims to draw up a monitoring list to keep track of vessels of Contracting Parties (“CPs”) that have engaged in illegal, unreported and unregulated (“IUU”) fishing activities;
- (e) **CM 10-07** - “Scheme to promote compliance by non-Contracting Party¹ vessels with CCAMLR conservation measures”, which aims to draw up a monitoring list to keep track of vessels of Non-Contracting Parties that have engaged in IUU fishing activities; and
- (f) **CM 10-08** - “Scheme to promote compliance by Contracting Party nationals with CCAMLR conservation measures”, which requires CPs to take measures to verify if any of its nationals has engaged in IUU fishing activities and measures to prevent such illegal activities.

¹ Non-Contracting Parties (“NCP”) means a state not formally associated with the CCAMLR. Some states have chosen to be a cooperating NCP to voluntarily implement the CDS.

Implications of the Proposals

Financial and Civil Service Implications

Under the proposed regulatory regime, an importer, exporter or re-exporter is required to apply for an import, export or re-export licence for each consignment of toothfish that is intended to be imported into or exported/re-exported from Hong Kong. At present, there are about 100 to 200 consignments of toothfish imported into and re-exported from Hong Kong per annum. We anticipate a similar number of consignments and hence a corresponding number of licences upon commencement of the proposed legislation. Revenue arising from the related licence applications is estimated to be \$0.06 million per annum which is considered minimal. The new legislation also involves inspection of fishing vessels carrying Antarctic marine living resources entering Hong Kong waters.

2. Additional manpower may be required for processing licence applications, operating the Catch Documentation Scheme for toothfish, handling the testing of toothfish samples, conducting vessel inspections, etc. Capital cost for establishing DNA testing protocol for identification of toothfish consignments may also be required. Additional resources, if required, would be sought with justifications in accordance with the established mechanism.

Economic Implications

3. The proposed regulatory regime on toothfish trading is unlikely to have any significant implications on the trade concerned, as the additional cost arising from licensing and other compliance procedures should not pose significant burden on their operations.

Environmental Implications

4. Extension of the Convention on the Conservation of Antarctic Marine Living Resources (“CCAMLR”) to Hong Kong would demonstrate our efforts in protecting and conserving the Antarctic marine environment. The proposed regulatory regime including the licensing system for toothfish trade and port controls would help combat illegal, unreported and unregulated fishing and illicit international trade.

Sustainability Implications

5. The implementation of CCAMLR will enhance the conservation and rational utilisation of marine resources in the Southern Ocean. This is in line with the sustainability principles of wise use of natural resources for the benefit of the present and future generations.