

LEGISLATIVE COUNCIL BRIEF

Marine Parks Ordinance (Chapter 476)

MARINE PARKS AND MARINE RESERVES (AMENDMENT) REGULATION 2019

INTRODUCTION

The Secretary for the Environment made the Marine Parks and Marine Reserves (Amendment) Regulation 2019 (the Amendment Regulation) at **Annex A** under section 20 of the Marine Parks Ordinance (Cap. 476) (the Ordinance).

BACKGROUND AND JUSTIFICATIONS

2. The existing fisheries management system in marine parks was established in accordance with the Marine Parks and Marine Reserves Regulation (Cap. 476A) (the Regulation). Under the Regulation, only holder of a valid marine park fishing permit granted in accordance with the Regulation may fish in the marine park. The Director of Agriculture, Fisheries and Conservation (DAFC), pursuant to the power granted to him under the Regulation, would only issue a marine park fishing permit to a bona fide fisherman or a person who ordinarily resides near the marine park. The permit allows the holder to continue fishing activities in the specific marine park. Under the existing marine park fishing permit system, only a bona fide fisherman from an eligible homeport would be granted with a marine park fishing permit.

3. Taking into account the findings of a consultant study and views gathered from major stakeholders (including fishermen, academics and green groups), the Agriculture, Fisheries and Conservation Department (AFCD) made proposals with a view to promoting conservation of marine parks and sustainable fisheries development more effectively, as well as addressing concerns from fishermen organisations that the existing

marine park fishing permit system might divide the fishermen community. The AFCD proposed that commercial fishing by local fishing vessels registered under the Fisheries Protection Ordinance (Cap. 171) should be allowed to continue in The Brothers Marine Park and new marine parks to be designated in the western waters. To protect coral communities as well as to enhance the overall fisheries resources in Hong Kong, commercial fishing would be banned in the Hoi Ha Wan Marine Park (HHWMP), Yan Chau Tong Marine Park (YCTMP) and Tung Ping Chau Marine Park (TPCMP) in the eastern waters and the Sha Chau and Lung Kwu Chau Marine Park (SCLKCMP) in the western waters. The locations of existing and proposed marine parks which will implement these new measures are shown in **Annex B**.

4. The AFCD will implement other fisheries enhancement measures in marine parks such as artificial reefs and fish fry restocking, with a view to increasing fisheries resources within and nearby the marine parks to facilitate rehabilitation of the ecosystem. The AFCD will also step up law enforcement to combat illegal fishing activities.

5. The AFCD may specify special conditions in the fishing permits, where necessary, to implement extra zonal management plans (e.g. designation of no-fishing core areas) and control on fishing gears for these marine parks. The AFCD will also streamline the application and renewal procedures of the marine park fishing permits.

6. To implement the proposed commercial fishing ban in the four marine parks as mentioned in paragraph 3 above, DAFC will not grant new fishing permits for these four marine parks and will not renew existing fishing permits with a validity period beyond a two-year transitional period (please see relevant arrangement in paragraph 9 below). The commercial fishing ban as mentioned above is not applicable to fishing permits granted to local residents.

7. We propose to grant ex-gratia allowance (EGA) to about 360 affected permit holders. With regard to the formula for calculating the EGA, we propose to make reference to the existing EGA formula for fishermen affected by marine works projects, which was approved by the Finance Committee of the Legislative Council (LegCo) in 2012. The proposed formula is as follows:

EGA = [notional value of one year's fish catch in the affected area by the permit holders derived from the 1989/91 Port Survey data] x [multiplier of 11 years] x [fish price index to factor in the change in fish prices since 1989/91]

The formula above has already included inflation factor to reflect the latest change in fish prices.

8. We will set up an Inter-departmental Working Group (IWG), chaired by AFCD and comprising representatives from relevant departments such as the Marine Department and the Home Affairs Department, to handle all matters relating to the processing of EGA applications from fishermen affected by the commercial fishing ban in marine parks. An Appeal Board, comprising non-official members, will also be set up for processing appeals lodged by affected fishermen against decisions of the IWG. The Appeal Board will operate independently to ensure the appeal cases are handled in a fair manner.

TRANSITIONAL ARRANGEMENTS

9. We propose that a transitional period of two years should be provided. During the two-year transitional period, the DAFC may, pursuant to the Regulation, renew fishing permits of these four marine parks with commercial fishing ban in future with a validity period up to 31 March 2022. In other words, fishing permits of these four marine parks already granted will remain valid for the remainder of their terms, and can be renewed, according to the established mechanism, with a validity period up to 31 March 2022. During this period, no new fishing permits will be granted by the DAFC for commercial fishing in these four marine parks. Permit holders may receive the EGA if they surrender their fishing permits during the transitional period, or upon the expiry of the permits. Under this arrangement, all relevant fishing permits of these four marine parks will expire on or before 31 March 2022, after which the commercial fishing ban will immediately take full effect from 1 April 2022.

LEGISLATIVE AMENDMENTS

10. To implement the proposed new fisheries management strategy in marine parks, we propose to amend the Regulation. Under the Amendment Regulation, it will provide that –

- (a) with effect from 1 April 2020, no fishing permit of the four marine parks (viz. the HHWMP, YCTMP and TPCMP in the eastern waters and the SCLKCMP in the western waters) will be granted; and
- (b) the validity period of fishing permits of these four marine parks already granted will not be extended beyond 31 March 2022.

As explained in paragraph 6 above, the above arrangement will not affect the fishing permits granted to local residents.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows:

Publication in Gazette	13 December 2019
Tabling at the LegCo	18 December 2019
Commencement of the Amendment Regulation	1 April 2020

IMPLICATIONS OF THE AMENDMENT REGULATION

12. The commercial fishing ban in the four specified marine parks would strengthen the overall marine conservation with enhanced protection of the coral communities as well as fish spawning and nursery ground in marine parks. Other fisheries enhancement measures such as artificial reefs and fish fry restocking would also facilitate rehabilitation of the ecosystem and increase in fisheries resources. The enhanced marine park fishing permit system and the payment of EGA would facilitate the smooth implementation of the new fisheries management strategy in marine parks. In the long run, the new strategy would contribute to a sustainable marine environment, increase fisheries resources and promote a sustainable development of the fisheries industry.

13. About 360 affected fishermen would be granted EGA which would provide them with financial flexibility to relocate their fishing grounds or to explore alternative means of living. We will also provide training, if necessary, to assist fishermen in developing sustainable fisheries and other fisheries related operations, such as aquaculture, recreational fishing and eco-tourism. We estimate that implementation of the new strategy would involve about \$172 million (including EGA payment to affected permit holders, resources for strengthened law enforcement efforts and enhancement of fisheries resources), as well as an estimated annual recurrent cost of about \$11 million. We will seek the necessary funding in accordance with the established resource allocation mechanism.

14. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Regulation does not affect the current binding effect of provisions of the Ordinance and its sub-legislations. There are no productivity, family or gender implications. It is also not anticipated to have significant economic implications.

PUBLIC CONSULTATION

15. Stakeholder engagement sessions were conducted in 2017 and 2018 respectively to solicit views from relevant stakeholders (including fishermen representatives and organisations, recreational fishers, green groups, academics and the Country and Marine Parks Board. They generally accepted the proposed new fisheries management strategy in marine parks.

16. The AFCD then briefed fishermen representatives and the affected marine park fishing permit holders between mid 2018 and the first half of 2019 on the proposed strategy, the EGA and the transitional arrangement. They generally supported the proposed strategy and arrangement. We have also consulted Members of the LegCo Panel on Environmental Affairs on 25 November 2019 and the proposal is generally supported by Members. Some Members hoped that the Government could grant the EGA to affected fishermen as soon as

possible or even increase the EGA to allow more extensive commercial fishing ban in marine parks. Some Members expressed that the boundaries of the marine parks with fishing ban should be delineated more clearly to prevent fishermen from inadvertently breaching the law. They also considered that the Government should allocate more resources to step up enforcement to combat illegal fishing activities.

PUBLICITY

17. A press release was issued on 13 December 2019. A government spokesperson has been arranged to handle media enquiries.

ENQUIRIES

18. Any enquiries on this brief may be addressed to Ms. Daisy LO, Assistant Director (Nature Conservation) of the Environmental Protection Department at telephone number 3151 7160 or Mr. Patrick Lai, Assistant Director (Country and Marine Parks) of the AFCD at telephone number 2150 6606.

Environment Bureau
Agriculture, Fisheries and Conservation Department
11 December 2019

Marine Parks and Marine Reserves (Amendment) Regulation 2019

(Made by the Secretary for the Environment under section 20 of the Marine Parks Ordinance (Cap. 476))

1. Commencement

This Regulation comes into operation on 1 April 2020.

2. Marine Parks and Marine Reserves Regulation amended

The Marine Parks and Marine Reserves Regulation (Cap. 476 sub. leg. A) is amended as set out in sections 3 and 4.

3. Section 2 amended (interpretation)

Section 2, definition of *permit*—

Repeal

“22 of the Ordinance”

Substitute

“17”.

4. Section 17 amended (permit)

(1) Section 17—

Repeal subsection (3)

Substitute

“(3) The Authority may, at his or her discretion, grant—

- (a) a permit to a bona fide fisherman for fishing in or from a marine park (except a specified marine park);
or

- (b) a permit to a person who ordinarily resides near a marine park to which the permit relates for fishing in or from the marine park.”.

(2) After section 17(6)—

Add

“(6A) Despite subsections (4) and (6), the Authority may renew under subsection (4) a permit granted to a bona fide fisherman for fishing in or from a specified marine park provided that the validity period of the renewed permit expires before 1 April 2022.”.

(3) After section 17(7)—

Add

“(8) In subsections (3)(a) and (6A)—

specified marine park (指明海岸公園) means the area specified in any of the following items in the Schedule to the Marine Parks (Designation) Order (Cap. 476 sub. leg. B)—

- (a) item 1 (Hoi Ha Wan Marine Park);
(b) item 2 (Yan Chau Tong Marine Park);
(c) item 3 (Sha Chau and Lung Kwu Chau Marine Park);
(d) item 4 (Tung Ping Chau Marine Park).”.



Secretary for the Environment

2019.12.11

Explanatory Note

The Marine Parks and Marine Reserves Regulation (Cap. 476 sub. leg. A) (*principal Regulation*) empowers the Country and Marine Parks Authority to grant a permit for fishing to a bona fide fisherman or to a person who ordinarily resides near a marine park designated under the Marine Parks Ordinance (Cap. 476).

2. This Regulation amends the principal Regulation to provide that—
 - (a) with effect from 1 April 2020, no permit for fishing in or from the Hoi Ha Wan Marine Park, the Yan Chau Tong Marine Park, the Sha Chau and Lung Kwu Chau Marine Park and the Tung Ping Chau Marine Park will be granted to bona fide fishermen; and
 - (b) the validity period of permits for fishing in or from those 4 marine parks already granted to bona fide fishermen will not be extended beyond 31 March 2022.
3. The amendments are to come into effect on 1 April 2020. Subject to the restrictions described in paragraph 2(b), permits for fishing in or from those 4 marine parks that are valid immediately before that date will not be affected by the amendments.

新海岸公園漁業管理策略的實施 Implementation of New Fisheries Management Strategy in Marine Parks

