

L.N. 151 of 2019

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

(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.

Professor Sophia CHAN Siu-chee
Secretary for Food and Health

3 April 2019

Explanatory Note

Purpose

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;

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- (c) the Director's power to give directions to fishing vessels;
- (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.