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(ACE Paper 68/96)
for advice

**Consultation Paper on Proposed Amendments to
the Fisheries Protection Ordinance and
the Fisheries Protection Regulations**

Purpose

The purpose of this paper is to invite public views on proposed amendments to the Fisheries Protection Ordinance, Cap. 171, and the Fisheries Protection Regulations. Copies of the Ordinance and Regulations are attached.

Existing provisions

2. The objectives of the Fisheries Protection Ordinance, Cap. 171, are to promote the conservation of fish and other forms of aquatic life within the waters of Hong Kong, regulate fishing practices and prevent activities detrimental to the fishing industry.
3. The Fisheries Protection Ordinance, Cap. 171 and its regulations provide for, among other things, the prohibition or restriction of the use of explosives and toxic substances for the purpose of fishing. Any persons contravening these regulations shall be liable on summary conviction to a maximum fine of \$10,000 and to imprisonment for six months.

Use of explosives for fishing

4. The use of explosives for fishing is prohibited because it has devastating effect on the marine ecosystem. The amount of explosives confiscated by the Royal Hong Kong Police Force as substances used for the purpose of fishing has increased substantially in recent years. The amount of explosive found increased from 15 kg in 1993 to 194 kg in 1994 and up to 258 kg in 1995. In the first five months of 1996, the amount of explosive found (368 kg) has already exceeded the total for 1995. It is considered that the existing maximum penalty for fishing with explosives, particularly the maximum fine of \$10,000, is inadequate to deter such activities.

Use of toxic substances for fishing

5. There has been increasing international concern over the reported use of toxic substances, particularly cyanide, to capture fish in and around coral reefs in southeast Asia.

Fishing with toxic substances is not a major problem in Hong Kong waters at present but could become one if not adequately deterred. The Government is investing some \$100 million over the next five years on deployment of artificial reefs in marine parks and at sites of special importance for local fisheries to promote fish production and the long-term sustainability of fisheries production. It is considered that the existing maximum penalty for fishing with toxic substances, particularly the maximum fine of \$10,000, is inadequate to deter to such activity at these artificial reef locations.

Use of other destructive fishing practices

6. There are reports of other fishing practices that are as destructive as the use of explosives and toxic substances. The use of vacuum suction and dredging devices to harvest clams causes serious disturbance to the seabed. Electric fishing kills or harms most fish, including larvae and juveniles, whether or not they are commercial species, within the range of the electrical apparatus used. Such methods of fishing have long term deleterious effect on fisheries resources and the marine ecosystem. It is, therefore, considered necessary to amend the Fisheries Protection Ordinance, Cap. 171 to provide for the prohibition or restriction of the use of any kind of apparatus for fishing which is detrimental to the fishing industry and will have a harmful effect on the marine ecosystem, with maximum penalties identical to those for fishing with explosive and toxic substances.

Proposal

7. It is proposed to increase the maximum fine for breaches of the regulations under the Fisheries Protection Ordinance Cap. 171 from \$10,000 to \$200,000 and to amend the Ordinance to provide for the prohibition or restriction of the use of any kind of apparatus for fishing which is detrimental to the fishing industry and will have a harmful effect on the marine ecosystem.

Submission of comments

8. You are invited to submit written comments on the above proposals. Comments should be addressed to the Director of Agriculture and Fisheries (Attention : Dr. LEUNG Siu-fai), Agriculture and Fisheries Department, 12/F, Canton Road Government Offices, 393 Canton Road, Kowloon (Fax No. 2311 3731), and should reach him by 31 December 1996.

Agriculture and Fisheries Department
December 1996



LAWS OF HONG KONG

FISHERIES PROTECTION ORDINANCE

CHAPTER 171

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FISHERIES PROTECTION ORDINANCE

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CHAPTER 171

FISHERIES PROTECTION

To promote the conservation of fish and other forms of aquatic life within the waters of Hong Kong and to regulate fishing practices and to prevent activities detrimental to the fishing industry. (Amended, 68 of 1987, s. 2)

[12 October 1962.]

Originally 19 of 1962 1 of 1967 68 of 1987	Short title.	1. This Ordinance may be cited as the Fisheries Protection Ordinance.
Interpretation.	2.	In this Ordinance, unless the context otherwise requires— "authorized officer" means any officer appointed under section 3A; (<i>Added, 68 of 1987, s. 3</i>) "Director" means the Director of Agriculture and Fisheries; "fish" includes all forms of aquatic life and turtles; "fisheries inspector" means an officer appointed under section 3; "fishing" includes the capture of fish; "toxic substance" means a substance specified in the Schedule; "vessel" means any vessel used for fishing, and any junk, sampan, native craft or boat.
Schedule.	3.	(1) The Governor may appoint in writing by name or office any public officer to be a fisheries inspector. (2) An appointment made under this section may be made to give effect to the purposes of this Ordinance generally or may be limited to such purposes as may be specified in the appointment.
Appointment of officers.	3A.	(1) The Director may appoint in writing any officer of the Agriculture and Fisheries Department to be an authorized officer for the purposes of such provision of this Ordinance as the Director specifies. (2) An authorized officer when exercising a power under this Ordinance shall produce his written appointment under subsection (1) for inspection by any person who reasonably requires to see it. (<i>Added, 68 of 1987, s. 4</i>)
Authorized officers.	4.	(1) The Governor in Council may by regulation provide for (a) the prohibition or restriction of the use of explosives for the purpose of fishing; (b) the prohibition or restriction of the use of toxic substances for the purpose of fishing;
Regulations.		

- (c) the prohibition or restriction of the taking of any variety of fish, or fish of any size, from the waters of Hong Kong; (*Amended, 68 of 1987, s. 5*)
- (d) the prohibition or restriction of the use of any specified kinds of net or of nets having a mesh of any specified size for the purpose of fishing;
- (e) the conservation of oysters and oyster beds;
- (f) the prohibition or restriction of the collection, removal or destruction of any variety of fish spawn or turtle eggs;
- (g) the protection of spawning areas;
- (h) generally, the protection or regulation of fishing.

(2) Regulations made under this Ordinance may provide that contravention of any of the provisions of such regulations shall constitute an offence and may prescribe penalties therefor not exceeding \$10,000 and imprisonment for 6 months. (*Amended, 68 of 1987, s. 5*)

5. (1) The Director or any authorized officer, fisheries inspector or police officer may without warrant—

Power of search and seizure.

- (a) board and search any vessel or any part thereof;
- (b) seize, remove and retain any fish or other article or thing whether found on board any vessel or in any other place, in respect of which it appears to him that any offence against this Ordinance has been committed or which appears to him to constitute evidence of any such offence having been committed.

(2) The Director or any authorized officer or any police officer of the rank of inspector and above may enter and search without warrant any premises or place used or reasonably suspected of being used either wholly or in part for the storage of fish in respect of which he has reason to believe an offence against this Ordinance has been committed, or for the storage of any other article or thing capable of being used in the commission of an offence against this Ordinance.

(*Amended, 68 of 1987, s. 6*)

6. (1) Where a magistrate is satisfied that an offence against this Ordinance has been committed in respect of any fish or any other article or thing seized under the provisions of section 5, whether or not any person has been convicted in respect of such offence, the magistrate shall order such fish or other article or thing to be forfeited to the Crown.

Forfeiture of things in respect of which offences are committed.

(2) Notwithstanding anything contained in subsection (1), where any fish is seized under section 5, the Director or any authorized officer may cause such fish to be sold or otherwise disposed of prior to application being made for the forfeiture thereof, and the proceeds thereof retained in lieu, and if in any such

case the magistrate, upon such application for forfeiture being made, is not satisfied that an offence against this Ordinance has been committed in respect thereof, upon application made by any person claiming to be the owner of such fish he shall, if he is satisfied as to the validity of the claim, order such proceeds to be paid to the claimant, but where no claim is made or the magistrate is not satisfied as to the validity of any claim, the proceeds shall be paid into the general revenue. (*Amended, 68 of 1987, s. 7*)

(3) For the purposes of this section—

“proceeds” means sale price less any commission or fee payable in respect of such sale.

Seizure and forfeiture of things used for the commission of offences.

7. Whenever it is lawful under this Ordinance for the Director or any authorized officer, fisheries inspector or police officer to seize and retain any fish or other article or thing, it shall be lawful— (*Amended, 68 of 1987, s. 8*)

(a) to seize and retain—

(i) any receptacle other than a vessel or vehicle in which such fish or other article or thing is contained;

(ii) any machinery other than the propellant machinery of a vessel or vehicle, implement, utensil, material or substance used for the commission of any offence against this Ordinance; and

(iii) any books or documents which appear to him to contain evidence that an offence has been or is about to be committed against this Ordinance; and

(b) to direct any vessel or vehicle in which any thing referred to in paragraph (a) is seized to proceed to such port or place as may be convenient for unloading from the vessel or vehicle anything seized thereon and may then detain the vessel or vehicle for such time as may reasonably be required to effect the unloading.

Presumptions.

8. (1) Any explosive or toxic substance found in the possession or control of any person engaged in fishing or in any vessel or in any premises or place used in whole or in part for the storage of fishing equipment or fish, shall be deemed, until the contrary is proved, to be possessed, stored or used for the purpose of fishing.

(2) The master or other person in charge of any vessel or the person in control of any premises or place used in whole or in part for the storage of fishing equipment or fish in which any explosive or toxic substance is found shall be deemed, until the contrary is proved, to be in possession or control of such explosive or toxic substance for the purpose of fishing.

(3) Where any vessel is found to have on board any explosive or toxic substance or any premises or place used in whole or in part for the storage of fishing equipment or fish is found to contain any explosive or toxic substance, any fish found in such vessel, premises

or place shall, until the contrary is proved, be deemed to have been captured by means of such explosive or toxic substance.

(4) Where any vessel is found to have on board any fish which has been killed, stupefied or otherwise injured by any explosive or toxic substance, such vessel shall, until the contrary is proved, be deemed to have been used for the capture of such fish by means of explosive or toxic substance.

9. Where in any case the cause of death, injury or stupefaction of any fish is in question, a certificate purporting to be signed by an authorized officer shall be prima facie evidence in any court as to the cause of death, injury or stupefaction of the fish.

(*Amended, 68 of 1987, s. 9*)

10. The Governor in Council may amend the Schedule by order published in the *Gazette*.

Proof of cause of death, injury or stupefaction of fish.

Amendment of Schedule.

SCHEDULE

[ss. 2 & 10.]

TOXIC SUBSTANCE

1. The residue left after oil has been expressed from tea-seeds, commonly known as *Cha Tsai Peng* (茶仔餅).
2. Any substance containing any proportion of—
 - (a) rotenone (2R,6aS,12aS)-1,2,6,6a,12, 12a-hexahydro-2-isopropenyl-8,9-dimethoxychromeno [3,4-b] furo [2,3-h] chromen-6-one;
 - (b) cyanide;
 - (c) phenthoate S- α -ethoxycarbonylbenzyl 0,0-dimethyl phosphorodithioate;
 - (d) permethrin 3-phenoxybenzyl (1RS)-cis-trans-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropane-carboxylate. (*Replaced, L.N. 220/87*)