

**Consultation Paper on the Proposed Amendment of
the Fisheries Protection Ordinance, Cap 171 for the Establishment of a
Regulatory Framework for Fishing Activities in Hong Kong Waters**

Purpose

The purpose of this paper is to consult and solicit the views of the fishing industry, stakeholders and the public on proposed amendments to the Fisheries Protection Ordinance, Cap 171 for the establishment of a framework to regulate fishing activities in Hong Kong waters.

Background

2. Since the late 1980s, there has been a steady decline in fisheries resources and fish catch within Hong Kong waters. To address this problem, the Agriculture, Fisheries and Conservation Department (AFCD) completed a consultancy study in 1998 to assess the situation and identify ways of remedying it. The study found that the catches in most areas had dropped by over 50% and the fish fry production had decreased by 90% in the last decade. Twelve of the 17 fish species assessed were “heavily over-exploited”, and the rest “fully exploited”. Furthermore, the local fishery had shifted from one that was dominated by large, slow growing, high value fish species to one composed of small, faster growing, low value species. The findings pointed to an over-exploitation of fisheries resources in Hong Kong waters, resulting in a steady decline.

3. The study recommended several priority fisheries management measures to protect and sustain local fish stocks. Some of these measures, including habitat enhancement through the deployment of artificial reefs, habitat restoration by mitigating the impact of marine works projects, and fish restocking with a fish fry releasing trial scheme, have already been actively pursued with encouraging results.

4. To further alleviate the pressure of fishing activities on local fisheries resources for the recovery and maintenance of stocks at a sustainable level, a working group comprising representatives of relevant government departments, fishing community, green groups and academics was set up to consider and devise a regulatory framework for fishing activities in Hong Kong waters, taking into account the study’s recommendations. The proposed framework includes the establishment of a fishing licence system and limiting new entrants to our fisheries, and the designation

of fisheries protection areas (FPAs). An extensive consultation exercise with fishermen groups, advisory committees, district councils and the public was conducted in this connection.

5. Taking into consideration that there may be a need to further enhance the conservation and restoration of our fisheries resources, we, with the support of the Agriculture and Fisheries Advisory Committee, propose to establish a legal mechanism for the implementation of a territory-wide “closed season” for fishing in Hong Kong waters. It will enable us to implement the measure if it is considered necessary in future.

6. Acting upon all the consultations, we propose to amend the Fisheries Protection Ordinance (Cap. 171) to provide a regulatory framework for the implementation of the three management measures, namely,

- the establishment of a fishing licence system and limiting new entrants to our fisheries;
- the designation of fisheries protection areas (FPAs); and
- the implementation of a territory-wide “closed season” for fishing.

The proposed regulatory framework will enable us to effectively control fishing activities in Hong Kong and bring our fisheries back on a sustainable path.

Fishing Licence System and Limiting New Entrants

7. Access to Hong Kong’s fisheries has always been open. This situation has rendered it very difficult to control over-fishing or enforce any related management measures for the sustainable development of the fishing industry. It is therefore advisable to set up a fishing licence system, under which all fishing activities conducted within Hong Kong waters with the use or aid of any vessels shall require fishing licences or permits.

8. The proposed licensing system will be vessel-based, targeting at fishing vessels which generate considerable pressure on fisheries resources. Fishing licences will be issued only to the owners of the local fishing vessels for fishing in local waters. The licence will be transferable and valid for two years. Fees for licence issuance or renewal will be set on a cost recovery basis.

9. Recreational fishing conducted with the use or aid of non-fishing vessels will not be subject to any control under the proposed licence system, as the methods deployed for such activities would generally capture relatively smaller amounts of fish, and its impact on fisheries resources and marine environment is limited. Other fishing activities conducted with the use or aid of non-fishing vessels will not be allowed except for scientific research or related purposes for which a fishing permit is required.

10. The proposed licensing system will not only serve to limit the access to our fisheries resources to local fishermen but also enable the Government to collect important data vital to the effective management of our fisheries. When circumstances so require, the Government may have to control the growth of the local fishing fleet and keep the total fishing effort at a level that could sustain the fisheries resources. The proposed licensing system is an instrument to exercising such control, with the following powers conferred upon the Director of Agriculture, Fisheries and Conservation (DAFC) in addition to his other powers as the licensing authority to issue, renew and cancel licences and permits, and approve the transfer of licences, allowing him :

- (a) to impose moratorium on the issue of new fishing licences or permits should the situation warrant;
- (b) to impose conditions on the licences or permits to limit the operation to be carried out by a vessel with specified particulars e.g. vessel engine power, fishing gear etc., the alteration of any of which requires prior approval from DAFC; and
- (c) to refuse to grant, renew or approve alteration of vessel or fishing specification in a licence/permit or to approve transfer of a licence if he considers that it is not in the best interest of promoting the sustainability of local fisheries resources.

11. To ensure the effective implementation of the proposed control regime, it is proposed to make contravention of the fishing licence control scheme an offence. Any person who conducts fishing activities with the use or aid of a fishing vessel without a valid fishing licence or permit, or conducts fishing activities other than the specified recreational fishing methods with the use or aid of a non-fishing vessel without a valid permit, will be held responsible for the offence. Details of the proposed fishing licence system are shown in Appendix 1.

Fisheries Protection Areas (FPAs)

12. To help promote recovery of our fish stocks to a sustainable level, it is proposed that FPAs be established in selected waters in Hong Kong, to provide a protected environment for nursery and spawning for fish fry, juvenile and spawning fish.

13. Under this proposal, no fishing vessels will be allowed to carry out fishing activities in the FPAs without a permit issued by DAFC for operation in advance, in addition to the territory-wide fishing licence. Permits to fish in the FPAs will only be issued to bona fide fishermen habitually fishing in the waters of the FPAs concerned and persons fishing with any vessels for scientific research and related purposes. Trawling activities, which are non-selective in nature and have greater impact on the ecosystem, will be strictly prohibited within the areas. Recreational fishing is allowed inside the FPAs except the “no-take” zones in which all fishing activities will be prohibited. Such zones are set up within the areas where artificial reefs are laid, to protect fish fry or other fish taking shelter in the reefs from being captured, thereby ensuring the effectiveness of the reefs in enhancing fisheries resources.

14. The designation of FPAs will be made subsequent to public consultation. To protect fisheries resources in FPAs effectively, it is proposed to make it an offence for non-compliance with the above-mentioned fishing regulations. Details of the proposed procedures for the designation of FPAs and the proposed control measures within FPAs are shown in Appendix 2. Two areas, namely, Tolo Harbour and Port Shelter, which have been identified as important fish spawning and nursery grounds and will be proposed for designation as FPAs, are shown in Figure 1.

Annual Territory-Wide “Closed Season” for Fishing

15. The implementation of a “closed season” for fishing is a common fisheries management measure adopted by many countries including Australia, India, Japan, Korea, Pakistan and the USA. As a fisheries resources conservation measure, it allows a break for fish to breed and stocks to recover. The Mainland has, since 1999, implemented the “closed season” policy in the South China Sea, and reported an increase in catch rates and average size of catch for certain species after the implementation of the “closed season”. Given the stressed fishery condition of our waters, there may be a need to introduce an annual territory-wide “closed season” in

Hong Kong in future to enhance the sustainability of fisheries resources.

16. It is proposed to set up a legal framework for the implementation of an annual territory-wide “closed season”. The proposed implementation of an annual “closed season” will be made only after full consultation with the fishing industry, the public and relevant parties. Details regarding its duration, timing and extent of fishery control such as the types of fishing activities prohibited during the period will be determined taking into account of the views of all the stakeholders. Preliminary idea is to make reference to the “closed season” implemented by the Mainland in the South China Sea covering only a short period of time (e.g., two months) in a year and prohibiting only certain fishing methods such as trawling and purse seining. Under this arrangement, we estimate that out of over 4000 fishing vessels in Hong Kong, only a few hundreds of trawlers and purse-seiners relying on Hong Kong waters for fishing would be affected. We will discuss with affected fishermen to see what assistance could be offered to them if a “closed season” is to be introduced.

17. To ensure the effective implementation of the proposed “closed season”, it is proposed that all fishing licences and permits previously issued in connection with prohibited fishing activities be suspended automatically during the period. However, permits may be granted to allow fishing for scientific research or related purposes during the “closed season”. It is also proposed that non-compliance with the “closed season” requirement be made an offence. Details of the proposed mechanism for the designation and implementation of the annual territory-wide “closed season” are in Appendix 3.

Proposed Implementation Schedule

18. The effective implementation of the proposed designation of FPAs in Hong Kong waters and the annual territory-wide “closed season” would require prior establishment of the fishing licence system. Subject to the enactment of the legislative amendments to the Fisheries Protection Ordinance, we plan to establish the fishing licence system first, before proceeding to designating the two proposed FPAs. The proposed annual territory-wide “closed season” will only be implemented at a later stage as necessary, subject to consultation with the fishing industry, the public and other stakeholders.

Advice Sought

19. Comments and views on the above proposed regulatory framework for fishing activities in Hong Kong waters are invited. Written comments can be sent to Agriculture, Fisheries and Conservation Department at Cheung Sha Wan Road Government Offices, 303 Cheung Sha Wan Road, 5th Floor, Kowloon, by fax (2311 3731) or by email to fopm@afcd.gov.hk, on or before 6 March 2005. For enquiries, please contact Dr. Patsy Wong, Senior Fisheries Officer, at 2150 7080 or Mr. Rock Kwok, Fisheries Officer at 2873 8341.

Health, Welfare and Food Bureau/
Agriculture, Fisheries and Conservation Department
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Proposed Fishing Licence System

Item	Details
Objectives	To establish a fishing licence system for the effective control of fishing activities in Hong Kong waters and enforcement of any related management measures for the sustainable development of the fishing industry.
Controls	<ol style="list-style-type: none"> 1. All fishing activities (except recreational fishing listed below) with the use/aid of any vessel in Hong Kong waters require a valid fishing licence or fishing permit. 2. Fishing licence is to be issued to owners of local fishing vessels to conduct fishing activities in all of the waters in Hong Kong except those areas which are restricted for fishing under this or other ordinances e.g. navigational channels, marine parks, marine reserves or fisheries protection areas etc. 3. Fishing with the use/aid of any vessel in Hong Kong waters for scientific research and related purposes require a valid fishing permit. 4. Recreational fishing with the use/aid of a non-fishing vessel involving hand-lining, capture of fish without the use/aid of any fishing gear or during scuba diving, is not subject to licensing control. 5. The licence/permit specifies the conditions and particulars of the vessel, under and with which the fishing activity is to be carried out. All fishing activities carried out with the use/aid of the vessel shall comply with the conditions and particulars specified in the licence/permit.
Fishing licence/permit Application	<ol style="list-style-type: none"> 1. All licence/permit related applications are to be made to the Director of Agriculture, Fisheries and Conservation Department. 2. Fishing licence application requirements: <ol style="list-style-type: none"> (a) Applicant is a person ordinarily resident in Hong Kong or a local company with majority of shares owned by people ordinarily resident in Hong Kong; (b) Applicant is the owner of a local fishing vessel and possesses a valid vessel licence issued by Marine Department; (c) The vessel is primarily used for, or designed for and equipped to be used for fishing activities; and (d) Applicant pays the prescribed fee to cover the administrative

Item	Details
	<p>expenses involved.</p> <p>3. Fishing permit application requirement:</p> <p>(a) Applicant is the owner of the vessel with which the fishing activity is to be carried out for scientific research and related purposes in Hong Kong waters; and</p> <p>(b) No fee shall be payable for the grant and renewal of fishing permit.</p>
Fishing licence/permit validity period	<p>1. Fishing licence is valid for not more than 24 months.</p> <p>2. Fishing permit is valid for not more than 12 months.</p>
Fishing licence/permit transferability	<p>1. Fishing licence is transferable.</p> <p>2. Fishing permit is non-transferable.</p>
Hiring of fishing vessel	<p>If any fishing vessel is to be hired out to a third party for carrying out fishing activities in Hong Kong waters, the third party has to be a person ordinarily resident in Hong Kong or a local company with majority of shares owned by people ordinarily resident in Hong Kong.</p>
Offences	<p>1. Any person carries out fishing activities (except recreational fishing listed above) with the use/aid of a vessel without a valid fishing licence/permit commits an offence.</p> <p>2. The owner, master or person in charge of the vessel commits an offence if he allows any person on board the vessel to carry out fishing activity without a valid fishing licence/permit.</p> <p>3. If the owner of the vessel is not on board the vessel at the time the fishing activity is carried out, he shall be liable if he knowingly permits or assists such activity to be carried out without a valid fishing licence/permit.</p>
Penalties	<p>The maximum penalties for the above offences include a fine of HK\$25,000 and imprisonment for 6 months.</p>
Cancellation of fishing licence/permit	<p>Fishing licence/permit may be cancelled if:</p> <p>1. Licensee/permittee has been convicted of any offence under the Fisheries Protection Ordinance or any regulations made under the Ordinance; or</p> <p>2. The vessel has been engaged in activities which do not comply with any of the provisions of the Fisheries Protection Ordinance or any regulations made under the Ordinance.</p>

Item	Details
Right of appeal	Any person aggrieved by a decision of the Director in turning down a fishing licence/permit related application may, within 21 days of the receipt of the notification of the decision of the Director, appeal to the Administrative Appeals Board.
Moratorium on issue of further licence/permit	When there are reasons to support the need for stepping up the control of fishing activity to promote the sustainability of fisheries resources, the Director may impose a moratorium on the issue of further fishing licences/permits or restrict the growth in the overall engine power of fishing vessels.

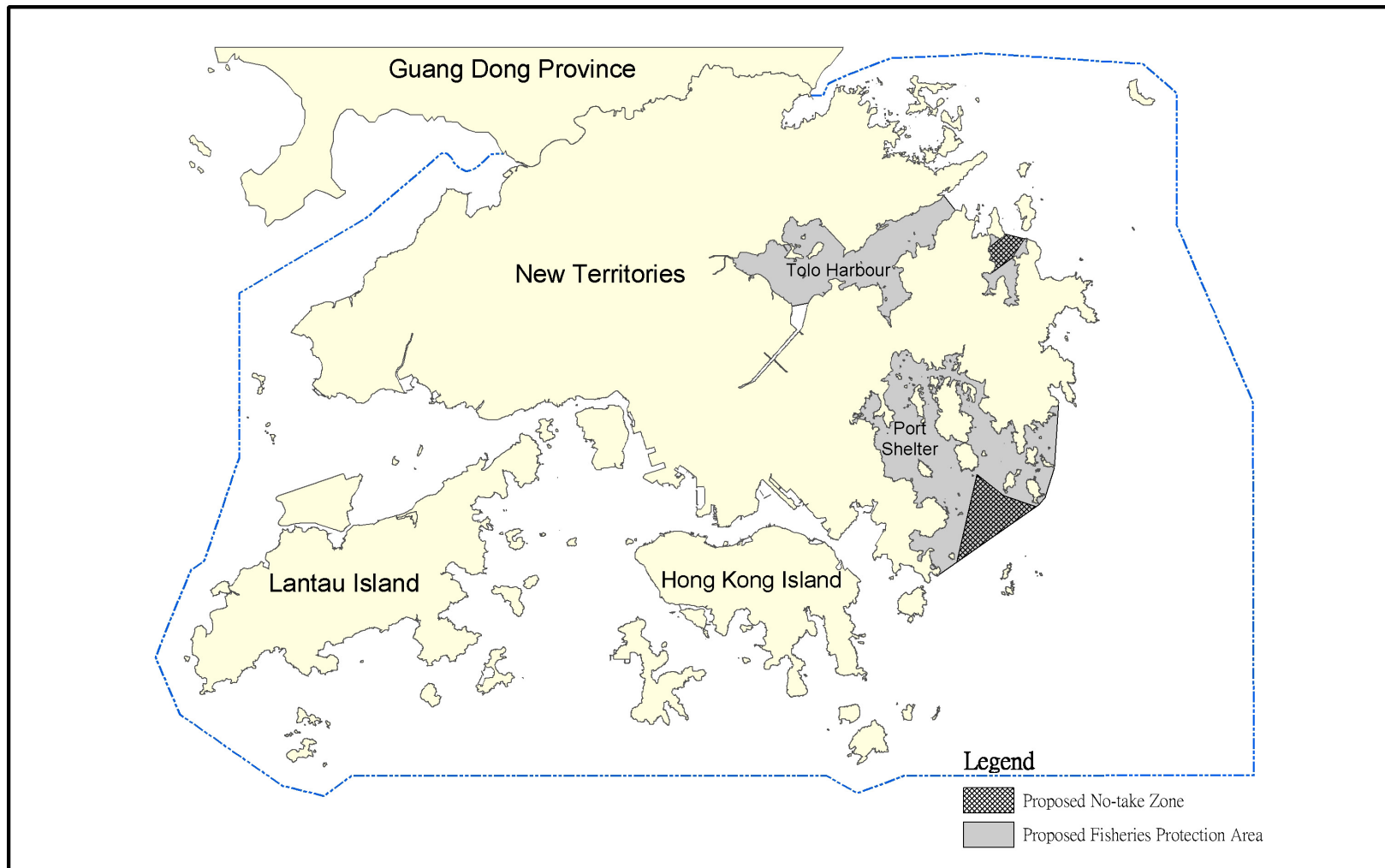
Proposed Designation of Fisheries Protection Areas (FPAs)
and Associated Control Measures

Item	Detail
Aims	To provide a legal framework for the designation of important spawning and nursery ground as Fisheries Protection Area (FPA) and implementation of control measures in the FPA to protect fish fry and spawning fish stocks in the areas from intense fishing pressure.
FPA designation procedures	<ol style="list-style-type: none"> 1. Prepare a draft map showing the boundaries of the proposed FPA, the “no-take” zones, if any, and other details; 2. Publish the draft map and relevant details by notice in the Gazette and on newspapers and allow any persons to submit objection within 60 days from the date of publication of the notice; 3. Submit the draft map with amendment (if any) to Chief Executive in Council for approval within 6 months from the last day of the objection period; 4. Upon approval by Chief Executive in Council, deposit the approved map in the headquarters of the Agriculture Fisheries and Conservation Department for inspection and notify it in the Gazette; and 5. Designate the FPA by Order in the Gazette.
Controls	<ol style="list-style-type: none"> 1. Trawling activity is prohibited within FPAs. 2. All fishing activities (except recreational fishing listed below) with the use/aid of any vessel in the waters of FPAs require a valid FPA fishing permit 3. Recreational fishing with the use/aid of a non-fishing vessel involving hand-lining, capture of fish without the use/aid of any fishing gear or during scuba diving, is allowed in the waters of FPAs. 4. All fishing activities with the use/aid of a vessel are prohibited in “no-take” zones within FPAs. 5. When there is a need to further restore fisheries resources or

Item	Detail
	<p>protect fisheries spawning and nursery grounds in FPAs, the Director may, by order in the Gazette, specify the period of a year during which all fishing activities or fishing by specified fishing methods are prohibited within specified FPAs. No person shall carry out any fishing activities with the use/aid of a vessel by the prohibited fishing method during the specified period within FPAs.</p>
FPA fishing permit	<ol style="list-style-type: none"> 1. Application requirement: <ol style="list-style-type: none"> (a) For fishing with the use/aid of a fishing vessel in FPA, the applicant shall be a fishing licence holder and a bona fide fisherman habitually fishing in the waters of the FPA; or (b) For carrying out fishing activities with the use/aid of a vessel in the FPA for scientific research and related purposes, the applicant shall be the owner of the vessel with which the fishing activity is to be carried out. 2. Fishing permit is valid for not more than 12 months. 3. Fishing permit is non-transferable. 4. No fee shall be payable for the grant and renewal of fishing permit.
Offences	<ol style="list-style-type: none"> 1. Any person carries out prohibited fishing activity or other fishing activity (except recreational fishing listed above) with the use/aid of a vessel in the FPAs without a valid fishing permit commits an offence. 2. The owner, master or person in charge of the vessel commits an offence if he allows any person on board the vessel to carry out such fishing activity in the FPAs without a valid fishing permit. 3. If the owner of the vessel is not on board the vessel at the time such fishing activity is carried out, he shall be liable if he knowingly permits or assists such activity to be carried out without a valid fishing permit.
Penalties	<p>The maximum penalties for the above offences include a fine of HK\$25,000 and imprisonment for 6 months.</p>
Proposed FPAs	<p>Tolo Harbour and Port Shelter are important fish spawning and</p>

Item	Detail
	nursery grounds. It is proposed to designate these two areas as FPAs and the areas in which artificial reefs have been deployed within the FPAs as “no-take” zones (Figure 1). The two proposed FPAs cover a total sea area of 13,700 hectares or 8.3% of the total sea area of Hong Kong.

Figure 1. Proposed Fisheries Protection Areas



Proposed Implementation of the
Annual Territory-wide “Closed Season”

Item	Detail
Objectives	To provide a legal framework for the implementation of an annual territory-wide “closed season” and necessary control measures to allow a break for fish to breed and stocks to recover.
Implementation procedures	<ol style="list-style-type: none"> 1. Prepare a draft plan which includes details of the timing and duration of the “closed season”, the types of fishing activities/ fishing methods to be prohibited during the “closed season” and the commencement date, following consultation with the fishing industry and relevant parties; 2. Publish the draft plan by notice in the Gazette and on newspapers and allow any persons to submit objection within 60 days from the date of publication of the notice; 3. Submit the draft plan with amendment (if any) to Chief Executive in Council for approval within 6 months from the last day of the objection period; 4. Upon approval by Chief Executive in Council, effect the implementation of the annual territory-wide “closed season” by Order in the Gazette.
Controls	<ol style="list-style-type: none"> 1. Fishing activity by prohibited fishing methods is not allowed during the “closed season”. 2. All fishing licences and fishing permits issued for conducting fishing activities prohibited during the “closed season” shall be automatically suspended during the “closed season”.
Offences	<ol style="list-style-type: none"> 1. Any person carries out the prohibited fishing activity during the “closed season” commits an offence. 2. The owner, master or person in charge of the vessel commits an offence if he allows any person on board the vessel to carry out the prohibited fishing activity during the “closed season”. 3. If the owner of the vessel is not on board the vessel at the time the prohibited fishing activity is carried out during the “closed

Item	Detail
	season”, he shall be liable if he knowingly permits or assists such activity to be carried out.
Penalties	The maximum penalties for the above offences include a fine of HK\$25,000 and imprisonment for 6 months.