

**For Discussion on
10 April 2018**

**Legislative Council
Panel on Food Safety and Environmental Hygiene**

**New Legislation for Implementing the Convention on the Conservation
of Antarctic Marine Living Resources in Hong Kong**

PURPOSE

This paper briefs Members on the legislative proposal for implementing the Convention on the Conservation of Antarctic Marine Living Resources (“CCAMLR”) in Hong Kong with a view to better protecting Antarctic marine living resources.

BACKGROUND

CCAMLR

2. CCAMLR is an international convention entered into force in 1982 with the objective of conserving Antarctic marine living resources. The Commission for the Conservation of Antarctic Marine Living Resources (“Commission”) has been established to give effect to the objectives and principles of CCAMLR, including regulating activities associated with the rational utilisation and management of the marine living resources in the Convention Area¹. Conservation Measures (“CMs”)² are adopted by the Commission to support the conservation of Antarctic marine living resources and the management of fisheries in the Southern Ocean.

3. Currently there are a total of 36 Contracting Parties (“CPs”), comprising 25 members and 11 acceding states, which are committed to be bound by CCAMLR and its CMs. China acceded to CCAMLR in 2006.

¹ Convention Area refers to an area of waters in the Antarctic region specified in CCAMLR.

² 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 March 2018, there were a total of 69 CMs.

Application of CCAMLR to HKSAR

4. One of the species being regulated under CCAMLR is toothfish³. With a view to protecting toothfish from illegal, unreported and unregulated (“IUU”) fishing internationally, and to contribute to the international concerted efforts in the protection and sustainable use of marine resources, the Central People’s Government (“CPG”), upon consultation with the Hong Kong Special Administrative Region (“HKSAR”) Government, has agreed in principle to extend the application of CCAMLR to HKSAR. Background on the application of CCAMLR to HKSAR is summarised in **Annex I**.

5. This Panel was briefed on the proposal to implement CCAMLR in Hong Kong and introduce a control scheme for the trading of toothfish on 11 March 2014 (vide LC Paper No. CB(2)992/13-14(05)). The English text of CCAMLR was attached to the said paper.

SCOPE OF APPLICATION

6. Both CCAMLR and its CMs will be binding on HKSAR. This notwithstanding, as Hong Kong has no fishing vessel operating in the Convention Area and will unlikely have any in the future⁴, we would implement CCAMLR and only those CMs relevant to Hong Kong. As foreshadowed in LC Paper No. CB(2)992/13-14(05), six CMs have been identified to be relevant to Hong Kong. We have since then reviewed all CMs, including revised and new ones. Upon consultation with the CPG and further clarification with the Commission Secretariat, we reaffirm that, to achieve the objectives set out in paragraph 4 above, only those six CMs are

³ *Dissostichus* spp., including Antarctic toothfish, *Dissostichus mawsoni* and Patagonian toothfish, *Dissostichus eleginoides*. Toothfish are sold under different common names such as Chilean seabass or white cod.

⁴ Having regard to the use, nature and condition of fishing vessels and the difficulty of providing adequate supervision of fishing vessels, the Director of Marine has given a direction, pursuant to section 22(4) of the Merchant Shipping (Registration) Ordinance (Cap. 415), that it is inappropriate to register, among others, fishing vessels and vessels engaged in processing living resources of the sea, including whale and fish factories and aqua farming vessels under Hong Kong Shipping Registry, as stipulated in G.N. 4653 of 16 September 2005. Therefore, HKSAR is not a “flag state” of any fishing vessels, and does not intend to license fishing vessels to operate in the Convention Area. Besides, according to the information from the Marine Department, no licensed vessel, receiving vessel or transporting vessel operated in the Convention Area was registered under the Hong Kong Shipping Registry at least in the past 5 years.⁵ The web-based platform that supports CCAMLR’s Catch Documentation Scheme.

relevant. Details of the six CMs are set out in **Annex II**.

7. The Government will continue to keep in view the development of CCAMLR. If, in the future, other CM(s) revised or adopted by the Commission are relevant to HKSAR, we will consider if their implementation in Hong Kong is required.

KEY ELEMENTS OF THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES BILL

8. Domestic legislation is necessary for the implementation of CCAMLR and its CMs relevant to Hong Kong. Details of the proposed legislation are set out in the ensuing paragraphs.

Primary Legislation

9. For implementing the relevant provisions of the CCAMLR and CMs in Hong Kong, the Conservation of Antarctic Marine Living Resources Bill (“CAMLRL Bill”) is proposed to provide the legal basis and to provide for general powers for the Director of Agriculture, Fisheries and Conservation (“DAFC”) and his authorized officers. A summary of those general powers are set out in **Annex III**.

Regulations

10. It is proposed that the Secretary for Food and Health be empowered to make regulations for implementing specific CMs that are relevant to HKSAR and any related matters. To implement the CMs relevant to HKSAR, two Regulations are proposed to implement (i) the Toothfish Catch Documentation Scheme; and (ii) port inspection and control.

11. A new licencing regime will be introduced for implementation of the Toothfish Catch Documentation Scheme. An appeal channel will be provided through the Administrative Appeal Board for any person who feels aggrieved by a decision of DAFC on licensing matters. Amendment to the Schedule of the Administrative Appeal Board Ordinance (“AABO”) (Cap. 442) will be required. More information of the two Regulations are set out in

Annex IV.

ENFORCEMENT PLAN

12. The Agriculture, Fisheries and Conservation Department (“AFCD”) will be responsible for implementing the new licensing regime for regulating the toothfish trade supported by the electronic Catch Documentation Scheme (“e-CDS”)⁵ created under the CMs, and port inspection requirements for fishing vessels carrying Antarctic marine living resources as well as coordinating relevant enforcement strategies and effort. The Marine Department (“MD”) will assist in the port control of the above fishing vessels seeking to enter into Hong Kong waters. The existing vessel traffic services information system in use by MD will help alert AFCD of the arrival of any targeted fishing vessels for follow up action. The Customs and Excise Department will also provide assistance in combating illegal import and export of toothfish.

CONSULTATION

13. After the formulation of the regulatory framework, we have conducted another round of consultation in the first quarter of 2018 with the relevant stakeholders trade (including wholesalers, importers and representatives of seafood trade and catering associations), environmental concern groups and other advisory bodies (Annex V). The implementation of CCAMLR in Hong Kong is welcome by all the parties consulted. The trade considers that the proposed control scheme will not cause significant burden on their operation. They have requested the Government to deploy adequate resources for efficient law enforcement, and that the licence application and other related procedures should be simple and user-friendly. The stakeholders have also requested the Government to organise education and publicity programme for the trade as well as the public in general.

⁵ The web-based platform that supports CCAMLR’s Catch Documentation Scheme.

TIMETABLE

14. We plan to introduce the CAMLR Bill into the Legislative Council in the latter half of 2018. Subject to the passage of the Bill, we will proceed with the legislative exercises of the two Regulations and the amendment to AABO for negative vetting by the Legislative Council. A grace period of 6 months is proposed to allow time for the trade to adapt to the new requirements.

ADVICE SOUGHT

15. Members are invited to note and comment on the legislative proposals.

Food and Health Bureau
Agriculture, Fisheries and Conservation Department
April 2018

Background on the Application of the Convention on the Conservation of Antarctic Marine Living Resources (“CCAMLR”) to HKSAR

Toothfish are harvested and traded internationally as a table fish in some places, and sold to hotels, restaurants and supermarkets under different common names such as Chilean seabass or white cod. Toothfish resources have been experiencing significant levels of exploitation and illegal, unreported and unregulated fishing (“IUU fishing”). With a view to protecting toothfish from IUU fishing internationally, the Commission adopted Convention Measure 10-05 “Catch Documentation Scheme for *Dissostichus* spp.” (“CM 10-05”), under which each catch or shipment of toothfish must be accompanied by a valid catch document issued in accordance with CM 10-05.

2. Hong Kong has no fishing vessel operating in the Convention Area. Toothfish imported into Hong Kong involves a small group of traders and importers in Hong Kong, and varies from a few hundred to two thousand tonnes per annum in recent years. Nevertheless, according to the Commission, Hong Kong has become one of the major importing economies of toothfish⁶. Toothfish sold in Hong Kong are mainly imported from Australia, Argentina, Chile, and France in the form of chilled or frozen fish or as fish meat or fillet, and account for less than 1% of the total consumption of fisheries products in Hong Kong.

3. Some Contracting Parties have expressed concern about the lack of regulation of trading of toothfish in Hong Kong. In view of such development and to contribute to the international concerted efforts in the protection and sustainable use of marine resources, in 2013 the Central People’s Government, upon consultation with the Hong Kong Special Administrative Region (“HKSAR”) Government, has agreed in principle to extend the application of CCAMLR to HKSAR.

⁶ According to statistics compiled by the Commission, the toothfish imported into Hong Kong in recent years represented about 10% of the total volume exported by Contracting Parties. Other major importing economies of toothfish include the United States and Japan.

Conservation Measures (“CMs”) Relevant to HKSAR

- (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.”, 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 CPs that have engaged in IUU fishing activities;
- (e) **CM 10-07** - “Scheme to promote compliance by non-Contracting Party⁷ 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.

⁷ 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.

**Conservation of Antarctic Marine Living Resources Bill
Summary of Powers of
the Director of Agriculture, Fisheries and Conservation**

- (a) Enter, inspect and search place, premises, vessel, vehicle, train or aircraft for verifying compliance with this Ordinance;
- (b) Stop, board and search a vessel, vehicle, train or aircraft if an offence is suspected to have been, be being or be about to be committed;
- (c) Stop, search and detain a person if an offence is suspected to have been, be being or be about to be committed;
- (d) Require the identification of a person who is suspected;
- (e) Arrest a person who is suspected to have committed, be committing or be about to commit an offence if service of a summons is impracticable;
- (f) Require the production of, inspect, examine or take copies of documents for verification of compliance with this Ordinance;
- (g) Take samples and carry out tests of anything for verifying compliance or obtaining evidence for the commission of an offence;
- (h) Seize, remove and detain any thing that is suspected to be or contain evidence of the commission of an offence;
- (i) Dispose of, sell and forfeit things seized;
- (j) Obtain information on the particulars of a vessel or its owner from the Director of Marine for the purposes of exercising and performing duties under this Ordinance; and
- (k) Exchange information with the Commission Secretariat or the competent authority of other Contracting Parties.

Implementation of the Convention on the Conservation of Antarctic Marine Living Resources in Hong Kong : Proposed Regulations

(A) Toothfish Catch Documentation Scheme

The Regulation will regulate the trading (including import, export and re-export) of toothfish by way of a licensing system. An import, export or re-export of toothfish will be prohibited unless it is accompanied by an import / export / re-export licence issued by the Director of Agriculture, Fisheries and Conservation (“DAFC”).

Licensing Regime

2. All applications for import, export or re-export licences must be made to DAFC in a specified form, together with payment of a prescribed fee, and accompanied by the Convention documents⁸ issued in respect of the toothfish to be imported, exported or re-exported (as the case may be). To avoid visitors who bring in or out toothfish in small quantity for personal consumption to be caught under the Regulation, we are considering introducing exemption for any carriage of toothfish for personal consumption not exceeding a certain weight (say 15kg).

Appeal to the Administrative Appeal Board

3. We propose to provide an appeal channel through the Administrative Appeal Board in relation to decisions of DAFC on the licensing matters. Amendment to the Schedule of the Administrative Appeal Board Ordinance (Cap. 442) will be required.

⁸ Under CM 10-05, relevant documents in relation to the catch/export/re-export of toothfish generated by a e-CDS system under the Convention on the Conservation of Antarctic Marine Living Resources are referred to as Convention document (i.e. a Convention catch document, a Convention export document or a Convention re-export document).

(B) Port Inspection and Control

4. In accordance with CM 10-03, the Regulation will empower DAFC to inspect fishing vessels carrying toothfish or Antarctic marine living resources and deny entry of vessels to Hong Kong waters engaged in illegal, unreported and unregulated (“IUU”) fishing activities. Major features of the Regulation will include :

(a) Vessel Inspection

Fishing vessels carrying toothfish or other Antarctic marine organisms entering Hong Kong will be inspected by authorized officers to check whether harvesting activities in the Convention Area were carried out in accordance with CMs;

(b) Declaration and notification requirement

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 give a notification to DAFC at least 48 hours before the expected arrival; to provide the requested information on the vessel and the catch; and to give a written declaration that the vessel has not engaged in IUU fishing activities; and

(c) Deny Entry of vessels to Hong Kong waters

A fishing vessel will be denied entry to Hong Kong waters⁹ if (i) it is on the lists 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 (b) above.

⁹ Except for the purposes of inspection, emergency or enforcement action.

Consultation Sessions

During the three-month consultation period from January to March 2018, we organised engagement forums with key stakeholders and solicited views from a relevant advisory body on the implementation of Convention on the Conservation of Antarctic Marine Living Resources. The general public were also invited to submit their views.

(a) Engagement Forum

Date	Stakeholders
22 January & 22 February 2018	Trading companies/Importers/Wholesalers/ Retailers of seafood
	Relevant trader associations
22 January 2018	Environmental groups
2 February 2018	Trade Consultation Forum (organised by the Centre for Food Safety)

Number of participants: 57

(b) Advisory Body

Date	Advisory Board
27 March 2018	Fish Marketing Advisory Board

(c) Written Submission

3 submissions received