

**MARINE FISH CULTURE ORDINANCE
- CHAPTER 353**

LONG TITLE

Long title VerDate:30/06/1997

To regulate and protect marine fish culture and for purposes connected therewith.

[The Ordinance other than sections 6 and 7 } 18 January 1980

Sections 6 and 7 } 9 July 1982 L.N. 267 of 1982]

(Originally 2 of 1980)

SECT 1

Short title VerDate:30/06/1997

PART I

PRELIMINARY

This Ordinance may be cited as the Marine Fish Culture Ordinance.

SECT 2

Interpretation VerDate:07/06/2002

In this Ordinance, unless the context otherwise requires-

"authorized officer" means a public officer authorized under section 3;

"Director" means the Director of Agriculture, Fisheries and Conservation; (Amended L.N. 331 of 1999)

"fish" means any marine fish, crustacean or mollusc, other than an oyster;

"fish culture" means any operation involving the maintenance, propagation or promotion of growth of fish in captivity within the waters of Hong Kong;

"fish culture zone" means an area of the waters of Hong Kong designated to be a fish culture zone under section 5(a);

"impoundment" means an enclosure of an area of the waters of Hong Kong by means of a net or other removable, permeable structure used or designed for the purpose of fish culture;

"licence" means a licence granted or renewed under section 8;

"licensee" means a person to whom a licence has been issued or transferred or whose licence has been renewed; (Amended 13 of 2002 s. 2)

"permit" means a permit granted or renewed under section 14;

"permittee" means the holder of a permit;

"proof of identity" has the meaning assigned to it by section 17B(1) of the Immigration Ordinance (Cap 115); (Added 13 of 2002 s. 2)

"raft" means a floating structure or object, including any cage, net or other device attached thereto, used or designed for the purpose of fish culture;

"relevant proceeds" means proceeds from the sale of relevant property under section 18(2); (Added 13 of 2002 s. 2)

"relevant property" means a raft or other thing seized and detained under section 17; (Added 13 of 2002 s. 2)

"site" means a site within a fish culture zone specified under section 5(b);

"vessel" includes-

(a) any ship, boat or any other description of vessel used in navigation; and

(b) any other movable structure that is not used in navigation and not constructed nor adapted for use in navigation, but does not include a raft;

"waters of Hong Kong" means waters of Hong Kong within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1).
(Replaced 26 of 1998 s. 44)

"withdrawal" includes abandonment. (Added 13 of 2002 s. 2)

SECT 3

Authorized officers VerDate:30/06/1997

(1) The Director may authorize in writing any public officer to exercise any of the powers and perform any of the duties or functions conferred or imposed on the Director or an authorized officer by this Ordinance.

(2) A document purporting to be an authorization under subsection

(1) and to be signed by the Director shall, without further proof and until the contrary is proved, be evidence of the matters contained therein in any proceedings or otherwise.

(3) An authorized officer when exercising a power or performing a duty or function under this Ordinance shall produce his authorization under subsection (1) for inspection by any person who questions his authority to exercise the power or to perform the duty or function.

(4) A public officer who ceases to be an authorized officer shall forthwith deliver up his authorization to a person authorized by the Director to receive it.

SECT 4

Power of Chief Executive to give directions VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Chief Executive may give to the Director or to an authorized officer such directions as he thinks fit with respect to the exercise or performance of any powers, duties or functions under this Ordinance, and such directions may be given either generally or in respect of any particular case.

(2) A person to whom a direction is given by the Chief Executive under subsection (1) shall, in the exercise or performance of any powers, duties or functions under this Ordinance, comply with that direction.

(Amended 65 of 1999 s. 3)

SECT 5

Designation of fish culture zones and specification of sites therein VerDate:30/06/1997

PART II

CONTROL AND PROTECTION OF FISH CULTURE

The Director may-

(a) by order published in the Gazette designate any area of the waters of Hong Kong to be a fish culture zone within which fish culture may be engaged in, and he shall demarcate the boundaries of the fish culture zone in the prescribed manner; and

(b) in such manner as he thinks fit, specify sites within a fish culture zone.

SECT 6

Restrictions on fish culture VerDate:30/06/1997

(1) No person shall, without a licence, engage in fish culture within a fish culture zone.

(2) No person shall, without a permit granted under section 14(1)(a), engage in fish culture within the waters of Hong Kong for the purposes of scientific research.

(3) No person shall, without a permit granted under section 14(1)(b), maintain fish in captivity within the waters of Hong Kong for purposes other than the propagation or promotion of growth of such fish.

(4) Any person who contravenes this section commits an offence.

SECT 7

Prohibition of fish culture outside fish culture zones VerDate:30/06/1997

(1) Subject to subsection (2), no person shall engage in fish culture within the waters of Hong Kong outside a fish culture zone.

(2) This section shall not apply to-

- (a) fish culture for the purposes of scientific research; and
 - (b) the maintenance of fish in captivity for purposes other than the propagation or promotion of growth of such fish.
- (3) Any person who contravenes this section commits an offence.

SECT 8

Grant of licences and renewal thereof VerDate:07/06/2002

- (1) Subject to this Ordinance, the Director may grant to any person, a licence, and renew such licence, to engage in fish culture within a fish culture zone.
- (2) The form of application for the grant or renewal of a licence and the form of the licence shall be specified by the Director.
- (3) A licence may be granted, and may be renewed, upon payment of the prescribed fee and subject to such conditions as the Director thinks fit. (Amended 13 of 2002 s. 3)
- (4) The Director shall specify in a licence-
- (a) the site in respect of which the licence is valid;
 - (b) the area of the rafts or impoundments permitted under the licence; and
 - (c) the conditions to which the licence is subject.
- (5) (Repealed 13 of 2002 s. 3)
- (6) The Director may refuse to grant or renew a licence if it appears to him-
- (a) that, having regard to the size or location of a fish culture zone, the grant or renewal of a licence would cause overcrowding of the fish culture zone or would otherwise not be in the best interests of fish culture;
 - (b) that any raft or impoundment used or to be used by the applicant for the purpose of fish culture does not comply with any of the provisions of this Ordinance or any regulations made thereunder.
- (7) Where the Director refuses to grant or renew a licence under subsection (6) he shall send to the applicant a notice of the refusal and state in the notice the reasons for the refusal.

SECT 8A

Transfer of licences VerDate:07/06/2002

- (1) A licence shall not be transferred except as provided in this section.
- (2) An application for the transfer of a licence shall be-
- (a) made to the Director by the licensee in such form and manner as the Director may specify; and

- (b) accompanied by the prescribed fee.
- (3) The Director may determine an application under subsection (2) by-
- (a) approving the transfer of the licence to the intended transferee subject to such reasonable variation of the conditions of the licence as the Director thinks fit; or
 - (b) refusing to approve the transfer of the licence-
 - (i) on any ground specified in section 8(6) which would have entitled him to refuse to grant or renew a licence;
 - (ii) on the ground that the licensee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence, as the case may be;
 - (iii) if the licence was held by the licensee for less than 2 years;
 - (iv) in the case where the intended transferee is or was a holder of a licence, on the ground that the intended transferee has contravened any provision of this Ordinance or any regulation made under this Ordinance or any conditions of the licence mentioned in this subparagraph, as the case may be;
 - (v) if the Director reasonably concludes that false or misleading information was furnished by the licensee or the intended transferee in connection with the application.
- (4) Where the Director refuses to approve the transfer of a licence under subsection (3)(b), he shall send to the licensee a notice of the refusal and state in the notice the reasons for the refusal.
- (5) A licence the subject of an application under subsection (2)
- (including a licence to which subsection (6) applies) shall continue in force against the licensee unless and until the licence is transferred to the intended transferee under subsection (3)(a).
- (6) Where but for this subsection a licence the subject of an application under subsection (2) would expire before the determination of the application under subsection (3), then the licence shall continue in force according to its terms and conditions until-
- (a) the application is withdrawn;
 - (b) the licence is cancelled under section 9; or
 - (c) the determination of the application under subsection (3),

whichever first occurs.
(Added 13 of 2002 s. 4)

SECT 9
Cancellation of licences VerDate:30/06/1997

- (1) The Director may cancel a licence-

(a) on any ground specified in section 8(6) which would have entitled him to refuse to grant or renew a licence;

(b) on the ground that the licensee has-

(i) contravened any of the provisions of this Ordinance or any regulations made thereunder;

(ii) contravened his licence;

(iii) failed or is unable or incompetent to carry out the purposes of his licence; or

(iv) failed to provide adequate management or supervision of any raft or impoundment in respect of which the licence is valid.

(2) Where the Director cancels a licence under subsection (1) he shall, where practicable, send to the person who was the holder of the licence a notice of the cancellation and state in the notice the reasons for the cancellation.

SECT 10

Director may give instructions on fish culture VerDate:30/06/1997

(1) The Director may give to all or any licensees instructions in writing as to-

(a) any matter concerning fish culture;

(b) the disposal or destruction of any fish within any site found or suspected to be suffering from any infectious disease; or

(c) the disposal of any noxious or waste matter resulting from the collecting or harvesting of fish.

(2) It shall be a condition of every licence that the licensee shall carry out, or cause to be carried out, to the satisfaction of the Director, within the site in respect of which his licence is granted, any instructions given to him under subsection (1).

SECT 11

Protection of fish culture zones VerDate:30/06/1997

Any person who, without reasonable excuse, deposits, or causes or permits to be deposited, either on land or in the sea, any chemical or other substance or thing in such a place or in such a manner as-

(a) to injure or to be likely to injure any fish in any fish culture zone; or

(b) to pollute or to be likely to pollute the waters in any fish culture zone,

commits an offence.

SECT 12

Interference with rafts or impoundments or fish therein VerDate:30/06/1997

- (1) Subject to subsection (2), any person who wilfully-
 - (a) moves, damages or otherwise interferes with any raft or impoundment that is lawfully within a site; or
 - (b) removes any fish from, or injures or otherwise interferes with any fish within, such a raft or impoundment, commits an offence.
- (2) Subsection (1) shall not apply to any act prohibited by that subsection if such act is-
 - (a) authorized by or under this or any other Ordinance;
 - (b) committed by the owner of the raft or impoundment, or of the fish therein or with such owner's consent; or
 - (c) committed in a case of emergency or stress of weather to save life or property or for the safety of any raft or impoundment, or of any fish therein.

SECT 13

Prohibition of unauthorized vessels etc. in fish culture zones VerDate:30/06/1997

- (1) Subject to subsection (3)(a), any person who causes or permits any vessel to enter or remain in a fish culture zone commits an offence.
- (2) Subject to subsection (3)(b), any person who causes or permits any raft or impoundment to enter or remain or to be constructed in a fish culture zone otherwise than under and in accordance with a licence or permit granted to him commits an offence.
- (3)
 - (a) Subsection (1) shall not apply to any act prohibited by that subsection if such act is-
 - (i) committed for the purposes of or in connection with fish culture operations;
 - (ii) authorized in writing by the Director; or
 - (iii) committed in a case of emergency or stress of weather to save life or property or for the safety of the vessel concerned.
 - (b) Subsection (2) shall not apply where a raft or impoundment is caused or permitted to enter or remain in a fish culture zone in a case of emergency or stress of weather to save life or property or for the safety of the raft or impoundment, or of any fish therein.

SECT 14

Director may grant permits in certain cases VerDate:30/06/1997

PART III

GENERAL

(1) The Director may, subject to such conditions as he thinks fit, grant to any person a permit, and renew such permit, to-

(a) engage in fish culture within the waters of Hong Kong solely for the purposes of scientific research; or

(b) maintain fish in captivity within the waters of Hong Kong for purposes other than the propagation or promotion of growth of such fish.

(2) The Director may cancel or refuse to renew a permit-

(a) on the ground that the permittee has-

(i) contravened any of the provisions of this Ordinance or any regulations made thereunder;

(ii) contravened his permit;

(iii) failed or is unable or incompetent to carry out the purposes of his permit; or

(iv) failed to provide adequate management or supervision of the fish culture or other operations permitted under his permit; or

(b) in the public interest.

(3) Where the Director refuses to grant a permit under subsection

(1), or cancels or refuses to renew a permit under subsection (2), he shall, where practicable, send to the applicant or the person who was the holder of the permit, as the case may be, a notice of the refusal or cancellation and state in the notice the reasons for the refusal or cancellation.

SECT 15

Limitation of rights under licences or permits VerDate:30/06/1997

No licence or permit shall be construed as granting any right to-

(a) occupy or use any land, whether the same be covered by water or not; or

(b) the exclusive use of any water,

except for the purposes of this Ordinance.

SECT 16

Right of Appeal VerDate:07/06/2002

(1) Any person aggrieved by a decision made in respect of him by the Director to-

- (a) refuse to grant or renew a licence under section 8(6);
- (b) refuse to approve the transfer of a licence under section 8A(3)(b);
- (c) cancel a licence under section 9(1);
- (d) refuse to grant a permit under section 14(1); or
- (e) cancel or refuse to renew a permit under section 14(2),

may appeal to the Administrative Appeals Board against that decision.

(2) Where an appeal is made under subsection (1) against a decision of the Director to-

- (a) cancel a licence or permit, the decision shall not become effective pending;
- (b) refuse to renew a licence or permit, the licence or permit (if expired) shall be deemed to continue in force according to its terms and conditions until; or
- (c) refuse to approve the transfer of a licence (including a licence to which section 8A(6) applies), the licence shall continue in force pending,

the determination of the appeal by the Administrative Appeals Board.

(3) Where-

- (a) an appeal has been made under this section; and
- (b) the period of validity of the licence or permit to which the appeal relates would have expired but for subsection (2)(b) or (c), then the licensee or permittee, as the case may be, shall be liable for the fee prescribed-
- (c) for the period from the day the licence or permit would have expired to the day of the determination of the Administrative Appeals Board or withdrawal of the appeal, whichever first occurs; and
- (d) on a pro rata basis, irrespective of the outcome of the appeal.

(Replaced 13 of 2002 s. 5)

SECT 17

Power of search, seizure, etc. VerDate:02/01/2007

(1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that any vessel, raft or impoundment within the waters of Hong Kong is being or has been used in connection with any offence under this Ordinance, he may issue a warrant authorizing the Director or any authorized officer to-

- (a) board and search any such vessel or raft, or enter any such impoundment; and

(b) seize and detain any such raft or anything which the Director or an authorized officer reasonably suspects to be, or to contain, evidence of the commission of such an offence.

(2) The Director or an authorized officer may exercise any of the powers referred to in subsection (1)(a) or (b) without a warrant issued under this section if-

(a) he has reasonable grounds for suspecting that any vessel, raft or impoundment is being or has been used in connection with any offence under this Ordinance; and

(b) it would not be reasonably practicable to obtain such a warrant in respect of the vessel, raft or impoundment before exercising those powers.

(3) Subsections (1) and (2) shall not apply to-

(a) any ship required to be provided with a certificate referred to in section 3(1)(a) or (b) of the Merchant Shipping Ordinance (Cap 281); and (Amended 24 of 2005 s. 55)

(b) any vessel for the time being used for any purpose by the Central People's Government, the Government or any state.

(4) If any raft or impoundment is found sunken, stranded, abandoned or adrift within or outside a fish culture zone, the Director or an authorized officer may seize and detain such raft or anything found on or in such raft or within or forming part of such impoundment.

(5) The Director or an authorized officer may exercise any of the powers under this section with the assistance of any other persons as he thinks fit.

(6) Within 14 days of the seizure and detention under this section of any raft or any other thing, the Director or an authorized officer shall-

(a) subject to paragraph (b), serve a notice on the person whom he believes to be the owner thereof; or

(b) if the identity and address of the owner thereof is not known to him, publish a notice in the Gazette, in which he shall specify-

(c) his intention to apply for forfeiture of the raft or thing, or the proceeds thereof if the same has been sold under section 18(2); and

(d) the owner may, within 30 days from the date of service or publication, as the case may be, of the notice, submit a claim in writing to the Director for the return of the raft or thing, or the proceeds thereof, as the case may be.

(7) In this section-
"thing" includes-

(a) any fish, equipment or other thing found on board the vessel or on or in the raft or within the impoundment, as the case may be; and

(b) any net or structure forming part of the impoundment,

upon which the Director or an authorized officer has exercised his power under subsection (1) or (2).
(Replaced 13 of 2002 s. 5)

SECT 18

Power of sale and forfeiture VerDate:07/06/2002

(1) Subject to subsections (3) and (7), any relevant property is liable to forfeiture whether or not any person has been charged with an offence under this Ordinance which relates to the relevant property.

(2) If the Director or an authorized officer reasonably concludes that any relevant property is of a perishable nature or of such a nature that it is difficult to store or is likely to deteriorate before the conclusion of any proceedings under this Ordinance, then he may cause the relevant property to be sold in such manner as he thinks fit, irrespective of whether a claim for its return has been made under section 17(6)(d).

(3) Without prejudice to the generality of subsection (2), on receipt of a claim under section 17(6)(d), the Director or an authorized officer may return to the owner-

(a) any relevant property, upon payment of any reasonable expenses or disbursement incurred in respect of the seizure and detention of the relevant property; or

(b) any relevant proceeds, after deduction of any reasonable expenses or disbursement incurred in respect of the seizure, detention and sale of the relevant property concerned.

(4) After the expiry of the period for making a claim under section 17(6), the Director or an authorized officer may, in proceedings where an offence under this Ordinance is prosecuted or in separate proceedings under this Ordinance, apply to a magistrate for the forfeiture of any relevant property or relevant proceeds where-

(a) no such claim is made; or

(b) the relevant property or relevant proceeds have not been returned under subsection (3).

(5) Upon hearing an application under subsection (4), a magistrate may order that any relevant property or relevant proceeds-

(a) be forfeited to the Government if the magistrate is satisfied that an offence against this Ordinance has been committed;

(b) be returned to the owner subject to such conditions that the magistrate may specify in the order;
or

(c) be disposed of in such manner and subject to such conditions that the magistrate may specify in the order.

(6) Where an application is made under subsection (4) for the forfeiture of any relevant property or relevant proceeds, otherwise than in proceedings where an offence under this Ordinance is prosecuted, the Director or an authorized officer shall forthwith notify in writing the owner thereof, unless the owner has indicated in writing to the Director that notification is not required or if the identity and address of the owner is not known to him.

(7) Notwithstanding subsections (1) to (6), if the Director or an authorized officer reasonably concludes that any relevant property is of no appreciable value or of small value, he may cause the relevant property to be destroyed or otherwise disposed of in such manner as he thinks fit.

(8) Any relevant property ordered to be forfeited under this section may be destroyed or otherwise disposed of as determined by the Director or an authorized officer.

(Replaced 13 of 2002 s. 5)

SECT 19

Power of inspection and arrest VerDate:07/06/2002

(1) If the Director or an authorized officer has reasonable grounds for suspecting that a person has committed or is about to commit an offence under this Ordinance, he may, without warrant and on proof of his identity, stop the person or, where the person is on board a vessel, stop and board the vessel for the purposes of requiring that person to-

- (a) give his name and address; and
- (b) produce his proof of identity for inspection.

(2) A person who, without reasonable excuse, fails to give his name and address or to produce his proof of identity when required to do so under subsection (1) or gives a false or misleading name or address commits an offence.

(3) The Director or an authorized officer may, without warrant, arrest a person who-

- (a) contravenes subsection (2); or
- (b) is reasonably suspected to have committed or is about to commit an offence under section 6 or 11.

(4) If any person who may be arrested under this section forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the Director or an authorized officer may use all means necessary to effect the arrest.

(5) Where the Director or an authorized officer arrests a person under this section, he shall forthwith take the person to the nearest police station or hand him over to the custody of a police officer to be dealt with in accordance with the Police Force Ordinance (Cap 232).

(Replaced 13 of 2002 s. 5)

SECT 20

Obstruction, etc. VerDate:30/06/1997

Any person who-

- (a) obstructs the Director or an authorized officer in the exercise of any power or the performance of any duty or function conferred or imposed on the Director or an authorized officer by this Ordinance; or

(b) fails to comply with any instruction given under this Ordinance, commits an offence.

SECT 21

Penalties VerDate:07/06/2002

(1) Any person who commits an offence under section 6 or 7 is liable to a fine at level 6 and to imprisonment for 1 year, and in the case of a continuing offence to a further daily penalty of \$1500.

(2) Any person who commits an offence under section 11 is liable to a fine at level 6 and to imprisonment for 1 year.

(3) Any person who commits an offence under section 12, 13 or 20 is liable to a fine at level 4 and to imprisonment for 6 months.

(4) Any person who commits an offence under section 19(2) is liable to a fine at level 2.
(Replaced 13 of 2002 s. 6)

SECT 22

Regulations VerDate:07/06/2002

(1) The Chief Executive in Council may make regulations for all or any of the following matters-
(Amended 65 of 1999 s. 3)

(a) the application for and the grant, renewal and transfer of licences, and the fees payable in respect thereof; (Replaced 13 of 2002 s. 7)

(aa) the application for and the grant and renewal of permits, and the fees payable in respect thereof;
(Added 13 of 2002 s. 7)

(b) the period of validity for which-

(i) licences may be granted, renewed or transferred; and

(ii) permits may be granted or renewed; (Replaced 13 of 2002 s. 7)

(c) the control of fish culture;

(d) the marking of the boundaries of fish culture zones and sites;

(e) the equipment to be installed and used on rafts and within impoundments;

(f) the construction, dimensions, marking and lighting of rafts and impoundments;

(g) the structures that may be erected on rafts, and the removal of illegal structures;

(h) the mooring and anchoring of rafts;

- (i) the inspection of rafts, impoundments and sites;
 - (j) the inspection of fish maintained in rafts and within impoundments;
 - (k) the size, species or numbers of fish which may be kept in rafts and within impoundments;
 - (l) the returns and reports to be rendered and accounts, registers, books, records and plans to be kept by licensees, and the manner of rendering or keeping them;
 - (m) the seizure and detention of rafts or impoundments, and of any fish, equipment or other thing, to which section 17 applies; (Replaced 18 of 1983 s. 4)
 - (mm) the sale or other disposal or destruction under section 18 of rafts or impoundments, and of any fish, equipment or other thing seized and detained under section 17; (Added 18 of 1983 s. 4)
 - (n) generally for the better carrying out of the provisions and purposes of this Ordinance.
- (2) Regulations made under this section may provide that any contravention of any such regulations shall be an offence, and may prescribe penalties therefor not exceeding a fine at level 3 and imprisonment for 6 months, and in the case of a continuing offence a further daily penalty of a fine not exceeding \$300. (Amended 13 of 2002 s. 7)

SECT 23

Savings VerDate:01/07/1997

Amendments retroactively made - see 29 of 1998 s. 105

Nothing in this Ordinance shall-

- (a) apply to any portion of the foreshore and sea-bed in respect of which the grant of a Government lease has been authorized under section 7 or 8 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127); or (Replaced 63 of 1985 s. 21. Amended 29 of 1998 s. 105)
- (b) be construed to the prejudice of any of the provisions of the Shipping and Port Control Ordinance (Cap 313).

SECT 24

Transitional VerDate:07/06/2002

- (1) Any right of appeal subsisting under section 16 immediately before the commencement of this section shall be treated as being a right of appeal to the Administrative Appeals Board under section 16 as amended by the Marine Fish Culture (Amendment) Ordinance 2002 (13 of 2002) ("the amending Ordinance").
- (2) Any appeal pending under section 16 immediately before the commencement of this section shall be treated and disposed of as if it were an appeal pending to the Administrative Appeals Board under section 16 as amended by the amending Ordinance.
(Added 13 of 2002 s. 8)