



THE TRADE IN
LIVE REEF FOOD FISH

GOING GOING GONE

VOLUME 2
APPENDICES



1 **APPENDIX A**
TRADE INFORMATION

35 **APPENDIX B**
LEGAL



APPENDIX A: TRADE INFORMATION

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1

IMPORT AND RE-EXPORT VOLUMES: 17 YEARS OF TRADE

1.1 Introduction

This section highlights the reported volumes and species that comprise the bulk of Hong Kong's LRFFT spanning 17 years, using data collected from interviews and by C&SD and AFCD.

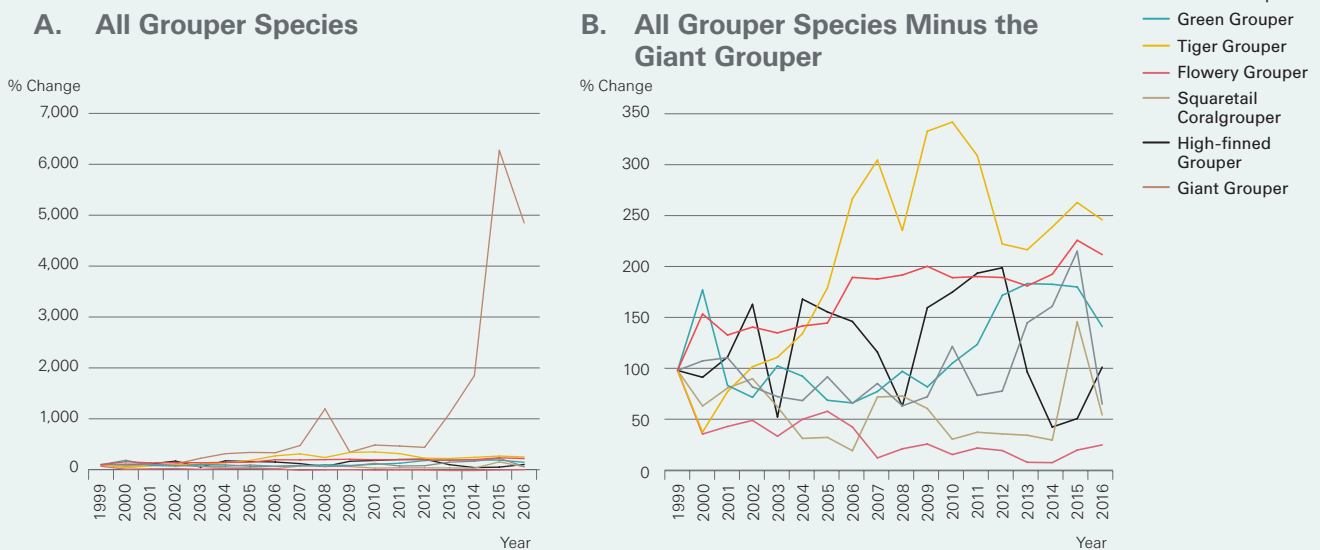
The LRFFT is dominated by grouper species, and of the ten grouper species/categories for which records are maintained, the Leopard Coralgrouper, Green Grouper, 'Other Groupers' and, since 2005, Tiger Grouper are the most heavily traded (by weight). 'Other Groupers' comprise a mix of grouper species.

1.2 Groupers

Percentage Change in Imported Species

While in absolute terms, imports of the Leopard Coralgrouper, Green Grouper and 'Other Groupers' have historically dominated the live grouper trade, there have been upward trends in the relative numbers of the High-finned Grouper (Figure A-1.1) and Tiger Grouper since 1999, as well as the Giant Grouper over the last few years. Note, however, that Tiger and Giant Grouper figures include significant numbers of the Hybrid (Sabah) Grouper (Part I).

FIGURE A-1.1 PERCENTAGE CHANGE IN IMPORTED SPECIES, 1999-2016*

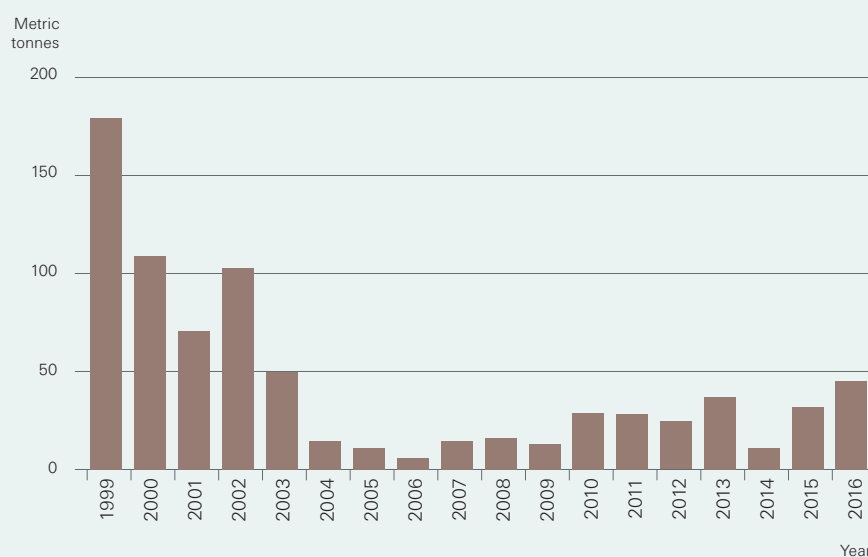


* Base year (1999) indexed to 100
Data Source: C&SD & AFCD (HKL FV), 2017

1.3 Wrasses and Parrotfishes (Excluding Humphead Wrasse)

The recorded import volumes of live wrasses and parrotfishes (excluding the Humphead Wrasse) have been minimal compared to grouper species, representing less than 0.5% of the total trade volume in 2016. Moreover, there has been a marked overall decline (75%) in reported imports since 1999 (Figure A-1.2). Low relative numbers are in line with direct observations of these species on retail sale in the city.¹

FIGURE A-1.2 TOTAL IMPORTS OF LIVE WRASSES AND PARROTFISHES, 1999-2016



Data Source: C&SD & AFCD (HKLFV), 2017

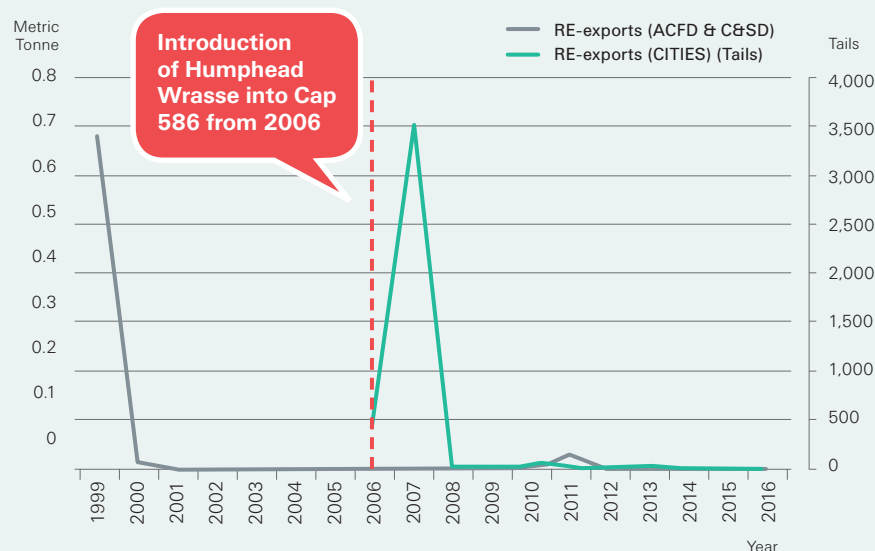
Re-export volumes of live Wrasses and Parrotfishes between 1999 and 2016 were recorded as zero. Likewise, observations at landing ports in Yantian and visits to LRFF retail and wholesale outlets in Shenzhen and Guangzhou did not reveal significant numbers of these fishes.² One trader indicated that re-exports are rare for Wrasses and Parrotfishes, and since these are not particularly sought-after species in the Hong Kong and Chinese markets,³ the profit margin for trading in them is relatively low. It is therefore likely that the majority of live Wrasses (excluding the Humphead Wrasse) and Parrotfishes are consumed locally.

1.4 Humphead Wrasse

According to C&SD and AFCD data, annual imports fluctuate from year to year, with 90MT registered in 1999 and 35–45MT registered in 2006. Reported imports declined steadily from 2005–2006 onwards, culminating in zero imports since 2010 (Section 3.6.11, Figure 3-22; Section 3.12.5). This, however, does not correspond to CITES data, which recorded imports up until 2015. It is also inconsistent with the hundreds of Humphead Wrasses observed on retail sale in recent years in the city (Section 3.12.5, Figure 3-53).

Regarding re-exports, reported volumes were highly variable prior to 2007, after which volumes dropped to negligible numbers. From 2001 to 2005, there were no recorded re-exports of the species. In 2007, a single batch of 3,448 Humphead Wrasses destined for China (and to a lesser extent, Macau) arrived from Malaysia. From 2008 to 2015, only 100 live Humphead Wrasses were recorded as being re-exported from Hong Kong, destined for Macau and Japan (Figure A-1.3). The data suggest that Humphead Wrasses imported into Hong Kong are mainly for local consumption. However, studies involving interviews with traders, as well as inspections of markets and hotel menus, have indicated that the number of Humphead Wrasses entering China is likely to be in the tens of thousands,⁴ of which a substantial proportion passes through Hong Kong. It is suggested that much undocumented cross-border trade of this species is taking place.

FIGURE A-1.3 RE-EXPORT VOLUMES AND TAILS OF LIVE HUMPHHEAD WRASSES, 1999-2016



Source: C&SD & AFCD (HKLFV) and AFCD (CITES), 2017

As with import data, re-export data from C&SD and CITES show discrepancies for the years 2006 and 2007. While C&SD customs recorded no re-exports for the captioned years, AFCD CITES indicated that a total of 4,000 Humphead Wrasse were re-exported in 2006 and 2007. It is not known whether the difference is due to selective reporting practices of traders, or for other reasons. In any case, it reflects serious shortcomings in the compilation of data concerning this CITES-listed species, and highlights inconsistencies between data from CITES and C&SD/AFCD.

This examination of C&SD and AFCD data regarding imports and re-exports of Humphead Wrasse, involving independent market surveys, interviews in mainland China and studies of source countries, demonstrates serious shortcomings in Hong Kong's ability to monitor and control the trade of the Humphead Wrasse. It serves as a reflection of the under-reporting of actual trade volumes, and of poor compliance by Hong Kong authorities with its CITES obligation regarding this species. ■

2 TRANSPORT MODES

2.1 Introduction

Analyses of transportation modes, in particular for species that merit conservation efforts such as the Humphead Wrasse, can inform sustainable fisheries strategies as well as identify intervention points and the potential/actual role of transporters in promoting sustainable trade and reducing IUU fishing. This section highlights the patterns and trends in transport modes of different species, and considers factors associated with the selection of transport mode. It covers transportation trends for:

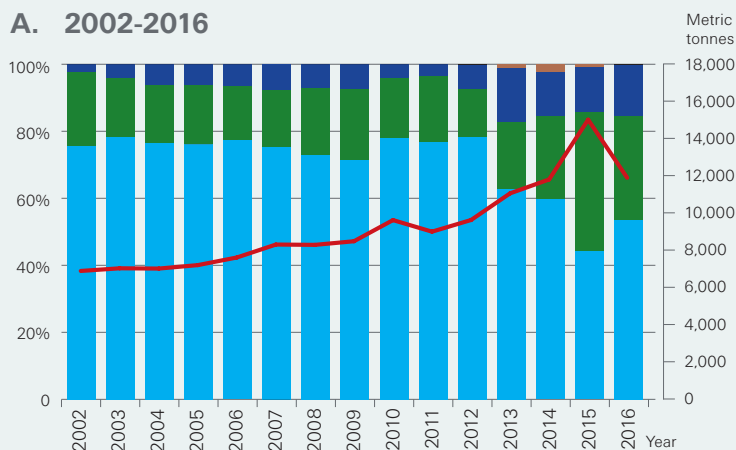
- Groupers;
- Wrasses and Parrotfishes (excluding the Humphead Wrasse); and the
- Humphead Wrasse.

2.2 Live Groupers: Overview Breakdown by Transport Mode and Species

The years 2002 to 2012 witnessed a fairly unvarying pattern of transport mode for live groupers (Figure A-II1(a)). From 2012 onwards, grouper imports by sea increased notably (Figure A-2.1(b)). In 2015, at least 41% of groupers were transported by HKLFV. Nonetheless, it should be noted that data on grouper imports by sea are considered unreliable for the said time period; in fact, the current data are believed to be an underestimation of the actual volumes by sea due to underreporting by HKLFC (after 2006).

FIGURE A-2.1 PERCENTAGE VOLUME OF LIVE GROUPERS BY TRANSPORT MODE*

A. 2002-2016



* Based on a total import volume of 12,244 MT
Data Source: CBS & AFCD (HKLFV), 2017

B. 2016 only

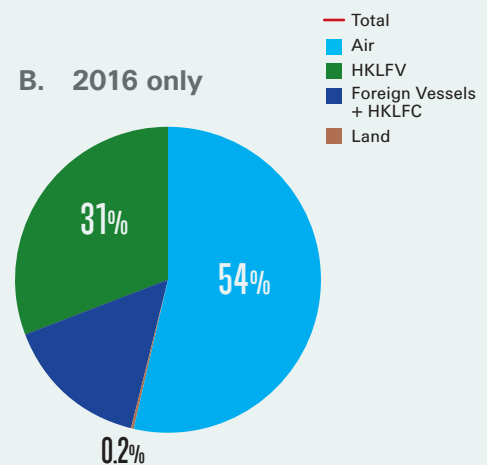
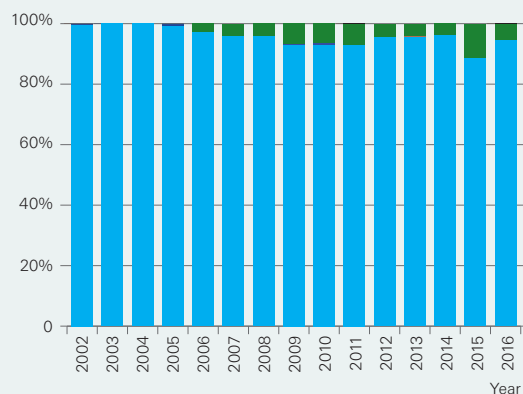


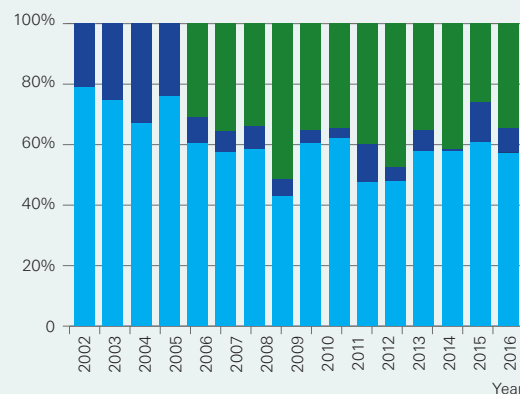
FIGURE A-2.2 PERCENTAGE TRANSPORT MODE BY GROUPER SPECIES OVER TIME

Air Foreign Vessels + HKLFC
HKLFCV Land Others

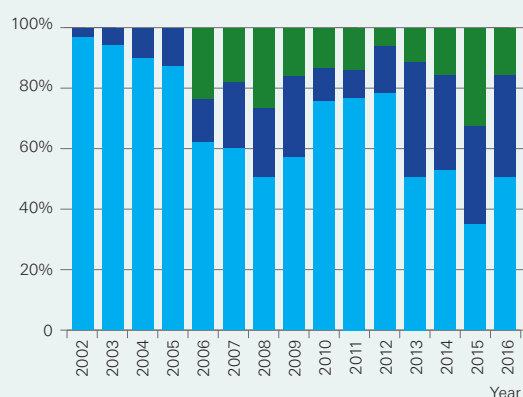
Leopard Coralgrouper



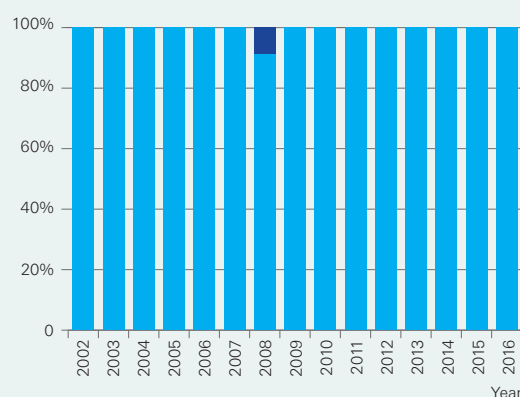
Tiger Grouper



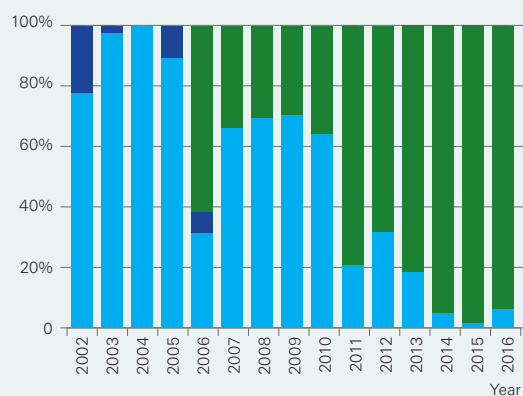
Green Grouper



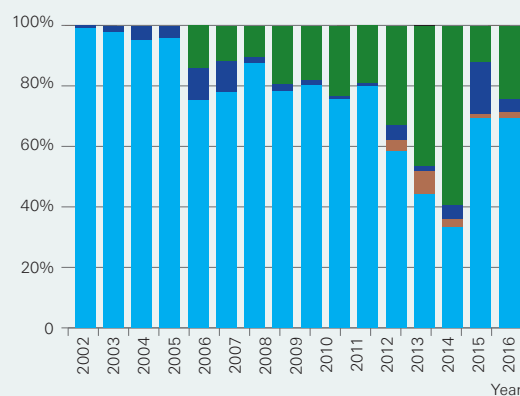
Green Grouper Fry



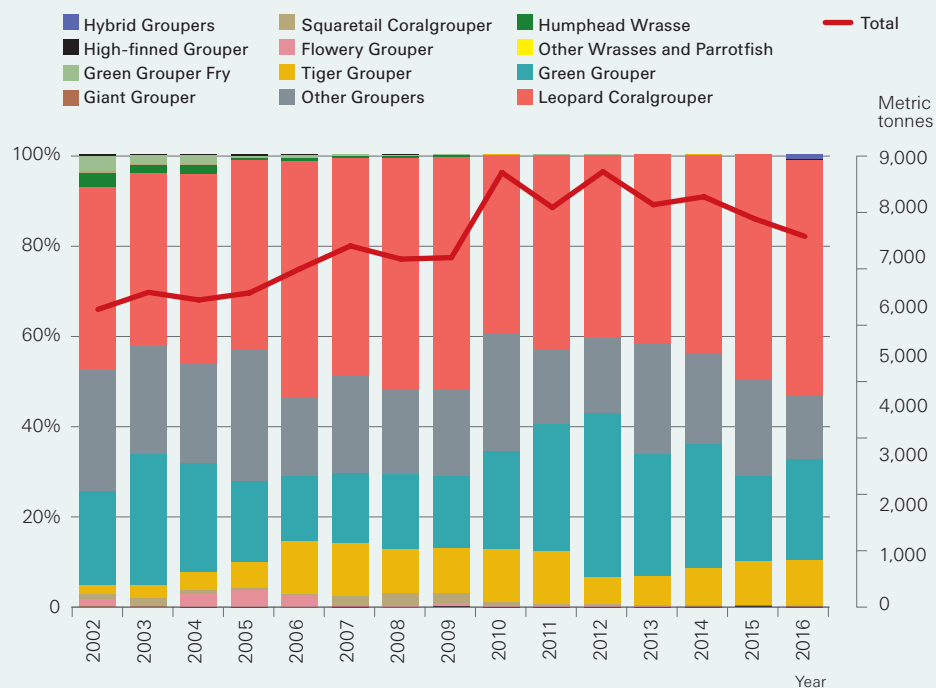
Squairetail Coralgrouper



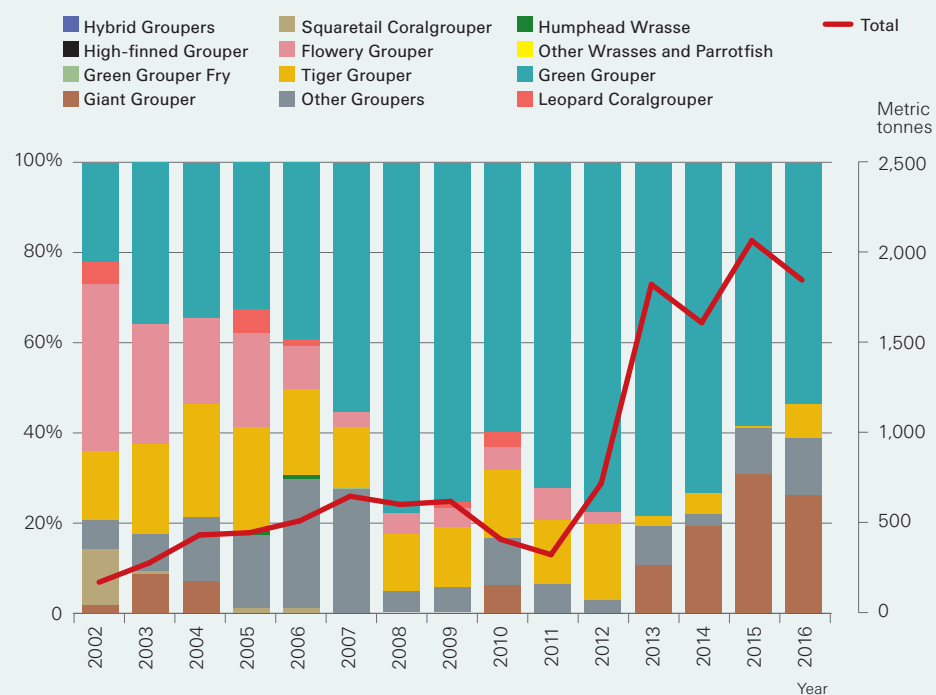
Other Groupers



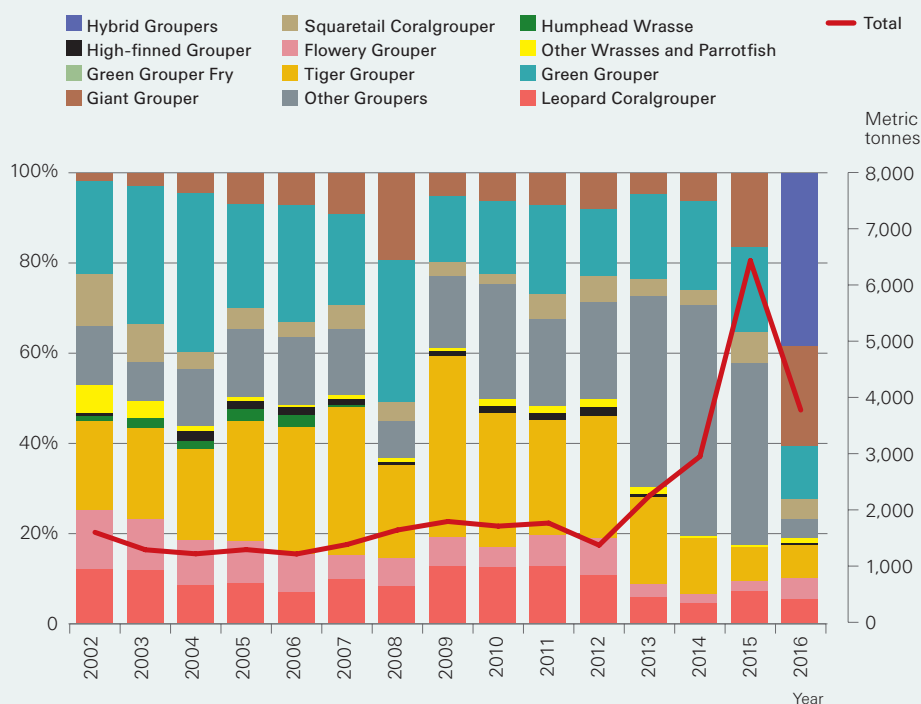
Data source: C&SD & AFCD [HKLFV], 2016

FIGURE A-2.3 COMPOSITION OF LRFF IMPORTS TRANSPORTED INTO HONG KONG BY AIR, 2002-2016

Data source: CGSD, 2017

FIGURE A-2.4 COMPOSITION OF LRFF IMPORTS TRANSPORTED INTO HONG KONG BY SEA (FOREIGN VESSELS), 2002-2016 (+HKLFC AFTER 2006)

Data source: CGSD, 2017

FIGURE A-2.5 COMPOSITION OF LRFF IMPORTS TRANSPORTED INTO HONG KONG BY SEA (HKLFV), 2002-2016

Data source: C&SD, 2017

Leopard Coralgrouper

For the Leopard Coralgrouper, air transport accounted for an average of 94% ($\pm 2\%$) by weight from 2002 to 2016. This is compared to 6% ($\pm 2\%$) for transport by HKLFV, and to virtually no transport by foreign vessels (Figure A-2.2). The substantiality of air transport for the Leopard Coralgrouper was maintained over this period, comprising 88% (in 2015) to 97% (in 2006) of total imports. The Leopard Coralgrouper accounted for over half of total LRFF imports by air (Figure A-2.3).

Tiger Grouper

Air transport accounted for roughly 60% of Tiger Grouper imports, as observed from the past decade (Figures A-2.2 & A-2.3).

Green Grouper

From 2002 to 2016, approximately 63% of Green Grouper were imported via air carriers. As a source country, Thailand provided for an average of 42% ($\pm 13\%$) of Hong Kong's Green Grouper imports between 2006 and 2016 (Section 3.6.3). It is interesting to note that shipment by foreign vessels of this particular species has been steadily increasing and accounting for a larger proportion of overall sea transport.

Squaretail Coralgrouper

The Squaretail Coralgrouper has witnessed a sharp decline in imports by air since 2010. At the same time, imports by HKLFV soared to nearly 100% in 2015 and 94% in 2016 (Figure A-2.2).

Other Groupers

For 'Other Groupers', transport modes varied little from 2007 to 2012, with air transport accounting for about 80% of its trade. In 2013, the proportion of 'Other Groupers' carried via air dropped to 58%. This was accompanied by a corresponding increase in sea transport (HKLFV and foreign vessels) to almost 40%. 'Other Groupers' is one of the few species to be traded via land routes.

2.3 Live Wrasses and Parrotfishes (Excluding Humphead Wrasse)

According to AFCD volume records, almost all live wrasses (excluding the Humphead Wrasse) and parrotfishes are imported into Hong Kong by HKLFV. Interviews with traders revealed that the low market demand and retail prices of these fishes do not offer sufficient incentive for traders to pay for them to be transported by air. A lot of these fishes are instead brought in together with groupers when they are caught by chance. Hong Kong traders rarely make specific orders for non-grouper species from source countries (except for the Humphead Wrasse). Rather, traders receive these species when they are 'thrown in' with shipments of ordered groupers.⁵

2.4 Live Humphead Wrasse

Before and After CITES Appendix II Listing

Information on the transportation modes and trade of live Humphead Wrasses is patchy and incomplete due to high levels of IUU fishing.⁶ For this reason, analysis of this species is based on the following data (Section 3.12.5):

- C&SD 1999–2015;
- AFCD (HKLFV) 1999–2015 (no indication of breakdown by country between 1999 and 2005); and
- AFCD (CITES) 2006–2015 (no indication of transport mode).⁷

Data from C&SD and AFCD HKLFV indicate that prior to 2006, 63% ($\pm 13\%$) of Humphead Wrasses were imported by sea (almost completely by HKLFV) and 34% ($\pm 16\%$) by air.

A relatively large quantity of LRFF per shipment is needed to justify the cost of transportation by sea. To illustrate this, the cargo capacity of a HKLFV ranges between 15 and 45 MT depending on the vessel type (section 3.7.2). For this reason, traders rely on the collection of LRFF from cage farms (CBA and/or HBA), or from cages that have consolidated wild-caught fish for weeks, to generate the quantities needed to justify the use of sea transport within a limited timeframe. This requires substantial communication between Hong Kong

traders and farm/consolidator operations regarding collection dates, in other words, when sufficient fish are available for collection. Shipping by sea cannot be justified if the quantity of fish being shipped to Hong Kong is insufficient to cover the cost of diesel (round trip from major source countries to Hong Kong). Round trips from the Philippines and Malaysia, for instance, require 10–20 days.

In their interviews, Hong Kong traders indicated that because live water flow during shipment is crucial, the LRFF cannot be shipped inside cargo containers, examples being Evergreen and Maersk. There are carrier vessels custom-built with live wells for use in LRFF shipments. The hulls of these vessels are equipped with water inlets and outlets, providing ample water circulation during shipment. LRFF carrier vessels are also usually equipped with robust pumping systems to maintain water flow when the vessels are stationed for loading or unloading.

Of those Hong Kong traders interviewed, two respondents indicated that they receive HKLFV shipments every month (at least once a month). Other respondents receive shipments less frequently. In the case of these other respondents, they are only notified by traders in source countries of incoming shipments once target supply volumes are met. One trader reported that in 2013–2014, he was responsible for arranging only six shipments. ■

3

SOURCE
COUNTRIES**3.1 Key Source Countries for Groupers, Wrasses and Parrotfishes**

Source country analyses are based on data collected by C&SD and AFCD HKLFV from 1999 to 2016. Since HKLFV only started documenting information on countries of origin after 2006 (see Part I, Section 2), information collected from 1999 to 2005 will be referred to as 'Unknown HKLFV'. Accordingly, this section will focus on the period 2006–2016, unless stated otherwise.

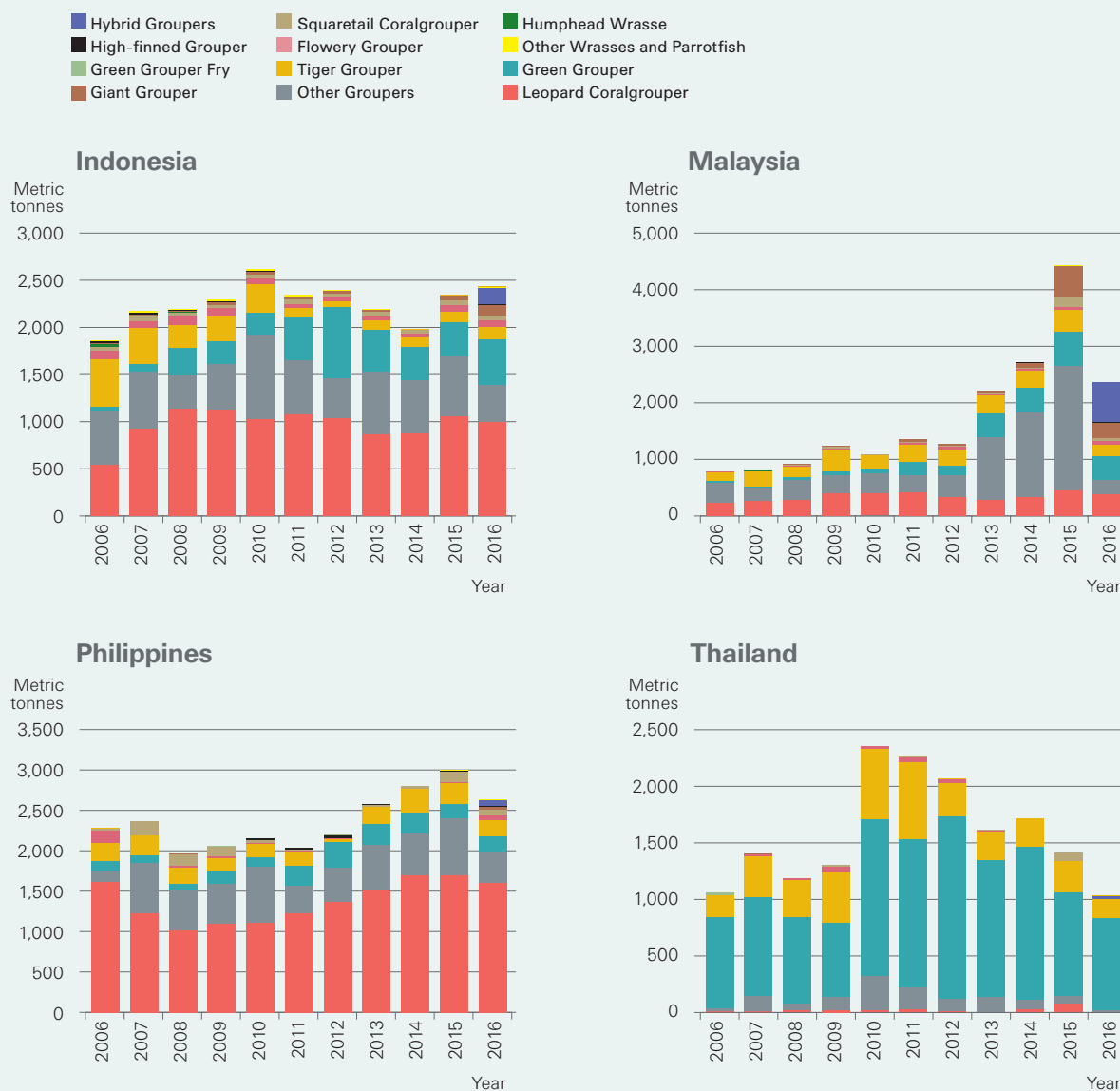
Indonesia: Since 2006, Hong Kong has been importing increasing volumes of LRFF from Indonesia (Figure A-3.1). Among them, the Leopard Coralgrouper (all wild-caught), 'Other Groupers' and the Green Grouper (wild and cultured) dominate the imports by volume. These species represent an average of 43% ($\pm 6\%$), 25% ($\pm 6\%$) and 15% ($\pm 8\%$) (standard deviation) of total LRFF imports from Indonesia respectively.

Malaysia: 'Other Groupers', the Leopard Coralgrouper and the Tiger Grouper comprise the bulk of Hong Kong's imports from Malaysia, representing an average of 35% ($\pm 14\%$), 24% ($\pm 10\%$) and 19% ($\pm 8\%$) of total LRFF imports from the country respectively. Increased imports of 'Other Groupers' have also contributed to an increase in Malaysia's overall import volumes. The marked 'decrease' in imports in 2016 is likely attributable to the introduction of Hybrid Groupers as a distinct category, and does not signify a true decrease (Figure A-3.1).

Philippines: Total volumes of LRFF imported from the Philippines have generally increased over the last decade. The Leopard Coralgrouper (all wild-caught and mostly grown-out to attain market size) has consistently ranked as the dominant species, accounting for an average of 58% ($\pm 6\%$) of total LRFF imports from the Philippines (Figure A-3.1).

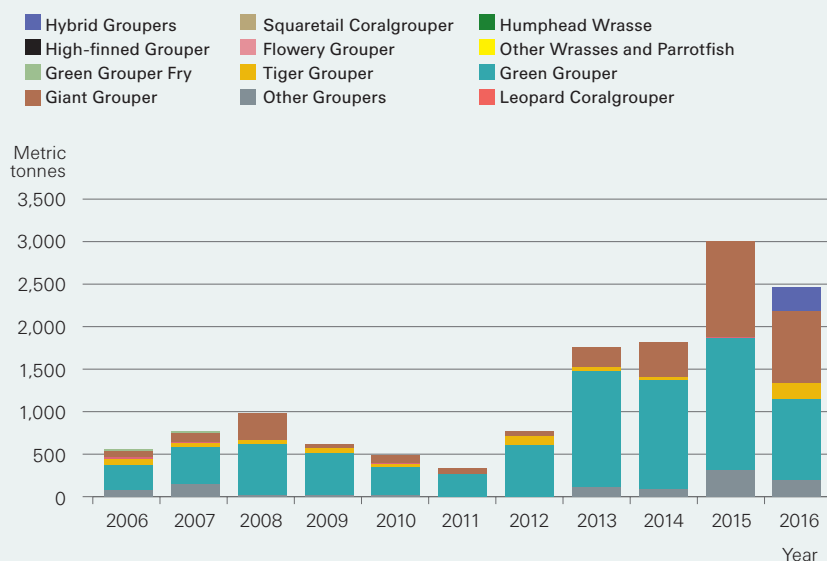
Thailand: The Green Grouper, 'Other Groupers' and the Tiger Grouper comprise the bulk of Hong Kong's imports from Thailand, representing an average of 68% ($\pm 10\%$), 7% ($\pm 8\%$) and 22% ($\pm 7\%$) of all LRFF imports from the country respectively (Figure A-3.1). Transactions of the Tiger Grouper were first registered in 2006. Due to the dominance of the Green Grouper in total LRFF imports from Thailand, fluctuations in Thailand's supply of this species exerted great influence on trade patterns. Some of these fishes are likely to originate from full-cycle mariculture.

FIGURE A-3.1 LRFF IMPORTS FROM KEY SOURCE COUNTRIES, 2006-2016



Data source: C&SD & AFCD (HKLFFV), 2017

Taiwan: Total volumes of LRFF imported from Taiwan have increased over the last decade, with the country recently becoming one of Hong Kong's key providers of live fish (Figure A-III2). The most traded species include the Green Grouper (65% \pm 14%), the Giant Grouper (20% \pm 10%) and 'Other Groupers' (6% \pm 6%). Fluctuations in trade volumes of the Green Grouper were noted over the study period. 'Other Groupers' saw an increase from 0.5% (in 2012) to 10% (in 2015) of total Taiwanese imports. The introduction of Hybrid Groupers as a separate species category in 2016 accounted for 278 MT of imports. An unknown percentage of imports from Thailand may have originated as wild-caught juveniles imported from Malaysia and Indonesia and grown out in Taiwan.⁸

FIGURE A-3.2 LRFF IMPORTS FROM TAIWAN, 2006-2016

Data Source: C&SD & AFCD (HKLFV), 2017

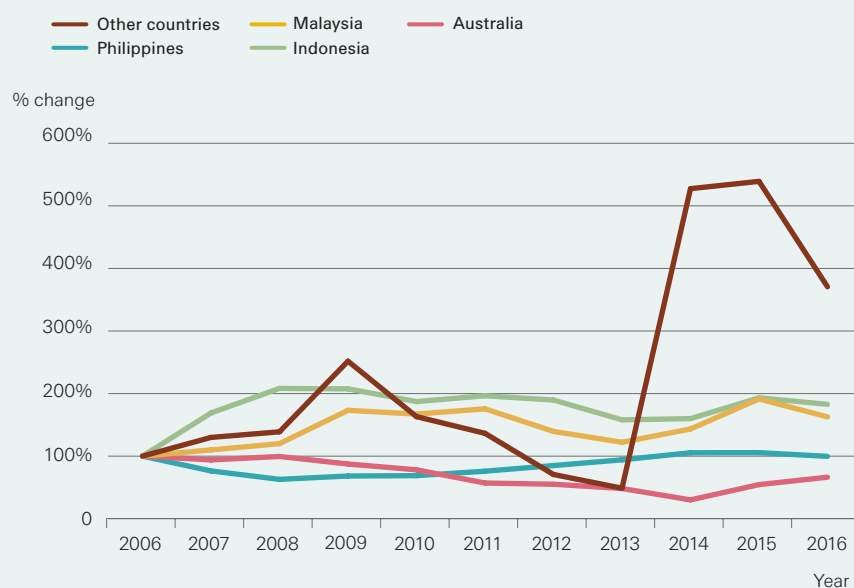
3.2 Source Countries by Species: Comparing Trends and Implications of Export Trade

3.2.1 Leopard Coralgrouper – The Philippines and Indonesia as Major Suppliers

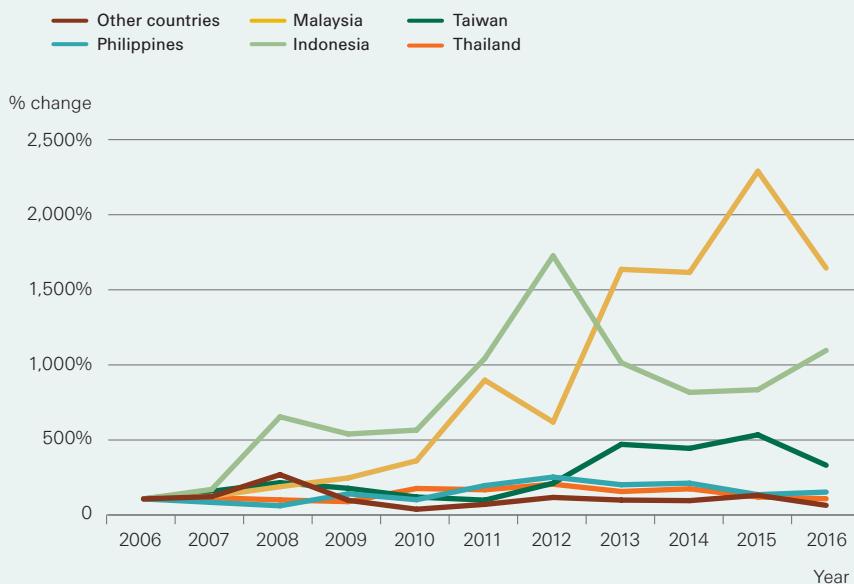
The Philippines, Australia and Indonesia are the key suppliers of this species. Substantial increases in imports of the Leopard Coralgrouper from the 'Other Countries' category have been observed, albeit in small volumes of around 420 MT (± 120 MT) (Figure A-3.3). While there is no known list of the countries that belong to this category, Fiji and Palau are said to have participated in the trade in the past, among other Western Pacific islands that export or once exported live fish. Due to trade bans, Fiji and Palau are currently inactive in LRFFT. A number of other small developing countries, including the Solomon Islands and Vanuatu, have shown sporadic presence in the trade.⁹ It is noted that the Leopard Coralgrouper is not present in the Maldives or Seychelles.

3.2.2 Green Grouper – Taiwan Takes Over Thailand as a Primary Source Country

Overall increases in imports of the Green Grouper have been observed over the last decade, in particular from Malaysia and Indonesia. Reported volumes average at around 234 MT (± 208 MT) and 341 MT (± 201 MT) respectively. Imports from Taiwan have also increased compared to 2006 (Figure A-3.4). The species is either caught in the wild or produced in hatcheries, but no data exist to illustrate its origins.

FIGURE A-3.3 PERCENTAGE CHANGE IN LEOPARD CORALGROUPER IMPORT VOLUMES BY COUNTRY, 2006-2016*

* Base year (1999) indexed to 100
 Data Source: C&SD & AFCD (HKL FV), 2017

FIGURE A-3.4 PERCENTAGE CHANGE IN GREEN GROUPER IMPORT VOLUMES BY COUNTRY, 2006-2016*

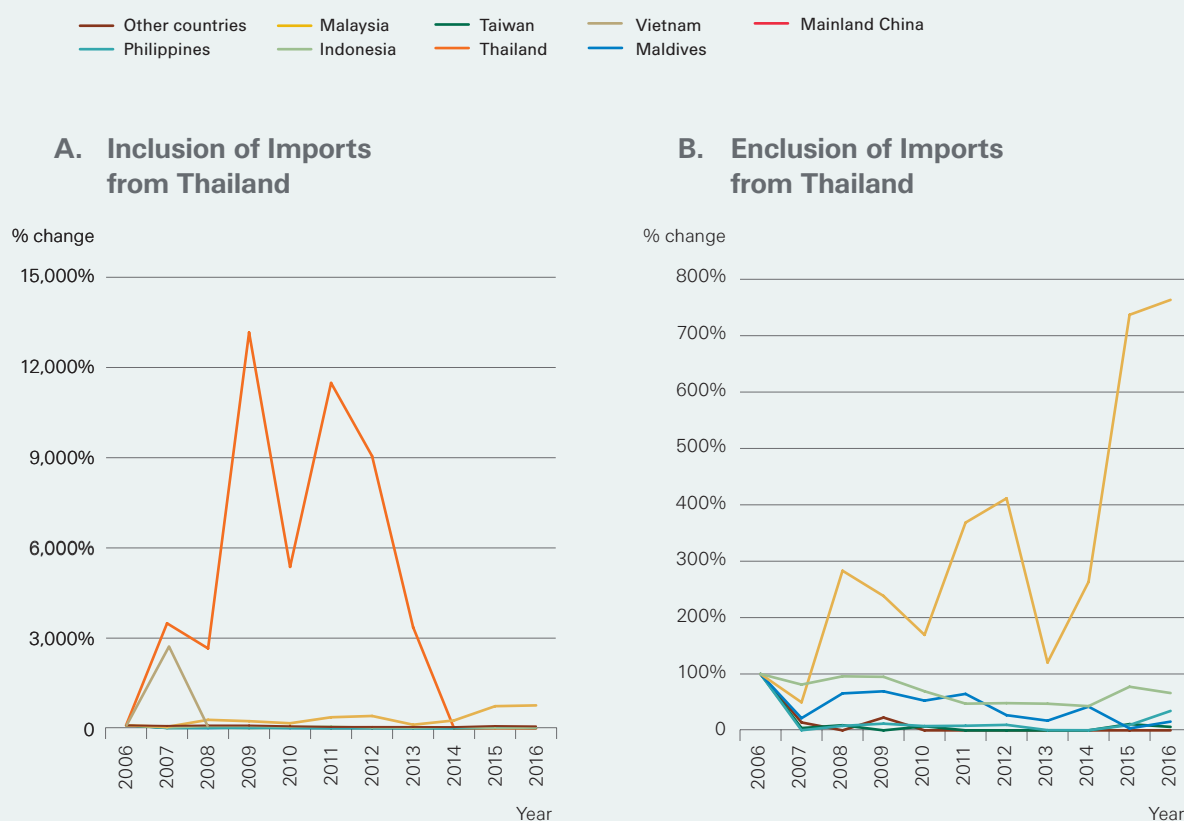
* Base year (1999) indexed to 100
 Data Source: C&SD & AFCD (HKL FV), 2017

3.2.3 Flowery Grouper – Malaysia Increases Supplies

Two graphs are presented for this analysis. The first shows imports from all source countries. The second graph excludes Thailand, for the reason that the country has shown major fluctuations in its small supply (an annual average of 18 MT \pm 20 MT) over the last decade (Figure A-3.5). Indonesia is the major source country for the species, accounting for between 30% and 75% of total imports from 2006 to 2016. Although imports from Malaysia have seen notable increases over the last couple of years, these are said to originate from the Philippines due to extensive cross-border trading and the poor conditions of reef resources in Malaysia.¹⁰

In the past, the Maldives and Western Pacific countries, including Fiji, the Solomon Islands and Palau, contributed to imports of this species.¹¹ In 2006–2013, the Maldives supplied 3–7% of total imports of the Flowery Grouper.

FIGURE A-3.5 PERCENTAGE CHANGE IN FLOWERY GROUPEE IMPORT VOLUMES BY COUNTRY, 2006–2016*

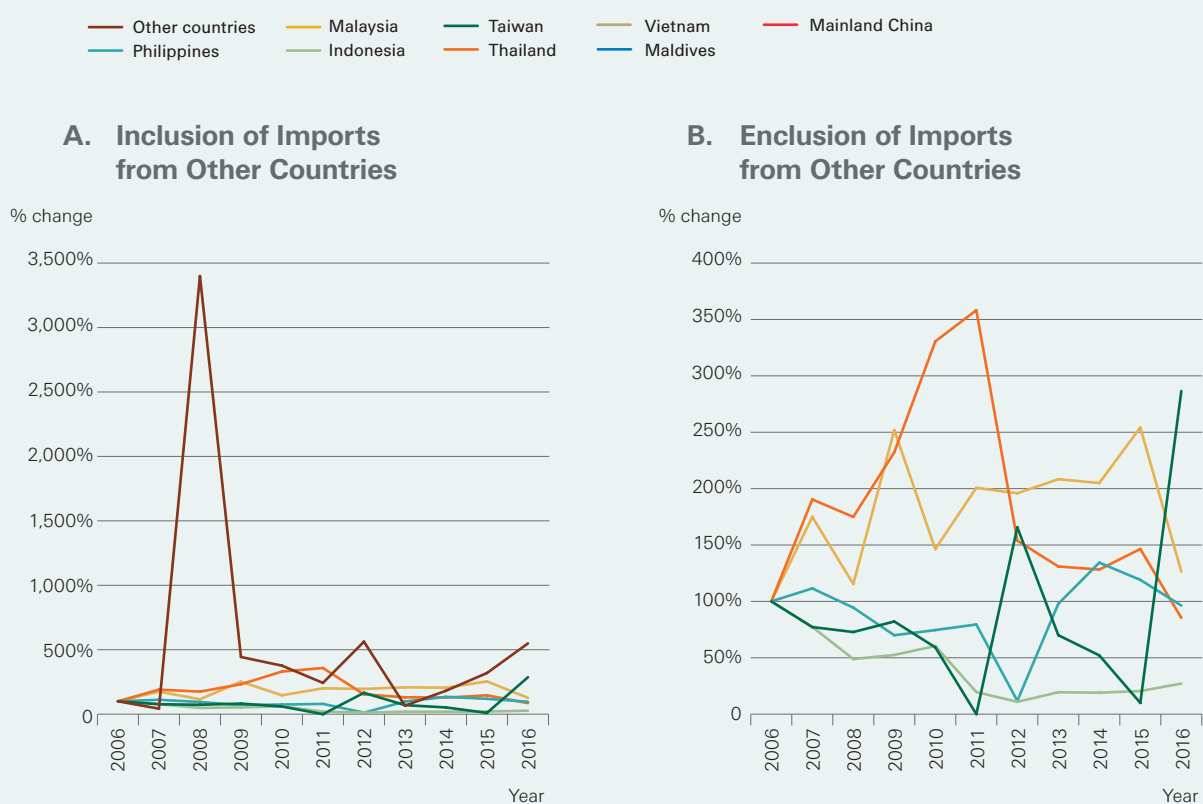


* Base year (1999) indexed to 100
Data Source: C&SD & AFCD (HKLFV), 2017

3.2.4 Tiger Grouper – Malaysia Increases Supplies

With the exception of Thailand and Malaysia, exports of the Tiger Grouper to Hong Kong have generally declined since 2006. While imports from Thailand and Malaysia have increased overall, volumes from both countries fluctuated significantly during the study period. These fluctuations have yet to be explained. For this reason, more information on sources of production (wild-captured adults and seed (CBA) versus artificial (HBA)) needs to be obtained. It will bring a better understanding of the impacts on trade patterns and potential implications for wild stocks of CBA.

FIGURE A-3.6 PERCENTAGE CHANGE IN TIGER GROUPE IMPORT VOLUMES BY COUNTRY, 2006-2016*

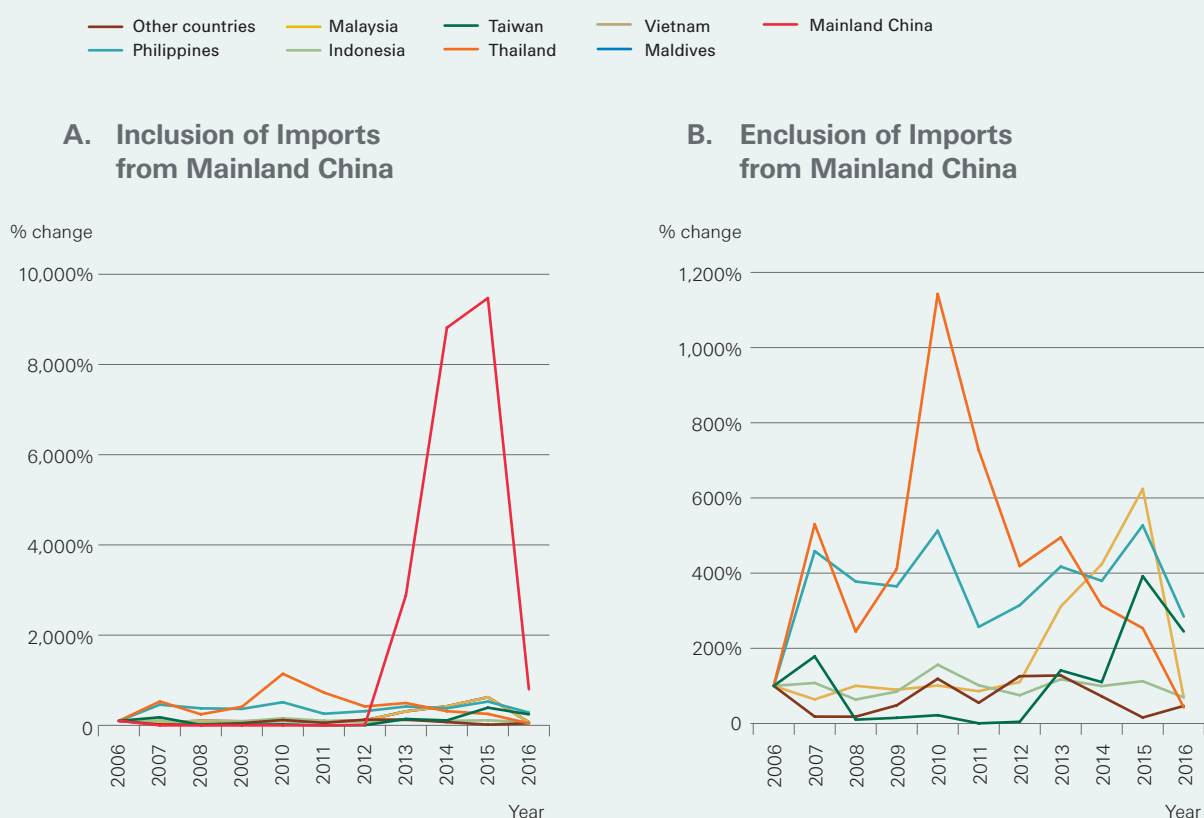


* Base year (1999) indexed to 100
Data Source: C&SD & AFCD (HKLTV), 2017

3.2.5 'Other Groupers' – Recent Increased Supplies from Malaysia

'Other Groupers' have seen increased imports since 2006, when country-specific records were made available. These fishes are either captured from the wild or maricultured. Imports from Malaysia increased by 423% in 2014 and 624% in 2015. This was likely due to increased production of the hybrid Sabah Grouper, which incidentally contributed to the drop in imports in 2016 (FigureA-3.7).

FIGURE A-3.7 PERCENTAGE CHANGE IN 'OTHER GROUPERS' IMPORT VOLUMES BY COUNTRY, 2006-2016*



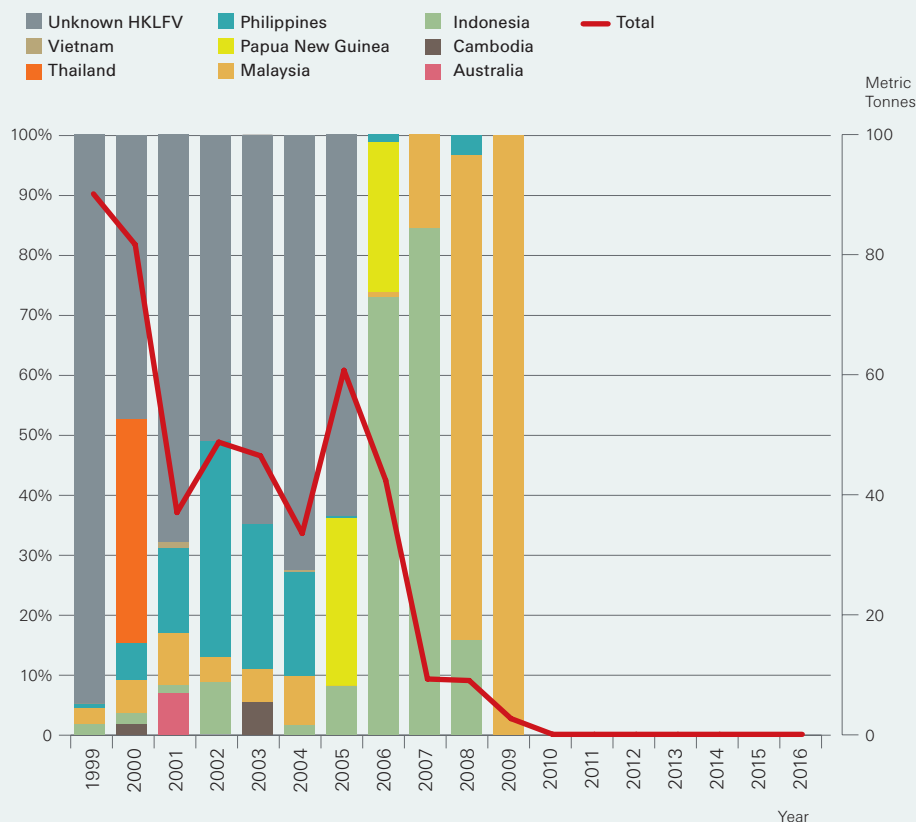
* Base year (1999) indexed to 100

Data Source: C&SD & AFCD (HKLFV), 2017

3.2.6 Humphead Wrasse

While key source countries for the Humphead Wrasse have varied from 1999 to 2016, Indonesia and Malaysia have been singled out as the major exporters of the species (Figure A-3.8). The limited data on this species point to an interesting 'start and stop' pattern for its trade. The Philippines was a fairly consistent supplier of the Humphead Wrasse from 2001 to 2004, after which the country exported little of the species. Tawi-Tawi, an island province in South-Eastern Philippines, was a major supplier, and had much of its catch exported illegally to Malaysia.¹² This catch was re-exported, mainly to Hong Kong.^{13,14} In 2005 and 2006, PNG was a key source country for the Humphead Wrasse. Like the Philippines, PNG's exports ceased shortly after. Likewise, Fiji, Palau and the Maldives all exported the Humphead Wrasse for a short period of time before the species became protected and therefore banned from exports. ■

FIGURE A-3.8 SOURCE COUNTRIES OF HUMPHHEAD WRASSE IMPORTS, 1999-2016



Data source: C&SD & AFCD (HKLFV), 2017

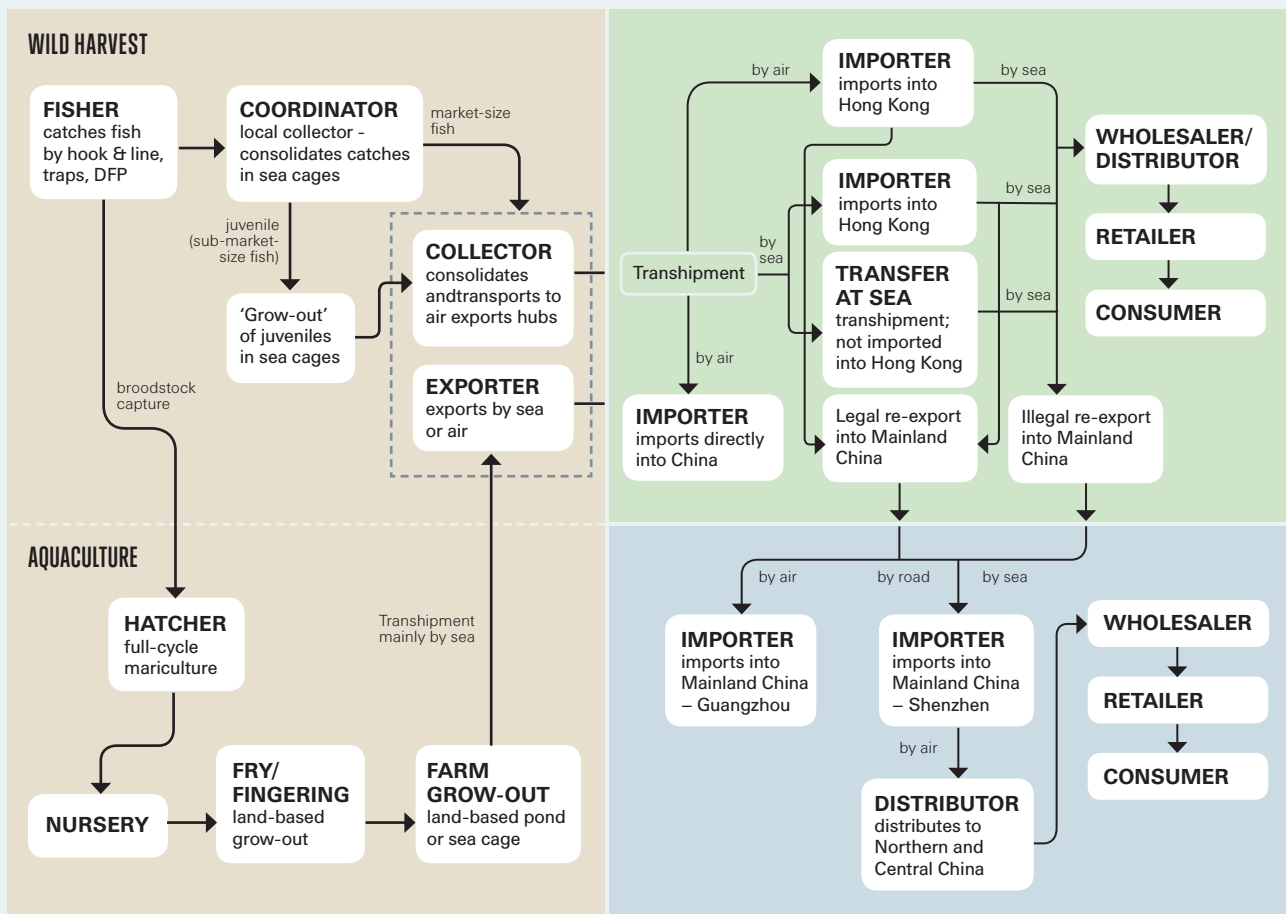
4 AN OPAQUE AND COMPLEX SUPPLY CHAIN

4.1 A Bottleneck of Players

The fishes that make up the LRFFT pass through a complex supply chain. From capture, they go through consolidation, exports and wholesale before reaching the retail sector (Figure A-4.1).

At the start of this supply chain are the fishers (producers), and at the end, the consumers. Between these two sizeable groups of people, however, is a 'bottleneck' of players made up of a smaller group of exporters, traders and transporters (Section 3.9.1).

FIGURE A-4.1 SUPPLY CHAIN COMPONENTS AND LINKAGES FOR FARMED AND WILD-CAUGHT LIVE REEF FOOD FISH FROM SOURCE COUNTRIES TO HONG KONG AND MAINLAND CHINA



Data Source: Hanson et al., 2011

4.2 LRFF Routes

Interviews with traders in Malaysia and the Philippines provided insights into logistical considerations of the domestic trade before the LRFF is exported to Hong Kong. The analysis of the trade in Indonesia is based on existing reports, publications, presentations and personal communications.

Trade routes from source to destination countries are often fragmented, passing through at least one intermediate trader (Figure A-4.1). Both Filipino and Malaysian traders cited Hong Kong as the most important export destination for their LRFF trade. The Philippines' Hong Kong-bound trade was reported to account for as much as 80% to 100% of individual traders' total LRFF exports, with the remainder destined for either Macau or Singapore. In Malaysia, the figure ranged from 60% to 100%, with the remainder destined for Singapore, or for local consumption in Kota Kinabalu, Kuala Lumpur, Johor and Penang.

4.2.1 Palawan to Manila

Logistics

Traders in Palawan were selected for interview because the archipelagic province is known to be a main source of LRFF, accounting for as much as 60% of the country's total exports, of which the Leopard Coralgroupers makes up a significant proportion.¹⁵ Palawan's LRFF has been documented since the 1980s, and is estimated to bring more than USD100 million annually to local fishing communities.¹⁶ A 2009 study surveyed more than 1,500 fishermen across ten municipalities in Palawan, and found that the LRFF contributed to approximately 51% of their household incomes.¹⁷ Palawan fisheries, however, have been showing signs of over-exploitation and depletion from as early as 2003.¹⁸ It is thus important to gain a better understanding of the province's current LRFF status and operations, and to seek ways for a more sustainable approach to the trade.

Around 16 of Palawan's 23 municipalities are documented as a source of LRFF. Interviewees indicated that all LRFF arriving in Palawan are transported to Manila by chartered plane from landing strips located in the municipalities of Roxas and Quezon. There is an international airport in Puerto Princesa, the provincial capital, but this airport cannot be used for transporting LRFF to Manila or the international markets. This is due to a long-standing local ordinance banning the collection and shipment of certain LRFF species from the Puerto Princesa municipality.¹⁹

This lack of access to commercial airline routes between Puerto Princesa and Manila or other destinations has driven traders to utilize private planes, reported to cost approximately PHP25,000–33,000 (USD489–645) per chartered shipment (or ≈ PHP38 (USD0.74) per kg) from Roxas to Manila. One trader indicated that the same weight of dead fish can be transported on the same route by commercial flight for just PHP7,560–10,800 (USD148–211) per shipment (USD0.23) (or ≈ PHP12 per kg).²⁰

According to local traders, at least one LRFF shipment is sent to Manila every day. An interviewee added that during peak season from November to May, up to seven shipments are sent from Roxas in a day. Depending on the size of the plane, a single shipment can carry between 200kg and 400kg of fish, amounting to multiple tonnes of fish a month. A LRFF chartered shipment can be shared between two to three traders.

Once the fishes land in Manila, they are reconditioned in tanks. From here they are either retailed to Chinese restaurants in Manila, traded with local dealers, or exported to international markets. According to interviewees in Manila, all international exports are transported by air. The frequency of flights (at least five flights a day between the Philippines and Hong Kong) as well as lower costs (compared to shipments to other destinations) were cited as reasons for this mode of transport.²¹

Packing for Export

For domestic chartered shipments, a single-engine plane can carry 32–35 boxes of LRFF, while a double-engine plane can carry 42–50 boxes. According to traders, shipments are typically packed in 1:3 fish-to-water ratios, with the more modern containers requiring less water per kg. One polystyrene box weighs around 18kg, containing water and 6–8kg of LRFF. These figures are constantly adjusted depending on the species and travelling time. During shipment, the fish are anaesthetized. Mortality rates were reported to be less than 10% for each shipment by air. One interviewee commented that mortality rates could increase to between 10% and 20% depending on air temperature.²²

According to the Philippines Bureau of Fisheries and Aquatic Resources (BFAR), there are four major licensed LRFF exporting firms in Manila.²³ Three of these firms have been in the LRFF trade for at least seven years, while one exports only dead (fresh/frozen) reef fish. All four firms export other marine products, among them lobsters, eels, and sea and mud crabs. All of the interviewed traders were Manila-based Chinese businessmen, with facilities and aquariums situated in Metro Manila, close to the Manila International Airport.

The BFAR indicated that it did not maintain export records for the LRFF, and suggested that such information might be available at the Bureau of Quarantine. At the time of writing, the Bureau of Quarantine has yet to respond to our requests for detailed LRFF export data on the Philippines.

It is noted that interviews in Palawan were conducted with traders who were not proficient in English and had not attained high levels of education. Most of them had earlier careers as fishermen. The traders were unwilling to comment on the decline of wild stocks, and refused to discuss how their businesses might be affected by such decline in the future (see the discussion on Busuanga and Coron in Part I, Section 1.3).

4.2.2 Sabah to Hong Kong

Sixteen interviews were conducted in Sabah. Compared to their Filipino counterparts, Malaysian traders appeared to be more knowledgeable about trade routes and consumer demands, and were able to provide more general information on trade volumes of LRFF. The following reasons were noted for such variance.

- Kota Kinabalu is the main hub for Malaysian exports of LRFF, and communicates directly with Hong Kong-based importers and wholesalers. While these traders' understanding of the overseas market is comparable to traders based in Manila, they are explicable more familiar with the international trade than traders in Palawan, who are based further upstream in the supply chain.

- Many traders in Malaysia are of Chinese ethnicity and are well connected with traders in Hong Kong. They have a better understanding of the dynamics of demand, in particular of the demand of Peninsular Malaysia's Chinese community and tourism industry.
- Malaysian traders are increasingly dependent on fish farms (inclusive of both HBA and CBA) for the production and development of hybrid species, such as the Sabah Grouper. Some of them participate or invest in hybrid grouper research in order to maintain high production levels (30–100 MT of hybrid grouper production per annum). The listing of their companies on the Malaysian stock exchange is an illustration of the success of such strategies.
- Approximately 70% of Malaysian traders interviewed indicated that they send their LRFF to Hong Kong by air, exporting primarily from Kota Kinabalu and Sandakan. Kota Kinabalu acts as the main export hub for Hong Kong-destined LRFF, while Sandakan focuses on exports of the Hybrid Grouper to both Peninsular Malaysia and Hong Kong.

In recent years, farmers of the Hybrid Grouper have been struggling with low prices as a consequence of considerable success with culturing the hybrids and oversupply. The rapid and significant expansion of farming operations in Hainan is also believed to have contributed to this.²⁴

In recent years, farmers of the Hybrid Grouper have been struggling with low prices as a consequence of considerable success with culturing the hybrids and oversupply. The rapid and significant expansion of farming operations in Hainan is also believed to have contributed to this.

Furthermore, an increasing awareness of overfishing problems in Malaysia has driven traders to invest heavily in mariculture, in particular of the Hybrid Grouper. Commenting on the future prospects of the LRFFT, two-thirds of interviewees stated that supplies of LRFF have declined 5% to 10% over the past two years. Traders identified the High-finned Grouper, Squaretail Coralgrouper and Flowery Grouper as the species dwindling most in numbers. Other species, such as the Leopard Coralgrouper, remain stable in supplies.

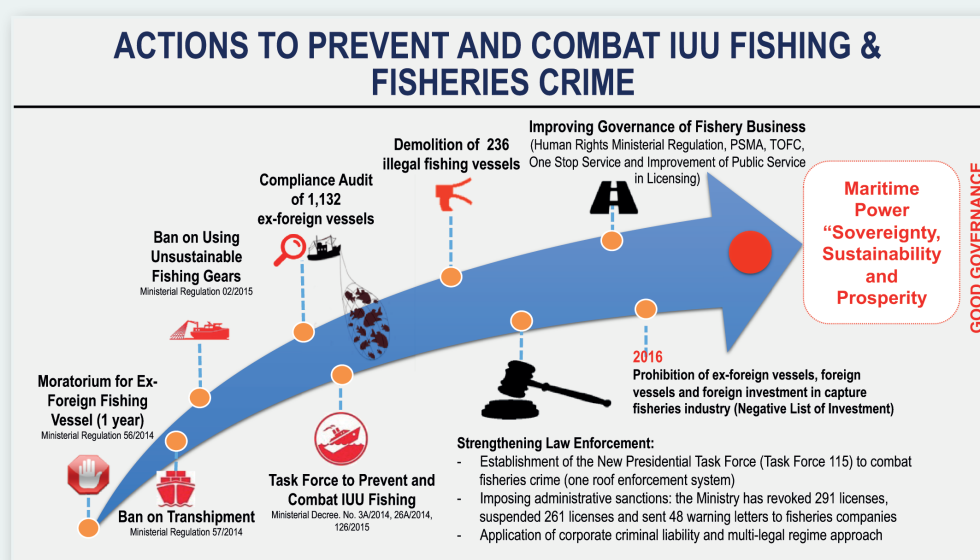
4.3 The Indonesian Trade

Difficulties encountered in securing interviews with Indonesian traders reflect a general lack of awareness of the scale and scope of the country's LRFFT. In the absence of interviews with traders, information presented at various forums in past years was used to provide a number of insights.

Most traders use illegal documents, according to an anonymous exporter. This makes calculation of Indonesia's LRFF exports problematic. Half of the LRFF exports leave the country by plane, the other half by Hong Kong vessels. While grouper species are transported by both air and sea, airlines are more likely to take in the Leopard Coralgrouper, which has higher market value and is more sensitive to travel conditions.

Presentations on Indonesia's LRFFT in recent years have brought to the spotlight aspects of concern and plans for action. In 2011, a presentation on the LRFF situation in Indonesia highlighted key aspects of the trade, drawing attention to the geographical shift of the sourcing of LRFF from western to eastern waters.²⁵ It also pointed to an absence of a comprehensive policy for the LRFFT, as well as a lack of government attention. There were no stock assessments nor was there any monitoring of landings, volume and value of export. Internal conflicts among regencies and government departments made conservation of fisheries and implementation of ecosystem-based management difficult. In addition, Marine Protected Areas were not effectively enforced.²⁶ In 2016, during a meeting convened by the Marine Stewardship Council in Bali, an officer from the Indonesian fisheries department presented plans to combat IUU fishing, a practice with widespread and negative impacts on fisheries resources in Indonesia. Measures being taken to address the issue were presented (Figure A-4.2).

FIGURE A-4.2 ADDRESSING IUU FISHING



At the same time, proposals regarding data collection were submitted, and regulations concerning size limits and catch moratoriums for certain species were put forward. Complexities in regional, national and international jurisdictions, however, mean that strong collaboration among government units and other institutions is required to implement these measures. Moreover, the separate administration of fish culturing/farming and capture fisheries operations is likely to challenge the effectiveness of LRFFT management.

4.4 Arrival in Hong Kong

The LRFF enters Hong Kong by air and by sea (on both Hong Kong and foreign vessels). For consignments by air, certain procedures and documentation are required for cargo clearance (Part I, Section 3.7). As a free trade hub, customs tariffs/duties for import, export and re-export commodities are not imposed, and formalities and associated payments are limited to Customs and Excise documentation, cargo handling charges and, in the case of CITES species, AFCD documentation.

A consignee can collect the cargo with an Air Waybill and letter of authorization from the consignor. The Airway Bill/Bill of Lading must be prepared by the carrier's cargo handling agent. The original copy is attached to the cargo, and a photocopy is sent by facsimile to the consignee, who will be responsible for the withdrawal of the cargo from the Hong Kong International Airport. In general, a consignee will appoint a transportation company to withdraw the cargo from the airport. If the LRFF is sent in polystyrene boxes, additional fees will be charged for the loading and unloading of the boxes into the local transportation vehicle.²⁷

For consignments by sea, the procedures to go through upon arriving in Hong Kong differ depending on the vessel type. For foreign vessels, reporting requirements are similar to that of air carriers, requiring declarations of cargo content, gross weight and gross volume. Hong Kong-licensed Class III (c) vessels (fishing vessels) are exempted from reporting live fish trade to the government. Class III (a) vessels (fish carriers) must submit manifests and declare their cargo. It is noted, however, that many such carriers may not be adhering to proper procedures (see Part II). Both Class III (a) and III (c) vessels are not required to make declarations of their entries or exits to the Hong Kong Marine Department. This in turn makes it difficult to conduct customs follow-up for Class III (a) vessels.

4.5 Re-export to Mainland China: Avoiding Tariffs

All traders interviewed in the Philippines and Malaysia affirmed that LRFF exports to China are always transported via Hong Kong. This is due to:

- i. Complications in quarantine and certification application processes in mainland China. Certifications, such as those concerning product origin and animal tests for safe consumption, are difficult and slow to obtain.
- ii. Lengthy import procedures at Chinese ports. Long durations are unfavourable for the survival of LRFF during shipment.
- iii. Varying tariffs at Chinese landing ports. Low or no tariffs are imposed on LRFF shipments moving through Hong Kong.
- iv. Number and schedule of flights bound for mainland China are not fitting for LRFF exports.

Sixty percent of exporters in Manila stated that up to 70% of their total LRFF trade is destined for mainland China and transported via Hong Kong. One exporter affirmed that about 80% of his Leopard Coralgrouper shipments are destined for the Chinese markets, with a much smaller proportion for Macau, with both routes passing through Hong Kong. On the contrary, few traders in Malaysia knew whether their shipments are destined for China or elsewhere. While traders in Palawan showed interest in knowing where their fishes are transported, traders interviewed in Malaysia showed little interest in knowing where their shipments are headed beyond Hong Kong. They explained that they did not want to trade directly with China, where the current documentation and reporting processes are ‘tedious’ and ‘complex’.

The majority of traders surveyed in the Philippines stated that they understood tariffs are lowered or exempted when shipping LRFF to China as re-exports via Hong Kong, and compared this to directly shipping to the mainland with a license titled ‘Fishermen operating in the South China Sea from Macau and Hong Kong’. One Hong Kong trader said he was aware of a common practice of deliberately misreporting the origins of the LRFF and other seafood-related products when re-exporting from Hong Kong to mainland China, by quoting the source as ‘South China Sea’ in order to avoid tariffs.

According to informal interviews conducted with traders in Shenzhen in 2010,²⁸ the tax in Shenzhen for live fish and lobster imported from foreign countries/territories was approximately RMB600 (USD90) per 250kg or USD0.36 per kg, and RMB800 (USD120) per 20kg, or USD6 respectively.

One trader in the Philippines indicated that the fish re-exported from Hong Kong would be transported to land-based holding facilities in Shenzhen in China, before being further transported to various markets, hotels and restaurant catering outlets in major cities, including Guangzhou, Shanghai and Beijing via air or land routes. ■



QUESTIONNAIRE USED TO COLLECT DATA FROM LRFF TRADERS

Live Reef Food Fish (LRFF) Survey in Hong Kong

* All information collected will remain confidential and will only be used in scholarly research

Interviewed Company:

Nature of the Company:

Interviewee and position:

Contact details:

Date:

1. For each of the following LRFF species:

- a) Please quantify the volume imported/consumed by your company either by weight, or as a % of your total trade in all LRFF species in 2013.

Common Name	2013	
	Volume (kg) per day/per year	Percentage Trade
Giant Grouper		
Highfin Grouper		
Leopard Grouper		
Sabah Grouper		
Green Grouper		
Tiger Grouper		
Flowery Grouper		
Mangrove Snapper		
Humphead Wrasse		
Others		
TOTAL of all LRFF		

- b) Also include source country with approximate percentage from each (in terms of volume) in 2013.

Common Name	Indonesia	Philippines	Malaysia	Thailand	Australia	Others

2. What transport method(s) does your company use to import LRFF in 2013?
Please provide a breakdown (%) by mode of transport (sea, air, land) and by origin.

Giant Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Leopard Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Highfin Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Humphead Wrasse	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Flowery Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Tiger Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Sabah Grouper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

Mangrove Snapper	Sea	Air	Land
Direct from Source Countries			
Via other provinces (e.g. Guangdong) Please specify:			

This should all add up to 100%

What's the reason for this pattern?

Reason:

Do you expect this pattern will change in the future? E.g. More by sea/air/land?

Reason:

3. If sea is selected, please kindly provide the following information:

Which type of the shipment carrier was used, i.e. Cargo container or fish carrier?

What was the percentage of live fish carrying into Hong Kong by Hong Kong registered vessel (or non-Hong Kong registered vessel)?

What was the percentage of live fish carried into Hong Kong by Foreign vessel or by fish carrier or motorized sampan?

How much fish (metric ton) can a fish carrier carry per trip? What types of Carriers are the most popular, and why? How many companies/people operate these carriers?

How long does it take per shipment, i.e. Indonesia to Hong Kong for a rounded trip? Is there an issue with fish deaths during the transportation, if so, what is the average percentage lost?

4. For those 8 focal species, has the volume increased or decreased over the past 3 years

Common Name	Increased, by how much (%)	Stable	Decreased, by how much (%)
Leopard Grouper			
Highfin Grouper			
Humphead Wrasse			
Flowery Grouper			
Tiger Grouper			
Sabah Grouper			
Humphead Wrasse			
Mangrove Snapper			

5. In which particular months during the year is demand for these 6 focal species the highest? Put a tick in the month.

Common Name	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Leopard Grouper												
Highfin Grouper												
Humphead Wrasse												
Flowery Grouper												
Tiger Grouper												
Sabah Grouper												
Humphead Wrasse												
Mangrove Snapper												

6. Other than the 8 focal species, currently are there any other LRFF species of particular importance to your company in 2013? Yes / No

If Yes what are these species:

7. For 2013, upon receiving the LRFF, to which country / province / city will these 8 focal species be transported to? And by what method? Please quantify (%) What's the reason for this?

Humphead Wrasse	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Highfin Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Leopard Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Flowery Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Giant Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Tiger Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Sabah Grouper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

Mangrove Snapper	Sea	Air	Land
Place 1:			
Place 2:			
Place 3:			

If not adding up to 100%, it means local use

What’s the reason for this pattern?
Reason:

Do you expect this pattern will change in the future?
Reason:

8. Do consumers in Hong Kong have any preferences for the LRFF they eat? For example is there are preference for:

Large (>1.0kg) versus small (from 600g to 1.0kg). Why?

Wild caught versus cultured species; Why?

Certain species. Which species and why? Are there any new trends emerging on certain species which are now being more favored? If so, where do they come from?

9. There is a view held that as incomes of many Chinese citizens' increases due to economic growth in China, the demand for luxury products like LRFF will increase.

a) Have you seen evidence of this trend?

b) Has demand for LRFF in general increased over the past 3 – 5 years?

c) Do you think this will continue to increase?

d) Of the LRFF trade in China, what percentage do you think passes through HK at some point? Is there another popular location where it is held before shipment into China?



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19. In 1992, the Palawan provincial government, with assistance from the PCSD, instituted a province-wide ban of the trading of LRFF. This ban was subsequently lifted in 1993, with exceptions for certain species such as the Humphead Wrasse, although the local government in Puerto Princesa continues to administer the ban. (Source: Fabinyi, M. & Dalabajan, D. (2011). 'Policy and practice in the live reef fish for food trade: A case study from Palawan, Philippines', *Marine Policy*, vol. 35, no. 3, pp.371-378.)
The effectiveness of this ban in managing and protecting the fishery stocks has been limited, with increasing LRFF catches being exported from municipalities surrounding the provincial capital.
20. Cebu Pacific, Philippine Airlines (PAL), Air Asia and Tiger fly from Puerto Princesa to Manila.
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APPENDIX B: LEGAL

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1

IMPORT AND EXPORT ORDINANCE: PERTINENT DEFINITIONS

Import and Export Ordinance (Cap 60)

'S.2. Interpretation

"article in transit" (過境物品) means an article which—

- (a) is brought in to Hong Kong solely for the purpose of taking it out of Hong Kong; and*
- (b) remains at all times in or on the vessel or aircraft in or on which it is brought into Hong Kong;*

[...]

"cargo" (貨物) means any article which is imported or exported other than—

- (a) the necessary equipment, stores or fuel of the vessel, aircraft or vehicle in or on which the article is imported or exported;*
- (b) food and other provisions reasonably required for consumption by the crew or passengers of such vessel, aircraft or vehicle;*
- (c) items of personal property reasonably required for the personal use of the crew or passengers of such vessel, aircraft or vehicle;*
- (d) any document relating to—*
 - (i) the carriage of cargo in or on such vessel, aircraft or vehicle; or*
 - (ii) the inter-office business transactions of the owner of such vessel, aircraft or vehicle;*
- (e) articles imported or exported by a passenger of such vessel, aircraft or vehicle, in his personal baggage or carried by him; and*
- (f) any article in transit unless such article is a prohibited article not falling under paragraphs (a) to (e);*

[...]

"export" (出口、輸出) means to take, or cause to be taken, out of Hong Kong any article;

[...]

"import" (進口、輸入) means to bring, or cause to be brought, into Hong Kong any article;

[...]

"prohibited article" (禁運物品) means any article—

- (a) the import or export of which is prohibited under the provisions of this Ordinance;¹*
- (b) the import or export of which is permitted subject to the terms and conditions of a licence; or*
- (c) the import or export of which is prohibited or controlled under any other law, not being an article in transit which is excluded from such prohibition or control;*

[...]

“transshipment cargo” (轉運貨物) means any imported article that—

- (a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong; and*
- (b) is or is to be removed from the vessel, aircraft or vehicle in which it was imported and either returned to the same vessel, aircraft or vehicle or transferred to another vessel, aircraft or vehicle before being exported, whether it is or is to be transferred directly between such vessels, aircraft or vehicles or whether it is to be landed in Hong Kong after its importation and stored, pending exportation;*

[...]

“unmanifested cargo” (未列艙單貨物) means any cargo which is not recorded in a manifest;

[...]

“vessel” (船隻) includes every description of vessel used in navigation for the carriage of persons or articles, whether or not the vessel is mechanically propelled and whether or not the vessel is towed or pushed by another vessel.’ ■

2

ARTICLES EXEMPTED FROM
IMPORT/EXPORT DECLARATIONS

The full list of exempted articles is given below.

- a. *transshipment cargo consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong;*
- b. *transit cargo destined for a place outside Hong Kong and is passing through Hong Kong on the same ship or aircraft without transshipment;*
- c. *articles imported or exported by the Government or the armed forces of Hong Kong Special Administrative Region;*
- d. *ships' stores, including bunker fuel, for use by or consumption on board the vessel on which the stores are carried;*
- e. *aircraft stores, including aviation fuel, for use by or consumption on board the aircraft on which the stores are carried;*
- f. *personal baggage including any article which is shown to the satisfaction of the Commissioner to be imported or exported otherwise than for trade or business, but not including motor vehicles;*
- g. *any postal packet the contents of which are valued at less than \$4,000;*
- h. *any article –*
 - i) *which consists solely of, and is marked clearly as, advertising material and which is supplied free of charge;*
 - ii) *which consists solely of, and is marked clearly as, a sample of any product and which is intended, to the satisfaction of the Commissioner, to be distributed free of charge for the purpose of advertising the article of which it is a sample;*
 - iii) *valued at less than \$1,000, which consists solely of a sample of any product and is intended, to the satisfaction of the Commissioner, to be used for the purpose of advertising the article of which it is a sample;*
 - iv) *which is imported solely for the purpose of exhibition and which is intended, to the satisfaction of the Commissioner, to be exported after it has been exhibited and is neither sold nor disposed of in any other way in Hong Kong;*
 - v) *which is exported solely for the purpose of exhibition and which is intended, to the satisfaction of the Commissioner, to be imported after exhibition;*
 - vi) *which is imported after having been exported for exhibition in accordance with sub-paragraph (v);*
 - vii) *which is imported or exported under and in accordance with an A.T.A. Carnet;*
 - viii) *which is imported solely for the purpose of being used in a sports competition and which is intended, to the satisfaction of the Commissioner, to be exported after the competition and is neither sold nor disposed of in any other way in Hong Kong;*
 - ix) *which is exported solely for the purpose of being used in a sports competition and which is intended, to the satisfaction of the Commissioner, to be imported after the competition; or*

- x) *which is imported after having been exported for use in a sports competition in accordance with sub-paragraph (ix);*
- i. *marine fish, including edible crustaceans, molluscs and other similar edible products derived from the sea, arriving in Hong Kong direct from fishing grounds on fishing craft registered or licensed in Hong Kong;*
- j. *gifts of a personal nature where no payment is or is to be made by the receiver thereof;*
- k. *used empty freight containers which are –*
 - i) *regularly imported and exported; and*
 - ii) *used solely for the carriage of articles which are imported or exported;*
- l. *any aircraft part or accessory imported or exported by an air transport undertaking operating air services on international or regional routes; the principal place of business of which is situated outside Hong Kong, for the purpose of being – i) used in the repair or maintenance of aircraft owned or chartered by such undertaking and operated by it on any international or regional air route; or ii) given in non-profitable exchange for any other aircraft part or accessory to any other similar air transport undertaking for a similar use, and which is used for such purpose or so exchanged and used;*
- m. *any article imported by a transport undertaking operating sea or air freight transport services on international or regional routes, the principal place of business of which is situated outside Hong Kong, for the purpose of being used in the repair and maintenance of freight containers operated by that undertaking in the transport of goods by sea or air on its international or regional routes and which is used for such purpose;*
- n. *banknotes and coins after issue into circulation, being legal tender in any country;*
- o. *any radio and television production and broadcasting equipment and specially adapted radio or television vans and their equipment – i) which is owned and imported by a person established or resident outside Hong Kong; and ii) which is intended, to the satisfaction of the Commissioner, to be exported after having been used in Hong Kong;*
- p. *any means of transport for the purpose of being used as a means of conveyance at the time when it is being imported or exported, other than those which are imported or exported as cargo or part thereof.*

(The list of exempted articles as summarized on pages 1–3 of http://www.censtatd.gov.hk/FileManager/EN/Content_93/B8XX0022.pdf.) ■

3

MANIFESTS

Particulars of all cargo are to be provided in the form of 'manifests' to the C&ED, at the C&ED's request. The statutory requirements to provide manifests are set out under s.15(1) of the **Import and Export Ordinance**, and Regs 11, 12 and 12A of the **Import and Export (Registration) Regulations (Cap 60E)**.

Submission of Cargo Manifests

- (1) To facilitate cargo clearance, a carrier shall, on entering or leaving Hong Kong, furnish to C&ED a manifest made on demand under s.15 of the Import and Export Ordinance (Cap 60).²
 - (a) This is known as 'Statement 1 Cargo Manifest' in the Electronic System for submission of Cargo Manifest (EMAN) prior to or upon arrival of vessel and train, on the demand of Hong Kong Customs for clearance purposes. Statement 1 Cargo Manifest is applicable to ocean, river and rail modes of transport.
 - (b) Regarding air cargo clearance, terminal operators furnish electronic cargo information of inbound flights to C&ED via the Air Cargo Clearance System (ACCS of C&ED) prior to flight arrival. The submission of electronic cargo information by air cargo operators to C&ED has long been done via the ACCS.
- (2) Within 14 days after shipment arrival or departure, one complete set of manifest should be submitted to C&ED (the Census and Statistics Department has been authorized by C&ED to collect the manifest on its behalf) for compilation of cargo statistics, and another copy or extract to the Trade and Industry Department for trade control purpose. This is known as 'Statement 2 Cargo Manifest' in the EMAN system.³

Manifests can be submitted electronically or on paper, but it is '*the ultimate objective of the Government to accept electronic submission of cargo manifest (for the air, rail, ocean and river modes of transport) as the only means of submission*'.⁴

3.1 Import and Export Ordinance (Cap 60)

'S.15. Duty to provide particulars of all cargo

- (1) *A person specified in subsection (1A) in relation to a vessel, aircraft or vehicle shall, on any occasion that the vessel, aircraft or vehicle is entering or leaving Hong Kong—*
 - (a) *furnish any member of the Customs and Excise Service of or above the rank of Inspector a manifest in respect of the cargo being imported or exported in or on the vessel, aircraft or vehicle if he is requested to do so by any such member of the Customs and Excise Service; and*

- (b) *allow any member of the Customs and Excise Service to board the vessel, aircraft or vehicle, inspect the cargo and search the vessel for contraband.*

[...]

(1B) For the purpose of any requirement under subsection (1)(a) to furnish a member of the Customs and Excise Service with a manifest, the manifest may—

- (a) be given to the member of the Customs and Excise Service in paper form;*
- (b) be given or sent to the member of the Customs and Excise Service in the form of an electronic record, but only if the manner and format in which the information is given or sent comply with any requirements specified under section 11(2) of the Electronic Transactions Ordinance (Cap 553) in relation to this Ordinance; or*
- (c) be sent to the member of the Customs and Excise Service using services provided by a specified body.*

(1C) In this section, “manifest” (艙單) means a record prepared as a manifest and containing such of the particulars prescribed under section 17 as the member of the Customs and Excise Service considers sufficient for his purposes.

- (2) Any person who contravenes subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine of \$1,000 and to imprisonment for 1 month.*

[...]

S.17. All cargo to be recorded in manifest

(1) All cargo which is imported or exported shall be recorded in a manifest which shall contain such particulars as the Commissioner may prescribe.

- (2) For the purposes of subsection (1) the Commissioner may, by notice published in the Gazette, prescribe the particulars of the cargo and the particulars of the consignment of cargo to be recorded.*

S.18. Offence of importing or exporting unmanifested cargo

(1) Any person who—

- (a) imports any unmanifested cargo; or*
- (b) exports any unmanifested cargo, shall be guilty of an offence and shall be liable—*
 - (i) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;*
 - (ii) on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.*

- (2) It shall be a defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested.*

S.18A. Assisting, etc., in export of unmanifested cargo

(1) Any person who knowingly—

- (a) has possession of any cargo;*
- (b) assists with the carrying, removing, depositing, harbouring, keeping or concealing of any cargo; or*

- (c) *otherwise deals with any cargo, with intent to export the cargo without a manifest or with intent to assist another person to export the cargo without a manifest is guilty of an offence and liable—*
 - (i) *on summary conviction to a fine of \$500,000 and to imprisonment for 2 years;*
 - (ii) *on conviction on indictment to a fine of \$2,000,000 and to imprisonment for 7 years.*
- (2) *Any person who—*
 - (a) *has possession of any cargo;*
 - (b) *assists with the carrying, removing, depositing, harbouring, keeping or concealing of any cargo; or*
 - (c) *otherwise deals with any cargo, in circumstances that give rise to a reasonable suspicion that there is intent on the part of that person to export the cargo without a manifest or to assist another person to export the cargo without a manifest, the first mentioned person will be presumed to have such intent in the absence of evidence to the contrary.'*

3.2 Import and Export (Registration) Regulations (Cap 60E)

Reg 11. Import manifests and other particulars

- (1) *The manifest of the cargo imported in every vessel, aircraft or vehicle which arrives within Hong Kong shall-*
 - (a) *give such particulars of each article therein as may be prescribed by notice under section 17 of the Ordinance;*

[...]

- (2) *Every manifest required to be lodged under paragraph (1) shall be lodged within 14 days after the arrival of the vessel, aircraft or vehicle within Hong Kong on the occasion concerned.*

[...]

Reg 12. Export manifests

- (1) *The manifest of the cargo exported in every vessel, aircraft or vehicle which leaves Hong Kong shall-*
 - (a) *give such particulars of each article therein as may be prescribed by notice under section 17 of the Ordinance;*

[...]

- (2) *Every manifest required to be lodged under paragraph (1) shall be lodged within 14 days after the departure of the vessel, aircraft or vehicle within Hong Kong on the occasion concerned.*

[...]

Reg 12A. Whether manifest under regulation 11 or 12 is additional to manifest under section 15 of the Ordinance

- (1) The requirement for a manifest to be lodged under regulation 11 or 12 shall be deemed to have been complied with where a manifest has been provided under section 15 of the Ordinance on the occasion of a vessel, aircraft or vehicle entering or leaving Hong Kong, if the manifest provided under section 15 of the Ordinance-*
 - (a) contains all the particulars prescribed under section 17 of the Ordinance; and*
 - (b) was sent using services provided by a specified body, as provided in section 15(1B)(c) of the Ordinance.*
- (2) Where paragraph (1) has effect, it shall also be deemed that-*
 - (a) the manifest was lodged under regulation 11 or 12 at the time it was provided under section 15 of the Ordinance; and*
 - (b) the manifest was lodged under regulation 11 or 12 using services provided by a specified body.*
- (3) Except as provided in paragraph (1), a manifest required to be lodged under regulation 11 or 12 shall be in addition to any manifest required to be provided under section 15 of the Ordinance.'*

3.3 Import and Export Manifests Notice (Cap 60C)

'Paragraph 2. Import manifest

- (1) An import manifest relating to the import of any cargo into Hong Kong shall, from 1 January 1984, contain the particulars of the cargo as set out in sub-paragraphs (2) and (3).*
- (2) In the case of cargo in packages, the particulars referred to in sub-paragraph (1) are-*
 - (a) where the cargo is-*
 - (i) carried by vessel, the number, description, gross weight and gross volume of the packages;*
 - (ii) carried otherwise than by vessel, the number, description and either the gross weight or the gross volume of the packages;*
 - (b) the distinguishing marks or numbers appearing on each package;*
 - (c) a description of the articles contained in each package;*
 - (d) the name and address of the consignor of each package;*
 - (e) the name and address of the consignee of each package;*
 - (f) the place at which each package was loaded in or on to the vessel, aircraft or vehicle;*
 - (g) the reference number and letters of the bill of lading, air waybill or air consignment note issued in respect of the consignment of each package;*
 - (h) a clear indication whether or not the cargo is transshipment cargo;*
 - (i) the import licence number, where applicable;*
 - (j) the name, date of arrival and the voyage, flight or vehicle number of the carrying vessel, aircraft or vehicle;*
 - (k) the container numbers, if the cargo is containerized, and a clear indication whether or not such containers are refrigerated containers.*

- (3) *In the case of cargo in bulk, the particulars referred to in sub-paragraph (1) are-*
- (a) *where the cargo is-*
 - (i) *carried by vessel, the description, gross weight and gross volume of the cargo;*
 - (ii) *carried otherwise than by vessel, the description and either the gross weight or the gross volume of the cargo;*
 - (b) *the quantity of the cargo, where applicable;*
 - (c) *the distinguishing marks or numbers appearing on the cargo, where applicable;*
 - (d) *the name and address of the consignor of the cargo;*
 - (e) *the name and address of the consignee of the cargo;*
 - (f) *the place at which the cargo was loaded in or on to the vessel, aircraft or vehicle;*
 - (g) *the reference number and letters of the bill of lading, air waybill or air consignment note issued in respect of the consignment of the cargo;*
 - (h) *a clear indication whether or not the cargo is transshipment cargo;*
 - (i) *the import licence number, where applicable;*
 - (j) *the name, date of arrival and the voyage, flight or vehicle number of the carrying vessel, aircraft or vehicle;*
 - (k) *the container numbers, if the cargo is containerized, and a clear indication whether or not such containers are refrigerated containers.’ ■*

4

DECLARATIONS

The statutory requirements and sanctions concerning import declarations are set out in the **Import and Export (Registration) Regulations (Cap 60E)**.

4.1 Import and Export (Registration) Regulations (Cap 60E)

'Reg 4. Import declarations

(1) *Every person who imports any article other than an exempted article shall lodge with the Commissioner an accurate and complete import declaration relating to such article using services provided by a specified body, in accordance with the requirements that the Commissioner may specify. (L.N. 322 of 1999)*

(2) *Every declaration required to be lodged under paragraph (1) shall be lodged within 14 days after the importation of the article to which it relates.*

(3) *Only one declaration is required in respect of imported articles that-*
 (a) *were imported under one bill of lading or air waybill; or*
 (b) *(i) have item code numbers with identical first 4 digits;*
 (ii) were imported in the same ship, vehicle, train or aircraft; and
 (iii) were consigned from the same country.

[...]

(3AA) *Notwithstanding paragraph (3), a separate declaration shall be lodged in respect of food items specified in Appendix I of the Imports and Exports Classification List. (L.N. 384 of 1987)⁵*

[...]

(5) *Any person who, in contravention of the provisions of paragraph (1), knowingly or recklessly lodges any declaration with the Commissioner that is inaccurate in any material particular shall be guilty of an offence and shall be liable on summary conviction to a fine of \$10000.*

(6) *Every person who, being required to lodge a declaration under paragraph (1), fails or neglects, without reasonable excuse, to do so using services provided by a specified body within the period specified in paragraph (2), or, where he has such excuse, fails or neglects to lodge such declaration in such manner as soon as is practicable after the cessation of such excuse, shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1000, and, commencing on the day following the date of conviction, to a fine of \$100 in respect of every day during which his failure or neglect to lodge the declaration in that manner continues. (L.N. 33 of 2003)'*

Statutory requirements and sanctions concerning export declarations are similar to those for imports and are set out in full below. Note that re-exports are subject to the same declaration requirements.

'Reg 5. Export declarations

- (1) *Every person who exports or re-exports any article other than an exempted article shall lodge with the Commissioner an accurate and complete export declaration relating to such article using services provided by a specified body, in accordance with the requirements that the Commissioner may specify. (L.N. 322 of 1999)*
- (2) *Every declaration required to be lodged under paragraph (1) shall be lodged within 14 days after the exportation of the article to which it relates.*
- [...]
- (5) *Any person who, in contravention of the provisions of paragraph (1), knowingly or recklessly lodges any declaration with the Commissioner that is inaccurate in any material particular shall be guilty of an offence and shall be liable on summary conviction to a fine of \$10000. (L.N. 294 of 1982; L.N. 260 of 1983)*
- (6) *Every person who, being required to lodge a declaration under paragraph (1), fails or neglects, without reasonable excuse, to do so using services provided by a specified body within the period specified in paragraph (2), or, where he has such excuse, fails or neglects to lodge such declaration in such manner as soon as is practicable after the cessation of such excuse, shall be guilty of an offence and shall be liable on summary conviction to a fine of \$1000 and, commencing on the day following the date of conviction, to a fine of \$100 in respect of every day during which his failure or neglect to lodge the declaration in that manner continues. (L.N. 33 of 2003)' ■*

INFORMATION REQUIRED TO BE SUBMITTED IN IMPORT, EXPORT AND RE-EXPORT DECLARATIONS⁶

Category	Information Required	
Importer/ Exporter Details	Name	
	Address, Telephone and Fax Numbers	
	Business Registration Number/Hong Kong Identity Card Number	
Shipment Details	For Imports	Arrival Date
		Port/Place of Loading The port/place, not the country/territory, at which the goods were loaded onto the means of transport used for the carriage of the goods.
		Exporting Country The country/territory from which the goods are originally dispatched to Hong Kong with or without breaking bulk in the course of transportation, but without any commercial transaction in any intermediate country/territory. It is not the country/territory to which the cargo is intended to deliver.

Category	Information Required	
Shipment Details (cont.)	For Exports/Re-exports	Consignee's Name and Address The name and address of the party outside Hong Kong to which the goods are consigned.
		Departure Date
		Port/Place of Discharge The port/place, not the country/territory, at which the goods were unloaded from the means of transport used for the carriage of the goods.
		Place of Final Destination if on Carriage
		Destination Country The last country/territory to which the goods are consigned from Hong Kong with or without breaking bulk in the course of transportation, but without any commercial transaction in any intermediate country/territory.
Consolidation Indicator	If the shipment is forwarded by a cargo forwarder/consolidator, indicate and give the house bill of lading no. or house air waybill no. assigned by the forwarder/consolidator.	
Transportation Mode Details (Omitting rail, mail and personal baggage modes)	For Air Mode Air transport mode also includes cargoes forwarded by aircraft through on-board courier or courier companies.	Flight Number
		Air Waybill Numbers
	For Ocean/River Mode 'Ocean' does not include water transport within the river trade limits defined in note 4 below, but includes sea transport with all other countries/territories. 'River' refers to transport by vessels in waters in the vicinity of Hong Kong, the Pearl River and other inland waterways in Guangdong Province and Guangxi Autonomous Region which are accessible from waters in the vicinity of Hong Kong.	Vessel Name The full name of the vessel is required. Dummy vessel name such as 'A Vessel' is not allowed.
		Voyage Number
		Bill of Lading Numbers
	For Road Mode	Vehicle Registration Number
		Customs Cargo Reference Number The unique reference number assigned by the Road Cargo System of the Customs and Excise Department to identify a consignment transported by road.
Commodity Details	Origin Country The country/territory in which the goods are produced or manufactured. Give the name of the country/territory in which the goods are produced or manufactured for each commodity item. For domestic exports, the origin country/territory must be Hong Kong.	
	Goods Description Give full particulars of the goods such as usage, method of manufacture, material used, and where appropriate, proper chemical or technical name. Give the goods description in specific terms, such as 'microwave ovens' but not 'electrical appliances'.	
	FOB Value HK – For Exports/Re-exports The full cost of the goods up to loading of the goods on to the exporting vessel, vehicle or aircraft, including the cost of goods and any other charges. The value should be in Hong Kong Dollars.	
Packaging Details	Marks and Numbers	
	Container Number	
	Number and Type of Packages	
	Total Number of Packages	
Submission Details	Unique Declaration Reference A new one should be assigned for each new declaration submitted.	
	Notice Reference Number	
	Unique Consignment Reference A unique reference number for the batch of line items that should be transported in one go according to the commercial contract between the supplier and the customer.	

5

HONG KONG HARMONIZED COMMODITY DESCRIPTION AND CODING

The Harmonized Commodity Description and Coding System (HS) was designed by the World Customs Organization to serve as a multipurpose classification suitable for use by customs and statistical authorities, traders, carriers and others concerned with international trade. Although Hong Kong is not a Contracting Party to the International Convention on the HS, Hong Kong has adopted the HS in full for trade declaration purposes since 1 January 1992 (the HKHS). The HKHS uses an 8-digit classification system. The additional 7th and 8th digits are used to further breakdown the commodity classification to meet the needs of Hong Kong. The HKHS undergoes annual amendments to reflect changes in trade patterns and technology.⁷

LRFF fall within the food items classified in Appendix I of the current HKHS, and the relevant Import Declaration form is Form 1A.⁸ A payment of 20 cents as Declaration Charge per declaration irrespective of value is required.⁹ The relevant Export/Re-export form is Form 2.¹⁰ ■



FISH MARKETING REGIME

6.1 Marine Fish (Marketing and Exportation) Regulations (Cap 291A)

- **Reg 1B:** Grants the power to inspect documents.
- **Reg 2:** Controls the landing of fish and the need for permits. Fish without a permit may be landed from a vessel only at a market (controlled 'ports'). Note that *'marine fish that (a) has been caught for sport or pleasure; (b) has not been sold and is not intended for sale or export; or (c) has been sold retail on the vessel from which such fish was caught, may be landed, without a permit, anywhere in Hong Kong'*.

The last category, *'fish that has been sold retail on the vessel'*, may present problems, as it can allow people to directly purchase fish from a vessel that lands its own catches without a permit. But this is unlikely to become common practice. *'Sold retail'* is understood as *'sale to the end user'*. Since fish traders importing fish are not the end users, they would not be covered by this regulation.

- **Reg 3:** Limits quantity of transportation of marine fish.
- **Reg 4A:** Grants powers to require export permits where *'the Chief Executive in Council considers that the exportation from Hong Kong of any species of marine fish would, for any reason, be contrary to the public interest'*.
- **Reg 4B:** Requires permits for the export of specified fish.
- **Reg 4C:** Allows for applications for export permits. The applicant is required to give information on, inter alia, consignee, species and quantity of fish, place at which fish is or will be prepared for export, any permit issued in connection with the purchase of the fish, and the country or place from which the fish was exported.¹¹
- **Reg 4E:** Requires the production of export permits to a designated officer.
- **Reg 4G:** Stipulates criminal liability. Any person who
 - (a) *contravenes regulation 4B [exporting only with permit] or 4E(1) [production of permit to designated officer]; or*
 - (b) *makes any statement in an application under regulation 4C for an export permit which to his knowledge is false or misleading in a material particular, commits an offence and is liable to a fine of \$10000 and to imprisonment for 6 months.*

Note: Powers relating to Reg 4A refer only to the export, not the import, of fish. Trans-shipment is generally exempted from these regulations, since this is referred to as *'marine fish as transshipment cargo'*. See Regs 2A, 3A and 4BA.

6.2 Marine Fish (Marketing) By-laws (Cap 291B)

Part IV: Control Over Purchasers

- **Bylaw 11:** Restriction of purchasers at a market to registered buyers or nominee buyers.
- **Bylaw 12:** Grants power to the manager to refuse an application to become a registered buyer on the grounds that the applicant *'is not a suitable person'* or *'has no bona fide interest in the wholesale marketing of marine fish'*.
- **Bylaw 24:** An offence is committed if a person *'attempts to purchase marine fish, when he is not authorized to do so under by-law 11'*, or *'wilfully supplies any false information in an application for registration under by-law 12'*. Such persons *'shall be liable on summary conviction to a fine of five hundred dollars'*. ■



CODE OF PRACTICE ON KEEPING RECORDS RELATING TO FOOD

A template record is available in the Code of Practice on Keeping Records Relating to Food

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Appendix II

紀錄範本²
TEMPLATE RECORD^{2nd}
本地獲取食物的紀錄
RECORD OF LOCAL ACQUISITION OF FOOD

20 年 月份收貨紀錄表 (本地食物) Record of local acquisition of food for the month of 20					
公司名稱: Name of company					
收貨日期 Date of food acquired	食物名稱 Food description	數量 Quantity	供應商資料 Particulars of supplier		
			名稱 Name	聯絡電話 Contact tel. no.	地址 Address

² 此範本僅供參考之用，法例並無規定食物商須使用此範本

^{2nd} This template is for reference only and it is not a legal requirement for traders to follow

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Appendix VI

紀錄範本²
TEMPLATE RECORD^{2nd}
捕撈本地水產的紀錄
RECORD OF CAPTURE OF LOCAL AQUATIC PRODUCTS

漁船編號: Fish vessel No.:	船主姓名: Name of fish vessel owner:			
捕撈地區: Capture area:				
捕撈日期/期間: Date/period of capture:				
水產名稱: Name of aquatic products:	(1)	(2)	(3)	(4)
	(5)	(6)	(7)	(8)
數量 (公斤計) Quantity (in kg)	(1)	(2)	(3)	(4)
	(5)	(6)	(7)	(8)

² 此範本僅供參考之用，法例並無規定食物商須使用此範本

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Appendix III

紀錄範本²
TEMPLATE RECORD^{2nd}
獲取進口食物的紀錄
RECORD OF ACQUISITION OF IMPORTED FOOD

20 年 月份收貨紀錄表 (進口食物) Record of acquisition of imported food for the month of 20						
公司名稱: Name of company						
收貨日期 Date of food acquired	食物名稱 Food description	數量 Quantity	供應商資料 Particulars of supplier			食物出口國家/地方 Exporting country/ place
			名稱 Name	聯絡電話 Contact tel. no.	地址 Address	

² 此範本僅供參考之用，法例並無規定食物商須使用此範本

^{2nd} This template is for reference only and it is not a legal requirement for traders to follow

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Appendix VII

紀錄範本²
TEMPLATE RECORD^{2nd}
以批發方式供應食物的紀錄
RECORD OF WHOLESALE SUPPLY OF FOOD

20 年 月份批發供應紀錄表 Record of wholesale supply of food for the month of in 20						
公司名稱: Name of company						
供應日期 Date of supply	食物名稱 Food description	數量 Quantity	收貨人資料 Particulars of the person to whom the food was supplied			
			名稱 Name	聯絡電話 Contact tel. no.	地址 Address	

² 此範本僅供參考之用，法例並無規定食物商須使用此範本

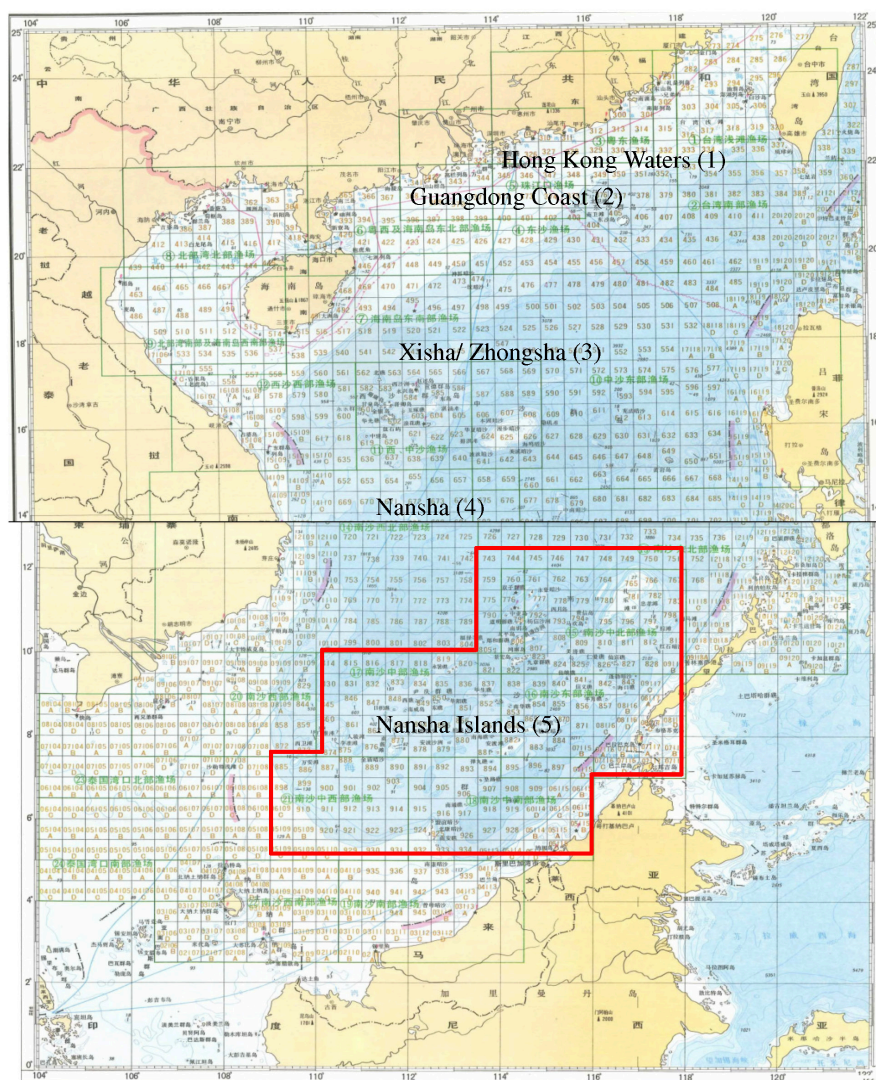
^{2nd} This template is for reference only and it is not a legal requirement for traders to follow

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Appendix V

South Sea Fishing Map



- (1) Guangdong Coast (including fishing grounds of East Guangdong, West Guangdong, Dongsha, mouth of Pearl River, Hainan and Gulf of Tonkin)
- (2) Xisha/ Zhongsha fishing grounds
- (3) Nansha fishing grounds
- (4) Nansha Islands

8

FOOD SAFETY ORDINANCE

Food Safety Ordinance (Cap 612)

'S.22. Record of acquisition of imported food

- (1) *A person who, in the course of business, imports food must record the following information about the acquisition of the food—*
- (a) *the date the food was acquired;*
 - (b) *the name and contact details of the person from whom the food was acquired;*
 - (c) *the place from where the food was imported;*
 - (d) *the total quantity of the food;*
 - (e) *a description of the food.*
- (2) *A record must be made under this section at or before the time the food is imported.*
[...]
- (4) *This section does not apply—*
[...]
- (b) *to an acquisition of food that is imported solely for the purpose of exporting it, if—*
 - (i) *the food is air transhipment cargo; or*
 - (ii) *during the period between import and export, the food remains in the vessel, vehicle or aircraft in which it was imported; or*
 - (c) *to an acquisition of food that is imported solely in the course of business of a food transport operator.*
- (5) *A person commits an offence if the person—*
- (a) *without reasonable excuse, fails to make a record in accordance with this section;*
 - (b) *includes in a record information that the person knows is false in a material particular; or*
 - (c) *recklessly includes in a record information that is false in a material particular.*
- (2) *A person who commits an offence under subsection (5) is liable to a fine at level 3 and to imprisonment for 3 months.*

S.23. Capture of local aquatic products

- (1) *A person who captures local aquatic products and who, in the course of business, supplies them in Hong Kong must record the following information about the capture—*
- (a) *the date or period of the capture;*
 - (b) *the common name of the local aquatic products;*
 - (c) *the total quantity of the local aquatic products;*
 - (d) *the area of the capture.*

- (2) A record must be made under this section at or before the time the supply takes place.*
- (3) This section does not apply to a person who is exempted, or is in a class of persons that is exempted, under section 29.*
- (4) A person commits an offence if the person—*
 - (a) without reasonable excuse, fails to make a record in accordance with this section;*
 - (b) includes in a record information that the person knows is false in a material particular; or*
 - (c) recklessly includes in a record information that is false in a material particular.*
- (5) A person who commits an offence under subsection (4) is liable to a fine at level 3 and to imprisonment for 3 months.’ ■*

9

THE ENDANGERED
SPECIES REGIME: CITES**Protection of Endangered Species of Animals and Plants Ordinance
(Cap 586)*****‘S.3. Meaning of “in transit”***

For the purposes of this Ordinance, a thing is in transit if—

- (a) it is brought into Hong Kong from a place outside Hong Kong;*
- (b) it is in the process of being taken to another place outside Hong Kong; and*
- (c) it remains under the control of the Director or an authorized officer from the time it is brought into Hong Kong up to the time it is taken outside Hong Kong.’*

S.22 places restrictions on possession or having control of endangered live animals in transit.

‘S.22. Import, re-export and possession or control of specimens in transit

(2) A person may import, re-export or have in his possession or under his control a live animal of a scheduled species in transit if—

- (a) upon the landing of the animal in Hong Kong, he produces, or causes to be produced, to an authorized officer a Convention certifying document or certificate in lieu in respect of the animal; and*
- (b) subject to subsection (3), at least 3 working days before the intended date on which the animal is to be brought into Hong Kong, the Director receives a notification made to him in writing—*
 - (i) providing a description and the particulars of the animal;*
 - (ii) stating the intended date on which the animal is to be brought into Hong Kong; and*
 - (iii) where the animal is to be brought into Hong Kong by a vessel, vehicle, train or aircraft, providing particulars of the vessel, vehicle, train or aircraft so as to enable the Director to locate it immediately upon its arrival in Hong Kong.’*

Ss.29 & 30 allow an officer, where he reasonably suspects a live animal is one of the scheduled species under CITES, to require a person in possession or control of the live animal to give its scientific name and common name and/or to require the animal be produced for inspection. This power applies regardless of whether the animal:

- (a) is being or has been imported;
- (b) is being or has been introduced from the sea;¹²
- (c) is in transit;
- (d) is being or is to be exported; or
- (e) is being or is to be re-exported. ■

10

HONG KONG'S FULFILMENT OF ITS OBLIGATIONS AS THE FLAG STATE

'B. Fulfilment of obligations as the flag state by Hong Kong

As defined by Art 94 of the United Nations Convention on the Law of the Sea (UNCLOS), the flag State has overall responsibility for all ships granted the right to fly its flag. In other words, the flag State must exercise, under its internal law, its jurisdiction and control over every ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship and ensure the ship's full compliance with all applicable international conventions. Unlike the case with [Flags of Convenience ('FOC')] States, the Marine Department of Hong Kong carries out strict supervision of Hong Kong-registered ships. The Flag State Quality Control System (FSQC) was introduced to ensure that the ship management company discharges its responsibilities properly according to international maritime conventions. In 2008, when the shipping market took a turn for the better, the Hong Kong Shipping Registry did not entertain the application of certain Mainland ships because of their failure to meet the construction standards of the China Classification Society (CCS). Therefore, it is clear that the Hong Kong Shipping Registry takes care that quantity does not override quality. Regarding classification societies, the Marine Department has recognised nine of the 11 member societies comprising the International Association of Classification Societies (IACS), except for the Russian Maritime Register of Shipping.

The FSQC System, similar to FSC, is supported by a computer-based information system to monitor the quality of Hong Kong-registered ships. With the information collected and analysed, a ship suspected of undesirable conditions will be identified and selected for an FSQC inspection. All FSQC ship inspections and company audits are initially carried out free of charge. If a Hong Kong-registered ship is detained abroad with serious deficiencies under [Port State Control ('PSC')] inspection or has been subject to a serious accident, the Director of Marine may request a special inspection of the ship by a Marine Department surveyor, and the relevant fees will be charged to the shipowner for the inspection and company audit.

In the context of changing a ship's nationality, PSC inspections' findings of deficiency and detention as revealed by previous records are taken seriously by the Marine Department and may precipitate an FSQC inspection of the registered ship, with resulting recommendations on equipment and manning. Here also, the nature of the deficiencies will be specified on the inspection report and improvements suggested. Furthermore, an FSQC audit of the ships' safety management systems may be carried out by the Marine Department at regular intervals. Therefore, it is the rigid and efficient supervision of the Marine Department that minimises Hong Kong-registered ships' risk of detention under PSC.

Under the FSQC system, the Marine Department will not be directly involved in the surveys and issuance of relevant certificates to Hong Kong-registered cargo ships except when requested by the shipowners. The following classification societies, all Members of IACS, are authorised to carry out statutory surveys and to issue related certificates on behalf of the flag Administration: the American Bureau of Shipping (ABS); Bureau Veritas (BV); the China Classification Society (CCS); Det Norske Veritas (DNV); Germanischer Lloyd's (GL); the Korean Register of Shipping (KR); Lloyd's Register (LR); Nippon Kaiji Kyokai (NKK); and Registro Italiano Navale (RINA). To discharge the responsibility of supervision, flag States usually rely on classification societies authorised as recognised organisations (RO) to conduct surveys on their behalf, which has been permitted by most international maritime conventions. There are two types of surveys conducted by classification societies, namely classification surveys and statutory surveys. As per the rules of the classification societies, classification surveys will be carried out on the condition of a vessel that applies to enter or maintain a specific classification. On the other hand, a statutory survey is a compulsory assessment, as per the regulations of international conventions and flag States, on the condition of a vessel. The purpose of this kind of survey is to secure the safety of people's lives and property, as well as to protect the marine environment.

C. The low detention rate of Hong Kong flag ships

Due to the strict observance by the Hong Kong authorities of their obligation of supervision, the PSC detention rates for Hong Kong-registered ships remain low. Responsibility for monitoring the compliance of ships with international standards lies primarily with the flag State. However, there has been a serious failure on the part of a number of flag States to implement and enforce international standards. Consequently, as a second line of defence against substandard shipping, monitoring of compliance with international standards must also be carried out by the port State to protect its seashore, ports and personnel from injuries caused by foreign vessels that do not measure up to international standards. Both PSC and FSC belong to the ship safety examination. By FSC we mean the regulatory inspection over the ships' condition, which is exercised by the country of registry under its internal law. On the other hand, PSC is the inspection of foreign ships in national ports to verify that the ship is manned and operated in compliance with international conventions and which is originally intended to be a back up to FSC. The PSC detention rates for FOC ships are quite high due to the neglect of careful management by these flag States.¹³ ■

11

SENTENCING IN RESPECT OF SPECIFIED OFFENCES

Organized and Serious Crimes Ordinance (Cap 455)***'S.27. Sentencing in respect of specified offences***

- (1) *This section applies where, in proceedings in the District Court or the Court of First Instance, a person has been convicted of a specified offence.*
- (2) *The prosecution may furnish information to the court regarding any or all of the following—*
- (a) *the nature and extent of any harm caused, directly or indirectly, to any person by the act in respect of which the person has been so convicted;*
 - (b) *the nature and extent of any benefit, whether financial or otherwise, that accrued or was intended to accrue, directly or indirectly, to that or any other person from that act;*
 - (c) *the prevalence of that specified offence;*
 - (d) *the nature and extent of any harm, whether direct or indirect, caused to the community by recent occurrences of that specified offence;*
 - (e) *the nature and extent of the total benefit, whether financial or otherwise, accruing directly or indirectly to any person from recent occurrences of that specified offence.*
- (3) *Only information that would be admissible in evidence in criminal proceedings (including proceedings in respect of sentencing) may be furnished to the court under subsection (2).*
- (4) ***If the prosecution so requests, the court shall determine whether the evidence adduced at the trial or, if the conviction followed a plea of guilty, the matters accepted by the court prior to conviction show that the specified offence was an organized crime.***
- [...]
- (8) *If in making a determination under subsection (4) the court determines that the specified offence was an organized crime by reason of its connection with the activities of a particular triad society, the prosecution may furnish information to the court regarding the nature and extent of those activities and the way in which the offence was connected with those activities.*
- (9) *The court may receive and take into account regarding a matter referred to in subsection (8) any information which it considers reliable in the circumstances.*

(10) Where the prosecution seeks to furnish information to a court under this section regarding any matter referred to in subsection (2) or (8), the court shall allow the person convicted an opportunity to object to the reception of the information, and where any such information is received by the court the court shall allow the person an opportunity to furnish information regarding that same matter.

(11) Subject to subsections (12) and (13), where a court is satisfied beyond reasonable doubt—

(a) that the specified offence was an organized crime; or

(b) as to any information furnished under subsection (2) or (8),

or where any such matter is agreed by the person convicted, the court shall have regard to such matter when it passes a sentence on the person for the relevant specified offence and may, if it thinks fit, pass a sentence on the person for that offence that is more severe than the sentence it would, in the absence of such matter, have passed.” ■

12

THE RIGHT OF
HOT PURSUIT**United Nations Convention on the Law of the Sea, Part VII S.1.***'Article 111. Right of hot pursuit*

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

[...]

- 3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.*
- 4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.'*

Customs and police vessels can carry out the right of hot pursuit, as they fall under the category of 'ships or aircraft on government service authorized to do so' under Article 23(4).¹⁴

- '5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.'* ■

13

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: RELEVANT PROVISIONS

United Nations Convention on the Law of the Sea, Part II S.3.

'Article 21. Laws and regulations of the coastal State relating to innocent passage

1. *The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of [...] (e) the prevention of infringement of the fisheries laws and regulations of the coastal State; [...] and (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.*

[...]

3. *The coastal State shall give due publicity to all such laws and regulations.*
4. *Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.'*

United Nations Convention on the Law of the Sea, Part V

'Article 61. Conservation of the living resources

2. *The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources **in the exclusive economic zone** is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.*
3. *Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.*
4. *In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.*

5. *Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.*

Article 62. Utilization of the living resources

4. *Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. [...]*

Article 63. Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. *Where the same stock or stocks of associated species **occur within the exclusive economic zones of two or more coastal States**, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.*
2. *Where the same stock or stocks of associated species **occur both within the exclusive economic zone and in an area beyond and adjacent to the zone**, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.*

Article 73. Enforcement of laws and regulations of the coastal State

1. *The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
[...]*
3. *Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.*
4. *In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.'*

United Nations Convention on the Law of the Sea, Part VII S.1.

'Article 87. Freedom of the high seas

1. *The high seas are open to all States [...] Freedom of the high seas comprises, inter alia, both for coastal and land-locked States [...] (e) freedom of fishing, subject to the conditions laid down in section 2 [...]*

United Nations Convention on the Law of the Sea, Part VII S.2.

'Article 116. Right to fish on the high seas

All States have the right for their nationals to engage in fishing on the high seas subject to:

- (a) *their treaty obligations;*
- (b) *the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67 [...]*

Article 117. Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas

*All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary **for the conservation of the living resources of the high seas.***

Article 118. Cooperation of States in the conservation and management of living resources

States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Article 119. Conservation of the living resources of the high seas

1. *In determining the allowable catch and establishing other conservation measures for the living resources in the high seas, States shall:*
 - (c) *take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;*
 - (d) *take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.'* ■



FAO COMPLIANCE AGREEMENT

Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

- **Article III:** Sets out the responsibility of the flag State. In essence, it places an obligation on the flag State to take 'such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures'. Further duties are stipulated to supplement these basic obligations.
- **Article IV:** Requires each Party to maintain a record of fishing vessels entitled to fly its flag and authorized for use on the high seas, and to take such measures as are necessary to ensure that all such vessels are entered in that record.
- **Article V:** Deals with international cooperation and, 'in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures'. A further measure relates to port State control. Where the port state has reasonable grounds for believing that the fishing vessel in its port has been used for an activity that undermines the effectiveness of international conservation and management measures, it shall promptly notify the flag State accordingly. 'Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.'
- **Article VI:** Deals with the exchange of information. Each Party is to make available to FAO certain information required to be maintained in the record of fishing vessels.

The text and summary of the treaty is available at <http://www.fao.org/fishery/topic/14766/en>. ■

15

THE CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

'Article 2. Objectives of the Code

The objectives of the Code are to:

- a. establish principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects;*
- b. establish principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development;*
- c. serve as an instrument of reference to help States to establish or to improve the legal and institutional framework required for the exercise of responsible fisheries and in the formulation and implementation of appropriate measures;*
- d. provide guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary;*
- e. facilitate and promote technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development;*
- f. promote the contribution of fisheries to food security and food quality, giving priority to the nutritional needs of local communities;*
- g. promote protection of living aquatic resources and their environments and coastal areas;*
- h. promote the trade of fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade;*
- i. promote research on fisheries as well as on associated ecosystems and relevant environmental factors; and*
- j. provide standards of conduct for all persons involved in the fisheries sector.'*

'Article 6. General principles

6.3 *States should prevent overfishing and excess fishing capacity and should implement management measures to ensure that fishing effort is commensurate with the productive capacity of the fishery resources and their sustainable utilization. States should take measures to rehabilitate populations as far as possible and when appropriate.*

6.4 *Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat, as well as relevant environmental, economic and social factors. States should assign priority to undertake research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with the ecosystem. In recognizing the transboundary nature of many aquatic ecosystems, States should encourage bilateral and multilateral cooperation in research, as appropriate.*

6.5 States and subregional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment.

[...]

*6.10 Within their respective competences and in accordance with international law, including within the framework of subregional or regional fisheries conservation and management organizations or arrangements, **States should ensure compliance with and enforcement of conservation and management measures and establish effective mechanisms, as appropriate, to monitor and control the activities of fishing vessels and fishing support vessels.***

The inclusion of 'fishing support vessels' in the principle to 'monitor and control' appears to include LRFF carriers and transport vessels.

*'6.11 States authorizing fishing and fishing support vessels to fly their flags should exercise effective control over those vessels so as to ensure the proper application of this Code. **They should ensure that the activities of such vessels do not undermine the effectiveness of conservation and management measures** taken in accordance with international law and adopted at the national, subregional, regional or global levels. **States should also ensure that vessels flying their flags fulfil their obligations concerning the collection and provision of data relating to their fishing activities.***

*6.12 States should, within their respective competences and in accordance with international law, cooperate at subregional, regional and global levels through fisheries management organizations, other international agreements or other arrangements to promote conservation and management, ensure responsible fishing and ensure effective conservation and protection of living aquatic resources throughout their range of distribution, taking into account the need for compatible measures in areas within **and beyond national jurisdiction.***

6.13 States should, to the extent permitted by national laws and regulations, ensure that decision making processes are transparent and achieve timely solutions to urgent matters. States, in accordance with appropriate procedures, should facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision making with respect to the development of laws and policies related to fisheries management, development, international lending and aid.

*6.14 International trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement and other relevant international agreements. **States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to this trade, environmental degradation or negative social, including nutritional, impacts.***

'Article 8.3. Port State duties

8.3.1 Port States should take, through procedures established in their national legislation, in accordance with international law, including applicable international agreements or arrangements, such measures as are necessary to achieve and to assist other States in achieving the objectives of this Code, and should make known to other States details of regulations and measures they have established for this purpose. When taking such measures a port State should not discriminate in form or in fact against the vessels of any other State.

8.3.2 Port States should provide such assistance to flag States as is appropriate, in accordance with the national laws of the port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.' ■

16

PORT STATE MEASURES AGREEMENT

A Guide to the Background and Implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

4.2. Legislation

4.2.1 General considerations

Aim and context of legislative review. As each State embarks upon implementing the Agreement's legal requirements in its national legislation, it should undertake a broader and deeper review of its national laws, regulations and practices relating to IUU fishing [...]

Scope of the Agreement. States must also be mindful that the Agreement is not restricted to IUU fishing activities, but also covers "fishing related activities". This gives the Agreement very broad scope and coverage. The related activities are defined in Article 1 as:

"any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at port, as well as the provisioning of personnel, fuel, gear and other supplies at sea".

A "vessel" includes vessels used for, equipped to be used for, or intended to be used for, fishing or fishing related activities. Therefore, the legal review will need to have a much wider focus than fisheries legislation. It should take into account legislation that relates to fishing vessels and a range of others such as factory ships (including those that process fish while in port), supply ships, refrigerated vessels, carrier vessels and transport vessels. The implementing legislation should regulate access to port and the activities of these vessels, ensure clear administrative authority for regulation and apply the Agreement's MCS and enforcement requirements to them. States should also ensure that legislation regulating non-fishing vessels is consistent with the implementing legislation.

[...]

Evidentiary standards and admissibility. The legal review should address evidentiary standards and admissibility and should not exclude the use of electronic evidence and new technologies that are likely to evolve over time. Another evidentiary matter to consider is the use of presumptions to combat IUU fishing or related activities. For example, where it may be easier – but no less fair – for an honest vessel master to prove that the fish was legally caught than for an inspector to prove that it was caught during IUU fishing activities, it is common for fisheries laws to include a provision such as unless it can be otherwise proved, all fish on board is presumed to have been taken during IUU fishing activities or related activities.

Areas beyond national jurisdiction. Importantly, the review should evaluate whether domestic legislation is sufficient to regulate and enforce against IUU fishing or related activities that take place beyond its areas of national jurisdiction. In this regard, there are

three key issues. The first is to ensure that legislation prohibits the State's nationals (vessels or persons) from engaging in IUU fishing activities or related activities beyond areas under national jurisdiction. A requirement for national vessels to be authorized to fish in such areas, which is standard in most countries, would complement such a prohibition.

The second issue relates to fish that were caught in violation of the laws of another country but brought to port. A standard legal provision, based on the United States Lacey Act, makes it an offence for any person to undertake certain activities, such as importing, trading or selling such fish or fish products. This is a highly effective "long-arm" provision that strengthens regional cooperation among States and acts as a means of deterring and preventing IUU fishing and related activities.

The third issue relates to giving legal effect to RFMO measures or decisions to which the State is not a Party or cooperating non-Party for purposes of implementing the Agreement. This could include prohibiting port entry to, or use of, vessels engaging in fishing or related activities in contravention of the conservation and management measures of such an RFMO or to vessels included on its IUU vessel list. Although States are not bound by treaties to which they are not Party, increasingly international instruments contain provisions relating to non-Parties and their duty under international law to cooperate with those organizations and their members.

In fisheries instruments, this duty is based on provisions of the 1982 UN Convention and includes a duty for non-Parties to cooperate with RFMOs, as provided in the 1995 UN Fish Stocks Agreement. It requires that States cooperate, as appropriate, bilaterally, multilaterally and within relevant RFMOs to develop compatible measures for port State control of fishing vessels. Such measures should deal with the information to be collected by port States, procedures for information collection, and measures for dealing with suspected infringements by the vessel of measures adopted under these national, regional or international systems. This should include non-Parties to the 1995 UN Fish Stocks Agreement.

In addition to the general issues described above that should form an important part of a legal review for implementation of the Agreement, many of its provisions will require direct implementation. Each State should check its existing laws against the Agreement to ensure there are no gaps or inconsistencies, and in turn, identify provisions that need amendment or introduction into the law [...]

4.2.2 Implementation of the Agreement

General provisions. It is of fundamental importance that the terms as defined in the Agreement are implemented fully in national legislation. [...]

Entry into port. Although most, if not all, States currently regulate entry by vessels into port, the requirements in the Agreement are very specific, hence, it is likely that legislation will need to be updated. These requirements relate to an advance request for port entry (including a required process and information), the decision-making to authorize or deny port entry, and the process of authorization.

Because of the sovereignty that States exercise over their ports, they have the right under the 1982 UN Convention to exclude any non-national vessel from entering port. However, it is normal for States to have legislation and/or policy on force majeure or distress that applies to all vessels, allowing port entry in accordance with international law and under specified circumstances. The Agreement is clear that a State may allow vessels to enter port for reasons of force majeure or distress, but in order to limit possible activities in port relating to fish taken during IUU fishing activities, it provides that the port State is not prevented from permitting entry into port of a vessel “exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress”. States should ensure that legislation of this nature relating to all vessels should be consistent with the Agreement.

Use of ports. At the core of the Agreement are the obligations for States to deny the use of a port under specified circumstances, in some cases where inspection is not required and in other cases after inspection. States should ensure that these requirements are incorporated in their national laws; they should be non-negotiable so as to prevent any sidestepping or attempts to elude the measures or opportunities to engage in corrupt behaviour. States should also ensure that their laws refer to all of the uses of port that must be denied under the Agreement: landing, transshipping, packaging and processing and other port services, including, inter alia, refuelling and resupplying, maintenance and dry docking. Significantly, States may decide to include other port services in the list of uses that must be denied.

Inspections and follow-up actions. Inspections and follow-up actions provided in the Agreement describe operational processes. Legislation should designate the responsibility of national agencies to set levels and priorities for inspection and, as appropriate, regulate procedures for the conduct of inspections. Legislation should, as a minimum, require information in the Agreement to be included in the written reports of each inspection and provide for the transmittal of inspection results and the electronic exchange of information. Requiring minimum training standards for inspectors, as provided in the Agreement, may be considered recognizing that the standards could eventually be strengthened.

The authority and responsibilities for taking action following an inspection where there are clear grounds to believe that a foreign vessel has engaged in IUU fishing or related activities should be set out in legislation. Actions that the port State may take, consistent with the Agreement and international law, should be identified clearly in the legislation.

Role of flag States. The role of flag States is described in the Agreement, and to implement these provisions States should ensure that legislation requires their flag vessels to cooperate with authorities of port States in inspections carried out pursuant to the Agreement. States should also ensure a non-discriminatory legislative basis for applying measures to its flag vessels that are as effective as those it applies to foreign vessels. In general, legislation should encourage and enable flag States to exercise effective control over their vessels for fishing and related activities beyond areas of national jurisdiction, for example, by requiring authorizations, reporting and the use of MCS tools such as VMS and observer programmes.

Non-Parties to the Agreement. Fair, non-discriminatory and transparent legal provisions may be considered to deter the activities of non-Parties that undermine the effective implementation of the Agreement. They should be consistent with international law and, although not specifically referenced in the Agreement, may include market-related measures.

4.3. Operations

[...]

4.3.2 Implementation of the Agreement

[...]

Cooperation and exchange of information. Procedures will need to be strengthened or established that will promote the cooperation and exchange of information with other States and through RFMOs, including those that support conservation and management measures of other States and international organizations. They could include designation of contact points, identification of official contacts in other States and international organizations and establishment and operation of information systems such as those described in Annex D of the Agreement.

Entry into port. A wide range of operational and procedural actions are essential for activities relating to entry into port. A sufficient number of trained workers will be required to conduct inspections at designated ports in order to meet the State's targeted level of inspections for each year. Procedures will be needed to receive information from a vessel requesting port entry, as appropriate identify irregularities and/or seek additional information and take a timely decision. Where entry is denied, this must be reported to the flag State and, where it is authorized, procedures must be in place for collection of the authorization upon port entry. Procedures should also be in place for vessels that are permitted to enter port because of force majeure or distress, to ensure that port is used exclusively for rendering assistance to persons, ships or aircraft in danger or distress.

Use of ports. When a vessel enters port and without first being inspected, it may be denied the use of port for a range of reasons including failure to hold an authorization required by the flag State and coastal State, contravention of the laws of a coastal State, failure by the flag State to confirm at the request of the port State that the fish on board was taken in accordance with RFMO measures, and that there were reasonable grounds to believe the vessel had engaged in IUU fishing or related activities.

There are some exceptions to the denial of use of a port: port services cannot be denied if they are proven to be essential to the safety or health of the crew or the safety of the vessel or for the scrapping of the vessel.

Procedures should be in place for an assessment of the vessel's activities, communication, investigation and decision-making in these areas. This would require, for example, having information or points of contact on hand relating to authorization requirements of the relevant flag State and coastal State, points of contact to request confirmation by the flag State that the fish on board was taken legally.

As appropriate, where national law prohibits the provision of port services to vessels that have been denied the use of a port (for example, by persons in the port State who provide fuel or landing facilities), procedures should be in place to ensure that such provisioning is identified and terminated and violations are dealt with.

Procedures for securing and dealing with evidence should be established, including evidence showing reasonable grounds to believe that the vessel was engaged in IUU fishing or that port services are essential for safety or health purposes. Responsibilities for decision-making and notification should be clear. For example, if it is necessary for legally trained officials to be consulted or to decide on the sufficiency of evidence, this should be designated.

Inspections. Procedures should address the levels and priorities for and the conduct of inspections, as well as the reporting, transmittal of inspection results, electronic exchange of information and training of inspectors. They should include as a minimum standard that inspectors carry out the functions described in Annex B of the Agreement and the duties in accordance with the requirements of Article 13(2). Protocols could be developed for handling information electronically and standards for the training of inspectors should be based on the Guidelines in Annex E of the Agreement. As noted above, these elements could be included in a national strategy and operationalized in procedures.

Following inspections, procedures should designate the action to be taken where it is believed that the vessel has engaged in IUU fishing. In this regard, relevant notifications will have to be made, including to the flag State. As appropriate, the flag State could be requested to consent to specified measures, but procedures should also foreshadow situations where the flag State requests the port State to take certain measures.

Where it is not possible to contact the flag State or the flag State does not respond within a reasonable time, operational procedures should specify the next steps. The Agreement does not prevent a Party from taking measures in conformity with international law in addition to the denial of the use of a port, so the procedures could involve referring the matter to fisheries, legal or trade authorities as appropriate for their decision and action. To ensure there is a broad scope for decision-making in this regard, it would be useful for countries to ensure that the national legislation specifies that the courts have jurisdiction over IUU fishing and related activities that occur beyond areas of national jurisdiction, as described in Section 4.2.1 above (an example of such legislation is the United States Lacey Act) as well as having the authority to implement and enforce conservation and management measures of specified RFMOs.

Role of the flag State. The Agreement gives flag State Parties certain responsibilities to ensure effective control of their vessels, and supportive procedures would include: requesting the port State to inspect the flag vessels where there are clear grounds to believe that IUU fishing or related activities had taken place; encouraging flag vessels to use ports that act consistently with the Agreement; immediately investigating port inspection reports of their flag vessels that show clear grounds to believe that IUU fishing or related had taken place; and reporting to Parties, relevant RFMOs and others on actions it has taken in respect of its vessels determined to have engaged in IUU fishing or related activities.

Non-Parties. Fair, non-discriminatory and transparent procedures should be developed to implement legal or policy measures to deter the activities of non-Parties that undermine the effective implementation of the Agreement.' ■



WORLD TRADE ORGANIZATION

GATT Analytical Index

'Article XX. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(a) necessary to protect public morals;

(b) necessary to protect human, animal or plant life or health;

[...]

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

[...]

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

[...]

(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. [...]

The WTO Report 2010 describes Article XX(b) as follows:

'On the first question, it is often the case that parties to a dispute will agree that the policy in question is designed to protect human or animal life, and thus falls under Article XX(b). Where parties disagree, a panel will undertake an assessment of the purported risk, and determine whether the policy in question is designed to protect human or animal life from this risk.'¹⁵ Examples of accepted policy designed to protect human or animal life include that designed to protect dolphin life and health,^{16,17} that against consumption of cigarettes,¹⁸ and that to reduce the risk posed by asbestos fibres.¹⁹

‘On the second question [proving that the inconsistent measure was necessary to fulfil the policy objective], in Brazil – Retreaded Tyres,²⁰ the Appellate Body stated that a determination of whether a measure is “necessary” for the purposes of Article XX(b) involves an assessment of “all the relevant factors, particularly the extent of the contribution to the achievement of a measure’s objective and its trade restrictiveness, in the light of the importance of the interests or values at stake” (para. 156). The Appellate Body further stated that a measure will be “necessary” if it is “apt to bring about a material contribution to the achievement of its objective” (Appellate Body Report, Brazil – Retreaded Tyres, para 151).’²¹ ■

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EUROPEAN FOOD SAFETY AUTHORITY ON ANIMAL WELFARE: RECOMMENDATIONS ON THE WELFARE OF FISH

Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare of animals during transport

'11.2. Recommendations on Transport of Fish

1. *Fish should be loaded, unloaded and provided with transport conditions according to their needs. For most fish, high oxygen availability is needed and should be maintained. This should normally be provided by bubbling oxygen through the water in which the fish are transported.*
2. *All fish should normally be loaded and unloaded without being put into air.*
3. *The method used to load fish should reduce physical contact between the fish body surface and other surfaces as much as possible. Care should be taken to reduce distances fish may drop from pumps or elevators. The handling before loading and the loading itself should be of as short duration as possible.*
4. *Although fish may be deprived of food for a short time before transportation, to preserve water quality during transport except in well boat or towed cage systems, the length of deprivation should be adapted to the fish species, the size of the fish and the temperature. This duration is critical since the immune status of fish deteriorates after a short period of starvation.*
5. *The design of container or boat wells should not allow the fish to injure themselves, and should be water-tight to avoid risk of biosecurity breaches due to spillages.*
6. *Water quality and condition of the fish during transport should be checked regularly and logged in writing.*
7. *The duration of transport, stocking densities and environmental conditions during the process may vary with species but should always be designed with the aim of providing that poor welfare of the fish is avoided.' ■*

ENDNOTES

1. Examples of such items include munitions and nuclear materials of the Import and Export (Strategic Commodities) Regulations Schedule 1.
2. Commerce & Economic Development Bureau. (2016). *How to Submit Cargo Manifests by Using Electronic Service for Air, Rail, Ocean and River Carriers (EMAN) Guidebook*. C&ED, Hong Kong, p. 5, <[http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_\(Eng\).pdf](http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_(Eng).pdf)>.
3. Commerce & Economic Development Bureau. (2016). *How to Submit Cargo Manifests by Using Electronic Service for Air, Rail, Ocean and River Carriers (EMAN) Guidebook*. C&ED, Hong Kong, p. 6, <[http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_\(Eng\).pdf](http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_(Eng).pdf)>.
4. Commerce & Economic Development Bureau. (2016). *How to Submit Cargo Manifests by Using Electronic Service for Air, Rail, Ocean and River Carriers (EMAN) Guidebook*. C&ED, Hong Kong, p. 1, <[http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_\(Eng\).pdf](http://www.cedb.gov.hk/citb/doc/en/gets/EMAN_Guidebook_(Eng).pdf)>; See p. 2 for the practical differences between making electronic and paper submissions.
5. Appendix I includes LRFF.
6. Census and Statistics Department. *How to Complete and Lodge Import/Export Declarations*. C&SD, Hong Kong, pp.7–13, <http://www.censtatd.gov.hk/FileManager/EN/Content_93/B8XX0022.pdf>.
7. Census and Statistics Department. (2012). *Hong Kong Imports and Exports Classification List (Harmonized System)*. C&SD, Hong Kong, Preface.
8. LRFF is included as food under Appendix I (p. 228) of the current Hong Kong Imports and Exports Classification List (Harmonized System). See http://www.customs.gov.hk/en/cargo_clearance/declaration/lodgement/types/index.html.
9. Census and Statistics Department. *How to Complete and Lodge Import/Export Declarations*. C&SD, Hong Kong, p. 15, <http://www.censtatd.gov.hk/FileManager/EN/Content_93/B8XX0022.pdf>.
10. For exports of Hong Kong-made non-clothing items and articles not exempted from declaration charge, as well as re-exports of articles not exempted from declaration charge. See http://www.customs.gov.hk/en/cargo_clearance/declaration/lodgement/types/index.html.
11. This may not include place of origin. It appears to refer only to the last place the fish was exported from.
12. Under s.2, 'introduce from the sea' means to bring, or to cause to be brought, into Hong Kong directly from a marine environment that is not under the jurisdiction of any state. This does not apply to reef fishes, since reefs are always within the jurisdiction of a country.
13. Zhang, L. (2010). 'A Comparative Study of "Hong Kong Flag" Ship Registration', *Asia Pacific Law Review*, vol. 18, no. 2, p197.
14. Brownlie, I. (2008). *Principles of Public International Law*, 7th edn, Oxford University Press, Oxford, p. 237, fn 89.
15. World Trade Organization. (2010). *World Trade Report 2010: Trade in natural resources*. WTO, Switzerland, p. 171.
16. In the two *Tuna* disputes, the panel and the parties accepted – implicitly in *US – Tuna I (Mexico)*, explicitly in *US – Tuna II (EEC)* – that the protection of dolphin life or health was a policy that could fall under Article XX(b): '[...] [T]he Panel noted that the parties did not disagree that the protection of dolphin life or health was a policy that could come within Article XX(b)'.
17. Van Den Bossche, P. (2006). *The Law of World Trade Organization*, Cambridge University Press, Cambridge, p. 603.
18. Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines, DS371.
19. European Communities – Measures Affecting Asbestos and Products Containing Asbestos, DS135.
20. Brazil – Measures Affecting Imports of Retreaded Tyres, DS332.
21. World Trade Organization. (2010). *World Trade Report 2010: Trade in natural resources*. WTO, Switzerland, p. 171.



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