

Chapter 635A Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation 10/09/2020

Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation

(Cap. 635, section 4)

(Enacting provision omitted—E.R. 5 of 2020)

[1 July 2020] *L.N. 153 of 2019*

Part 1

Preliminary

1. *(Omitted as spent—E.R. 5 of 2020)*

2. **Interpretation**

(1) In this Regulation—

CDS (產品證書制度) means the Catch Documentation Scheme for *Dissostichus* spp. implemented by the Commission for tracking the movement of toothfish items;

CDS document (制度證書) means a DCD, DED, DRED or any other document generated, validated and completed by using the e-CDS;

CM10-03 (《10-03 措施》) means Conservation Measure 10-03 adopted by the Commission for port inspections of fishing vessels carrying AMOs, as revised or substituted from time to time and as applied to Hong Kong;

CM10-05 (《10-05 措施》) means Conservation Measure 10-05 adopted by the Commission for the CDS, as revised or substituted from time to time and as applied to Hong Kong;

DCD (產品證書) means a *Dissostichus* catch document;

DED (出口證書) means a *Dissostichus* export document;

despatching vessel (原載船隻), in relation to a transhipment of a non-landed toothfish item, means the vessel from which the item is transhipped;

Dissostichus catch document (犬牙南極魚產品證書) means a document that—

- (a) is generated by using the e-CDS; and
- (b) contains information relating to the harvest, transhipment and landing of *Dissostichus* spp. as described in CM10-05;

Dissostichus export document (犬牙南極魚出口證書) means a document that—

- (a) is generated by using the e-CDS; and

- (b) contains information relating to the export of *Dissostichus* spp. as described in CM10-05;

Dissostichus re-export document (犬牙南極魚再出口證書) means a document that—

- (a) is generated by using the e-CDS; and
 (b) contains information relating to the re-export of *Dissostichus* spp. as described in CM10-05;

DRED (再出口證書) means a *Dissostichus* re-export document;

e-CDS (網上系統) means the web-based application implemented by the Commission to support the CDS for the generation, validation, completion and storage of documents under the CDS;

export licence (出口許可證) means a licence granted under section 12(1);

fishing vessel (漁船) means a fishing vessel within the meaning of CM10-03;

import licence (進口許可證) means a licence granted under section 11(1);

licence (許可證) means—

- (a) an import licence;
 (b) an export licence; or
 (c) a re-export licence;

non-landed toothfish item (未上陸犬牙魚產) means a toothfish item that is not indicated by the e-CDS to have been certified as landed, within the meaning of CM10-05, by a competent authority of a place;

receiving vessel (接魚船隻), in relation to a transhipment of a non-landed toothfish item, means the vessel to which the item is transhipped;

re-export licence (再出口許可證) means a licence granted under section 12(2);

toothfish (犬牙魚) means any fish that belongs to *Dissostichus* spp.;

toothfish item (犬牙魚產) means any toothfish (live or dead), including any flesh or other part (whether raw, or in any way processed or preserved) of any toothfish;

transhipment (轉船), in relation to a non-landed toothfish item on a vessel—

- (a) means the transfer of the item from the vessel directly to another vessel, whether at sea or in port; but
 (b) does not include the act mentioned in paragraph (b) of the definition of ***unload***,

and ***tranship*** (轉船) is to be construed accordingly;

unload (卸下), in relation to a non-landed toothfish item on a fishing vessel, means—

- (a) unloading or transferring the item in Hong Kong, in any form, from the vessel to dockside, whether or not the item is subsequently transferred to another vessel; or
 (b) offloading or transferring the item in Hong Kong, in any form, in port from the vessel to a container vessel.

- (2) In this Regulation—
- (a) a reference to bringing a toothfish item into Hong Kong includes causing the item to be brought into Hong Kong; and
 - (b) a reference to taking a toothfish item out of Hong Kong includes causing the item to be taken out of Hong Kong.

Part 2

Movement of Toothfish Items

Division 1—Control of Movement

3. Import of toothfish items

- (1) This section does not apply to a non-landed toothfish item on a fishing vessel that enters Hong Kong waters.
- (2) A person must not import a toothfish item except under and in accordance with an import licence.
- (3) Subsection (2) does not apply to a toothfish item if the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for another place outside Hong Kong.
- (4) If required by an authorized officer, a person who imports a toothfish item must—
 - (a) produce the import licence that covers the item to the officer for inspection; or
 - (b) if the item falls within subsection (3), produce the DED or DRED mentioned in that subsection to the officer for inspection.
- (5) A person who without reasonable excuse contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (6) A person who without reasonable excuse contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 3.

4. Unloading non-landed toothfish items from fishing vessel

- (1) A non-landed toothfish item that is not covered by a valid DCD must not be unloaded from a fishing vessel.
- (2) If a non-landed toothfish item is unloaded from a fishing vessel, the master or the owner of the vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection.
- (3) If, without reasonable excuse, subsection (1) is contravened in relation to a non-landed toothfish item on a fishing vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

- (4) A person who without reasonable excuse contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3.

5. Taking toothfish items out of Hong Kong

- (1) A person must not take a toothfish item out of Hong Kong except under and in accordance with an export licence or a re-export licence.
- (2) Subsection (1) does not apply to a toothfish item if—
 - (a) the item is a non-landed toothfish item and—
 - (i) is covered by a valid DCD;
 - (ii) was transhipped in Hong Kong; and
 - (iii) is taken out of Hong Kong by the relevant receiving vessel after the transhipment; or
 - (b) the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for another place outside Hong Kong.
- (3) If a toothfish item that is taken out of Hong Kong—
 - (a) falls within subsection (2)(a), the master or the owner of the relevant receiving vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection;
 - (b) falls within subsection (2)(b), the person who takes the item out of Hong Kong must, if required by an authorized officer, produce the DED or DRED mentioned in that subsection to the officer for inspection; or
 - (c) neither falls within subsection (2)(a) nor falls within subsection (2)(b), the person who takes the item out of Hong Kong must, if required by an authorized officer, produce the export licence or re-export licence that covers the item to the officer for inspection.
- (4) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (5) A person who without reasonable excuse contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3.

6. Transhipment of non-landed toothfish items

- (1) A non-landed toothfish item that is not covered by a valid DCD must not be transhipped in Hong Kong.
- (2) A non-landed toothfish item that is not covered by a valid DCD must not be transhipped outside Hong Kong if a Hong Kong vessel is the despatching vessel or the receiving vessel.
- (3) If a non-landed toothfish item is transhipped in Hong Kong, the master or the owner of each of the despatching vessel and the receiving vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection.

- (4) If a Hong Kong vessel is the despatching vessel or the receiving vessel in a transshipment of a non-landed toothfish item outside Hong Kong, the master or the owner of the vessel must, if required by an authorized officer, produce the DCD that covers the item to the officer for inspection.
- (5) If, without reasonable excuse, subsection (1) is contravened, each of the following persons commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year—
 - (a) the master of each of the despatching vessel and the receiving vessel;
 - (b) the owner of each of the despatching vessel and the receiving vessel.
- (6) If, without reasonable excuse, subsection (2) is contravened in relation to a Hong Kong vessel, the master and the owner of the vessel each commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.
- (7) A person who without reasonable excuse contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine at level 3.

Division 2—Exemption from Control of Movement

7. Personal baggage

Sections 3 and 5 do not apply to a toothfish item that is in the accompanied personal baggage of a person entering or leaving Hong Kong if—

- (a) the item is for the person's personal use or is a gift to another person; and
- (b) the total net weight of all toothfish items in the baggage does not exceed 15 kg.

8. Persons in transit

Sections 3 and 5 do not apply to a toothfish item that is in the accompanied personal baggage of a person who—

- (a) enters Hong Kong via the Hong Kong International Airport from a place outside Hong Kong and then leaves Hong Kong via the Hong Kong International Airport; and
- (b) while in Hong Kong, does not pass through any immigration control between the entry time and the leaving time.

9. Articles in transit

Sections 3 and 5 do not apply to a toothfish item that is an article in transit as defined by section 2 of the Import and Export Ordinance (Cap. 60).

10. Air transshipment cargo

- (1) Subject to subsection (2), sections 3 and 5 do not apply to a toothfish item that is an air transshipment cargo.

- (2) If at any time between the item's being brought into and taken out of Hong Kong, the item is removed from the air cargo transshipment area (other than for its being taken out of Hong Kong by an aircraft)—
- (a) for the purposes of section 3—
 - (i) the item is deemed to be imported, at the time of the removal, by the person who brought the item into Hong Kong as an air transshipment cargo; and
 - (ii) except to the extent mentioned in subparagraph (i), that section applies to the item; and
 - (b) section 5 applies to the item.
- (3) It is a defence for a person charged under section 3(5) or 5(4) in relation to a toothfish item mentioned in subsection (2) (*defendant*) to show that the defendant—
- (a) took all reasonable steps and exercised reasonable diligence to avoid the removal mentioned in that subsection; or
 - (b) did not know, and had no reasonable ground for believing, that the removal had occurred.
- (4) Subsection (5) applies if the defence under subsection (3) involves an allegation that the offence was committed due to —
- (a) another person's act or default; or
 - (b) the defendant's reliance on information given by another person.
- (5) The defendant may not, without the leave of the court, rely on the defence under subsection (3) unless, at least 10 days before the hearing of the proceedings, the defendant has served a written notice on the prosecutor giving the particulars of—
- (a) the alleged act, default or information; and
 - (b) the person who is alleged to have committed the act or default or given the information,
- of which the defendant is aware at the time of service.
- (6) The defendant may not rely on the defence under subsection (3) because of the defendant's reliance on information given by another person unless the defendant shows that the reliance was reasonable in all the circumstances, having regard in particular to—
- (a) the steps that the defendant took, and those which might reasonably have been taken, for verifying the information; and
 - (b) whether the defendant had any reason to disbelieve the information.
- (7) In this section—

air cargo transshipment area (機場轉貨區) means the cargo transshipment area of Hong Kong International Airport as defined by section 2 of the Import and Export Ordinance (Cap. 60);

air transshipment cargo (航空轉運貨物) has the meaning given by section 2 of the Import and Export Ordinance (Cap. 60).

Part 3

Licence and Related Matters

Division 1—Grant of Licence

11. Import licence

- (1) On application in the specified form, the Director may grant a licence to the applicant for importing a toothfish item if—
 - (a) the item is covered by a valid DED or DRED that indicates that the item is destined, from a place outside Hong Kong, for Hong Kong; and
 - (b) the application fee prescribed in column 3 of item 1 of the Schedule is paid.
- (2) For making a decision under subsection (1), the Director may request the applicant to provide further information or other documents to support the application.

12. Export licence and re-export licence

- (1) On application in the specified form, the Director may grant a licence to the applicant for taking a toothfish item out of Hong Kong if—
 - (a) the item is covered by a valid DCD; and
 - (b) the application fee prescribed in column 3 of item 2 of the Schedule is paid.
- (2) On application in the specified form, the Director may grant a licence to the applicant for taking a toothfish item out of Hong Kong if—
 - (a) the item is covered by a valid DED or DRED that indicates that the item was destined, from a place outside Hong Kong, for Hong Kong; and
 - (b) the application fee prescribed in column 3 of item 3 of the Schedule is paid.
- (3) For making a decision under subsection (1) or (2), the Director may request the applicant to provide further information or other documents to support the application.

Division 2—Licence: Form, Conditions, Refusal of Application and Cancellation

13. Form of licence

A licence is to be in a form specified by the Director, and must contain—

- (a) the name and address of the licence holder;
- (b) the expiry date of the licence; and
- (c) the conditions, if any, attached under section 14(1).

14. Conditions of licence

- (1) The Director may attach conditions to a licence.
- (2) If, without reasonable excuse, a condition attached to a licence is contravened, the licence holder commits an offence and is liable on conviction to a fine at level 3.

15. Refusal of licence application

- (1) The Director may refuse an application for a licence if—
 - (a) any information provided by the applicant is incomplete or incorrect;
 - (b) the applicant fails to comply with a request made under section 11(2) or 12(3); or
 - (c) granting the licence would be inconsistent with the Convention or any Conservation Measure.
- (2) If the Director decides to refuse an application for a licence, the Director must give a written notice to the applicant stating the decision and the reason for the decision.

16. Cancellation of licence

- (1) The Director may cancel a licence—
 - (a) on the request of the licence holder;
 - (b) if a condition attached to the licence under section 14(1) is contravened;
 - (c) if the Director is satisfied that the licence was granted as a result of a false representation of any fact made by the applicant or an unlawful act of the applicant;
 - (d) if a CDS document submitted in support of the application for the licence is no longer valid; or
 - (e) if granting the licence was inconsistent with the Convention or any Conservation Measure.
- (2) If the Director decides to cancel a licence, the Director must give a written notice to the licence holder stating the decision and—
 - (a) the reason for the decision; and
 - (b) the effective date of the cancellation.
- (3) If a licence is cancelled, the licence holder must surrender the licence to the Director within 14 days after receipt of the written notice.
- (4) A person who without reasonable excuse contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 3.

17. Appeals to Administrative Appeals Board

- (1) If—
 - (a) an applicant is aggrieved by a decision of the Director to refuse an application for a licence under section 15(1); or
 - (b) a licence holder is aggrieved by a decision of the Director—
 - (i) to attach a condition to a licence under section 14(1); or

- (ii) to cancel a licence under section 16(1)(b), (c), (d) or (e),

the applicant or licence holder may appeal to the Administrative Appeals Board against the decision.

- (2) If the appeal is against a decision to attach a condition to a licence, the condition is not to be cancelled or varied pending the determination of the appeal by the Administrative Appeals Board.
- (3) If the appeal is against a decision to cancel a licence, the appeal does not suspend the decision pending the determination of the appeal by the Administrative Appeals Board, and accordingly does not affect the operation of section 16(3) and (4).

Division 3—Offence Relating to CDS Document or Licence

18. Alteration, etc. of CDS document or licence prohibited

- (1) A person must not alter, obliterate, deface or render illegible a CDS document or licence.
- (2) A person who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.

Schedule

[ss. 11 & 12]

Prescribed Fees for Licence Application

Column 1	Column 2	Column 3
Item	Licence	Application fee
1.	Import licence	\$375
2.	Export licence	\$410
3.	Re-export licence	\$410