

David O'Dwyer  
Chairman  
Living Seas Hong Kong  
c/o 17a, Block 26  
Baguio Villa, Pokfulam  
Hong Kong

Mr Edward Yau  
Secretary for the Environment  
Environment Bureau  
33/F Revenue Tower  
5 Gloucester Road  
Wanchai  
Hong Kong

By post and email.

26<sup>th</sup> July 2008

Dear Mr Yau,

Thank you for your letter dated the 27<sup>th</sup> June regarding the whale shark death in Hong Kong waters on the 6<sup>th</sup> June.

Contrary to AFCD assertions, we have discovered that a sum of \$10,000 was paid to the fisherman for the release of this whale shark. Also, and very worrying, Living Seas Hong Kong has found out from reliable sources that there was a second whale shark caught in Hong Kong waters in June. In this second case the fisherman ultimately dragged the fish to Zhuhai for slaughter after his requests for \$50,000 to release the fish were rebuked. I have mentioned this second serious and distressing incident to officers from the AFCD, however at the end of the day without adequate protection under HKSAR legislation there is a limited amount that the authorities can do to stop this from happening again. This needs to change.

So, I am afraid that your letter does not address our major concerns with regards to incidents of this kind. The fact remains that there is virtually no protection given under HKSAR legislation to endangered marine species such as the whale shark.

The purpose of this letter is to outline Living Seas Hong Kong's initial assessment of gaps in the current legislation and to highlight our high level suggestions about what needs to be done.

There are 3 relevant ordinances in Hong Kong covering wild animals and marine life.

1. WILD ANIMALS PROTECTION ORDINANCE (Chapter 170 of the government legislation)
2. PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS ORDINANCE (Chapter 586)
3. FISHERIES ORDINANCE (Chapter 171)

## **WILD ANIMALS PROTECTION ORDINANCE**

The major concerns with this ordinance are that:

- a) Fish and marine invertebrates are specifically excluded from this ordinance and
- b) CITES (Convention on International Trade in Endangered Species) listed marine species and other endangered marine species are not included in the list of protected species.

That fish and marine invertebrates are specifically excluded is very surprising. This means that there is no protection under this ordinance for any fish, corals, or many other valuable parts of our marine ecosystem, conserving biodiversity is not possible under this reality.

With regards to the "Wild Animals Protection Ordinance" we would suggest three changes.

1. The definition of "Animals" in section 2 of the ordinance needs to be amended by removing the sentence "other than fish and marine invertebrates"
2. A clause needs to be added that includes all CITES listed species automatically. CITES species are listed in Chapter 586 of the HKSAR legislation
3. IUCN red listed species such as the Chinese Bahaba, Hong Kong grouper, eagle ray, whale shark need to be specifically listed. Consideration needs to be made for other locally endangered species such as the horseshoe crab.

Living Seas Hong Kong acknowledges that these changes will require some redrafting and changes to various clauses in the legislation. However we believe that the required changes are not significant. To further this investigation Living Seas Hong Kong is working together with a Hong Kong law firm to finalise detailed work on this redrafting effort. We will comment on this again as soon as possible.

### **PROTECTION OF ENDANGERED SPECIES OF ANIMALS AND PLANTS ORDINANCE**

This ordinance is related to the restriction in trade in endangered species not in their protection. The ordinance was brought in to make sure that Hong Kong was compliant to the international CITES (<http://www.cites.org>) regulations. The naming of the ordinance is misleading. We would recommend that this ordinance be renamed "CONTROL IN THE TRADE OF ENDANGERED SPECIES OF ANIMALS AND PLANTS ORDINANCE"

### **FISHERIES ORDINANCE**

The Fisheries Ordinance is aimed at restricting the methods of fishing in Hong Kong waters. For the purpose of fishing this ordinance bans the use of explosives, toxic material or electrical or suction apparatus. This does not provide specific protection for endangered species from other means of capture.

The AFCD has stated to me that for historic reasons the Fisheries Ordinance was designed to provide protection for marine life and this was the reason that the Wild Animal Ordinance excluded marine fish. However as I have stated above this ordinance does not provide protection, it controls fishing methods.

We look forward to the expected release from the "Committee on Sustainable Fisheries" as fishing pressure needs to be reduced in Hong Kong waters. However this is a separate issue from the required protection of endangered marine species.

We do note with appreciation that the AFCD has agreed on the need and will put into place increased awareness campaigns to fisherman **and** to AFCD field staff about the identification of endangered species and the need for conservation, however;

Given that there was a second incident recently regarding a beautiful and valuable whale shark, we are concerned that fishermen are potentially targeting whale sharks and that we really have no idea of the extent of the problem. We earnestly request that the EPD and the AFCD undertake the following major tasks with relation to this issue:

1. Urgently put into place legislation that will provide protection to endangered marine species, we have outlined our high level suggestions above and will be in contact with additional details together with our legal partners in the coming period.
2. Put into place processes and additional patrols of Hong Kong waters to ensure that fishermen in breach are caught and suitably punished under the legislation.
3. Increase co-operation with mainland authorities. I am sure that you are aware that under Chinese law endangered marine species are protected.

Living Seas Hong Kong looks forward to actions to meet the concerns of our members and of a wide spectrum of the Hong Kong population.

Yours sincerely

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David O'Dwyer  
Chairman, Living Seas Hong Kong  
Email address: [dod@livingseas.hk](mailto:dod@livingseas.hk)

**cc.**  
Cheung Siu Hing, Director AFCD;  
C.C. Lay, Assistant Director (Conservation) AFCD;  
Albert Leung, Senior Fisheries Officer AFCD;  
Alfred Wong, Endangered Species Protection Officer, AFCD.  
All registered members of Living Seas Hong Kong