

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)  
CASE NO. AB0106

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Between

CHOW LOY (周來)

*Appellant*

and

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Date of Hearing: 30 December 2015

Date of Decision and Reasons for Decision: 1 March 2016

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**DECISION AND REASONS FOR DECISION**

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**JUDGMENT** (Chairman Mr. Yeung Ming-tai, Member Mr. Kong Tze-wing, James, Member Dr. Chan Yin-nin, Sammy, Member Mr. Law Chi-yuen and Member Prof. Chu Ka-hou):-

**Introduction**

1. Case number AB0106 is an appeal by Mr. Chow Loy (“**Mr. Chow**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 14 December 2012 (“**the Decision**”<sup>1</sup>) determining that Mr. Chow’s fishing vessel (with Certificate of Ownership Number CM90054V) (“**the Vessel**”) was an eligible trawler that was not ordinarily operating in Hong Kong waters (一艘一般不在香港水域作業的合資格拖網漁船) and awarding Mr. Chow an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the Vessel.

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<sup>1</sup> Hearing Bundle p 241

## **The Trawl Ban and the EGA**

2. According to Paragraph 3 of Food and Health Bureau Paper dated 29 January 2013 (“**FHB Paper**”), the Chief Executive announced in his 2010-11 Policy Address that the Government would implement a basket of fisheries management measures including banning trawling in Hong Kong waters (“**the Trawl Ban**”) through legislation in order to restore our seabed and marine resources as early as possible. The legislation for the Trawl Ban was passed by the Legislative Council (“**LegCo**”) in May 2011 and came into effect on 31 December 2012.
3. The Finance Committee (“**FC**”) of LegCo also approved in June 2011 a one-off assistance package to trawler owners affected by the Trawl Ban, which included making ex-gratia allowance (EGA) to affected trawler owners for permanent loss of fishing grounds arising from the Trawl Ban (“**EGA Package**”).

## **The Policy and Eligibility Criteria**

4. According to paragraph 7 of the FHB Paper, the policy and guiding principles underlying the EGA Package are set out in FC Paper FCR(2011-12)22 (“**FC Paper**”).
5. The eligibility criteria for application of EGA (“**the Eligibility Criteria**”) are set out in Part (A) of Enclosure 1 to the FC Paper :

“(A) EGA

The eligibility criteria are to be determined by an inter-departmental working group (IWG) established before the commencement of the registration for applying for EGA. Only applicants who can meet the criteria are eligible for the EGA. The criteria should include, inter alia, the following:

- (a) the applicant must be the owner of a trawler vessel which is used for fishing only and not engaged in other commercial activities as at 13 October 2010, and at the time of application is still the owner of that trawler;
- (b) the applicant must be the holder of a valid certificate of ownership and operating licence of a Class III vessel issued by the Marine Department (MD) under the Merchant Shipping (Local Vessels)

(Certification and Licensing) Regulation (Cap. 548D) in respect of the trawler vessel on or before 13 October 2010; or has obtained an approval-in-principle letter for construction of a Class III vessel issued by the MD on or before 13 October 2010, and submit a document proving that the vessel under construction is a trawler vessel;

- (c) where the application is in respect of an inshore trawler, the trawler vessel in the application must wholly or partly fish within Hong Kong waters.

### **The Appeal Grounds**

6. In this appeal, Mr. Chow contends that at the material time, the Vessel was operating 30% of its time in Hong Kong waters<sup>2</sup>. He is aggrieved by his knowledge that some other pair trawlers' owners were awarded compensation in excess of \$6 million under the Scheme even though those vessels were only about 3 to 4 years' in service, whilst he did not qualify for such compensation<sup>3</sup>. He was only awarded \$150,000.
7. Mr. Chow questions the professionalism of the IWG and the surveys it conducted. He argues that the IWG merely spent 10 minutes to determine the amount of compensation that should be awarded to each trawler owner and that the IWG's impartiality is called into question by reason that some vessel owners were awarded sums that were unreasonably high<sup>4</sup>.

### **The Appeal Hearing**

8. At the hearing, (**"the Appeal Hearing"**):
- (1) Mr. Chow was absent<sup>5</sup>; and
- (2) IWG conducted the appeal through their representatives, Dr Albert Leung, Dr William Siu and Dr So Chi-ming.
9. The IWG indicated their intention to rely on the documents already lodged with the Board in response to Mr. Chow's appeal. They did not make any

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<sup>2</sup> Hearing Bundle p 3

<sup>3</sup> Hearing Bundle p 4

<sup>4</sup> Hearing Bundle p 5

<sup>5</sup> Hearing Bundle 477 documents Mr. Chow's decision not to attend the hearing and not to appoint anyone to represent him at the hearing of his appeal; Hearing Bundle p 466 documents a written record of Mr. Chow's decision not to submit any statement for the purpose of the appeal.

supplemental submissions during the hearing.

### **Decision & Reasoning**

10. Having considered all the evidence and submissions from the parties<sup>6</sup>, this Board has decided to dismiss Mr. Chow's appeal.
11. In the questionnaire that Mr. Chow answered in December 2011, he stated that in the year to 13 October 2010, he operated the Vessel on about 260 days, of which 50% of time was spent operating in Hong Kong waters<sup>7</sup>.
12. That figure of 50% was later changed to 30% when he lodged the present appeal<sup>8</sup>. Mr. Chow did not give any explanation for the change. In fact, he opted to have the appeal hearing conducted in his absence. He also opted to adduce no further statement from him nor asked anyone representing him.
13. In the same questionnaire, Mr. Chow stated that the Vessel had been operated by a crew of 9, including 7 Mainland workers who were not part of the Mainland Fishermen Deckhands Scheme. We understand that it means that those 7 workers had no permission to work in Hong Kong waters. This is therefore an indicia that the Vessel was operated outside Hong Kong waters.
14. We also take note of the fact that the Vessel was a relatively large trawler, of some 39.56m in length<sup>9</sup>, with a steel hull and 1,119 kW aggregate engine power. We accept IWG's submission that the Vessel was capable of sailing far outside Hong Kong waters.
15. Having considered all the evidence, the Board has taken the view that Mr. Chow has not been able to discharge the burden of proof to establish his case that, on a balance of probabilities, that the Vessel had been spending about 30% of its time operating in Hong Kong waters. On the evidence before the Board, we further reject Mr. Chow's suggestion that the IWG lacked professionalism in their survey methodology or in the way they came to the conclusion in respect of his claim for compensation.

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<sup>6</sup> Mr. Chow failed to make any witness statement or written submission and opted to have the appeal conducted in his absence

<sup>7</sup> Hearing Bundle p 46

<sup>8</sup> Hearing Bundle p 3

<sup>9</sup> Hearing Bundle p 53

## Conclusion

16. In the circumstances, this appeal is dismissed.

Date of hearing : 30 December 2015

Heard at : Conference Room 1801, 18<sup>th</sup> Floor, East Wing  
Central Government Offices, 2 Tim Mei Avenue,  
Tamar, Hong Kong.

(signed)

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Mr. YEUNG Ming-tai  
Chairman

(signed)

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Mr. KONG Tze-wing, James, MH, JP  
Member

(signed)

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Dr. CHAN Yin-nin, Sammy  
Member

(signed)

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Mr. LAW Chi-yuen  
Member

(signed)

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Prof. CHU Ka-hou  
Member

The Appellant, Mr CHOW Loy (Absent)

Dr LEUNG Wai-yin, Albert, Supervisory Fisheries Management Officer, AFCD,  
representative on behalf of the IWG

Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries)1, AFCD, representative  
on behalf of the IWG

Dr SIU Ho-lim, William, Fisheries Officer (Sustainable Fisheries)3, AFCD,  
representative on behalf of the IWG

Mr Paul LEUNG, Legal Advisor to the Board