

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)  
CASE NO. CP0003

Between

HO PEI WAH (何北華)

*Appellant*

and

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Date of Hearing: 13 February 2015

Date of Decision and Reasons for Decision: 12 February 2016

---

**DECISION AND REASONS FOR DECISION**

---

**JUDGMENT** (Chairman Mrs. CHEUNG Po-yee, Peggy, Member Mr. CHAN Wai-chung, Member Mr. KONG Tze-wing, James, Member Mr. LO Wai-kei, Wilkie and Member Miss YUNG Hoi-yan):-

**Introduction**

1. Case number CP0003 is an appeal by Mr. HO Pei Wah ("**Mr. Ho**") against the decision of the Inter-departmental Working Group ("**IWG**") dated 14 December 2012 ("**the Decision**<sup>1</sup>") determining that Mr. Ho's fishing vessel (with Certificate of Ownership Number CM61067P) ("**the Vessel**") was an eligible trawler that was not mainly reliant on Hong Kong waters and awarding Mr. Ho an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the Vessel.

**The Trawl Ban and the EGA**

---

<sup>1</sup> Hearing Bundle p 194

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. Ho contends at the material time, the Vessel was operating 60 – 70% of its time in Hong Kong waters<sup>2</sup>. He further contends that he operated the Vessel predominantly in the nighttime, from about 6 pm until about 7 am<sup>3</sup>, and frequently in the areas of Cheung Chau, Lei Yue Mun, Tai O, Aberdeen, Sha Chau and Lung Kwu Chau (including during the fishing curfew periods).

### **The Appeal Hearing**

7. At the hearing, (“**the Appeal Hearing**”):
- (1) Mr. Ho’s wife, Madam Ng Ngan Ho (吳銀好) (“**Mrs. Ho**”), conducted the appeal with Mr. Ho’s authorization; and
  - (2) IWG conducted the appeal through their representatives, [Ms. Louise Li (“**Ms. Li**”) and Dr. So Chi-ming (“**Dr. So**”)].
8. Apart from relying on the documentary evidence already submitted to the Board prior to the hearing, Mrs. Ho gave oral evidence on behalf of Mr. Ho. She told the Board the following salient points:
- (1) Her family comprised 2 adults and 2 children.

---

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

<sup>3</sup> Hearing Bundle p 10

- (2) Their mode of operation was this. Generally speaking, each fishing outing lasted about 10 or more days. They would leave shore at about 3 or 4 am and return after dark.
- (3) Each fuel refill of the Vessel could last 20 to 30 days of operation.
- (4) As shown in the fuel receipts<sup>4</sup> produced by Mr. Ho, the Vessel refueled infrequently during 2009 to 2011. In 2009, it refueled just 6 times. In 2010, it refueled 8 times. In 2011, it refueled just 5 times in the whole year. Her explanation for the low frequency was that there was nowhere else to refuel.
- (5) She further explained that there was no refueling during the months from about May to August in those years because of the fishing curfew.
- (6) She said they would sail the Vessel back to Hong Kong when there was no business.
- (7) Each year, the Vessel spent about 4 to 5 months in Hong Kong waters.
- (8) They are holders of Macau identity cards and frequently had the Vessel repaired in Macau. Before the hearing, Mr. Ho had already submitted a repair receipt issued by a repairer bearing an address in Coloane, Macau<sup>5</sup>, and various other repair receipts issued by a repairer bearing an address in Macau<sup>6</sup>.

### **Decision & Reasoning**

9. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss Mr. Ho's appeal.
10. Mr. Ho has not adduced sufficient evidence to discharge the burden of proof, which is on him, to show, on a balance of probabilities, that he was operating the Vessel about 60% to 70% of the time in Hong Kong waters, which was the case put forward in his appeal.
11. On the other hand, we find the arguments put forward by IWG to be sustainable.

---

<sup>4</sup> Hearing Bundle pp 177 - 180

<sup>5</sup> Hearing Bundle p 473

<sup>6</sup> Hearing Bundle p 477 to 484

12. Although Mr. Ho has produced a number of sale receipts, many of them were from 2012 or later. This Board does not put any weight on such recent documents since these came into being after the announcement by the Hong Kong SAR Government of the Trawl Ban and the EGA Package.
13. During the course of the hearing, Mrs. Ho admitted that during the fishing curfew months in 2009, i.e. around May to July/August, they did not need to refuel the Vessel. In the view of the Board, this admission is very unhelpful to Mr. Ho's appeal because the curfew should only prohibit fishing in Mainland waters, not Hong Kong waters. If the Vessel were operating 60 to 70% of its time in Hong Kong, Mr. Ho should have no reason to stop operating his hang trawler during summer months.
14. Another feature of Mr. Ho's mode of operation was that he regularly had 4 direct Mainland deckhands onboard the Vessel who did not have permission to work in Hong Kong waters<sup>7</sup>. However, such deckhands from the Mainland did not have any restriction working in Macau waters or Mainland waters. The evidence suggests that Mr. Ho's operations could well have been based in Macau rather than Hong Kong. After all, the repair receipts adduced in evidence were issued by ship repairers in Macau. In the questionnaire<sup>8</sup> completed by Mr. Ho in December 2011, he declared that he operated the Vessel in outer Pearl River Delta (珠江口) when the Vessel was operating outside Hong Kong waters.
15. Furthermore, the records show that there had been no sighting of the Vessel during the surveys<sup>9</sup> in 2009 to 2011. Neither Mr. Ho nor Mrs. Ho was able to give any evidence to challenge such evidence adduced by IWG.
16. Having considered all the evidence, the Board has taken the view that Mr. Ho 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 60 to 70% of its time operating in Hong Kong waters (or, for that matter, 50% of its time operating in Hong Kong).

---

<sup>7</sup> Hearing Bundle p 16 para.2.5, p 105

<sup>8</sup> Hearing Bundle p 51

<sup>9</sup> Hearing Bundle p 16

## Conclusion

17. In the circumstances, this appeal is dismissed.

Date of hearing : 13 February 2015

Heard at : Conference Room 5, Ground Floor,  
Central Government Offices, 2 Tim Mei Avenue,  
Tamar, Hong Kong.

\_\_\_\_\_  
(signed)  
Mrs. CHEUNG Po-yee, Peggy  
Chairman

\_\_\_\_\_  
(signed)  
Mr. CHAN Wai-chung  
Member

\_\_\_\_\_  
(signed)  
Mr. KONG Tze-wing, James, MH, JP  
Member

\_\_\_\_\_  
(signed)  
Mr. LO Wai-kei, Wilkie  
Member

\_\_\_\_\_  
(signed)  
Miss YUNG Hoi-yan  
Member

The Appellant, Mr HO Pei Wah appearing in person together with his authorized representative, Madam NG Ngan Ho (i.e. his wife)  
Ms LI Wai-hung, Louise, Senior Fisheries Officer (Sustainable Fisheries) (Ag.), representative on behalf of the IWG  
Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries) 1, representative on behalf of the IWG  
Mr Paul LEUNG, Legal Advisor to the Board