

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. CP0040

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Between

LAU KAM YAU(劉金有)

*Appellant*

And

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

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Dates of Hearing: 10 July 2015

Date of Decision and Reasons for Decision: 23 October 2015

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**DECISION AND REASONS FOR DECISION**

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1. This is an appeal by the Appellant Mr. Lau Kam Yau of Case No. CP0040 against the decision of the Inter-departmental Working Group ("IWG") dated 17 December 2012 that the Appellant was considered ineligible for the ex-gratia allowance ("EGA") provided by the government ("the Appeal").
2. The Appeal was heard on 10 July 2015 whereby the Appellant was accompanied by Mr. Cheung Chi-chuen, a friend. Although the Appellant had requested Mr. Cheung Chi-chuen to speak on his behalf prior to the hearing, it transpired that he did personally address the Board and answer a number of questions when asked. The IWG was represented by Dr. So Chi Ming and Ms. Louise Li.

3. The Board now gives its decision and reasons for the decision.

#### **Pertinent facts and the IWG's decision**

4. On 13 October 2010 ("**the Cut-off Date**"), the Chief Executive announced that the Government would implement a basket of 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 Trawl Ban took effect on 31 December 2012.
5. In light of the Trawl Ban, an assistance package was approved by the Legislative Council Finance Committee in June 2011. This was a "*One-off assistance package to trawler vessel owners, local deckhands and fish collector owners affected by the trawl ban and other related measures*". This led to the setting-up of the IWG which was responsible for handling all matters relating to applications received under the assistance scheme. The Appellant was one such applicant.
6. In assessing EGA applications, the IWG would assess the type of the subject vessel and consider whether it fell into the category of a larger trawler or inshore trawler. If it were the former, a lump sum EGA of HK\$150,000 would be paid to the applicant. If it were the latter, the IWG would further assess and categorize the subject vessel into specific tiers in terms of its dependence on Hong Kong waters and other special cases. This meant that subject to the category of the subject vessel and the applicable apportionment criteria, an applicant could be eligible to apportion a total amount of the HK\$1,190 million of EGA with other eligible inshore trawler owners.
7. According to the IWG's records, the Appellant's fishing vessel was a stern trawler (license no. CM69657Y) ("**the Vessel**") that had 1 engine and measured 16.20 metres in length in total. Its propulsion engine power came

up to 80.57 kilowatts, and the fuel tank capacity was 1.14 cubic metres.

8. The IWG made the preliminary decision that the Vessel was ineligible for EGA, on the basis of various pieces of evidence that suggested that the Vessel had not been operating as a trawler on or before the Cut-off Date. This was communicated to the Appellant by letter dated 9 October 2012 whereupon the Appellant was invited to make further submissions (which he did, by way of reply dated 15 October 2012, enclosing further documentary evidence). By letter dated 17 December 2012, the IWG informed the Appellant that they were maintaining their decision, and cited the same grounds they relied upon when making the preliminary decision. The Appellant felt aggrieved and lodged the present appeal.

9. In their submissions to the Board, the IWG explained that having considered various aspects, including the Appellant's said further submissions, they had reached the formal decision that the Vessel had not been designed and equipped for the purposes of trawling. These were the various matters considered:

(1) When the Vessel was inspected on 8 December 2011 (on the day the Appellant registered his claim for EGA) ("**the Inspection**"):

(a) it was found to carry certain fish trawling equipment and tools which were very old, which indicated that the Vessel had not been employed for trawling purposes for a long time;

(b) it was also found to lack the appropriate equipment and tools, which indicated that it was not designed and equipped for trawling;

(c) the presence of other equipment and tools indicated that the Vessel could have been used as a fish collector.

(2) According to the records kept by the Agriculture, Fisheries and

Conservation Department (“AFCD”) of field validation surveys which took place between August to November 2011, the Vessel did not have the requisite equipment for trawl fishing and did carry other equipment which indicated that the Vessel was used as a fish collector, which is consistent with the findings at the Inspection;

(3) According to the records kept by the AFCD, the Appellant had made applications under the Mainland Fishermen Deckhand Scheme (“**the Deckhand Scheme**”) in January 2009 and April 2010 in respect of the Vessel, but had declared the Vessel as a gill netter rather than a trawler.

(4) According to records obtained by the IWG from the Fish Marketing Organization, the Vessel was issued with a Marine Fish Transportation Permit in September 2009, November 2010, May 2011 and August 2011. According to the relevant records, the Vessel was a fish collector.

### **Grounds of Appeal**

10. In the said further submissions of the Appellant dated 15 October 2012 that were made in response to the IWG’s preliminary decision, the Appellant argued that:

(1) The Vessel regularly operated in the areas of Tonggu and Sha Chau, whereby it left dock in the early hours of the morning and returned very late in the day. It is wrong to say that the Vessel had not been in operation for a long time.

(2) The Vessel was a stern trawler equipped with sufficient fishing equipment and tools. He was unable to understand why it was alleged that the Vessel was deficient as such.

(3) The Vessel had always been operating as a stern trawler. He was unable to understand why the allegation that it was otherwise could stand on

the basis of a mere two months of field validation survey records.

(4) Due to policy changes in the Mainland, he had switched to stern trawling three years ago. However, the fishing license could not be amended and as such he could only apply for deckhand quotas by gill net category.

(5) Since the Vessel's catch was sold at the fish market in styrofoam boxes, the fish market considered the Vessel a fish collector and not a trawler.

11. By letter dated 31 December 2012, the Appellant sought to appeal the IWG's decision and represented that the Vessel's pattern of operations began at around 4:00 am daily, departing from Castle Peak Bay at Tuen Mun to fish at the Lung Kwu Chau, Shan Chau and Lau Fau Shan areas, returning around 7:00 am the next day to moor at Castle Peak Bay before selling most of the catch to Shun Wah Seafood Wholesales Company ("**Shun Wah**"). Identical submissions were attached to the Notice of Appeal dated 4 February 2014 ("**the Appeal Notice**") and in his written submissions dated 30 May 2015, although in the Appeal Notice, the Appellant had also argued that the equipment onboard the Vessel was sufficient to prove that it was a qualified trawler, and that the Vessel had fished in Hong Kong waters 70% of the time.<sup>1</sup> To this end, the Appellant had submitted various receipts from Shun Wah, and also a company from which the Vessel obtained its diesel supply.

### **The Evidence**

12. At the hearing, the IWG adduced photos of trawlers as a comparison tool in order to demonstrate what the tools and equipment that would normally be

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<sup>1</sup> It bears noting at this point that the Appellant had, in the Notice of Appeal, represented that his application for EGA was on the basis that the Vessel fell into the category of being a larger trawler. His emphasis on the fact that the Vessel had operated in Hong Kong waters over 70% of the time was not material unless he was applying for EGA on the alternative basis that it was an eligible inshore trawler. Following explanation at the hearing from representatives of the IWG, the Appellant clarified that his intention was to apply for EGA on the basis that it was an inshore trawler, and that despite having represented in the EGA application form that the Vessel fished in Hong Kong waters 90% of the time, now confirms that the figure was 70%.

expected to be found on a standard trawler. This was not objected to by the Appellant. Amongst other things, the Board was given to understand that on a standard trawler, one could expect the existence of:

- (1) a pair of metal trawl boards operated by pulleys at the stern, for the purposes of keeping the trawl net open. Trawl boards were most often made of metal although wooden ones had been seen before, on vessels from the Mainland;
- (2) a winch near the stern, for the purposes of hauling in the trawl net;
- (3) a spacious and tidy stern, so as not to obstruct hauling; and
- (4) a clean and rust-free edge of the transom, which is built to be of even height with the deck in order to facilitate hauling.

13. By contrast, the Vessel exhibited the following characteristics at various points in time, which suggested that the Vessel was unlikely to have been used for trawling regularly nor recently, or was used for other purposes:

*As shown in photos of the Vessel taken at the Inspection*

- (1) a worn-looking wooden board (said by the Appellant to be the Vessel's trawl board) with holes and rusty parts (although there were some new screws);
- (2) an untidy stern and upper deck whose space was taken up by an excessive amount of styrofoam boxes, which was more distinctive of fish collectors than trawlers;
- (3) a stern that was protected from collision by rubber tires that were hung on the transom and along the hull, whereby the trawl net was hauled from the side of the Vessel assisted by a (rather rusty) rotating metal cylinder; and
- (4) certain essential trawling equipment were either non-existent (i.e. pulleys on either side to pull in the trawl cables), far too worn or far too new (certain ropes and nets) or far too old and only partially repaired (which raised the question of whether they were installed for no purpose other than "staging" for the Inspection).

*As shown in photos of the Vessel taken during earlier field surveys between August to November 2011*

(1) initially the said pulleys, trawl board and nets for trawling that were seen at the Inspection were nowhere to be seen, but had rather tellingly, appeared by the end of the year;

(2) a winch that was heavily obstructed with floats so as to be hardly operable; and

(3) the rubber tires tied along the transom and the hull, as well as the numerous styrofoam boxes, could already be seen.

14. In pointing out the inconsistencies as regards how the Vessel's purpose was described in the Appellant's various applications under the Deckhand Scheme and for the Marine Fish Transportation Permit, the IWG submitted that whilst certain trawlers like shrimp trawlers might be engaged with other kinds of fishing activity, it was rather unusual for a stern trawler to operate as a gill netter and hand liner. The IWG also drew the Board's attention to the fact that an applicant for EGA needed to satisfy each and every aspect of the eligibility criteria, and therefore what really mattered was that the Vessel was designed and equipped in such a way that was inconsistent with trawling.

15. Commenting on the Appellant's other grounds of appeal/documentary evidence adduced, the IWG pointed out, amongst other things, that apart from the fact that the receipts from Shun Wah were not dated, the very limited variety of the Vessel's catch (3-4 types) contrasted with that which would be expected from a standard trawler (up to 8-10 types) which could normally catch a wider variety of species given the trawling method. Insofar as the receipts for diesel were concerned, these post-date the Cut-Off Date and also the date that the Vessel registered for EGA and therefore of little reference value.

16. In response, the Appellant accepted that the purpose of the Vessel did not

matter to him because having found it difficult to make a living from just catching shrimp (which was a seasonal occupation), the Vessel needed to be put to a diversity of purposes. He also claimed that the discrepancies concerning the Vessel's stated purpose arose out of the fact that (1) in the Mainland, all fishing vessels limited to a certain horsepower level had to be classified as gill netters, which was a policy which he could not argue with; and (2) in order to obtain the Marine Fish Transportation Permit, he was obliged to state that the Vessel was a fish collector, and argued that since he was not the one filling in the details on the application, there could well have been some errors.

17. On defending the IWG's challenges about the design and equipment of the Vessel, the Appellant described the manner of the Vessel's daily operations and stressed, amongst other things, that:

(1) because the Vessel was of smaller horsepower that fished in shallow waters, and that it was only himself and his wife who were working thereon. As such, the equipment thereon (i.e. the trawl board) cannot be compared to a larger trawler and what he had was sufficient for its purpose;

(2) although he caught over 100 catties per day earning HK\$1000-2000 per day on average, he was unable to produce evidence to fully support this because the smaller fishes were often sold here and there and no receipts were given.

(3) at the time of the Inspection, fishing had to be halted for 4 months after his wife was hospitalized, which accounted for the rusty condition of certain equipment/parts, which were made of iron; and

(4) he found it more convenient to use styrofoam boxes to keep the catch cool, and it took only a matter of minutes to tidy the stern of the Vessel so that it could be put to trawling purposes.



## The Decision

18. The Board notes that notwithstanding the Appellant's late clarification as regards the basis which EGA was applied for, this apparent change of stance had little effect on the force of the IWG's submissions, which was aimed at demonstrating that the Vessel failed to satisfy the criteria of having to be a trawler in the first place. Emphasis was properly placed on the issue of whether the Vessel was indeed designed and equipped exclusively for trawling, and whether it was engaged solely for such purpose at the Cut-off Date.
  
19. Having had the opportunity to consider the Appellant's counter-arguments, we found these to mainly consist of bare denials which were unsupported by credible evidence. We found the Appellant to have shifted his stance as it suited him, and that his explanations as to why the Vessel's purpose was described differently on different occasions, rather self-serving and not at all credible. Amongst all, we have found most difficult to accept his explanations for the rusty/varied condition of the Vessel's equipment, why so many styrofoam boxes needed to be stored on-board, the manpower employed on the Vessel (only 2), and his description of whether and how the Vessel could be and/or was readily employed towards various purposes. We are satisfied that the IWG has adduced cogent evidence to support their decision that the Vessel was not designed and equipped exclusively for trawling, and that the Appellant has failed to discharge his burden to show that the IWG's decision was wrong.
  
20. In light of the above, the Board upholds the IWG's decision. The Appeal is dismissed.

**Case No. CP0040**

Date of hearing : 10 July 2015  
Heard at : Conference Room 7, Ground Floor, Central  
Government Offices, 2 Tim Mei Avenue,  
Tamar, Hong Kong.

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(signed)

Ms HUI Mei-sheung, Tennessee  
Chairman

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(signed)

Mr. LO Wai-kei, Wilkie  
Member

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(signed)

Professor CHU Ka-hou  
Member

\_\_\_\_\_  
(signed)

Ms AU Sin-lun, Catherine  
Member

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(signed)

Miss YUNG Hoi-yan  
Member

The Appellant, Lau Kam-yau.

Mr. Cheung Chi-chuen (the Appellant's authorized representative).

Ms. Louise Li, Senior Fisheries Officer (Sustainable Fisheries), AFCD,  
representative on behalf of the IWG.

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

Ms. Abigail Wong, Legal Advisor of the Board