

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. CP0080

Between

LAI FOR-SING (黎伙勝)

*Appellant*

And

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Dates of Hearing: 9 March 2016

Date of Decision and Reasons for Decision: 6 July 2016

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**DECISION AND REASONS FOR DECISION**

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1. This is an appeal by the Appellant Mr. Lai For-sing of Case No. CP0080 against the decision of the Inter-departmental Working Group (“IWG”) dated 21 December 2012 to issue to him amount of HK\$4,473,224.00 in respect of the ex-gratia allowance (“EGA”) provided by the government (“**the Appeal**”).
2. The Appeal was heard on 9 March 2016 whereby the Appellant, who had not appointed any representative to act on his behalf, was absent, having entered notice on 24 February 2016 that he would not appear for the hearing. The IWG was represented by Ms. Louise Li, Dr. So Chi Ming and Ms. Teresa Yuen.
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 that generally did not operate in Hong Kong waters 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 (license no. CM61051P) ( “**the Vessel**”) had 1 engine and measured 22.00 metres in length, with propulsion engine power coming up to 216.34 kilowatts, whereas the fuel tank capacity was 18.86 cubic metres.

8. On 3 October 2012, the IWG made the preliminary decision that the Vessel fell into the category of an inshore trawler, and in observing that the time claimed to be spent fishing in inshore waters (95%) was higher than that spent by trawlers of comparable type and length (according to statistical data collected by the Agriculture, Fisheries and Conservation Department (“AFCD”)), the Appellant was requested to provide more evidence/documents to substantiate his claims.
9. By way of reply dated 15 October 2012, the Appellant provided the following explanation and supporting documents:
  - (1) He had been fishing in Hong Kong waters for many years. His fishing catch from Hong Kong waters as well as the profit from its sales was relied on for sustenance and for meeting the daily expenses of his family, whereby he had brought up 6 children.
  - (2) The total amount of time he spent on fishing in the last 17 months (between 1 May 2011 and 14 October 2012), was around 400 days. During the rest of the time, he would moor at the typhoon shelters in Hong Kong because of the Lunar New Year holidays, poor catch, strong winds, and typhoons. When it became necessary to repair the Vessel, transport deckhands to and from Mainland China or buy fishing gear, he would moor in Mainland waters.
  - (3) Fish sales receipts, fuel purchase receipts and ice purchase receipts to prove that the Vessel fished at inshore waters and would make a fishing trip and return on the same day.
10. Subsequently, the IWG wrote back to the Appellant on 21 December 2012 to inform him that all relevant materials and evidence had been considered and that their assessment of his application was completed. In accepting that the Appellant was an inshore trawler owner who was affected by the Trawl Ban, the IWG made the following decision:

Type of Vessel:	Prawn trawler
Length of Vessel (in metres):	22.00
Category of dependency on Hong Kong waters:	Highly dependent on Hong Kong waters for trawling operations (higher tier)
Amount of EGA payable:	\$4,473,224.00

11. By the same letter, the IWG also informed the Appellant that around 30% of the EGA payable to all eligible inshore trawler owners had been reserved and will be distributed by apportionment after the Board had determined all successful appeals.

**Grounds of Appeal**

12. Subsequently, the Appellant sought to appeal the IWG’s decision, and by letter dated 20 February 2013, stated the following:

- (1) He was dissatisfied with the fact that 30% of the EGA payable to him had been held up;
- (2) Since the Trawl Ban, he had to move his fishing operations from Hong Kong to Mainland waters. Apart from longer fishing hours, he also had to brave more turbulent waters;
- (3) Before the implementation of the Trawl Ban, a satisfactory catch could be achieved in around 10 hours. After the Trawl Ban, the catch was still unsatisfactory even if another 4 hours were spent on fishing, and he still had to contend with competition from Mainland fishermen;
- (4) Faced with increasing labour costs, longer distances to travel, the moratorium periods on fishing in the Mainland, increases in costs of fishing operations but decreased income, it was difficult to continue and

he had to consider folding the operations;

(5) He and his wife had been in the fishing industry since they were very young, and their only skill set was trawl fishing. Not having received formal education and now in their fifties, it was difficult for them to take up alternative occupations even with assistance from the government. They were feeling desperate and helpless; and

(6) In the circumstances they hope the Board would distribute the remaining 30% of the EGA to them and would fairly deal with each appeal case.

13. In the Notice of Appeal dated 9 February 2014, the Appellant also gave the following reasons for his dissatisfaction concerning the awarded EGA amount:

(1) The construction of the Hong Kong-Zhuhai-Macau Bridge (“**the Bridge**”) caused large scale excavation of the seabed and the depositing of silt has caused a decrease in the amount of fish caught;

(2) With the increase of net boats and cage boats, areas where trawlers can operate has diminished;

(3) During times of bad weather and turbulent waters, it has become necessary to give up fishing in the outer waters, out of safety concerns for the Vessel and the crew aboard;

(4) Faced with increasing costs of employing deckhands and fuel etc., and the increase in the costs of fishing but decrease in income, offshore fishing has become difficult to sustain in the long term; and

(5) The reliance on fish catch figures of 1989/1991 by the AFCD in calculating the compensation due did not match the pace of inflation. As such he believes that \$4+ million was insufficient to compensate for the

loss caused by the Trawl Ban.

14. In the written submissions submitted for this Appeal dated 1 February 2016, the Appellant has repeated the substance of what was mentioned in his earlier submissions to the Board, and added that because the Certificate of Survey dated 3 February 2015 amended the details regarding the length of the Vessel from 22 metres to 23.3 metres, he believes the amount of compensation payable to him should be increased.

#### **Matters considered by the Board**

15. In their written submissions to the Board, the IWG explained how their decision as to the amount of EGA payable to the Appellant was determined. The Board accepts that the IWG had appropriately taken into account the materials that were available to them, including information about the Vessel's type, length, material and design (which amongst other things, affected the distance which the Vessel could travel and therefore its dependency on Hong Kong versus outer waters), statistical data from the AFCD concerning homeport and inshore sightings of the Vessel, the employment profile of the crew, fishing permits held by the Appellant, and also the explanations/evidence submitted by the Appellant. We are satisfied that the Vessel is an eligible inshore trawler that belonged to the higher tier, as assessed by the IWG, and do note that there is in fact no dispute in this regard.
16. The IWG also heard the submissions of Ms. Teresa Yuen of the IWG concerning how the EGA amount payable to the Appellant (denoted as "*E<sub>i</sub>*" in the IWG's calculations at page 22 of the bundle) was arrived at. Put simply, this involved the application of an apportionment ratio (denoted as "*P<sub>i</sub>*" in the calculations) to the total amount of EGA available for distribution to the total sum of HK\$828,870,000 that was assessed to be available for distribution among eligible inshore trawlers. By reference to the data

contained at page 287 of the bundle, the apportionment ratio that was assessed to be applicable in the present case was taken to be 0.005396775, on the basis that the Vessel was 22m in length. Therefore:

$E_i = \text{HK\$}828,870,000 \times 0.005396775 = \$4,473,224$  (rounded to the nearest dollar)

17. The following are submissions made by the IWG in response to the Appellant's submissions and/or the queries of the Board:

(1) In respect of the Appellant's complaint that the EGA granted to him was insufficient compensation for the decrease in income, the IWG emphasized that they had, according to the principles previously approved by the Finance Committee of the Legislative Council, already considered all of the materials before them and had apportioned to the Appellant the highest amount of EGA payable to inshore prawn trawlers of comparable size as the Vessel.

(2) Moreover, the IWG also noted that of all reasons given by the Appellant for decrease of income, increased cost of fishing operations was not necessarily related to the Trawl Ban, and it needed to be borne in mind that the EGA was set up for the specific purpose of ameliorating the negative impact that the Trawl Ban might have on the livelihood of the fishermen who were affected;

(3) The Appellant's complaint about marine works and the loss of fishing grounds forms the specific subject of an ex-gratia award ("**the Marine Works EGA**") that was another scheme in itself and as such, such loss should not be addressed on this occasion. The Appellant ought to apply under that other scheme if he was an affected party.

(4) The reservation of roughly 30% of the EGA was a measure applied across the board to all eligible inshore trawler owners. It was a necessary step

because a reserve fund needed to be maintained to meet further grants of EGA following successful appeals to the Board and in the aftermath of all appeals having been heard and determined, the entirety of such remaining sum shall be apportioned to all eligible inshore trawler owners;

(5) The IWG had relied on the Certificate of Survey issued in respect of the Vessel by the Director of Marine, whereby the date of survey for the certificate was 11 March 2011 and was valid between then and 10 March 2013. As such, that Certificate of Survey was one that was valid at the time the Appellant applied for the EGA on 13 December 2011, and was relied upon by the IWG as evidence that the Vessel was 22m in length, at the time when the Appellant's entitlement to IWG came to be assessed. Although the current Certificate of Survey dated 3 February 2015 has given a different figure for the overall length of the Vessel, the IWG cannot rely upon the same because it is not known whether and what change of circumstances brought about the amendment.

(6) Concerning queries from members of the Board as to the figure adopted as notional value of 11 years' fish catch, the IWG submitted that the adoption of 11 years as the multiplier was in line with the timespan adopted by the Marine Works EGA for the permanent loss of fishing grounds. And, although the value of fish catch was based on the 1989/1991 Port Survey, such figure had already been adjusted for fish price movement at the time when the formula was submitted for discussion to the Finance Committee in 2011 and approved.

### **The Board's Decision**

18. The Board has heard how the criteria adopted by the IWG had been applied towards their determination of the EGA payable to the Appellant, and take the view that the IWG's representatives have provided satisfactory



explanations to the questions raised by the Board members, and have also adequately responded to the Appellant's submissions.

19. The Appellant, who was absent, forfeited the opportunity to submit on the IWG's case. Having carefully scrutinized all of the evidence placed before us, the Board has found no reason to disturb the findings made by the IWG, who as mentioned above, has awarded to the Appellant the highest amount of EGA for inshore prawn trawlers of comparable size.
20. To conclude, the Appellant has failed to discharge his burden to show that the Decisions are wrong. The Appeals are therefore dismissed.

**Case No. CP0080**

Date of hearing : 9 March 2016  
Heard at : Room 1801, 18<sup>th</sup> Floor, East Wing Central  
Government Offices, 2 Tim Mei Avenue,  
Tamar, Hong Kong.

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

HUI Mei Sheung, Tennessy, JP

Chairman

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

Mr. CHAN Wai Chung  
Member

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

Mr. LO Wai Kei, Wilkie  
Member

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

Miss WONG Pie Yue, Cleresa  
Member

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

Mr SOO Kwok Leung  
Member

The Appellant, Mr. Lai For-shing (in absentia).

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

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

Ms. Yuen Wing-sum Teresa, Fisheries Officer (Sustainable Fisheries)<sup>4</sup>, AFCD,  
representative on behalf of the IWG.

Ms. Abigail Wong, Legal Advisor of the Board