

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)  
CASE NO. SW0121

Between

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KWOK SO (郭蘇)

*Appellant*

and

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Date of Hearing: 4 March 2016

Date of Decision and Reasons for Decision: 28 February 2017

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**DECISION AND REASONS FOR DECISION**  
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**JUDGMENT** (Chairman Mr. TO Wai-keung, Vincent, Member Ms. AU Sin-lun, Catherine, Member Miss Nancy CHAN, Member Mr. AU Pak-ching, Romeo and Member Mr. KONG Tze-wing, James):-

**Introduction**

1. Case number SW0121 is an appeal by Mr. KWOK So (郭蘇) (“**Mr. Kwok**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 16 November 2012 (“**the SW0121 Decision**”<sup>1</sup>) determining that Mr. Kwok’s fishing vessel (with Certificate of Ownership Number CM90016V) (“**the SW0121 Vessel**”) was an eligible trawler that generally did not operate 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 him an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the SW0121 Vessel.
2. At the material time, the SW0121 Vessel was operated as a pair trawler (雙拖). In the year leading up to 13 October 2010, the paired-up trawler was a vessel registered in the Macau Special Administrative Region and owned by one Mr.

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<sup>1</sup> Hearing Bundle p 85

LAM Sui (林瑞)<sup>2</sup>.

3. In 1995, Mr. Kwok was the recipient of a Certificate of Honour awarded in the name of Her Majesty Queen Elizabeth the Second by the Governor of Hong Kong in recognition of the valuable services rendered by Mr. Kwok to Hong Kong<sup>3</sup>.

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

4. 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.
5. 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 Guiding Principle**

6. 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**").
7. According to Paragraph 12 of the FC Paper, the guiding principle is that the EGA apportioned to different groups of claimants should be proportional to the impact on them caused by the Trawl Ban.
8. Owners of inshore trawlers which operated wholly or partly in Hong Kong waters were expected to be most affected when the Trawl Ban took effect as they would lose their fishing grounds in Hong Kong waters. They would receive a greater amount of EGA than owners of larger trawlers<sup>4</sup>.
9. Owners of larger trawlers which generally did not operate in Hong Kong waters were also affected by the Trawl Ban since they would lose the option to trawl in

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<sup>2</sup> Hearing Bundle p 41

<sup>3</sup> Hearing Bundle p 333

<sup>4</sup> Paras. 5 to 10 of FC Paper

Hong Kong waters in the future. However, as the impact of the Trawl Ban on them was far much less when compared with owners of inshore trawlers, an owner of larger trawler is only granted a lump sum EGA of HK\$150,000<sup>5</sup>.

### **The Appeal Grounds**

10. In this appeal, the Appellant contends<sup>6</sup> that:
- (1) his dependency on Hong Kong waters for trawling operations amounted to 30%;
  - (2) the EGA sum of \$150,000 was too little and unfair; some vessel owners were awarded EGA in the millions of dollars;
  - (3) he had been in the fishing industry since 1962; as such, he has made considerable contribution to the industry;
  - (4) all along, he had been operating in Hong Kong waters and the South China Sea; depending on the weather conditions, he would decide where to fish; now that the Trawl Ban has taken effect, the area in which he could operate has been reduced; the number of days in a year in which he could fish has also been reduced.
11. In a letter<sup>7</sup> dated 9 January 2013, the Appellant further stated that the Government's basis for making the EGA awards was unclear. He pointed out that it would be unfair to award the same amount of EGA, i.e. \$150,000, irrespective of whether the vessel owner had been in the industry for ages or only for a short while.

### **The Appeal Hearing**

12. At the hearing, (**"the Appeal Hearing"**):
- (1) Mr. Kwok conducted his appeal in person; although he was present at the hearing, he had also authorised<sup>8</sup> his daughter, Ms. KWOK Kwai-ying (郭桂英) to represent him; and
  - (2) IWG conducted the appeal through their representatives, Dr. SIU Ho-lim,

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<sup>5</sup> Paras. 9 and 10 of FC Paper

<sup>6</sup> Hearing Bundle pp 3, 4

<sup>7</sup> Hearing Bundle p 8

<sup>8</sup> Hearing Bundle p 381

William and Dr. LEUNG Wai-yin, Albert.

13. Prior to the Appeal Hearing, Mr. Kwok had submitted a written statement<sup>9</sup> dated 7 July 2015. In essence, he made 3 points which can be summarized as follows:
  - (1) the EGA awards did not appear to take into account of the owners' seniority in the industry;
  - (2) the Trawl Ban has caused a drop in Mr. Kwok's catch quantities and revenue due to more intense competition in the area outside Hong Kong waters;
  - (3) Mr. Kwok had plans to focus on inshore trawling in Hong Kong waters as he became older and unable to fish in the outer seas; the Trawl Ban has made it impossible for him to return to Hong Kong waters to make a living by trawling; he seeks a raise in the EGA award amount to compensate him for his future loss.
14. Appended to that statement were various documents said to be relating to a vessel by the name "Hai Fung" (海峰), dating as far back as 1968. A copy of the Certificate of Honour mentioned at the start of this decision was also included in the appendices.
15. The SW0121 Vessel is also called "Hai Fung". However, according to the Certificate of Ownership<sup>10</sup>, its date of first registration was 9 October 1997. Presumably, the documents relating to "Hai Fung" mentioned in the preceding paragraph relate to a different vessel by the same name.
16. The present "Hai Fung" is or was a relatively large trawler, of 36.12 length and steel construction. It had 3 engines with aggregate power<sup>11</sup> of 1,119KW and fuel capacity of 228.24 sq m.
17. Both Mr. Kwok and his daughter gave oral evidence, made oral submissions and raised questions with the IWG representatives.
18. Mr. Kwok and her daughter's oral evidence can be summarized as follows:
  - (1) Mr. Kwok has been in the fishing industry for over 60 years; he is now 83 years' old; he has made considerable contributions to the industry over the decades;

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<sup>9</sup> Hearing Bundle p 264

<sup>10</sup> Hearing Bundle p 50

<sup>11</sup> Hearing Bundle p 13

- (2) He confirmed the correctness of the answers he gave<sup>12</sup> at paragraphs 17(b) and 18 in the 2012 questionnaire where he declared that the SW0121 Vessel was a trawler which generally did not operate in Hong Kong waters (一艘一般不在香港水域捕魚作業的拖網漁船) in the year leading up to 13 October 2010 and that on average, only 6% of the time was spent operating in Hong Kong waters;
  - (3) He explained that during the typhoon season, the vessel would operate around the edge of Hong Kong waters but for other times of the year, it would operate outside Hong Kong waters;
  - (4) After the Trawl Ban had come into effect, the seas outside Hong Kong waters have become more crowded with other fishermen;
  - (5) He was of the view that the distribution of EGA was unfair in that more than 700 vessel owners were granted only \$150,000 irrespective of their seniority in the industry or the age of the vessels.
19. In oral submissions, Mr. Kwok argued that the distribution of EGA was unfair in that more than 700 vessel owners were granted only \$150,000 irrespective of their seniority in the industry or the age of their vessels.

### **Decision & Reasoning**

20. Having considered all the evidence and submissions from the Appellant, this Board has decided to dismiss the appeal.
21. The Board takes the view that the Appellant has not been able to discharge the burden of proof to establish his case that, on a balance of probabilities, his vessel had been spending about 30%, or 10% which is the required threshold<sup>13</sup>, of its time operating in Hong Kong waters. Not only was there no evidence to support any such case, whether it be 10%, 20%, 30% or anything in between, the Appellant in fact confirmed in oral evidence that only about 6% of the time was spent operating in Hong Kong waters at the material time and that his vessel generally did not operate in Hong Kong waters in the year leading to 13 October 2010. The Appellant has not discharged his burden to persuade this Board to accept his case of having a 30% dependency on Hong Kong waters.

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<sup>12</sup> Hearing Bundle p 41

<sup>13</sup> The Board is mindful that any percentage of fishing time in Hong Kong waters at or above 10% would satisfy the threshold requirement stipulated in Annex III of the Food and Health Bureau Paper dated 29 January 2013

22. We are not persuaded that the seniority of the vessel owners in the industry is a factor relevant to the amount of EGA that should be awarded to eligible trawler owners. Nor should the age of the vessels be a relevant factor.
23. As to the Appellant's contention that \$150,000 was too small an amount to compensate for the loss of a chance to return to Hong Kong waters to trawl, one only needs to refer to the discussion paper<sup>14</sup> for the Finance Committee in June 2011, that the \$150,000 allowance was specifically to compensate for the loss of opportunity to return to trawl in Hong Kong waters insofar as larger trawlers were concerned, including the situation where the age of the vessel has reached a stage when the vessel would no longer be suitable for sailing afar. In other words, it was part of the policy to make \$150,000 as the figure for such an allowance.
24. The Board is mindful of the Terms of Reference upon which it has been established. In essence, they are as follows:
- (1) To see that the criteria established by the IWG for processing and/or vetting applications for the EGA comply with the government policy, and are fair and reasonable to the applicants;
  - (2) To see that the IWG's decisions on eligibility and the amount of EGA granted comply with the government policy and are fair and reasonable to the applicants;
  - (3) To examine any new or additional information / evidence provided by the appellants (or their representatives) who have lodged an appeal against the IWG's decisions or by the relevant departments, and to consider the relevance of and the weight to be given to such information/ evidence;
  - (4) To consider whether to uphold the IWG's decisions on the appellants' cases or to revise the decisions, and to determine the type and amount of EGA payable to the appellants, as appropriate.
25. We are satisfied on the evidence and the aforesaid admission at the hearing that IWG's decision to classify the Vessel as a larger but eligible trawler that generally did not operate in Hong Kong waters (一艘一般不在香港水域作業的合資格拖網漁船) was a correct one. In light of the Terms of Reference and the policy as set out in the Finance Committee discussion paper abovementioned, we are of the view that the decision of awarding \$150,000 allowance to this appellant was

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<sup>14</sup> Hearing Bundle p 150 paras. 9, 10

correct.

### Conclusion

26. In the circumstances, the appeal is dismissed. IWG has not asked for costs, and accordingly we make no order as to costs of this appeal.

Date of hearing : 4 March 2016

Heard at : Room 1801, 18/F, East Wing, Central Government  
Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

(signed)

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Mr. TO Wai-keung, Vincent, BBS  
Chairman

(signed)

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Ms. AU Sin-lun, Catherine  
Member

(signed)

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Miss Nancy CHAN  
Member

(signed)

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Mr. AU Pak-ching, Romeo, JP  
Member

(signed)

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Mr. Kong Tze-Wing, James, MH, JP  
Member

The Appellant, Mr. KWOK So appearing in person together with his representative, Ms. KWOK Kwai-ying  
Dr LEUNG Wai-yin Albert, Supervisory Fisheries Management Officer, 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