

Legislative Council Panel on Health Services

**Review of Ex-gratia Allowances for Fishermen and Mariculturists
Affected by Marine Works Projects in Hong Kong Waters**

INTRODUCTION

This paper seeks Members' views on the new proposals regarding ex-gratia allowances (EGA) for fishermen and mariculturists affected by marine works projects in Hong Kong waters.

BACKGROUND

2. On 23 June 2000, the Administration submitted to Finance Committee (FC) a set of proposals to revise the EGA package for fishermen and mariculturists affected by marine works projects. After discussion, FC requested the Administration to further consult fishermen and mariculturists with a view to reaching an agreement. The paper was subsequently withdrawn.

CONSULTATION

3 We have reviewed the package submitted in June 2000 and consulted the representatives of the major fisheries organizations.

4. The major concerns of fishermen are related to the adequacy of the multiplier (i.e. the number of years of fish catch) used for calculating the EGA for reclamation projects, the effective date for implementation of the new EGA, the case for demolishing the homeport system for registration of inshore fishing vessels (those below 15 metres), the request for conducting an EGA registration exercise for fishing vessels exceeding 15 metres as soon as possible, and the ways to enhance the transparency of the appeal board set up in connection with EGA registration exercises.

5. The main concerns of mariculturists are related to the adequacy of the new five-kilometre "proximity" criterion; the request for raising the existing EGA rates, and the provision of adequate time for mariculturists to dispose of their existing fish stocks in fish culture zones.

NEW EGA PACKAGE

6. We have worked out a new EGA package for fishermen and mariculturists, having regard to their concerns and suggestions. The new package includes: -

- (a) a new EGA for fishermen affected by marine works projects causing permanent loss of fishing grounds to be calculated on a notional value of six years' fish catch (a 100% increase over the current level) in the affected area;
- (b) the payment of EGA to fishermen affected by successive marine works projects at the same location where three years have elapsed since the completion of the original works;
- (c) a new eligibility criterion for EGA payable to mariculturists based on proximity of fish culture zones to the designated boundary of sand dredging or mud disposal operations (i.e. within a distance of five kilometres or less); and
- (d) revised formulae for calculating EGA for mariculturists.

Effective date of the new package is proposed to be 15 March 2000, which was the commencement date for the most recent EGA registration exercise. We do not consider it appropriate to apply the new EGA package retrospectively further to 1997 to cover any projects in which EGA payments have already been affected.

7. Details of the new package are contained in the two draft FCais (one on EGA for fishermen and the other on EGA for mariculturists) at Annex 1 and Annex 2 respectively.

8. It should be noted that EGA is in fact a kind of assistance to help fishermen re-establish themselves over a transitional period of time rather than compensation as fishermen have no legal rights over the waters where they habitually fish and they can continue to fish in waters not affected by the works. We consider that the multiplier of six years' catch, which is twice the existing one, is a marked improvement over the existing arrangement.

9. We will continue to use the 1989-91 Port Survey data as the basis for calculating EGA for fishermen. In 1996-97, the then Agriculture and Fisheries Department commissioned a consultancy study to ascertain, among other things, the state of fish resources and fishing operations in Hong Kong waters, the reasons leading to the

decline in fish catch, and the ways to set the fishing industry back on a sustainable path. The study concluded that over-fishing and development had contributed to a decline in fish catch but the impact of each of these two factors could not be precisely quantified or apportioned. We do not intend to use the findings of the 1996-97 study as the basis for calculating EGA as this took no account of the drastic reduction in fish resources at the time of large-scale development projects in the first half of the 1990s.

OTHER CONCERNS OF FISHERMEN AND MARICULTURISTS

10. Fishermen have also requested to dispense with the homeport system for registering inshore fishing vessels (those below 15 metres in length) and allowing all vessels to register for EGA payment arising from marine works. We believe that the homeport system provides an objective means to identify fishermen being affected by a particular marine project and see no justification for any change. We also believe that fishing vessels exceeding 15 metres, like those under 15 metres in length, should continue to be screened for eligibility to receive EGA and can only register if they can demonstrate that they still fish within Hong Kong waters. In response to fishermen's request, we plan to start to arrange a registration exercise for these vessels in January 2001.

11. We are also prepared to consider empowering the appeal board to handle borderline cases involving fishing vessels which marginally exceed 15 metres in length but habitually fish within Hong Kong waters, having regard to the merits of individual cases. We would also consider ways to enhance the transparency of the appeal board where appropriate.

12. Moreover, we are prepared to provide a 12-month grace period for the mariculturists who opt for suspension or extinguishment of operations to dispose of their fish stocks. However, we do not consider it appropriate to extend the "proximity" criterion beyond five kilometres.

NEXT STEP

13. Subject to any comments from Members, the Administration will put forward the new EGA package to FC as soon as possible.

Agriculture, Fisheries and Conservation Department /
Environment and Food Bureau

November 2000

DRAFT

Annex 1

**For discussion
on _____**

FCR(2000-01)_____

ITEM FOR FINANCE COMMITTEE

CAPITAL WORKS RESERVE FUND

HEAD 701 - LAND ACQUISITION

Ex-gratia allowances for fishermen affected by marine projects in Hong Kong waters

Members are invited to approve -

- (a) a new ex-gratia allowance (EGA) for fishermen affected by marine works projects causing permanent loss of fishing grounds calculated on the basis of a notional value of six years' fish catch in the affected area; and
- (b) the payment of EGA to fishermen affected by successive marine works projects at the same location where three years have elapsed since the completion of the original works.

PROBLEM

The current basis for calculating EGAs for fish losses caused by works carried out in Hong Kong waters was adopted in May 1993. We need to review the package.

PROPOSAL

2. To take into account the different types of marine works projects being undertaken in Hong Kong waters and the possibly repetitive nature of sand dredging or mud disposal works at the same location, we propose to -

- (a) introduce a new EGA for fishermen based on notional value (total value of annual fish catch from an affected area) of six years' fish catch in respect of projects resulting in the permanent loss of fishing grounds (primarily due to reclamation projects), and retain the existing EGA based on three years' fish catch in respect of projects resulting in the temporary loss of fishing grounds (primarily due to sand dredging or mud disposal projects); and
- (b) permit the payment of further EGA to fishermen affected by successive marine works projects (such as sand dredging or mud disposal projects) at the same location where three years have elapsed since the completion of the original works.

3. The current arrangements for calculating EGAs for fishermen and our recommendations are set out respectively at columns (A) and (B) of the

Encl.

Enclosure.

JUSTIFICATION

Formula for calculating EGA

4. At present, the proposal of EGA to eligible fishermen affected by marine works projects makes no difference between the permanent loss (primarily due to reclamation projects) and the temporary loss (primarily due to sand dredging or mud disposal projects) of fishing grounds. As projects resulting in the permanent loss of fishing grounds have a more deleterious impact on the fishing industry than those which result in a temporarily loss only, we recommend that a higher EGA should be paid. We propose that the EGA payable to eligible fishermen affected by marine projects resulting in the permanent loss of fishing grounds should be based on notional value of six years' catch. We intend to retain the present basis for calculating EGA, namely, notional value of three years' fish catch, for fishermen affected by temporary loss of fishing grounds caused by implementation of marine projects.

Loss caused by successive works at the same location

5. At present, we only grant EGA once in respect of a specific fishing ground affected by successive marine works projects (primarily sand dredging or mud disposal works). This is not entirely fair as fishermen are affected by repeated works. As it may take some three years for fishing grounds to recover after the completion of a works

project, we consider it reasonable to allow further EGA to be granted if three years have elapsed since completion of the last marine works project at the same location.

Effective Date

6. If approved, we intend to introduce the proposals set out in paragraph 2 above from 15 March 2000, which was the commencement date for the most recent EGA registration exercise.

CONSULTATION

7. [subject to consultation with LegCo Health Services Panel]

FINANCIAL IMPLICATIONS

8. Subject to Members' approval of the proposals set out in paragraph 2 above, we estimate that the total EGAs payable to fishermen between 15 March 2000 and April 2003 will increase from \$79.5 million to \$120.4 million, i.e. an increase of about 51.4%.

BACKGROUND INFORMATION

9. Fishermen are not entitled to statutory compensation when marine works extinguish their habitual fishing grounds permanently or temporarily. Recognizing that affected fishermen may suffer a reduction of income and may incur extra expenses in relocating fishing activities to fishing grounds elsewhere, they may be granted EGA equivalent to the notional value of three years' fish catch in Hong Kong waters, subject to meeting certain eligibility criteria (e.g. their homeport must be associated with the affected fishing area).

10. Fishermen groups have suggested that the existing EGA package should be enhanced. We believe the new measures set out in paragraph 2 above already represent the most appropriate and reasonable package.

Agriculture, Fisheries and Conservation Department /
Environment and Food Bureau

Enclosure

Ex-gratia Allowances (EGA) for Fishermen

| | (A) Existing arrangements (based on FCR(93-94)25 as approved by Finance Committee on 7 May 1993) | (B) Proposed new arrangements |
|---|---|---|
| 1. Formula for calculating EGA | Loss of fishing grounds (e.g. due to reclamation): 3 years' fish catch. | (a) Permanent loss: 6 years' fish catch. (b) Temporary loss: 3 years' fish catch. |
| 2. Basis for calculating the notional value of fish catch | (a) Fishing vessels not longer than 15 metres: 1989/91 Port Survey (on fish catch, fishing efforts etc.) data are used. (b) Fishing vessels longer than 15 metres: Agriculture, Fisheries and Conservation Department's relevant fisheries data. | (a) No change to existing arrangements. (b) No change to existing arrangements. |
| 3. Loss caused by successive works at the same location | EGA is paid once only in connection with marine works at a specific location. | Further EGA may be granted where a period of 3 years has elapsed since the completion of works for which the original EGA was granted in connection with marine works at a particular location. |

DRAFT

Annex 2

**For discussion
on _____**

FCR(2000-01)___

ITEM FOR FINANCE COMMITTEE

CAPITAL WORKS RESERVE FUND

HEAD 701 - LAND ACQUISITION

Ex-gratia allowances for mariculturists affected by marine projects in Hong Kong waters

Members are invited to approve -

- (a) a new eligibility criterion for ex-gratia allowance (EGA) payable to mariculturists based on proximity of fish culture zones to the designated boundary of sand dredging or mud disposal operations; and
- (b) revised formulae for calculating EGA for mariculturists.

PROBLEM

The current eligibility criteria and formulae for calculating EGA payable to mariculturists affected by works carried out in Hong Kong waters was adopted in July 1993. We need to review the package.

PROPOSAL

2. At present, EGAs for mariculturists are only paid if the concentration of suspended solids reaches prescribed levels. We propose to introduce a new criterion whereby mariculturists will qualify for EGA payments wherever the shortest water distance between the designated boundary of a sand dredging or mud disposal operation and the gazetted zone boundary of a fish culture zone (FCZ) is five kilometres or less without the need for the suspended solids test.

3. Mariculturists may opt to continue or suspend or cease their operations permanently. The existing formulae for calculating EGA are based on the notional loss of income and/or the loss of capital investment in rafts and cages. We propose to: -

- (a) revise the basis for calculating the notional loss of income and the loss of capital investment;
- (b) introduce a new element, namely loss of working capital, into the formulae for the calculation of EGA for mariculturists who opt for suspension or extinguishment of their operations; and
- (c) delete the obsolete domestic removal allowance.

4. The current arrangements for calculating EGA for mariculturists and our recommendations are set out respectively at columns (A) and (B) of Enclosure.

JUSTIFICATION

Proximity to sand dredging and mud disposal operations

5. EGA for mariculturists are presently payable when the concentration of suspended solids in a FCZ reaches prescribed levels, as follows –

- (a) reaches 100% more than the highest level recorded at the zone during the five years before commencement of works in the vicinity; or
- (b) reaches 50 mg per litre.

6. Eligible mariculturists would be required to make an irrevocable option before any payment of EGA is made. They would be able to opt to: -

- (a) continue mariculture operations in the same place at their own risk, in which case they would be eligible for an EGA equivalent to 50% of the notional loss of income for a normal two-year fish culture cycle; or
- (b) suspend mariculture operations for two years, in which case they would be eligible for an EGA equivalent to the notional loss of income for a normal two-year fish culture cycle; or

- (c) cease mariculture operations permanently, in which case they would receive an EGA payable for extinguishment, which contains elements for the notional loss of income for two years and the loss of capital investment in rafts and cages.

7. Based on recent experience, we believe that FCZs located close to sand dredging and mud disposal operations may have an increase in suspended solid level and the health of fish may be affected at the initial stages of operations when the environmental impact on local water quality is less certain. We therefore propose to introduce a new criterion for FCZs located close to sand dredging or mud disposal operations. Under this proposal, mariculturists would automatically be eligible for EGA for the first two years of a project, if the shortest water distance between the designated boundary of a sand dredging or mud disposal operation and the gazetted boundary of a FCZ is five kilometres or less. The current restrictions relating to suspended solids will not apply in such cases and eligible mariculturists may receive EGA in advance of the commencement of the works. For sand dredging or mud disposal operations carried out more than five kilometres away and for other types of marine works (e.g. reclamation), the existing criteria based on the concentration of suspended solids will continue to apply.

8. The distance of five kilometres in applying the “proximity” criterion is derived from general experience and data relating to marine works carried out since the existing suspended solid criteria were approved by Finance Committee in 1993.

Revision of EGA Formulae

9. The results of a recent review by Agriculture, Fisheries and Conservation Department indicate that the current formulae for calculating EGA for mariculturists are not up to date. They should be revised to reflect the changed circumstances. Details are set out in the Enclosure.

10. Under the new proposal for calculating EGA, if approved, mariculturists with an average farm size of 250m² raft area who opt to continue their operations would be eligible for an EGA payment of about \$68,020 (i.e. an increase of 10% over the current payment of \$62,066). Mariculturists who opt to suspend their businesses for two years would receive about \$209,480 (i.e. an increase of 69% over the current payment of \$124,133). Mariculturists who opt to cease their mariculture operations permanently would be paid an allowance of about \$272,500 (i.e. an increase of 51% over the current payment of \$180,024).

11. As stated in paragraph 6 above, options will be irrevocable during the first two-year period for which the EGA are granted (i.e. no additional EGA would be granted in relation to any other works which start within the two-year period and even if the

concentration of suspended solids exceeds the existing criteria during this period). Upon the expiry of the first two-year period, EGA may be granted again only if the concentration of suspended solids meets the existing criteria set out in paragraph 5 above.

Effective Date

12. If approved, we intend to introduce the proposals set out in paragraphs 2 and 3 above with effect from 15 March 2000.

CONSULTATION

13. [subject to consultation with LegCo Health Services Panel]

FINANCIAL IMPLICATIONS

14. Subject to Members’ approval of the proposals in paragraphs 2 and 3 above, we estimate that the EGA payable for fish culture zones in the coming three years would amount to a total of \$107.3 million (i.e. maximum financial commitment) based on the revised EGA formulae if all the mariculturists in the affected fish culture zones opt to cease their operations permanently.

BACKGROUND INFORMATION

15. Large scale sand dredging or mud disposal operations carried out in the vicinity of FCZ may lead to an increase in the concentration of suspended solids in the water. This may affect the health of fish in FCZ in the vicinity. Affected mariculturists may as a result suffer economic losses. Under the existing arrangements, they may be granted EGA only if the concentration of suspended solids in the water has reached certain prescribed levels.

16. Mariculturists have suggested that the existing EGA package should be enhanced. We believe that the new EGA proposals for fishermen set at in paragraph 3 above already represent the most appropriate and reasonable package.

Agriculture, Fisheries and Conservation Department/
Environment and Food Bureau

Ex-gratia Allowances (EGA) for Mariculturists

| | (A) Existing arrangements (based on FCR(93-94)72 as approved by Finance Committee on 23 July 1993) | (B) Proposed new arrangements |
|--------------------------|---|--|
| 1. Suspended solids test | <p>EGA may be granted if the concentration of suspended solids in a fish culture zone:</p> <p>(a) reaches 100% more than the highest level recorded there in the previous 5 years; or</p> <p>(b) reaches 50 mg per litre.</p> | <p><u>New proximity test</u></p> <p>Mariculturists may opt to receive EGAs covering 2 years provided the shortest water distance between the designated boundary of a sand dredging or mud disposal operation and the gazetted zone boundary of a fish culture zone is 5 kilometres or less, irrespective of the concentration of suspended solids. Upon expiry of the first 2-year period, the mariculturist may be granted EGA again only if the existing suspended solids criteria are exceeded.</p> <p>For sand dredging / mud disposal more than 5 kilometres away and other types of works (eg reclamation), payment of EGA should continue to be subject to the existing suspended solids test.</p> |

| | (A) Existing arrangements (based on FCR(93-94)72 as approved by Finance Committee on 23 July 1993) | (B) Proposed new arrangements |
|--|--|--|
| <p>2. Options which mariculturists may take in receiving EGA payment</p> | <p>Mariculturists who have been deemed eligible for EGA may: -</p> <p>(a) continue their business at their own risk and receive EGA equivalent to 50% of the loss of income for a normal 2-year fish culture cycle; or</p> <p>(b) suspend their business for 2 years and receive EGA equivalent to the loss of income for a normal 2-year fish culture cycle; or</p> <p>(c) cease their business permanently and receive an extinguishments allowance to cover the loss of income for 2 years and the loss of capital investment in rafts/cages.</p> | <p>(a) No change.</p> <p>(b) Propose to introduce the loss of working capital in addition to the EGA for the loss of income for a 2-year fish culture cycle.</p> <p>(c) Propose to introduce the loss of working capital and the loss of capital investment for other equipment in addition to the EGA for the loss of income for a 2-year fish culture cycle.</p> <p>[The above changes and other changes to the basis for calculating the notional loss of income and the loss of capital investment are detailed in the following pages.]</p> |

| | (A) Existing arrangements | (B) Proposed new arrangements |
|--|---|---|
| <p>3. Elements of EGA formulae</p> <p>3.1 Notional loss of income</p> <p>(equivalent to the difference between gross income and operational farm expenses)</p> | <p>(a) Gross income is based on 1-year's survey of fish production and the price of fish.</p> <p>(b) Operational expenses include the operator's own labour cost, the depreciation factor of rafts and cages and the cost of fry is based on 1-year's survey.</p> | <p>(a) Gross income is proposed to be based on 5-years' average of fish production and price of fish to minimise the effect of the short-term fluctuations in these values.</p> <p>(b) (i) It is proposed to discount the operator's own labour cost and depreciation of rafts and cages as operational expenses for the following reasons: -</p> <ul style="list-style-type: none"> — Operators are aging and finding alternative employment is not a realistic option. — The depreciation cost of these items has already been reflected in the loss of capital investment. <p>(ii) It is proposed to add fuel expenses for farm equipment in the formulae as mechanised farm equipment has become more common.</p> <p>(iii) It is also proposed to calculate the price of fry based on a 5-year average to minimise the effect of the short-term fluctuations in prices.</p> |

| | (A) Existing arrangements | (B) Proposed new arrangements |
|--------------------------------|--|--|
| 3.2 Loss of capital investment | (a) To take into account of the residual value of rafts and cages. | (a) It is proposed to take into consideration the residual value of other essential farm equipment in addition to rafts and cages because in recent years, fish farmers have introduced a number of new equipment items to improve their farming technique. |
| 3.3 Loss of working capital | (a) The loss of working capital is not taken into account under the current formulae. | (a) It is proposed to add a new element, namely loss of working capital, into the EGA formulae for suspension and extinguishment of operations. Mariculturists usually have two stocks of fish (an “older” stock and a “younger” stock) most of the time. The younger fish stock may have been reared less than one year and not yet reached maturity. Given the small size and the immaturity of the fish, such a stock has little market value. We therefore propose that the loss of working capital for the younger stock be paid to farmers who opt to suspend or cease operations permanently. |
| 4. Domestic Removal Allowance | This is pegged to the EGAs payable to mariculturists affected by the clearance operation in 1989-1991 when all structures related to domestic use were cleared on rafts. | It is proposed to delete this allowance as it has become obsolete. All domestic structures on rafts have been cleared and such structures on rafts are now illegal. |