

**For discussion on
13 March 2012**

Legislative Council

Panel on Food Safety and Environmental Hygiene

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

PURPOSE

This paper briefs Members on the results of a recent review on the ex-gratia allowance (EGA) package for fishermen affected by marine works projects in Hong Kong waters.

BACKGROUND

2. Fishermen are not entitled to statutory compensation when they lose their habitual fishing grounds permanently or temporarily due to marine works projects as they have no legal rights over the waters where they habitually fish. However, recognising that affected fishermen may suffer a reduction of income and may incur extra expenses in relocating their activities to fishing grounds elsewhere, they may be granted EGA in an amount proportional to the notional value of annual fish catch from the affected waters, subject to certain eligibility criteria (e.g. their homeport must be associated with the affected fishing grounds).

3. The EGA package for fishermen affected by marine works projects in Hong Kong waters was last reviewed in 2000 and approved by the Finance Committee (FC) of the Legislative Council in December 2000. The existing formula for calculating EGA payable to fishermen affected by marine works projects are set out in FC Paper FCR(2000-01)46. At present, the EGA payable to eligible fishermen affected by marine works projects are calculated on the basis of a notional value (the total value of fish catch from an affected area) of –

- (a) seven years' fish catch in respect of marine works projects resulting in a permanent loss of fishing grounds (primarily due to reclamation operations); and
- (b) three years' fish catch in respect of marine works projects resulting in a temporary loss of fishing grounds (primarily due to sand dredging or mud disposal operations).

Further EGA payments may be granted to fishermen affected by successive marine works projects (such as sand dredging or mud disposal operations) at the same location where three years have elapsed since the completion of the last works projects.

4. In view of changes in the operating environment in the last decade, fishermen have recently raised with the Government that the current EGA package was inadequate in assisting them to manage and adapt to the ever-dwindling operating environment due to a loss of fishing grounds. Fishermen representatives have requested that the multiplier for the current EGA formula, covering both the permanent and temporary loss of fishing grounds, be increased.

THE REVIEW

5. The Administration generally shares the view that fishermen impacted by marine works are indeed facing more difficulties when seeking to relocate their fishing activities.

6. First, the size of the local fishing ground is decreasing due to our infrastructure development in the last decade. When examining the impact brought to capture fishermen by marine works projects, we note that in general the scale of individual marine works projects planned for the next few years is bigger and more complex than those in the past. Fishing in alternative areas close to their homeports is not always a practical choice anymore. It is expected that affected fishermen would have to travel further afield from their homeports to alternative fishing grounds in Hong Kong waters and some might have to compete with their Mainland counterparts in the South China Sea in order to make a living. Secondly, the average age of local fishing vessels has increased

over the last decade and older vessels may not be fit for fishing further afield from their homeports. Thirdly, greater expenses would also be incurred for their relocation due to the increasing operating costs (e.g. increase in fuel price) in recent years.

7. When conducting this review, we draw comparison to the permanent loss of fishing ground resulted from the trawl ban, for which EGA is payable to the affected trawler fishermen. The FC approved that the EGA payable in the trawl ban exercise would be determined on the basis of the 1989/91 Port Survey, to be adjusted by the fish price movement, with a multiplier of 11 years' notional fish catch value. This new multiplier was derived as a result of many rounds of consultation with a wide range of fishermen groups. We consider the new multiplier for the trawl ban exercise an appropriate benchmark for marine works which result in permanent loss of fishing grounds. Any suggestions for a multiplier more than 11 years are considered unjustified as the nature of the impact between the two on fishermen should be similar¹.

8. Similar hardship would be experienced by fishermen during a temporary loss of fishing grounds, albeit to a lesser degree. In order to maintain the relativity of the EGA payable to fishermen for the permanent versus temporary loss of fishing grounds, we propose that the multiplier for the latter be adjusted from three years' to five years' notional value of fish catch. EGA payable to affected fishermen due to a temporary loss of fishing ground would remain at around 40% of that for a permanent loss of fishing grounds after the proposed adjustment.

¹ Although individual marine works projects mainly affect localised areas, the cumulative impact of marine works projects since the last EGA review in 2000 and the new projects to commence in the coming years will also impose a significant impact on fishermen whose vessels have limited navigational range. Against the background of the fast-depleting fisheries resources, what fishermen would be facing in the coming years is almost unprecedented, in terms of the cumulative effect brought about by six large scale marine works projects planned to commence within three years in a hydrographic system. The possible adverse impact on these small inshore fishing vessels as a result of marine works will be very manifest.

9. While there have been requests to increase the multiplier for temporary loss of fishing grounds to the whole construction period plus the seabed recovery period after completion of works, we consider it not justifiable to devise a variable multiplier for marine works projects resulting in a temporary loss of fishing grounds, mainly because of the need to maintain relativity with the EGA multiplier for permanent loss of fishing grounds. We consider a new multiplier of five years' notional value of fish catch appropriate.

10. We suggest that we adhere to the same Port Survey data (i.e. 1989/91 Port Survey data) for calculating EGA for fishermen affected by marine works projects. Fishermen were generally more receptive to the catch value based on the data from the 1989/91 Port Survey and they had maintained their view that the catch value based on the 1989/91 Port Survey could better reflect the fisheries resources situation before the commencement of the large scale marine works in the early 1990s.

11. At present, to cater for the impact on fishermen affected by successive marine works projects in a specific fishing ground (primarily sand dredging or mud disposal operations), further EGA may be granted if three years have elapsed since the completion of the last marine works project at the same location, as it may take some three years for the affected fishing grounds to recover after completion of works. We consider the arrangement reasonable and should be maintained in the package.

12. Same as in the past, an inter-departmental working group will be set up to determine the eligibility and apportionment criteria for the relevant EGA exercise.

THE PROPOSALS

13. To cater for the increased hardship faced by fishermen affected by marine works projects, we propose, following the outcome of the review, that –

- (a) the multiplier of the EGA formula be enhanced from seven years to 11 years' notional value of fish catch in respect of marine works resulting in a permanent loss of fishing grounds; and

- (b) the multiplier of the EGA formula be enhanced from three years to five years' notional value of fish catch in respect of marine works resulting in a temporary loss of fishing grounds.

All other arrangements for the EGA package for fishermen approved by the FC in 2000 will remain unchanged. The current arrangements and our proposals are set out in columns (A) and (B) of **Annex A** respectively.

EFFECTIVE DATE

14. We propose setting 1 April 2011 as the effective date for the proposals, so that fishermen affected by projects which commenced in the review period can also benefit from the outcome of the review. Subject to the approval of FC, the proposals will be applicable to fishermen affected by marine works projects commencing after the effective date.

CONSULTATION

15. In the course of the review, the Food and Health Bureau (FHB) and the Agriculture, Fisheries and Conservation Department (AFCD) have met with the fishermen to listen to their views on the current EGA mechanisms. Officials of FHB and AFCD, together with representatives from other bureaux and departments responsible for marine works, have also conducted site visits and held talks with fishermen groups. Fishermen groups have asked the multiplier be increased from seven years to 15 years' notional value of fish catch in respect of marine works resulting in a permanent loss of fishing grounds. For marine works resulting in a temporary loss of fishing grounds, they are of the view that the multiplier should be equivalent to the whole construction period plus the seabed recovery period after completion of works. Towards the end of the review, AFCD has explained to fishermen groups the rationale for adjusting the multiplier for permanent and temporary loss of fishing grounds to 11 and five years respectively. The current proposals are broadly agreeable to the trade.

FINANCIAL IMPLICATIONS

16. Based on known major public marine works projects commencing in the next five years, we estimate that if the proposals are adopted, the maximum EGA payable under the proposed new formula to affected fishermen

would amount to \$59.6 million in total, i.e. an increase of about 62% or \$22.8 million as compared to the EGA amount derived from the existing formula.

WAY FORWARD

17. Members are invited to note and advise on the proposals set out in paragraph 13 of this paper. Subject to any comments from Members, the Administration will put forward the proposals to FC as soon as possible.

**Food and Health Bureau
Agriculture, Fisheries and Conservation Department
March 2012**

Ex-gratia Allowances (EGA) for Fishermen

	(A) Existing arrangements (based on FCR(2000-01)46 approved by Finance Committee on 1 December 2000)	(B) Proposed new arrangements
1. Multiplier in the formula for calculating EGA	(a) 7 years' fish catch for permanent loss of fishing grounds. (b) 3 years' fish catch for temporary loss of fishing grounds.	(a) 11 years' fish catch for permanent loss of fishing grounds. (b) 5 years' fish catch for temporary loss of fishing grounds.
2. Basis for calculating the notional value of fish catch	1989-91 Port Survey data (supplemented by other relevant fisheries data obtained by Agriculture, Fisheries and Conservation Department).	No change.
3. Loss caused by successive works at the same location	Further EGA may be granted to fishermen affected by successive marine works operations at the same location where three years have elapsed since the completion of the last works for which EGA was already granted.	No change.