

## **FACT SHEET**

### **Mechanism for granting ex-gratia allowances to mariculturists affected by marine works**

#### **1. Introduction**

1.1 Large scale marine works such as sand dredging and mud disposal operations may lead to an increase in the concentration of suspended solids in the sea water. This may affect the growth of fish in the fish culture zones in the vicinity and lead to economic loss of the affected mariculturists. As such, the Government may grant ex-gratia allowances ("EGAs") to affected mariculturists who meet the prescribed eligibility criteria.

1.2 This fact sheet provides information on the existing mechanism for granting EGAs to mariculturists affected by marine works, and issues and concerns about the mechanism.

#### **2. Existing mechanism**

2.1 The Government last reviewed the mechanism for granting EGAs to mariculturists affected by marine works in 2000. The proposed amendments to the previous eligibility criteria for granting and basis for calculating EGAs for affected mariculturists were approved by the Finance Committee ("FC") of the Legislative Council on 1 December 2000<sup>1</sup>.

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<sup>1</sup> *Minutes of the 3<sup>rd</sup> Meeting of the Finance Committee of the Legislative Council (2000).*

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## Eligibility criteria

2.2 According to the existing mechanism, EGAs are payable to mariculturists affected by marine works if one of the following eligibility criteria is met:

- (a) "suspended solids test" – the concentration of suspended solids in the sea water of a fish culture zone in the vicinity is 100% more than the highest level recorded at the zone during the five years before commencement of the marine works concerned, or the concentration of suspended solids reaches 50 milligrams per litre of sea water<sup>2</sup>; or
- (b) "proximity test" - 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 five kilometres or less, regardless of the concentration of suspended solids in the sea water<sup>3</sup>. For sand dredging and mud disposal operations carried out more than five kilometres away and other types of marine works such as reclamation, the "suspended solids test" will continue to apply.

2.3 Under the "proximity test", eligible mariculturists would be granted a one-off payment of EGAs for the first two years of a marine works project before commencement of the works. Within the two years covered by the EGAs, the mariculturists concerned would not be granted additional EGAs in relation to any other marine works near the affected fish culture zones even if the concentration of suspended solids exceeds the prescribed levels of the "suspended solids test". However, EGAs may be granted again upon expiry of the first two-year period if the criterion of the "suspended solids test" is met.

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<sup>2</sup> The "suspended solids test" was endorsed by FC of the then Legislative Council in 1993.

<sup>3</sup> The Government introduced the "proximity test" as an eligibility criterion in 2000 considering that fish culture zones located close to sand dredging and mud disposal operations might be subject to increased risk of fish loss at the initial stages of the works. The five kilometres yardstick was derived from general experience and data relating to marine works carried out since the introduction of the "suspended solids test" in 1993.

2.4 The Government will set up an inter-departmental working group comprising representatives from the Agriculture, Fisheries and Conservation Department, Lands Department, Home Affairs Department and other relevant departments, where necessary, to consider whether the mechanism of granting EGAs should be activated to process the applications of the eligible mariculturists having regard to the criteria referred to in paragraph 2.2.

### Components of the ex-gratia allowances

2.5 Eligible mariculturists are required to make an irrevocable option to continue, suspend or cease their mariculture operations for establishing the basis for calculating the EGAs payable. The components of the EGAs granted under the different options are as follows:

- (a) continuing mariculture operations in the same place at the mariculturists' own risk – eligible for an EGA equivalent to 50% of the notional loss of income, i.e. the difference between gross income and operational expenses<sup>4</sup>, for a normal two-year fish culture cycle;
- (b) suspending mariculture operations for two years – eligible for an EGA equivalent to the notional loss of income for a normal two-year fish culture cycle, and loss of working capital<sup>5</sup>; and
- (c) ceasing mariculture operations permanently – eligible for an EGA equivalent to the notional loss of income for a normal two-year fish culture cycle, loss of working capital, and loss of capital investment in rafts, cages and other essential farm equipment<sup>6</sup>.

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<sup>4</sup> The calculation of gross income is based on fish production and fish price data over a five-year period to minimize the effect of short-term fluctuations. Operational expenses include, among other things, the cost of fry based on a five-year average of prices and fuel expenses for farm equipment.

<sup>5</sup> The calculation of loss of working capital is based on the loss of the younger fish stock which is reared for less than one year and has little market value when disposed of if the mariculturists suspend or cease their operations.

<sup>6</sup> The calculation of loss of capital investment takes into account the residual value of rafts, cages and other essential farm equipment.

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### 3. Issues and concerns

3.1 When the Government conducted the last review on the mechanism for granting EGAs to mariculturists affected by marine works in 2000, stakeholders had raised concern about the adequacy of the five-kilometre water distance criterion under the "proximity test". They had also suggested raising the EGA rates<sup>7</sup>.

3.2 At the FC meeting on 1 December 2000 when the proposed amendments to the previous arrangements for granting EGAs to mariculturists affected by marine works were considered, some members queried why reclamation projects were not included under the proposed "proximity test" and urged the Government to review the matter seriously. The Government pointed out that reclamation released far less sediments into the water when compared with sand dredging or mud disposal works, and mariculturists would still be eligible for EGAs under the "suspended solids test" irrespective of the nature of marine works<sup>8</sup>.

3.3 At the Council meeting of 11 March 2009, a Member raised a question on whether the Government would review the eligibility criteria for granting EGAs to mariculturists affected by marine works, such as considering extending the shortest water distance to "15 kilometres or less" under the "proximity test" and lowering the prescribed concentration level of suspended solids under the "suspended solids test"<sup>9</sup>.

3.4 The Government replied that the yardstick of five kilometres adopted under the "proximity test" was derived from the general condition and data relating to marine works carried out since the introduction of the "suspended solids test" in 1993. Three major sand dredging projects carried out between 1993 and 2000 caused the concentration of suspended solids in the nearby fish culture zones to exceed the level prescribed under the "suspended solids test", thereby triggering the mechanism of granting EGAs to the affected mariculturists. The distance between these three projects and the fish culture zones concerned was less than five kilometres.

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<sup>7</sup> Agriculture, Fisheries and Conservation Department and Environment and Food Bureau (2000), and Environment and Food Bureau (2000).

<sup>8</sup> *Minutes of the 3<sup>rd</sup> meeting of the Finance Committee of the Legislative Council* (2000).

<sup>9</sup> *Official Record of Proceedings of the Legislative Council* (2009).

3.5 The Government further advised that there were four sand dredging or mud disposal projects meeting the "proximity test" since its introduction in 2000, and EGAs were granted to mariculturists in six affected fish culture zones as a result. Nonetheless, these projects did not cause the concentration of suspended solids in the water to exceed the prescribed level or lead to abnormal fish kills in the fish culture zones which were more than five kilometres away.

3.6 With regard to the "suspended solids test", the Government stated that it had been very prudent to set the level of concentration of suspended solids at 50 milligrams per litre when drawing up the "suspended solids test" in 1993, taking into account relevant scientific studies, the local species of culture fish and mariculture environment. According to relevant scientific studies, fishes generally would not die unless the concentration of suspended solids reached several thousand milligrams or above per litre of water. Given that fishes might be affected due to failure to adapt to a sudden and substantial increase in the concentration of suspended solids in the sea water within a short period of time, the Government had introduced another criterion i.e. affected mariculturists would be eligible for EGAs if the concentration of suspended solids in the sea water of a fish culture zone was 100% more than the highest level recorded at the zone during the five years before commencement of the marine works in the vicinity.

3.7 Based on the above information, the Government considered that the existing "suspended solids test" and "proximity test" had provided adequate protection for mariculturists affected by marine works.

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## References

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2. Environment and Food Bureau. (2000) *Capital Works Reserve Fund Head 701 – Land Acquisition: Ex-gratia allowances for mariculturists affected by marine works projects in Hong Kong waters*. Paper submitted to the Finance Committee of the Legislative Council for discussion on 1 December 2000. FCR(2000-01)47.
3. Environment and Food Bureau et al. (2002) *Note for Finance Committee – Ex-gratia Allowances relating to Land Resumption, Clearance and Marine Works in Hong Kong Waters*. Available from: <http://www.legco.gov.hk/yr01-02/english/fc/fc/papers/f-feb01be.pdf> [Accessed March 2012].
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5. *Minutes of the 15<sup>th</sup> Meeting of the Finance Committee of the Legislative Council*. (2000) 23 June. LC Paper No. FC160/99-00.
6. *Minutes of the 3<sup>rd</sup> Meeting of the Finance Committee of the Legislative Council*. (2000) 1 December. LC Paper No. FC41/00-01.
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