



Principles to be applied when seeking and assessing applications for compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*

Context

Under s.3 of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* (FRICMA), a range of fishing and related authorisations are listed for consideration regarding compensation.

Under s.4 of the FRICMA a set of events are specified that may cause an entitlement to compensation to arise regarding an authorisation listed in s.3, including:

- the coming into operation of a marine park (and any subsequent amendments); and
- the classification of an area of a marine park (e.g. sanctuary, recreation or special purpose).

Relatedly s.5 of FRICMA states that fair compensation is payable to listed authorisation holders who suffer a loss as a result of a relevant event and only if the market value of the authorisation is reduced because of a set of specified reasons, including:

- only part of the area can be renewed under the authorisation;
- one or more classes of fishing cannot be renewed under the authorisation; or
- an area will not be available for commercial fishing when the authorisation is renewed.

These above provisions of FRICMA potentially require a reliable estimate of market value at up to five points in time:

1. immediately before the marine park is declared;
2. immediately after the marine park is declared;
3. during the period between declaration and zoning, based on the year of authorisation transfer;
4. immediately before the marine park zoning scheme comes into effect; and
5. immediately after the marine park zoning scheme comes into effect.

In most instances only some of these will apply given the need to hold a specified authorisation (s.3) and the need for a specified event to have occurred (s.4) and the reasons for compensation applying (s.5).

However, it is often not possible to reliably ascertain the market values of authorisations via comparative sales at one or more of the five points in time. In many cases there is little information available because of the low number of authorisation transfers and even when there are there has been and still is no

obligation for transfer prices to be provided to the Department of Primary Industries and Regional Development (Department).

For the above reasons it is therefore necessary to develop a set of principles and further guidance to be used when determining eligibility for compensation and estimating possible changes in market value utilising other methodologies, particularly where this cannot be determined directly. Proxies for market value may include catch, Gross Value of Production (GVP) and catch per unit of effort. Like the market value of an authorisation these may change before and after an event. This is most likely to occur when zoning for a marine park is gazetted that may result, for example, in areas being closed to fishing.

In general, a fishery level approach has been taken to determining compensation both because most fisheries are unitised and that the market value of the authorisation type is being measured not the individual performance of the operator using their authorisation.

Note that where references to catch, GVP and catch per unit of effort are referred to in this paper, these are based on statutory returns or other such information collected by the Department.

Note also that a transfer of an authorisation is not defined in FRICMA but is referred to in Section 140 of the *Fish Resources Management Act 1994*. For the purposes of FRICMA, the Department has used s.140 (1)(a) which refers to a person who applies for the transfer of an authorisation (i.e. a change of ownership of a managed fishery licence or other authorisation) Department.

Future Directions for FRICMA

When fully implemented, the *Aquatic Resources Management Act 2016* (ARMA) will consequentially amend FRICMA such that in a Managed Aquatic Resource, any loss in market value must be associated with a reduction in the Total Allowable Catch (TAC) for the resource. This provides guidance as to how situations where it is currently not possible to directly determine changes in market value should be dealt with.

Purpose of the Principles for Determining Compensation under FRICMA

The principles outlined below are intended to guide the process of making decisions regarding eligibility for and the level of compensation to be offered to fisheries authorisation holders affected by marine parks where it is not possible to directly determine changes in market value

Each eligible applicant will be invited to provide information they have regarding change in market value of their authorisation(s) and any such information will be considered as part of the process of assessing their claim.

Principle 1 - Eligibility to be considered for compensation

To be eligible to be considered for compensation an applicant must be a registered holder of an authorisation listed in FRICMA s3(1) on the day a relevant event (FRICMA s4) occurs and any reduction in market value of the authorisation must be for a specified reason (FRICMA s5).

Further Guidance

This principle defines who may be eligible to be considered for compensation but does not entitle a person to compensation.

A person leasing or sub-leasing an authorisation is not eligible to be considered for compensation.

Third party interests in an authorisation are not eligible to be considered for compensation.

Only permanent (not temporary) units held against a Managed Fishery Licence (MFL) would be considered when determining the level of compensation.

The holders of the authorisation between the declaration of the marine park boundaries and the marine park zone declaration would be considered eligible if the market value of the authorisation has been reduced by the relevant event/s that took place.

Principle 2 – Preferential use of market value

Where it is possible to determine the market value of an authorisation before and after a relevant event then these should be used as the basis for any compensation.

Further Guidance

Where market value is assessable, the Minister must be satisfied that any reduction is the result of a relevant event before compensation can be paid.

Principle 3 – Reduction in the Allowable Harvest Level

Consistent with the future direction provided by ARMA, when estimating the potential loss in market value consideration should be given as to whether there has been a reduction in the Allowable Harvest Level associated with implementation of the marine park.

Further Guidance

Any such reduction may be associated with the declaration of either the boundary of the park and/or the introduction of the marine park zoning scheme.

Direct reductions in the Allowable Harvest Level (AHL) are more likely to occur in fisheries for sessile species and/or output managed fisheries e.g. the Abalone

Managed Fishery with respect to the Ngari Capes MP. Such a reduction has flow-on effects to individual applicants depending on the share of the AHL they may be able to catch.

Principle 4 – When using catch and related information to calculate a change in market value

Both before and after a relevant event it is preferable to use multiple years of catch, GVP and/or CPUE to determine an average that can be used for calculating change in market value, and that the metric used is the same either side of the event.

Further Guidance

The 'metric' refers to the data used and calculations made with the data either side of an event.

The catch, GVP and/or CPUE years used for each event will likely vary for each marine park as it will depend on when those events occurred, the time between the relevant events and how much time has elapsed after the most recent event.

The preference for averaging has been adopted to cater for environmental, operational or other risks. However, circumstances may arise where an average may not be calculable and alternatives may be used, for example, annual catch or the longest reliable catch period available.

Where the GVP of a fishery has increased the authorisation holder is unlikely to be considered eligible for compensation because on this measure a loss in market value has not been demonstrated. In making this determination CPUE may be used as a supporting measure to ascertain any change in market value.

Principle 5 – Estimating the proportion of the catch lost from a fishery when an area is closed to commercial fishing.

Consideration of compensation claims need to have regard to both the proportion of relevant catch-reporting blocks closed to fishing and that fish, or the ability to catch fish, may not be distributed equally across a block.

Further Guidance

The Department's catch reporting systems collect catch data from large areas based on identified blocks. These blocks are generally either 60 x 60 nm or 10 x 10 nm. Areas closed to fishing in marine parks may be small in comparison to the size of these blocks. Boundaries of closed areas also do not follow the reporting block boundaries.

It is possible that a closed area may include waters that are more or less important to applicants for compensation. So, if 5% of a block has been closed, it may not be appropriate to assume that 5% of their catch from that block was caught in that area.

To address this issue, where a closed area includes part(s) of a block(s) it would be appropriate to estimate the proportion of the catch from blocks which are partially closed and then applying a multiplier to provide fair compensation.

Principle 6 – Accounting for species mobility when determining loss of catch from closed areas

The mobility of commercial species in relation to a closed area which has historically been fished is a relevant consideration when determining compensation since it will affect the degree to which that fish can be caught outside the closed area.

Further Guidance

As an example of species mobility considerations, in the Ngari Capes Marine Park, the abalone Allowable Harvest Level has been permanently reduced as a result of the closure of areas as these animals have limited mobility as juveniles and adults so cannot be taken outside of the closed areas. However, for many crustaceans and scalefish it could be expected that some of the fish historically taken in the closed area will be able to be caught in areas still open to commercial fishing. For still other species, (e.g. pelagics such as pilchards and mackerel) it could be expected that most, if not all, of the catch historically taken in the closed area will be able to be caught elsewhere in the fishery. The extent to which these expectations are correct will largely depend of the relative size of the closed area compared to the area remaining open to fishing.

The reason for the above approach is that the mobility multiplier is derived from the perceived level of risk to market value of the authorisation that could occur as a result of lost catch and in turn GVP.

When calculating a multiplier consideration will be given to previous similar circumstances under Voluntary Fisheries Adjustment Schemes, Act of Grace payments and FRICMA processes.

Principle 7 – Calculating total fishery compensation to account for closures

The calculation of total fishery compensation has several factors including the proportion of the block closed, catch from the block and GVP. In addition, multipliers of the proportion of the block closed and for mobility are included in the calculation consistent with Principles 5 and 6.

Further Guidance

In the absence of comparable sales market value is usually determined by use of a multiplier aligned to turnover (GVP) and an industry multiplier.¹

¹ Small business Development Corporation as at 14 July 2020 <https://www.smallbusiness.wa.gov.au/business-advice/exiting-business/selling-a-business>

Voluntary Fisheries Adjustment Scheme and Act of Grace processes at times apply a multiplier to catch values used in compensation offers. This recognises that with the surrender of licences or entitlement, the loss in potential income from the licence is ongoing. A similar approach may be used to calculate compensation payments under FRICMA, but with a variable mobility multiplier according to the species or species mix taken in each block where there is a zone closed to fishing with respect to each fishery.

When calculating the total fishery compensation the GVP to be used is the catch of each species by the beach price for the most recent year for which beach prices are available.

The overall calculation to use is: *Total fishery compensation = proportion of block closed x a multiplier for permanent closure x Average kg from block x Average GVP of catch x Mobility multiplier*

Total compensation for the fishery would be divided by the total number of licences/units in the fishery to give a payment per licence/unit.

The preference for averaging has been adopted to cater for environmental, operational or other risks. However, circumstances may arise where an average may not be calculable and alternatives may be used, for example, annual catch or the longest reliable catch period available.

Principle 8 - Fisheries where it is not possible to establish a GVP

In fisheries where the Department has no GVP data, each authorisation holder should receive a “flat” payment.

Further Guidance

In some fisheries, for example the Marine Aquarium Fish Managed Fishery, the Department has no GVP data to include in the type of calculation described above. A process consistent with that used to achieve the quantum of compensation for such fisheries in the Ningaloo and Montebello Marine Park processes should be undertaken for fisheries where it is not possible to establish GVP.

Principle 9 – Valuing other authorisations listed under FRICMA

Fishing Boat Licences have a low market value given their access right refers only to open access fisheries of which none of substance remain and their utility is generally unaffected by marine parks.

Commercial Fishing Licences have nil market value since they are unlimited in number and cannot be traded.

Fish Processing Licences have nil market value since they are unlimited in number. They can be traded, but there would be no value lost or gained when doing so.

Further Guidance

Although there remains a freeze on the grant of new FBLs, the Department does grant new licences to allow operation in association with a Managed Fishery Licence. As a result, FBLs now have very little market value, and this is reflected in the recent practice of paying \$5,040 for the surrender of an FBL under FAS schemes.

Some FBLs, are also associated with Section 43 Orders and/or exemptions. In such cases, the FBL may have a market value which could potentially have been impacted by the marine park. A nominal payment that is consistent with the Voluntary Fisheries Adjustment Scheme, Act of Grace and/or FRICMA payments may be considered in these instances.

Unlike MFLs, there are now few restrictions on species that can be processed under a Fish Processing Licence, so the holders of these licences are free to diversify their operation in a way that is not possible for MFL holders.

Summary of Principles to be applied and Further Guidance when seeking and assessing applications for compensation under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*

