

Approaches for determining commercial fisheries compensation

Increasingly, commercial fishers are being called on to surrender their fishing rights (in part or in full). Historically, compensation schemes have been used to improve the sustainability and economic viability of a fishery through reducing the number of licenced fishers. More recently, compensation schemes have arisen out of a need to meet other objectives, such as making way for offshore wind farms, port infrastructure, marine parks or reallocation of fish stocks to recreational fishers.

Designing a compensation scheme and setting a proper level of compensation, be it for compulsory buy-out of licences or a voluntary scheme, is inherently difficult. Participants have divergent goals. Fishers seek the best price possible for surrendering their rights, while the government seeks the best overall value for all parties. Importantly, compensation schemes need to be transparent, defensible and equitable if they are to gain broad acceptance.

This report reviews the range of approaches currently being used in Australia and internationally, with particular emphasis on small scale fisheries in Western Australia (WA). Small scale fisheries have a unique set of characteristics that tend to make compensation challenging – these being the limited or no trade in fishing rights (resulting in a paucity of traded market values for licences on which to base compensation), limited public information about fishing activities and financial performance, and fishers being motivated by lifestyle factors over profit.

In this study, both process aspects of compensation and methods for determining payments are examined. The objective is to develop an understanding of how various approaches have worked in the past, lessons learned and what improvements may be warranted.

Lessons from past experience

The study finds that past compensation schemes conducted in WA have experienced a range of issues that have given rise to concerns and frustrated the process of determining fair and reasonable compensation. These include:

- **Lack of transparency** – it was often the case that insufficient information was provided to fishers about how compensation offers were determined, which made it difficult for participants to understand and appraise initial offers and engage in negotiations.
- **Timing** – some processes reviewed were arguably triggered later than they should have been and took too long, running for two or more years, consuming resources, and creating significant uncertainty.

- **Data challenges** – for small fisheries, limited or no trade in fishing rights has made it difficult to use market-based approaches to estimate licence values. Application of income-based valuations is limited by a lack of detailed economic data, while reliance on gross value of production (GVP) approaches is complicated by potential inaccuracies in beach prices. The lack of data has generated debates about values that cannot easily be resolved.
- **Planning issues** – in some cases, the broader purpose of the compensation scheme has not been completely clear to fishers. There has been confusion around when a process was voluntary versus compulsory.
- **Mistrust** - compensation processes that were not transparent with clear accountability led to a level of mistrust in the scheme, which was amplified in cases where compensation offers were well below initial industry expectations.
- **Reliance on industry leadership** – schemes were demonstrated to benefit from having industry input as part of the design phase. However, there was mixed evidence on what form of governing structure works best for harnessing industry input.

Compensating for the impact of marine parks is found to present some special challenges under current legislative settings. In WA, compensation to fishers that are affected by the formation of a marine park is guided by the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* (FRICMA). This legislation requires compensation to be based on the loss of market value for fishery licences, which is often problematic due to the lack of traded values for licences in many smaller fisheries and the difficulty of using a market value metric to determine compensation for partial loss (as opposed to full loss) of rights to fish.

Process improvements

Based on the findings of this study, much can be done to improve compensation processes and valuation methodology. The overarching need is for systems that have greater clarity, predictability of outcomes, consistency in treatment of individual licensees (while maintaining flexibility to adjust for unique cases situations) and fairness.

The report makes it clear there is no ‘one size fits all’ solution. Much depends on the specific circumstances in the fishery, the nature of the policy change affecting the fishery, and what data is available for establishing the value of rights and/or impairment of those rights.

In establishing a process, managers will have several considerations. First, what is the objective of the scheme – is it to achieve a sustainable harvest or to compensate for the impact from a marine project (e.g. wind farm) or a marine event (e.g. oil spill)? Second, is the compensation for a complete or partial loss of a right and is it permanent or temporary? Third, will the scheme be voluntary or compulsory and what exact process will be followed?

The report sets out a decision framework for working through these criteria and guidance on how compensation should be determined under different situations. The detailed reasoning behind the framework is covered in the report, but in summary the main principles are as follows:

- For most of the foreseeable cases, compulsory schemes should be favoured.
- Each scheme needs to begin with clear criteria to guide the triggering of the compensation process.

- Schemes should have comprehensive guidance available to participants on the compensation process planning and implementation, including time frame for completion.
- Schemes should provide guidance on how compensation amounts are to be determined, including specified compensation formulas for licence acquisition processes, requirements to use external valuers to determine the market value element, and decision criteria to guide the choice of methods to determine a right's market value.
- Schemes should be designed so that critical elements (time frame, formula, valuers etc) can be agreed early in the process by representatives of the Government and the fishers.
- Provision should be made for individuals to appeal the outcome based on their individual circumstances.

A forward work plan

Appropriate legislative change will be required to effectively implement the above recommendations. Further, the recommendations will need to be supported and informed by additional work. The following next steps are identified:

- Design a 'pro forma' for affected fishers that incorporates relevant information on the compensation formula to be used, including a section prefilled with required information available from the relevant agencies (e.g., estimated licence value, catch history, GVP, beach prices, solatium percentage), and a section for fishers to submit relevant information on their operation (e.g., financial history, income, operating costs). Information from the two sections can be used to calculate the compensation to be offered.
- Amend or replace FRICMA to move away from compensating for change in the market value of rights to focus instead on expected loss of income.
- Develop and communicate strategies for determining compensation in situations where fishery licence holders also perform value adding (e.g., fish processing or retail).
- Improve the depth and quality of data for supporting compensation determinations, commensurate with the economic size and significance of the fishery (e.g., spatial catch and effort data, recording values at which rights are traded, greater use of economic surveys, and develop relevant GVP multipliers for specific fishery types).

It will be in the overall interest of the State, the fishing industry, and individual fishers to adopt more transparent and consistent compensation processes that deliver greater certainty, are less onerous, quicker and more equitable.

Related project

For full report refer to [FRDC Project 2022-021](#)