

MARINE PARK COMPENSATION

Frequently Asked Questions - April 2020

Q. Are commercial fishers automatically entitled to compensation when a marine park is put in place?

A. Commercial fishers may be entitled to compensation as a result of a marine park being declared. The process for determining whether compensation is payable is governed by the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* (FRICMA). A key element of FRICMA is that a person is only eligible for compensation if they suffer a loss in the market value of their authorisation as a result of either:

- the reservation of an area of water as a marine park; or
- the implementation of the zoning scheme under the marine park management plan.

These are termed *relevant events* under FRICMA.

Q. How will I know when I can apply for compensation?

A. The Department of Primary Industries and Regional Development (DPIRD) will advise all licensees in fisheries impacted by a marine park and the Western Australian Fishing Industry Council (WAFIC) when it is time to apply for compensation. It will also be advertised in The West Australian newspaper.

Q. Which licences are potentially eligible for compensation?

A. You can make an application for compensation with respect to:

- an aquaculture lease;
- an aquaculture licence;
- a commercial fishing licence;
- a fishing boat licence;
- a fish processor's licence;
- a farm lease;
- a managed fishery licence;
- an interim managed fishery permit;
- a hatchery licence;
- a hatchery permit;
- a pearling lease; or
- a pearling permit.

Q. What is the process taken to claim compensation?

A. DPIRD supports payment of fair and reasonable compensation to fishers who suffer a loss in the market value of their authorisation as a result of a marine park coming into effect. Much has been learnt in recent times about how to apply FRICMA and it is anticipated that this will speed up future compensation processes, though it is unlikely all timeframes specified in FRICMA will be met.

The first key step to the compensation process is determining whether a person is entitled to compensation. The second key step is determining the amount of compensation payable. If agreement cannot be reached on either being entitled to, or the amount of, compensation the decision/s may be independently reviewed or made by the State Administrative Tribunal (SAT).

Step 1

Minister for Fisheries must, as soon as practicable, publish a notice inviting affected persons to apply for compensation

Step 2

The Minister must determine whether or not the affected person is entitled to compensation, and notify that person of the decision **within 30 days** of receiving an application

Step 3

If the Minister for Fisheries determines the affected person is entitled to compensation then the Minister is to commence negotiations with the affected person with a view to settling the amount of compensation payable to the person, and setting out the terms of the agreement.

Step 4

If agreement cannot be reached on the amount payable **within 60 days** of the decision on being entitled to compensation is made, the affected person or the Minister may apply to the SAT to determine the amount of compensation payable.

A summary of the marine reserve compensation process is provided below. The Compensation Act can be viewed in full through the following link - https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a1838.html

Q. How will the order in which applications are considered be determined.

A. The Department will work through applications on a fishery by fishery basis, though negotiations may occur concurrently for multiple fisheries.

Q. What happens after I've made my application?

A. The Minister will write to you advising whether he considers you are entitled to receive compensation. DPIRD will then commence negotiations with you on the Minister's behalf. At that point, you will be asked to provide any information you have in support of your application. Following negotiations with DPIRD, the Minister will enter into an agreement with you with respect to the quantum of compensation to be paid.

Q. What is market value?

A. This is the value that someone is prepared to pay for your licence. While this may be linked with the profitability of your business, the potential impact on profits is not the basis for determining compensation.

Q. What if market value can't be determined?

A. Because of low turn-over of licences in many fisheries, determining a market value and how this may have been impacted upon by a marine park can be challenging.

Where the impact on market value cannot be estimated, DPIRD will work with WAFIC to determine principles, data requirements and options that could be applied to determine the level of compensation payable. These could include considerations such as the proportion of the fishing area lost, the level of catch from those areas and whether there has, or is expected to be, a reduction in the catch from the fishery as a result of area closures. The Department and WAFIC will keep you informed if this type of approach is being applied to your fishery.

Any decision to use this type of approach to estimating possible market value reductions will not impact on your right of review by the State Administrative Tribunal.

Q. Can I appeal a decision about compensation under FRICMA?

A. You can request a review by the State Administrative Tribunal if:

- the Minister determines that you are not entitled to compensation; and
- agreement on the amount of compensation to be paid is not reached within 60 days of a person being advised that they are entitled to compensation.

Ngari Capes Compensation

Q. How will I know when I can apply for compensation?

Applications for compensation for fisheries in the Ngari Capes Marine Park are open until 31 May 2020.

Application for compensation for fisheries impacted by Marine Parks in the Kimberley will be advertised in the coming months.

Q. How will the order in which applications are considered be determined?

A. The Department will work through applications on a fishery by fishery basis, though negotiations may occur concurrently for multiple fisheries.

For example, at the time of preparing this document, negotiations with the Abalone fishery had just commenced with respect to the Ngari Capes Marine Park and it was anticipated that the Southern Demersal Gillnet and Demersal Longline and West Coast Demersal Scalefish fisheries would follow.