

Chair
Cabinet Economic Development Committee

***Bonamia ostreae* (*B. ostreae*) compensation payment for** Privacy Act

Proposal

1. This paper seeks Cabinet's authorisation to make a payment of Commercial Sensitivity to Privacy Act (the claimant), in accordance with section 162A of the Biosecurity Act 1993 (the Act), for the disposal of the claimant's oysters and mussels which was directed by the Ministry for Primary Industries (MPI) as part of the Bonamia Response 2017.

Executive Summary

The Bonamia ostreae Response 2017

2. *Bonamia ostreae* (*B. ostreae*) is a parasite that can be fatal to *Ostrea chilensis* (flat oysters, also known as Dredge or Bluff Oysters).
3. The Bonamia Response resulted in the depopulation of all oyster farming activities in Big Glory Bay, Stewart Island.
4. This paper seeks authorisation from Cabinet for an assessed compensation payment of Commercial Sensitivity to the claimant, in accordance with section 162A of the Act for the disposal of its oysters and mussels which was directed by the Ministry for Primary Industries as part of the Bonamia Response 2017.
5. Approval of this recommended compensation payment would increase the cumulative amount of compensation paid to this claim to Commercial Sensitivity¹
6. As this payment, and the cumulative assessed amount of compensation for this claimant is above Commercial Sensitivity, Cabinet approval is needed to make this payment.
7. MPI has recognised the majority of the expenditure for this claim in the 2017/18 financial year. Cabinet has agreed to appropriate Commercial Sensitivity into the Compensation and ex-gratia appropriation for the 2018/19 financial year, through Budget 2019, and the balance of this claim will be paid from this.

¹ Refer to the summary in Appendix One, Table 4.

Background

8. *B. ostreae* was first detected in 2015 in the Marlborough Sounds. A controlled area notice (CAN) under section 131 of the Act restricting movements of shellfish was imposed in 2015. The CAN created two zones, the Contained Zone encompassing the top of the South Island and a Protected Zone encompassing the bottom of the South Island, including Stewart Island and the Chatham Islands.
9. In May 2017, MPI further detected *B. ostreae* on two flat oyster farms in Big Glory Bay, Stewart Island. The technical advisory group concluded that the whole of Big Glory Bay would likely be infected over a short period of time, due to the dwell-time and water circulation around the bay. To protect the greater oyster population and industry, particularly the wild oyster population in the Foveaux Strait from *B. ostreae* spread, the CAN was amended on 1 June 2017 to include a Stewart Island Zone that provided more restrictive movement controls of shellfish and marine farming equipment in and out of the area.
10. A decision to depopulate and decontaminate all oyster farming operations in Big Glory Bay was made in May 2017. Notices of Direction (NODs) under section 122 of the Act were issued on 12 June 2017 by an MPI inspector, in addition to the CAN. The NODs directed the immediate removal, decontamination and disposal of all farmed flat oysters and associated equipment.

Key points of MPI's assessment

11. On 1 June 2017, a CAN was issued under section 131 of the Act, restricting the movement of flat oysters on, off, or within Stewart Island.
12. On 12 June 2017, MPI issued NODs to the claimant and its share farming partners, under section 122 of the Act.
13. The NOD issued to the claimant directed the removal and secure disposal of all flat oysters and associated material being farmed at Marine Farms ^{Privacy} (the Marine Farms) in Big Glory Bay, Stewart Island.
14. The NODs issued to the claimant's share farming partners directed the removal and secure disposal of all flat oysters and associated material being farmed at Marine Farms ^{Privacy} (the Share Farms) in Big Glory Bay.
15. Accordingly, all of the claimant's flat oysters were removed and securely disposed of at a landfill in Bluff. Mussels were also removed and disposed of due to their co-location on growing lines containing flat oysters.²

² A small quantity of oysters were able to be sold as mitigation on Stewart Island within the restrictions of the exercises of power. MPI's assessment has deducted the value any mitigation the claimant achieved in doing so.

16. The claimant was affected by the NODs issued to its share farming partners, due to its confirmed ownership entitlement of oysters grown at the Share Farms.³
17. The claimant seeks **Commercial Sensitivity** in compensation for loss caused by the compulsory disposal of its oysters and mussels.⁴
18. MPI recommends a compensation payment of **Commercial Sensitivity**.⁵
19. There is a difference of **Commercial Sensitivity** between the claimed amount and MPI's recommended amount. This is due to the claimant:
 - 19.1. claiming a higher total quantity of oysters than estimated by the independent valuer **Privacy Act**.⁶
 - 19.2. not making any reductions for the expected mortality that would have occurred had the oysters remained in waters confirmed positive of harbouring *B. ostreae*;⁷
 - 19.3. valuing all oysters at an average wholesale price, whereas MPI has valued the oysters on a size to price ratio reflective of the actual prices previously achieved by the claimant;
 - 19.4. not deducting costs normally incurred but avoided in this instance due to MPI covering the costs of removing and securely disposing of both the oysters and mussels;
 - 19.5. not applying Treasury discount risk-free rate reductions (TDRs) to the 2020 and 2021 expected harvest years; and
 - 19.6. estimating a lesser quantity of mussels than that estimated by MPI and **Privacy Act**.
20. **Privacy Act** was employed by MPI to produce a report detailing the removal data recorded by MPI observers during the process of removing oyster stocks.
21. A breakdown of MPI's calculation of the assessed loss is detailed in Appendix One.
22. This assessment has been endorsed by MPI's Chief Legal Adviser and Crown Law.
23. Approval for compensation payments of the cumulative assessed amount for this claimant must be made by Cabinet.⁸

³ MPI has received email correspondence from all parties confirming the ownership entitlements of both the claimant and its share farming partners **Privacy Act**.

⁴ The claimant has sought **Commercial Sensitivity** for oysters and **Commercial Sensitivity** for mussels.

⁵ MPI's recommended compensation payment consists of **Commercial Sensitivity** for oysters and **Commercial Sensitivity** for mussels.

⁶ Refer to pages 15–19, Estimated harvest of oysters from Big Glory Bay, Stewart Island. Report for Ministry for Primary Industries.

⁷ MPI has determined the expected impacts on oyster mortality in the report 'Analysis of Mortality in Flat Oysters Exposed to *Bonamia ostreae*' October 2018.

⁸ Claims above **Commercial Sensitivity** must be submitted to Cabinet for consideration as per B17-0814 A.

24. MPI's full assessment of the compensable loss in relation to this submission has been provided to the Minister for Biosecurity in the cover briefing to this submission.

Consultation

25. MPI has consulted and received endorsement from Crown Law of the recommended compensation payment.
26. MPI also sent the submission to Treasury for their review. Treasury's feedback has been incorporated into the financial implications section below.

Financial Implications

27. There are no financial implications with this claim as MPI is able to fund the total amount of this claim from within existing appropriations.
28. In 2017/18 a provisional assessment for this compensation claim was approximately [Commercial Sensitivity]. Since this provision, MPI has received additional information, resulting in a [Commercial Sensitivity] increase to this claim. The total payment for this claim therefore totals [Commercial Sensitivity]⁹.
29. Cabinet agreed to appropriate [Commercial Sensitivity] in the financial year 2018/19 to the appropriation "Biosecurity: Compensation and Ex gratia payments following a biosecurity event" as part of Budget 2019 to allow for the payment of outstanding compensation claims associated with the 2015 biosecurity response to Bonamia Ostreae [Cab-19-min-0174.01 refers]. The additional [Commercial Sensitivity] funding required to complete this compensation claim was included in this [Commercial Sensitivity] agreed. MPI can already fund and has accounted for, the provisional sum of [Commercial Sensitivity] from within existing baselines.
30. As part of the process for Budget 2019, MPI has accounted for the volume of this claim in consideration of other claims expected for Bonamia Ostreae. MPI is confident that the amount requested at Budget 2019 for Bonamia Ostreae will provide for sufficient funds to cover all outstanding claims.

Legislative, Human Rights, Gender Implications, Impact Analysis and Disability Perspective

31. This paper has no human rights, legislative, gender or disability implications. It does not require a Regulatory Impact Analysis.

Publicity

32. No public announcement will be made about this compensation.

⁹ Refer to Appendix One for calculations of loss.

Proactive Release

33. Following Cabinet consideration, the Minister for Biosecurity may consider the release of this paper, with certain redactions in line with the Official Information Act 1982 and the Privacy Act 1993.

Proactively Released

Recommendations

1. The Minister for Biosecurity recommends that the Committee:

- a) **Agree** that Privacy Act has incurred loss caused by Notices of Direction issued by the Ministry for Primary Industries during the Bonamia Response 2017.

Agreed/Not Agreed

- b) **Note** that compensation for this claimant is in excess of Commercial Sensitivity and therefore Cabinet must authorise payment.

Noted

- c) **Note** that the Ministry for Primary Industries can fund this claim within the existing baseline appropriation: Biosecurity: Compensation and Ex gratia payments following a biosecurity event.

Noted

- d) **Agree** to endorse a compensation payment to the claimant of Commercial Sensitivity under section 162A of the Biosecurity Act 1993.

Agreed/Not Agreed

Authorised for lodgement
Hon Damien O'Connor
Minister for Biosecurity

Appendix One – MPI’s calculation of the losses incurred

Calculation of loss

1. Tables 1, 2 and 3 below breakdown all of the inputs in MPI’s assessment and detail the differences between MPI’s assessment and the claimed amounts.

Table 1: Comparison of the claimant’s and MPI’s assessment for oysters

Commercial Sensitivity





Proactively Released

10 Errors in claimant's share farming split calculations

11 Figures are based on precise calculations as per MPI's assessment model. Values rounded to two decimal places for purposes of this submission.

Table 2: Comparison of the claimant's and MPI's assessment for mussels

Commercial Sensitivity

A large grey rectangular area covering the content of Table 2, indicating that the information has been redacted. A large, diagonal watermark reading "Proactively Released" is overlaid on this area.

Table 3: MPI's recommended compensation payments for both aspects of this submission

Commercial Sensitivity

A large grey rectangular area covering the content of Table 3, indicating that the information has been redacted. A large, diagonal watermark reading "Proactively Released" is overlaid on this area.

2. MPI has assessed the claimant as being eligible for compensation under section 162A of the Act. The claimant complied with the requirements of the NODs, by working with MPI to remove and disposed of all flat oysters and mussels at the specified marine farms.
3. MPI recommends a compensation payment of Commercial Sensitivity
4. Table 4, overleaf, summarises the payments MPI has made to this claimant to date.

¹² Based on precise calculations in MPI's assessment model.

Table 4: Payments made to this claimant to date

Commercial Sensitivity

A large grey rectangular area covering the table content, indicating that the data has been redacted for commercial sensitivity.

Proactively Released