

COMPENSATION GUIDELINES

RESPECTING

DAMAGES RELATING TO

OFFSHORE PETROLEUM ACTIVITY

March 2002

FOREWORD

The Canada-Newfoundland Offshore Petroleum Board and the Canada-Nova Scotia Offshore Petroleum Board are responsible for regulation of petroleum exploration and production activities offshore Newfoundland and Labrador, and Nova Scotia respectively.

The authority for matters of compensation is the same for both Boards and is described in the Canada-Newfoundland Atlantic Accord Implementation Acts¹ and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Acts.²

Throughout this document both Boards and their respective legislation will be referred to as "the Boards" and "the Acts".

Frequent references are also made to attributable damage, non-attributable damage and absolute liability. Attributable damage is that which can be attributed to a particular work or activity which has been authorized by the appropriate Board. Non-attributable damage occurs where either the offshore petroleum work or activity is implicated but the actual person responsible for the work or activity ("operator") giving rise to the damage is not determined, or the source is completely unknown (e.g. a "mystery spill"). Absolute liability means that the person in whose name the work or activity has been authorized, is liable without proof of fault or negligence up to a specified limit for certain damages or expenses attributable to such work or activity.

This document has been prepared as a joint effort by both Boards and replaces the original edition of these Guidelines published by the Boards in September 1991.

¹ *Canada-Newfoundland Atlantic Accord Implementation Act, and The Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*

² *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, and The Canada-Nova Scotia Petroleum Resources Accord Implementation (Nova Scotia) Act*

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1.0 INTRODUCTION

Inherent in the nature of oil and gas operations in offshore areas is the risk of damage to the environment and to the property and economic interests of people working and living in areas affected by such operations. Such damage may occur either as a consequence of a "spill" or as a result of "debris" left on the ocean floor. The risk takes on special significance along Canada's east coast where fishing is a dominant factor in the economy.

In response to this concern the federal and provincial governments have provided the Boards with the mandate to help ensure that all offshore operations are conducted in an environmentally safe manner. Each Board's mandate is based upon legislation that may permit property owners and fishermen to recover economic loss resulting from an oil spill or debris which can be attributed to an oil company. In addition, the petroleum industry, in cooperation with the fishing industry voluntarily established a fisheries compensation scheme for damages resulting from seafloor debris for those cases where the responsible party cannot be identified.

These Compensation Guidelines have been prepared to:

- i) describe the various compensation sources available to potential claimants for loss or damage related to petroleum activity offshore Nova Scotia and Newfoundland and Labrador; and
- ii) outline the regulatory and administrative roles which the Boards exercise respecting compensation payments for actual loss or damage directly attributable to offshore operators.

2.0 COMPENSATION SOURCES

2.1 Identifying the Source of Damage

Damage caused by offshore oil and gas operations will most likely occur as a result of debris, spill or authorized discharge, emission or escape of petroleum. The appropriate compensation program for persons sustaining actual loss or damage will be determined by whether or not the responsible petroleum operator can be identified.

In most cases, spills associated with offshore petroleum operations can be readily attributed to a specific operator. Operators are required to immediately report any such spills to the appropriate Board and the Canadian Coast Guard. The location of the spill or damage resulting from a spill, combined with the ability to match oil samples through chemical analyses are also valuable in identifying the responsible party.

Damage from ship-source spills (including from a supply vessel or shuttle tanker), or from spills that cannot be attributed to an offshore petroleum work or activity, should be reported to Transport Canada, Marine Safety Branch, which is responsible for the administration of any claims for damages respecting such spills (see Section 2.3.2).

Damage caused by debris may be difficult to attribute to a particular operator or even to offshore petroleum activity if the debris is not recovered. The location of a seafloor obstruction in relation to past or current drilling sites could, however, implicate the offshore petroleum industry (see Section 2.3.1). Information on the location of drill sites may be obtained from the offices of the Boards or from their respective Web sites (see Section 4.0).

Figure 1 provides a general overview of the compensation claims process.

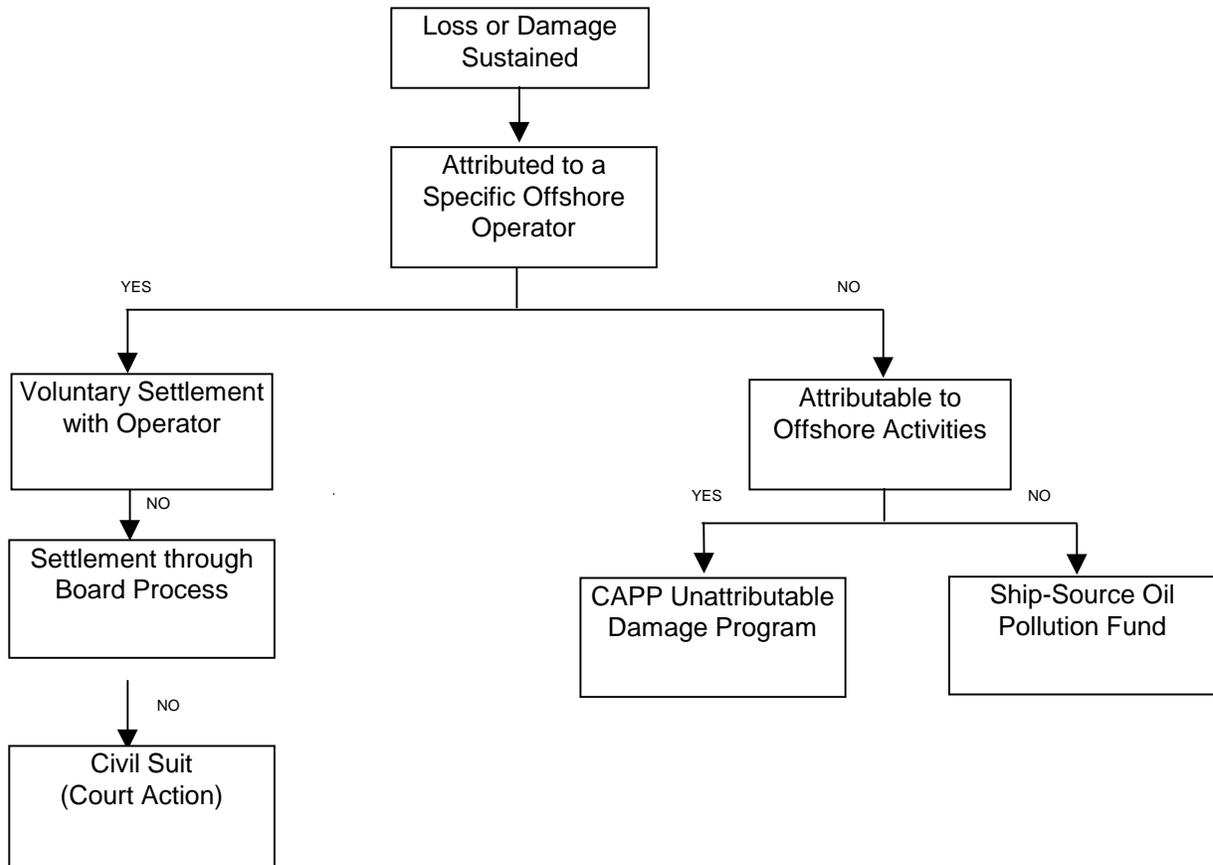


Figure 1: Compensation Claims Processes

2.2 Attributable Damage

There are three options available to a claimant for the recovery of actual loss or damage when the work or activity giving rise to such loss or damage can be attributed to an offshore operator:

- i) voluntary settlement by the operator for direct compensation (refer to Section 2.2.1);
- ii) application to the appropriate Board for recovery of damages, from the operator's security deposit (refer to Section 2.2.2); and
- iii) a civil suit for recovery through the appropriate court of law (refer to Section 2.2.3).

While each of these three options remain available to the claimant at any time, a settlement from the operator responsible for the work or activity giving rise to the damages should be sought before proceeding with other options.

2.2.1 Compensation Directly Through Industry

Although there is no legislated requirement for offshore petroleum operators to establish a procedure for compensation, they have traditionally met their obligations in other operations and have expressed a willingness to pay legitimate claims for damages attributed to their work or activity in the east coast offshore areas.

Addresses of the operators' east coast offices and information on their claim processing arrangements may be obtained by contacting the offices of the Boards (see Section 4.0).

2.2.2 Compensation Through the Boards

In the event that a claimant is unsuccessful in obtaining satisfactory compensation from the responsible offshore operator, compensation may be sought through the appropriate Board. The Board will review the claim and, depending upon the merits of each case, may award a damage settlement (in whole or in part) directly from the financial security provided to the Board by the operator. In the east coast offshore area, the operator is required to provide proper financial security in the amount of \$30 million for any damages incurred as a result of spills, discharges of petroleum or debris from oil and gas operations. Information respecting payment from such security, together with other details on the Boards' compensation policy is provided in Section 3 of this document

2.2.3 Compensation Through Court Action

The Acts do not limit a claimant's right to bring a civil suit against the responsible operator in seeking to recover damages. While court action may be initiated at any time, such action would likely be considered if the claimant remains unsatisfied after failing to obtain satisfactory compensation either from the operator or through the appropriate Board. Claims in excess of the amount of security provided to the Board by the operator and which therefore require proof of fault or negligence by the operator, will have to be settled through the operator directly or through the courts.

2.3 Non-attributable Damage

There are two mechanisms in place for compensation for damages of a non-attributable nature:

- (i) Canadian Association of Petroleum Producers' Commercial Fisheries Compensation Program for Loss Resulting from Non-Attributable Gear and Vessel Damage (refer to Section 2.3.1); and
- (ii) Ship-source Oil Pollution Fund (refer to Section 2.3.2).

2.3.1 Canadian Association of Petroleum Producers (CAPP) Commercial Fisheries Compensation Program for Loss Resulting from Non-Attributable Gear and Vessel Damage

The purpose of the Program is to provide fair and timely compensation to Canadian commercial fish harvesters, aquaculturalists and fish processors who sustain actual loss because of damage to fishing gear or vessels related to petroleum exploration and development activities within Canada's East Coast offshore areas, where the responsible petroleum operator is not known, that is, in cases where the damage is non-attributable.

The aim of the Program is to compensate eligible fisheries industry participants fully and fairly for all such actual loss, leaving participants in no worse or better a position than before the damage occurred.

This Program is an alternative to making a claim through the Courts or other regulatory authorities. Although claims for loss or damage can be made under the laws of Canada, this Program offers a simpler, less-expensive process for obtaining appropriate compensation.

Details on how to file a claim and the compensation procedures may be obtained from the following CAPP offices in Halifax or St. John's:

Canadian Association of Petroleum Producers
230, 1801 Hollis Street
Halifax, NS B3J 3N4
Telephone: (902) 420-9084
Fax: (902) 491-2980

Canadian Association of Petroleum Producers
905, 235 Water Street
St. John's, NF A1C 1B6
Telephone (709) 724-4200
Fax: (709) 724-4225

2.3.2 Canada's Ship source Oil Pollution Fund

The Ship-source Oil Pollution Fund (SOPF) was established by the amended Canada Shipping Act in 1989. The SOPF succeeded the Maritime Oil Pollution Claims Fund, which had existed since 1973. This fund was originally intended, in part, to serve as a last resort for fishermen seeking compensation for ship source oil spills or mystery spills.

The SOPF may be liable to pay claims for oil pollution damage at any place in Canadian waters and fishing zones.

Details on claim filing procedures and conditions may be obtained from:

Ship-source Oil Pollution Fund
90 Elgin Street, 8th Floor
Ottawa, ON K1A 0N5
Telephone: (613) 990-5807
Fax: (613) 990-5423
E-mail: SSOPF@home.com

3.0 BOARDS' POLICY ON COMPENSATION FOR ATTRIBUTABLE DAMAGE

The Boards are empowered to make payments (in whole or in part) directly from the funds available to them through the financial security provided by the responsible offshore operator. Conditions and procedures that would be used by the Boards regarding the payment of funds from these security deposits are discussed below.

3.1 Policy Objective

The objective is to provide assurance to fishermen and other affected parties that, in the event they suffer actual loss or damage arising from a spill or debris, or incur expenses in taking any remedial action in relation to a spill, all of which can be attributable to an offshore petroleum operator, they will receive both fair and rapid compensation. The Boards' intentions are to adopt the following procedures if and when claimants are dissatisfied with the voluntary compensation arrangements established by the responsible offshore operator.

3.2 Conditions for Claim Eligibility

There are five conditions which a claimant must satisfy before filing a compensation claim with the appropriate Board:

- (1) ***Damage or loss must be attributable to a work or activity performed by a specific operator.*** Because compensation by the appropriate Board entails the use of funds from security deposits provided by individual offshore operators, access to these funds is restricted to loss or damage claims attributable to a work or activity performed by a specific offshore operator.
- (2) ***Claims are restricted to actual loss or damage resulting from either a spill or debris and/or costs or expenses associated with any remedial action.*** Actual loss or damage occurring directly as a result of an offshore spill or debris may be claimed. Actual loss or damage includes loss of income, including future income, and, with respect to any aboriginal peoples of Canada, includes loss of hunting, fishing and gathering opportunities. Claims may also be made for costs and expenses reasonably incurred for any action taken to remedy a situation involving a spill, including measures taken to control or clean up the spill.
- (3) ***Claims must be received within a specified time period.*** Claims will not be accepted if submitted more than three years after the loss or damage has occurred and in no case later than six years after the spill has occurred or, in the case of debris, six years after the day the installation or structure in question was abandoned or the material in question broke away or was jettisoned or displaced.
- (4) ***The amount of the claim must be within the applicable limit.*** As a condition of conducting work or activity within the offshore area, the operator must provide the appropriate Board with financial security in order to deal with spill or debris related claims or classes of claims, up to a maximum amount of \$30 million. In the east coast offshore area operators are held liable without proof of fault or negligence up to such maximum amount. Notwithstanding this maximum aggregate amount, the Board reserves the right to

limit the amount provided for each case or class of cases depending upon the number and scope of claims arising for any given incident. Beyond this allowable amount, the claimant must establish proof of fault or negligence through a court of law or through settlement with the particular person at fault.

- (5) ***Settlement must first be sought from the responsible operator.*** In accordance with its overall compensation policy objective of acting as a "back-up" for voluntary arrangements instituted by the offshore operators, the Boards require that all claims must first be submitted to the responsible offshore operator. Only in those instances where the claimant and the responsible operator have not been able to reach an agreement, may claims be referred to the appropriate Board.

3.3 Making a Claim to the Boards

As stated above, where the damages can be attributed to a work or activity performed by a specific operator, the claim for compensation should be submitted to that operator. Contact should be made either directly with the operator or with the appropriate Board for information on the operator's claim procedure.

Where the claimant and the responsible operator are unable to settle the claim, or resolution of the claim is not considered to be proceeding at a satisfactory pace by the claimant, the claim may be referred to the appropriate Board.

Claims so referred must be submitted using the Compensation Claim Form (refer to Appendices 1 and 2) accompanied by a copy of all correspondence and attachments, including any invoices, appraisals or other relevant documentation respecting the claim. It is advisable therefore for the claimant to keep copies of all information submitted to an operator.

3.4 Claims Processed by the Boards

3.4.1 Initial Screening

Upon receipt of a claim but prior to subjecting the claim to the appropriate Board's assessment process, the Board will verify that:

- (i) the claimant has sought compensation from the responsible petroleum operator;
- (ii) the claimant has provided the operator with all necessary information and documentation; and
- (iii) sufficient time has elapsed to enable the claim to be properly assessed by the operator.

If in the opinion of the Board, sufficient time and information have been made available to properly resolve the claim, the Board will, as an initial step, attempt to achieve a mutually satisfactory agreement between the two parties. Failing a satisfactory resolution of the disputed claim, the Board will review the claim for the purposes of settlement.

3.4.2 Claim Assessment

Once a claim is accepted by the appropriate Board, assessments will be conducted in the following manner:

- Each claim will be evaluated on a case-by-case basis. If needed, advice will be sought from third party experts.
- In evaluating each claim the Board will first determine its eligibility as per Section 3.2. If the claim is considered eligible, the Board will determine the size of the settlement. In establishing an appropriate amount the Board may direct that an independent audit be conducted of costs and expenses claimed.
- It is the intention of the Board to assess and settle each claim as promptly as possible.
- The Board's decision along with reasons for the final determination will be forwarded in writing to both the claimant and responsible offshore operator.

3.5 Awards

Where awards are made to cover the cost of property lost or destroyed beyond repair, costs so determined will be based upon replacement at equivalent quality.

In addition, any claim may be rejected or an award reduced to the extent the claimant has recovered all or a portion of the loss from other sources, or to the extent the claimant by his action or inaction, contributed to the damages.

The appropriate Board may also prorate the amount of any settlement if it is thought that the total of all claims may exceed the applicable limit of absolute liability for that particular class of claims.

Finally, the claimant should note that the filing of a claim with the appropriate Board does not prejudice any right by the claimant to commence court proceedings against any responsible party. Pursuant to the Acts, any award obtained from a court proceeding will be reduced by an amount equal to any monies already received by the claimant through the Board.

4.0 FURTHER INFORMATION

For further information or clarification of the information presented, contact may be made with the appropriate Board. Contact information for the Boards is given below:

Canada-Newfoundland Offshore
Petroleum Board
Fifth Floor, TD Place
140 Water Street
St. John's NF A1C 6H6

Telephone: (709) 778-1400
Fax: (709) 778-1473
E-mail: postmaster@cnopb.nf.ca
Web Site: www.cnopb.nfnet.com

Canada-Nova Scotia Offshore
Petroleum Board
Sixth Floor, TD Centre
1791 Barrington Street
Halifax NS B3J 3K9

Telephone: (902) 422-5588
Fax: (902) 422-1799
E-mail: postmaster@cnsopb.ns.ca
Web Site: www.cnsopb.ns.ca

Appendix 1
COMPENSATION CLAIM FORM

Date: _____

1. **Name of Claimant:** _____

2. **Occupation:** _____

3. **Address & Telephone Numbers:**

Home: _____

Business: _____

4. **Relationship to property lost or damaged:** _____

5. **Location, date and approximate time of incident:** _____

6. **Details of incident and damage sustained: (*attach details if required*):** _____

7. **Damage or loss attributed to:** _____

8. **Supporting information: (*attach details if required*):** _____

COMPENSATION CLAIM FORM
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9. Description of property lost or damaged: *(attach details if required)*: _____

10. Nature of income loss (if applicable):

11. Other Sources of Compensation: Yes: _____ No: _____

If yes:
Name of Source: _____
Amount Received: _____

12. Amount of Claim: _____

13. Date claim made to responsible offshore operator: _____

14. Declaration:

I, _____ Of _____
in the Province of _____ do solemnly declare that I
conscientiously believe that the information given above is true.

Date: _____
Signed: _____
Signature witnessed: _____

Appendix 2

INSTRUCTIONS FOR COMPLETING THE COMPENSATION CLAIM FORM

The claim form is provided as a structure for registering a claim. Care must be taken to record and date all relevant information under the 14 headings. These may include:

1. **Name of claimant:** It should be stated whether the claim is for personal loss or whether the individual is filing a claim on behalf of others.
2. **Occupation:** Although a person's occupation may not have any relationship to the nature of the claim (e.g. automobile mechanic whose waterfront property was polluted), it should always be provided. In other instances the claimant may be a fisherman, a vessel owner, or hunter in which case the person's licence number should also be included.
3. **Address:** Sufficient information to contact the claimant at home or at work should be given.
4. **Relationship:** It should be stated whether the claimant owns, leases or operates the property lost or damaged.
5. **Location, etc.:** This is important for correlation with offshore petroleum activity. If the claim is for damage to a vessel or fishing gear the location may be given by latitude and longitude, or in relation to known geographical features.
6. **Details, etc.:**

The following information should be included for pollution damage:

 - location of fouled shoreline where applicable;
 - description of gear or facilities damaged;
 - impact upon use of property;
 - required remedy;
 - reason for claimant having personal property in area where spill occurred.

The following information should be included for debris-related damage information:

 - name of vessel, registration and home port;
 - manner of use or deployment at time of incident;
 - nature of damage or loss sustained;
 - effect upon subsequent fishing effort;
 - water depth, sea state, weather, visibility.
7. **Damage or loss attributed to:** Party believed to be responsible plus reason for allocating responsibility should be given.
8. **Supporting information:**
 - recovered debris;
 - oil sample(s); (If possible a sample of the oil should be collected and given to the local Fishery Officer or a member of the Board staff. The sample should be collected in a clean glass or metal container that has not previously contained any traces of petroleum substances. If the container lid contains any plastic or rubber, the container mouth should be covered with a metal foil before

attaching the lid.)

- names and addresses of any witnesses;
- copy of relevant passages from ship's log;
- photographs of damage.

9. **Description of Property:**

- condition of property at time of damage or loss;
- if vessel or equipment damaged, date of purchase or manufacture;
- if property lost, cost of replacement at equivalent quality.

10. **Nature of income loss:** Claims made for income loss attributable to lost catch will require extensive documentation:

- estimated time fishing effort curtailed, reduced or displaced,
- actual volume of catch during this period,
- recorded average catch (and landed value) of the vessel fishing the same gear and species at an equivalent time of year during the previous three years,
- estimated income loss due to loss of catch.

Other income loss claims due to a reduction in anticipated income will require similar documentation on past vs. actual earnings.

11. **Other Sources of Compensation:** In the event that compensation from other sources is received for the loss or damage in question, the value of any award determined by the Boards would be reduced by the amount of such other compensation awarded. The claimant is required to provide the name of the source and the amount received or to be received.

12. **Amount of Claim:** Costs and/or expenses must be separated for individual items and supported by signed invoices or estimates:

- for damaged property, estimated costs of restoration or repair must be broken down into cost for parts and labour
- for lost property, estimated cost of replacement at equivalent quality.

13. **Date of claim made to responsible party:** A copy of the claim forwarded to the offshore operator showing the date of transmittal must accompany this claim form. In addition, copies of all subsequent correspondence with the company should be attached.

14. **Declaration:** A claims form will not be accepted unless the declaration is made and signed by or for the claimant witnessed by a third party.

Additional information may be requested in order to process the claim. Failure to provide complete information may result in the rejection of a claim, or affect the amount awarded.

Declaration forms may be obtained at the following addresses:

Canada-Newfoundland Offshore Petroleum Board
Fifth Floor, TD Place
140 Water Street
St. John's, NF A1C 6H6
Telephone: (709) 778-1400
Fax: (709) 778-1473
E-mail: postmaster@cnopb.nf.ca

Canada-Nova Scotia Offshore Petroleum Board
Sixth Floor, TD Centre
1791 Barrington Street
Halifax NS B3J 3K9
Telephone: (902) 422-5588
Fax: (902) 422-1799
E-mail: postmaster@cnsopb.ns.ca