

INTRODUCTION TO COMPENSATION FOR FISHERS, AQUACULTURISTS, AND ALL INVOLVED IN RELATED ACTIVITIES

WEBINAR QUESTIONS AND ANSWERS

This document is based on fisheries-focused webinars hosted by the Ship-source Oil Pollution Fund (the “Fund”) in September and October 2020. Please note that the questions received during and after the webinars that are included in this document have been anonymized and edited for brevity. If you recognize your question and have concerns about our editing, please feel free to contact us at info@sopf-cidphn.gc.ca.

Webinar and Claims Publications

1. Will the webinar PowerPoint presentation be posted on your website?

The PowerPoint Slides from the presentation will be available on the website, alongside a recording of the webinar. The PowerPoint Slides are not designed to stand alone and we discourage their circulation for that reason.

2. Does your compensation handbook for fishers and aquaculturists contain guidance for community members who may be interested in submitting a claim for damages related to subsistence hunting?

The Compensation Handbook for Fishers, Aquaculturists, and All Involved in Related Activities provides a brief introduction to the compensation available for those who depend on Canadian aquatic ecosystems for subsistence, but those looking for more detailed claims guidance should consult our Manual for Special Loss Claims.

Information on Past Claims

3. Where can I find information on past incidents that involved the Fund?

Summaries of incidents involving the Fund, including details on any claims submitted and assessed, as well as any recovery measures taken by the Administrator, can be found in the Fund’s Annual Reports, up to the 2016-2017 fiscal year. Those Annual Reports are available for viewing and download here: http://sopf.gc.ca/?page_id=309#AnnualReport. Incident summaries for fiscal 2017-2018 onwards are available separately on the Fund’s website here: http://sopf.gc.ca/?page_id=9933. Available at the same link is a compendium of summaries covering the years 1989 through 2019. It will soon be updated to include 2020 summaries.

Claims, Eligibility, Compensation, and Assessment

4. Where can I find information on the deadlines to submit a claim?

We recommend that claimants submit their claims as soon as possible. Most claims to the Fund must be submitted within two years following a ship-source oil incident. Any claims under the Small Claims Process must be submitted within one year of the incident.

Consult the Fund's claims manuals for a more detailed explanation of our claim submission deadlines.

5. What happens if a claimant neither accepts nor appeals an offer of compensation from the Administrator within 60 days of receiving the offer?

Where an offer of compensation is received by a claimant and the claimant neither accepts the offer nor appeals it to the Federal Court within the 60-day timeline set by the *Marine Liability Act*, the offer is deemed to be refused and no compensation can be paid from the Fund. It is very important for claimants to be mindful of the 60-day deadline.

6. Can the Fund compensate oil pollution damages caused by an aquacultural net pen?

For compensation to be available, the net pen must meet the definition of a "ship" under the *Marine Liability Act*. Some net pens may qualify as a "ship"; others will not. Should such an event involving a net pen take place, those affected are encouraged to reach out to the Fund at an early date with all available information about the net pen.

7. Does the Fund cover damages caused by petroleum in solid form?

Pollution damage caused by petroleum in solid form may be covered, provided that that pollution was discharged from a ship. Details on the nature of the solid-form petroleum product in question would have to be examined.

8. If a ship is refuelling and oil spills as a result, can the Fund compensate claimants for damages caused by the spill?

It depends on the precise facts. A spill must come from a ship in order to be compensable. For example, if the ship's fuel tanks overflow during refuelling, this is likely to be a compensable spill. On the other hand, if the source of the spill was a shore-based refuelling station, the resulting spill is likely not eligible for compensation.

9. If Canadian waters usually extend 200 nautical miles from shore, how are the marine borders between Canada and the United States determined?

The 200 nautical mile rule is a general one. Where Canada's marine borders meet those of the United States, the location of the border is what matters. Where oil pollution damages are suffered near a possible marine border, we encourage claimants to consult a detailed map or chart.

It is helpful to remember that it is the location of the *damages*, not the location of the spill, that is important. A spill that occurs just outside Canadian waters can cause compensable damages within Canadian waters where the spill crosses the boundary.

10. How do you calculate financial compensation for loss of a subsistence living source?

The Fund can only pay monetary compensation. Subsistence living compensation can be forward-looking. The Fund takes into account the claimant's dependents, whatever their relation to the claimant.

The amount of compensation payable will be based on the reasonable like-for-like replacement costs of the loss. For example, a claimant suffering a loss of sockeye salmon will be compensated for the reasonable cost of obtaining sockeye to replace the amount lost. The compensation may be based on the expense of reaching alternative fishing grounds or purchasing sockeye at market prices. Where a claimant relies upon a specific seafood variety that is not available on the market, compensation will be payable for the closest reasonable substitute.

Subsistence living activities do not always generate detailed documentary records. Instead, claimants can submit a signed statement to establish their claim. The statement should provide as much detail as possible about the claimant's historic use of the resource. Ideally, the statement should include details on traditional diets, resource yields over the previous three years, and the actual and/or anticipated effects of the spill on current and future yields.

The Fund might retain a subject matter expert to advise on the assessment of claims for loss of a subsistence living source. The assessment of such claims may require a dialogue between the Fund and the claimant. This can help ensure that the Administrators understand the situation as clearly as possible.

More detailed information on claiming for loss of subsistence living sources can be found in our Manual for Special Loss Claims.

11. Many fishers and coastal harvesters closely guard the details on their fishing and harvesting grounds, as well as details on yields. Is a claimant required to disclose this sensitive information to the Fund? If a claimant does disclose such information, will it be kept in confidence by the Fund?

It is usually necessary to disclose resource location and yields to establish a claim. Claimants should consider that information submitted to the Fund may become public. The Fund must account to the public, and is subject to access to information and other disclosure regimes. Certain information may be protected, whether under privacy laws or otherwise, if a claimant indicates that publication would be harmful to that claimant's business or way of life.

12. Suppose a fisherman has to stop his regular activities due to an oil spill. That fisherman holds a license that allows him to fish in areas not affected by the spill, but he chooses not to do so. Is the fisherman still eligible for compensation from the Fund for economic loss?

Claimants are responsible for taking reasonable measures to mitigate their own damages following a ship-source oil spill. What those reasonable measures might be will depend on the circumstances of each particular claimant: for example, fishers who do not have the capacity to travel to alternate fishing grounds will most likely still be eligible for compensation if their regular fishing grounds are closed or inaccessible due to a spill. In any event, claimants seeking compensation for economic loss should identify and explain to the Fund their reasons for not taking advantage of alternatives that might have been available to them.

13. Does the Fund base its assessment of a claim solely on the documentation provided by the claimant, or will a representative of the Fund also meet directly with the claimant?

Usually, the Fund can complete an assessment and issue an offer of compensation based solely on the documentation provided by a claimant. That said, the Fund recognizes that the claims process will be unfamiliar to many claimants. Where the Administrators have questions or feel additional documentation may be of assistance, a representative will usually reach out to the claimant. In case of a spill involving many claimants, the Administrators may send a representative to facilitate the claims process. In rare cases, they may appoint an expert for a site visit in order to better understand a complex claim.

14. If a fishing vessel is sabotaged and spills oil as a result, is the owner still liable for damages caused by the spill? Can those affected by the spill submit a claim to the Fund? Finally, if the owner of the vessel takes measures to mitigate oil pollution damage from the vessel, can that owner obtain compensation from the Fund?

Sabotage by a third party is one of the three statutory defences available to the owners of polluting ships. If a vessel owner can prove that sabotage caused the spill, that owner will not be held liable for any oil pollution damages that resulted from it. Whether or not the owner can be held liable, those affected by a ship-source oil pollution incident are able to claim compensation from the Fund.

Where the vessel owner can demonstrate that the incident was the result of third-party sabotage, that owner may be eligible for compensation from the Fund, but that compensation can only extend to cover the costs of reasonable measures taken to mitigate oil pollution damage from the vessel. Salvage and wreck removal costs, for example, are not covered by the Fund.