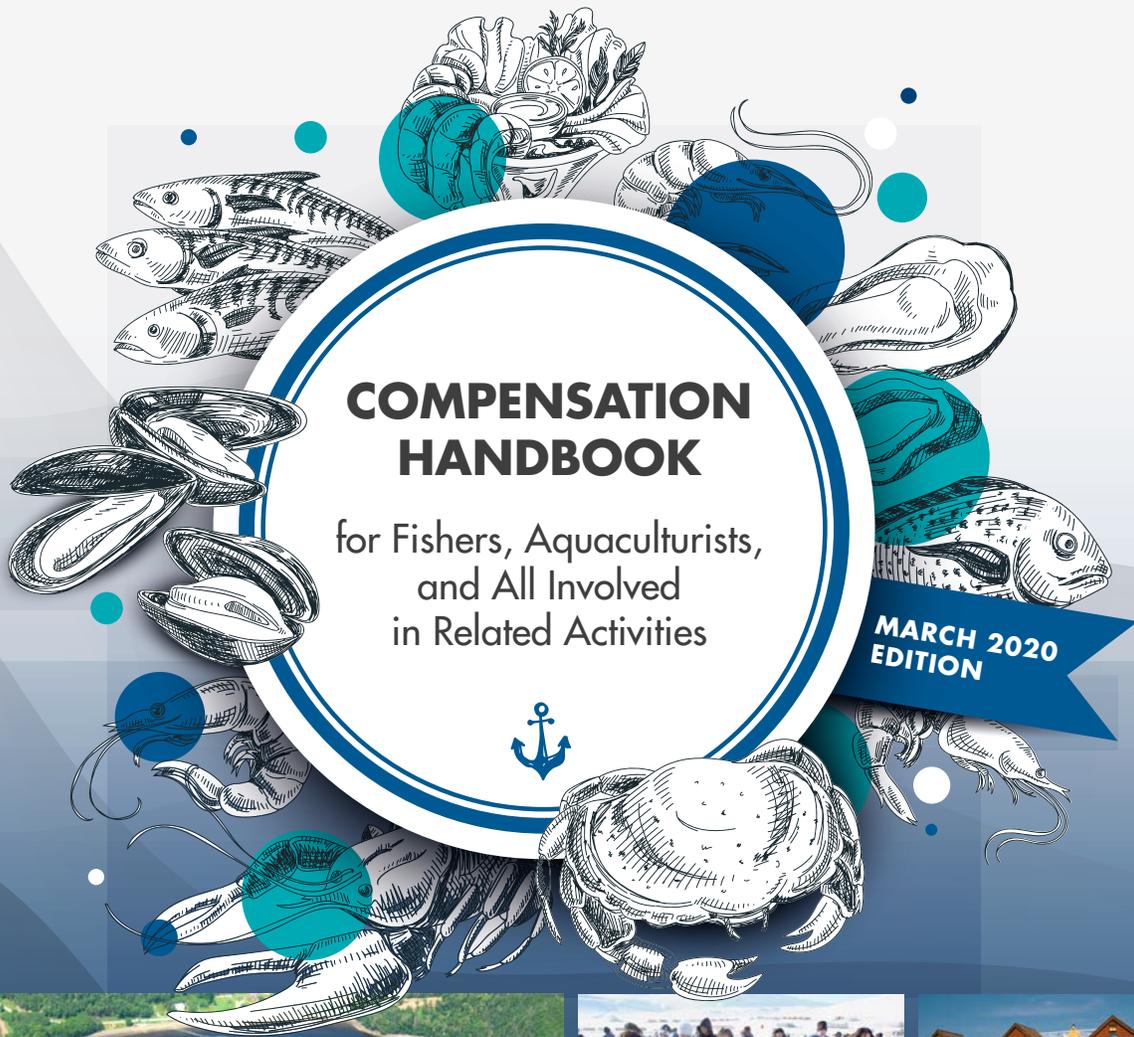


# SHIP-SOURCE OIL POLLUTION FUND



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**Note:** The information contained in this Handbook does not constitute legal advice and does not substitute any provision in the *Marine Liability Act*, its regulations, or any other applicable laws of Canada.

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Suite 830, 180 Kent Street  
Ottawa, Ontario, Canada, K1A 0N5  
T: (613) 991-1726  
F: (613) 990-5423  
E: info@sopf-cidphn.gc.ca

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**First edition**

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# MESSAGE FROM THE ADMINISTRATOR

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Dear Stakeholder,

Did you know that there is a federal Fund that compensates those who suffer damages caused by any type of oil, from any type of ship or boat, anywhere in Canadian waters?

**All involved in the “fishing sectors”\*, from catch or harvest to consumption or use** can benefit from the Ship-source Oil Pollution Fund (the Fund).



\*Throughout this Handbook, the term “fishing sectors” applies to commercial and non-commercial activities in both fresh and salt water. These activities include fishing, aquaculture, harvesting, hunting, and processing. More broadly, all those who sell or otherwise use or depend upon fish, shellfish, seafood, seaweed and marine plants, crustaceans, molluscs, and other animals are also covered.

Over the past 30 years, the Fund has received very few claims from the fishing sectors: **less than 1%** of the total amount paid from the Fund. We are therefore increasing our outreach efforts!

This Handbook is a **starting point for a broad audience** across the fishing sectors, including workers and business-owners, Indigenous communities, and those pursuing commercial and non-commercial activities, both in fresh and salt water.

You may find this Handbook useful if you are engaged in any of the following activities:

- Fishing
- Aquaculture and Mariculture
- Harvesting
- Hunting of animals
- Processing, preparation, packaging, and distribution
- Tourism and hospitality
- Management of ports, harbours, or marinas
- Subsistence living

While those in the fishing sectors can benefit from the Fund as claimants, ships used by the sectors can also cause oil pollution. For instance, fishing vessels have been responsible for **one in four claims** submitted to the Fund over the last 30 years. Once we pay a claimant, we take all reasonable measures to recover from the responsible person — this is the “polluter pays principle”.

**This Handbook provides general information for both potential claimants and responsible shipowners.**

Examples and a Q&A section are used throughout.

We encourage you to provide us with feedback and questions **via the Feedback Form** at the end of this Handbook.

For groups and organizations who would like to further discuss this Handbook or the Fund in general, we may be able to arrange a teleconference, webinar, or face-to-face meeting. Your questions and comments will help us develop the next edition of this Handbook.

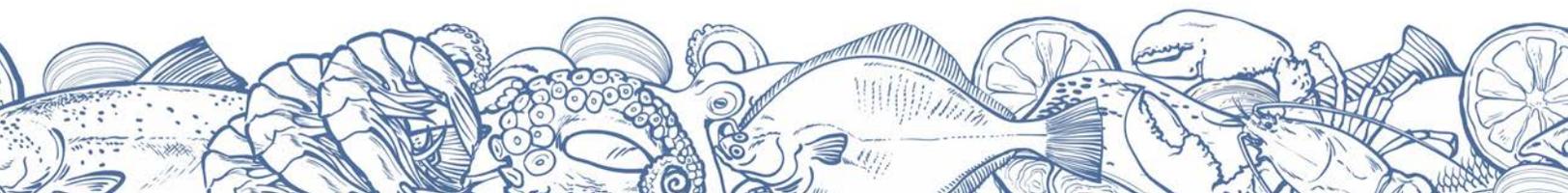
Thank you for your interest in the Fund.

**Anne Legars, Administrator**  
Ship-source Oil Pollution Fund

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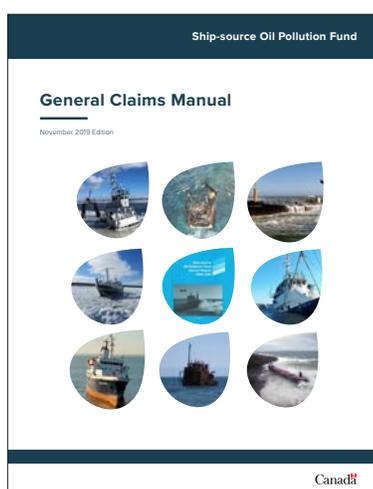
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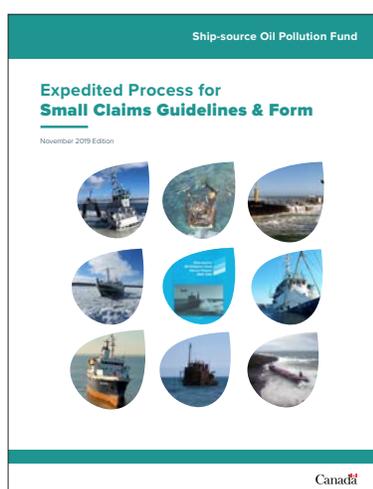
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To go beyond this introductory Handbook, our claims manuals provide detailed information on the Fund and instructions on how to submit a claim.

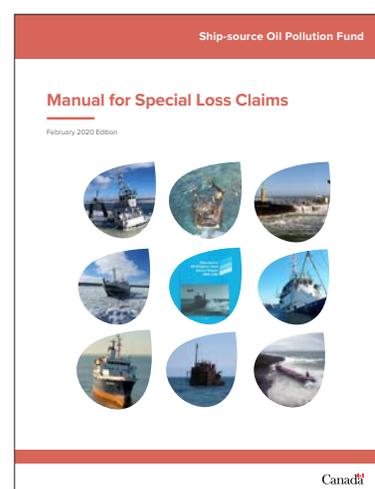
- These resources can be found under the “Submit a Claim” tab on our website: [www.sopf.gc.ca](http://www.sopf.gc.ca).



**General Claims Manual** — provides a comprehensive overview of the Fund, Canada’s ship-source oil pollution liability and compensation regime, and the General Claims Process.



**Expedited Process for Small Claims: Guidelines & Form** — describes a dedicated fast-track process for claimants who have suffered damages of \$35,000 or less, also providing simplified guidelines and a fillable Small Claims form.



**Manual for Special Loss Claims** — describes and provides guidance on a dedicated claims process for fisheries, aquaculture, and hunting losses that are not compensable under either the General Claims Process or the Small Claims Process.



# 1. WHAT TYPES OF DAMAGES ARE COVERED BY THE FUND?

THE FUND COMPENSATES FOR THE FOLLOWING DAMAGES SUFFERED AS A RESULT OF A SHIP-SOURCE OIL POLLUTION INCIDENT:

Any physical damage to property caused by oil contamination.

**Property damage**

**ANY TYPE**

## Examples:

- Soiled gear or other equipment to be cleaned, repaired, or replaced
- Contaminated fishing boats, docks, wharves, or aquaculture facilities
- Oil-contaminated catches or other products

Lost wages or profits.

**Economic loss**

## Examples:

- Fisheries closures, reduced yields, or decreased demand
- Increased overhead costs associated with reaching new fishing areas, such as extra fuel or wages
- Unsellable catches or other products due to contamination

Subsistence, cultural, recreational, and ceremonial losses, as well as lost access to traditional resources.

**Loss of subsistence living and cultural losses**

**FROM ANY TYPE ANYWHERE IN**

## Examples:

- A person can no longer fish for subsistence
- Decreased availability of animal skins or fish for use in traditional ceremonies
- Cost of the replacement of fish or animal skins



## Did you know?

The Fund has received about a dozen claims for damages sustained by those in the fishing sectors. These claims have led to payment of approximately \$170,700 from the Fund.

- This amounts to less than 0.7% of the total paid by the Fund to all claimants over the last 30 years.
- These claims involved mostly the loss of lobsters, at both the fishing and processing stages.

## OF OIL



### ? Mystery spill

## OF SHIP OR BOAT, CANADIAN WATERS

### Preventive Measures

Cost of reasonable measures taken to prevent, repair, remedy, or minimize oil pollution damage.

#### Examples:

- Use of sorbent materials or containment boom to protect property such as boats, equipment, or aquaculture facilities
- Measures taken to protect fishing or harvesting grounds, such as a clam bed or beach

### Environmental Reinstatement

Environmental impact studies and measures taken to accelerate the natural recovery of the environment.

#### Examples:

- Studies to better understand the environmental effects of a spill
- Restoration projects to repopulate an affected fishing area or rebalance the ecosystem

### Special Losses such as Future Losses and Losses outside Canadian Waters

Certain classes of claimant in the fishing sectors may be entitled to special compensation for anticipated future losses, including for damages suffered outside of Canadian waters.

#### Examples:

- Interim or emergency compensation for loss of revenue or loss of subsistence as damages develop and before they can be fully quantified



### Did you know?

"Mystery spills" are compensable too. If you cannot identify the ship that caused a spill, you may still submit a claim. If the evidence shows that the spill was not from a ship, however, we cannot compensate you.

- Mystery spills have been the source of **most claims** submitted by those in the fishing sectors.

## 2. HOW DOES THE CLAIMS PROCESS WORK?

### 2.1. WHO CAN SUBMIT A CLAIM TO THE FUND?

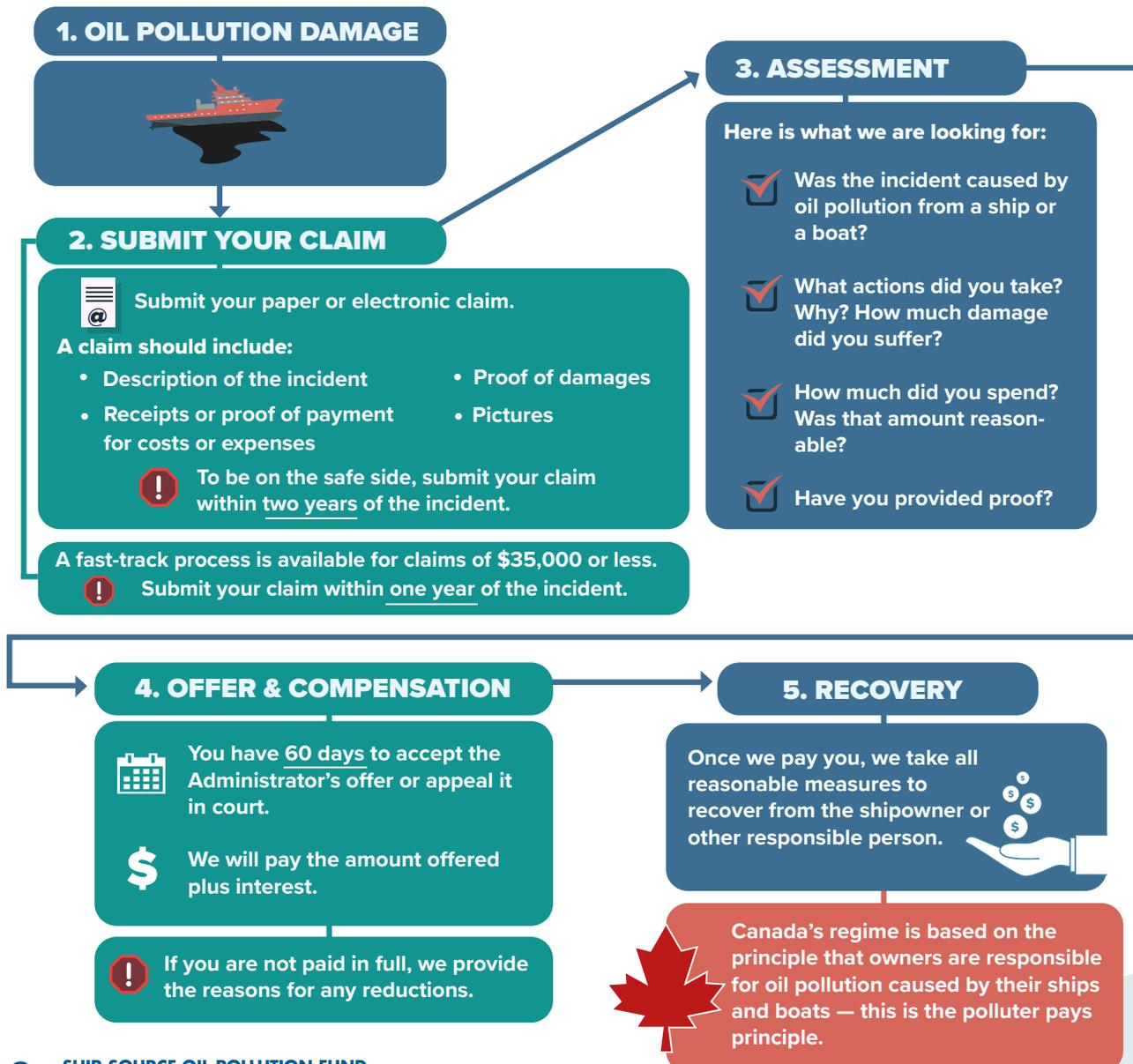
Any person in Canada that has suffered damages, including:

- ✓ Canadian Coast Guard
- ✓ Ports, harbours and marinas
- ✓ Fishing & tourism industries
- ✓ All levels of government



- ✓ Corporations
- ✓ Indigenous communities
- ✓ Individuals
- ✓ Coastal landowners & owners of impacted ships or boats

### 2.2. HOW DOES THE CLAIMS PROCESS WORK?



### No maximums or minimums:

- There is no cap on how much the Fund can compensate.
- There is no minimum claim: the smallest claim we have ever received totalled just over \$200!
- For some claims of \$35,000 or less, a fast-track option is available.



### Did you know?

Almost half of the claims submitted by those in the fishing sectors over the last 30 years would have qualified for the fast-track process for Small Claims.

If you are looking for more details and information on how to submit a claim, we invite you to visit the "Submit a Claim" tab on our website: [www.sopf.gc.ca](http://www.sopf.gc.ca).

### 2.3. CAN YOU GO DIRECTLY TO THE SHIPOWNER?

**If you suffer damages you can choose to negotiate with the shipowner directly, or sue the shipowner if you cannot reach a settlement.**

- If you start a lawsuit, the Administrator becomes a party to that lawsuit, providing you with an extra layer of protection.



### Is it preferable to submit a claim directly to the Fund, or to first go to the responsible shipowner?

It's your choice. However, it is often **easier and less expensive** to submit a claim to the Fund if the shipowner does not pay.

## 2. HOW DOES THE CLAIMS PROCESS WORK?

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### 2.4. KEY QUESTIONS FROM YOUR SECTORS ANSWERED

QUESTION

1

#### IS IT POSSIBLE FOR PEOPLE SUFFERING SIMILAR LOSSES FROM THE SAME INCIDENT TO BUNDLE THEIR CLAIMS IN A SINGLE PACKAGE?

- Yes, and by doing so, you might save time and money putting your claims together.
  - Any compensation paid will go to individual claimants based on their own damages.

QUESTION

2

#### FOLLOWING AN INCIDENT, WHEN SHOULD YOU SUBMIT A CLAIM?

- We recommend that you submit your claim as soon as possible after damages are suffered!

#### **A simple and safe rule: submit your claim within two years of the incident.**

- If you intend to use the expedited process for small claims, your claim must be submitted within one year of the incident.



We cannot evaluate or compensate claims submitted outside the required timeframes.

QUESTION

3

#### HOW LONG DOES IT TAKE FOR THE FUND TO ASSESS A CLAIM? THOSE IN THE FISHING SECTORS DO NOT ALWAYS HAVE WORKING CAPITAL AND CANNOT WAIT MONTHS FOR COMPENSATION, OTHERWISE THEY RISK BANKRUPTCY.

- We try to make an offer of compensation as soon as possible: the majority of claims are assessed within 3 months.
- Under the Small Claims Process, successful claimants receive payment within 60 days.
- As a claimant in the fishing sectors, you may be eligible for interim compensation for anticipated future losses under the Special Loss Claims process.

QUESTION

4

#### WHAT PROOF OF DAMAGES DO YOU NEED TO SUBMIT A CLAIM?

- You must submit the best evidence available to you, including a detailed description of the incident and your damages, as well as any relevant invoices or receipts.



Remember that all claimed costs or expenses must have been reasonable in the circumstances.



QUESTION  
**5**

**HOW DIFFICULT IS IT TO SUBMIT A CLAIM AND CAN YOU GET HELP TO DO IT?**

- Our Claims manuals are easy to use and will help you through the process.
- Most claimants can submit their claims without the need for professional help.
  - However, with large or complex claims, it may be helpful to obtain the advice or assistance of a lawyer or other professional. If this assistance is reasonably necessary, it may be compensated.

QUESTION  
**6**

**IS COMPENSATION AVAILABLE IF ACCESS TO A HARBOUR OR FISHING AREAS IS NOT POSSIBLE DUE TO PREVENTIVE MEASURES TAKEN TO MINIMIZE OIL POLLUTION DAMAGE?**

- Yes, as this may result in compensable economic loss.
- If your boat is oiled and needs to be cleaned up, you can submit a claim for property damage.

QUESTION  
**7**

**CAN YOU SUBMIT A CLAIM IF YOU SUFFERED DAMAGES OUTSIDE OF CANADIAN WATERS?**

- Usually, the Fund can only compensate damages that occur in Canada's rivers, lakes, and coastal waters up to 200 nautical miles from shore.
- Certain classes of claimant in the fishing sectors who suffer losses resulting from a spill beyond Canadian waters may be eligible for special compensation (for more information, see the Manual for Special Loss Claims).



### 3. WHO PAYS FOR A SHIP-SOURCE OIL SPILL?

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Canada's regime is based on the principle that owners are responsible for the oil pollution caused by their ships and boats.

- The liability and compensation regime is governed by the *Marine Liability Act* (MLA).
- Polluting shipowners are held liable under the MLA even if they are not at fault.

Once the Fund pays a claimant, we take all reasonable measures to recover from the shipowner or other responsible person.

- This may mean:
  - Court action
  - Out-of-court settlement
  - Arrest of the polluting ship or any other ship owned by the same person

#### **Did you know?**

Fishing vessels have been responsible for one out four claims received by the Fund over the past 30 years.

# APPENDIX: SUMMARY OF CLAIMS FROM THE FISHING SECTORS

Year	Incident and File	Location	Claimant(s)	Description of Damages	Claimed (\$)	Paid (\$)
1989	<b>Mystery Spill</b> (120-028)	Gabarus, NS	Lobster fisher	Approximately 4,000 lb of live lobsters in crates contaminated and ordered released	—	18,976
1989	<b>Mystery Spill</b> (120-028)	Gabarus, NS	Seafood processing companies	Loss of over 12,000 lb of live lobsters; costs of cleaning 430 contaminated lobster crates	—	48,000
1990	<b>Mystery Spill</b> (120-046)	St. John's, NL	Small group of lobster fishers	Delayed preparations for lobster season	—	0 <sup>1</sup>
1990	<b>Amy &amp; Sisters</b> (120-050)	Gabarus, NS	Two lobster fishers and a seafood processing company	6,100 lb of live lobsters in crates contaminated and ordered released	23,413.83	23,413.83
1992	<b>Mystery Spill</b> (120-066)	Lockeport, NS	Seafood processing company	3,400 lb of live lobsters in crates contaminated and ordered released; loss of income; loss of future income	100,940.35	59,350
1993	<b>Mystery Spill</b> (120-077)	Lockeport, NS	Seafood processing company	437 lb of live lobsters contaminated, and ordered destroyed	2,294.25	2,294.25
1993	<b>Mystery Spill</b> (120-84)	Wedgeport, NS	Lobster fishers	Contaminated lobster crates prior to lobster season	No claim <sup>2</sup>	—
1995	<b>Mystery Spill</b> (120-147)	Neil's Harbour, NS	Seafood processing company	1,260 lb of live lobsters contaminated and ordered destroyed	6,856.00	5,922.00
1999	<b>Gordon C. Leitch</b> (120-193)	Havre-Saint-Pierre, QC	First Nation council and all members	Loss of subsistence living source	No claim <sup>3</sup>	10,000 <sup>4</sup>
2003	<b>Black Dragon</b> (120-382)	Barkley Sound, BC	First Nation	Damaged clam beds caused by towage of polluting vessel	—	\$0 <sup>5</sup>
2016	<b>Nathan E. Stewart</b> (120-697)	Seaforth Channel, BC	First Nation hereditary chiefs, council, and all members	Lost aboriginal resources	Pending <sup>6</sup>	Ongoing

## Did you know?

About one out of four claims received by the Fund was caused by the threat of a spill, and not by an actual spill.



However, all past claims from the fishing sectors have involved a discharge of oil from a ship or boat.

1. The file was closed due to a lack of documentation from the claimants.
2. The responsible owner ended up assisting the local fishers and paid \$15,486.00 in damages.
3. The claimants sued the shipowner, and the Fund was a party to that lawsuit.
4. The claimants reached a settlement with the shipowner and the Fund, with the Fund ultimately contributing \$10,000.
5. The file was closed due to a lack of documentation from the claimant.
6. The matter is currently in court, and the Fund has also received a direct submission.

# FEEDBACK FORM

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**Please provide us with your feedback. Your questions and comments will help us develop the next edition of this Handbook.**

Once completed, please email this Form to [info@sopf-cidphn.gc.ca](mailto:info@sopf-cidphn.gc.ca), fax it to (613) 990-5423, or mail it to:

**Ship-source Oil Pollution Fund  
Suite 830, 180 Kent Street  
Ottawa, Ontario K1A 0N5**

## 1. Contact Information

Name	
Name of organization, if applicable	
Telephone	
Email	
Address	

## 2. In the event of a ship-source oil pollution incident in your area, do you feel that you have the information necessary to assess your options for obtaining compensation?

- Yes
- No    If not, what's missing?

## 3. If you are a boat owner or shipowner, would you like to have more information on the polluter pays principle and your potential liability in the event of an oil pollution incident caused by your vessel?

- I am not a boat owner or shipowner.
- I have enough information.
- I would like more information on:

