



CANADIAN ASSOCIATION
OF PETROLEUM PRODUCERS

GUIDE

Canadian East Coast Offshore Operators Non-attributable Fisheries Damage Compensation Program

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The Canadian Association of Petroleum Producers (CAPP) represents 150 companies that explore for, develop and produce natural gas, natural gas liquids, crude oil, oil sands, and elemental sulphur throughout Canada. CAPP member companies produce more than 95 per cent of Canada's natural gas and crude oil. CAPP also has 130 associate members that provide a wide range of services that support the upstream crude oil and natural gas industry. Together, these members and associate members are an important part of a \$100-billion-a-year national industry that affects the livelihoods of more than half a million Canadians.

Review by January 2008

Disclaimer

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2100, 350 – 7th Ave. S.W.
Calgary, Alberta
Canada T2P 3N9
Tel (403) 267-1100
Fax (403) 261-4622

403, 235 Water Street
St. John's, Newfoundland
Canada A1C 1B6
Tel (709) 724-4200
Fax (709) 724-4225

Email: communication@capp.ca Website: www.capp.ca

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1 Introduction

The Canadian East Coast Offshore Operators Non-attributable Fisheries Damage Compensation Program (the 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 applicable in Canada, this program offers a simpler, less expensive, confidential process for obtaining appropriate compensation.

The intent of this program is to demonstrate the commitment of CAPP's members who operate in the Atlantic Canada offshore area to the efficient and fair resolution of claims proven to be attributable to upstream oil and gas activity. The program provides a basis for addressing damage to the vessel or gear of aquaculturists or commercial fish harvesters.

The program supports the achievement of one of CAPP's key goals: to maintain a positive and collaborative working relationship with aquaculturists or commercial fish harvesters. The program supports the work that CAPP and its members undertake in the areas of stewardship, stakeholder relations and public, government, media and regulatory affairs.

This program will be in-place while oil and gas exploration (excluding non-exclusive seismic surveys), development, production and decommissioning activity is ongoing in Canada's East Coast offshore area. The program applies to loss of, or damage to, fishing vessels and fishing or aquaculture gear. This includes repairing, cleaning or replacing fishing gear or vessels, as well as towing, dry-docking charges and the cost of renting a substitute vessel and is explained in further detail in the 'Program Principles' section of this document. This program will pay up to a maximum of \$1,000,000 per occurrence. **This program does not cover claims for loss of life; personal injury; or claims for loss sustained as a result of a vessel or gear being in a designated or statutory safety zone, as defined by regulations made pursuant to the Accord Acts.**

IMPORTANT NOTE: The goal of the program is to resolve claims quickly but until the claim is settled, a resolution satisfactory to the claimant is not guaranteed. As a result, the claimant must pay careful attention to any legal limitation periods or similar conditions for bringing legal action and take care to preserve those rights until a settlement is reached. CAPP does not assume any responsibility to any claimants for preserving any rights to bring legal action.

2 Definitions

2.1 Upstream Oil and Gas Industry

This program refers to the upstream sector of the petroleum industry. The companies that explore, develop and produce Canada's petroleum resources are known as the upstream sector.

2.2 Attributable Damage

Attributable damage is damage or loss which can be definitively linked to the activities of a specific operator. If damage can be attributed to a specific operator's activities, this program does not apply and the claimant must proceed directly with the specific operator whose activities can be proven to have caused the damage or loss.

2.3 Non-attributable Damage

Non-attributable damage is damage or loss that, in the case of this program, was caused by the upstream oil and gas industry but cannot be definitively attributed to any one operator; i.e. the damage or loss may have been caused by the activities of any one of a number of operators in the identified vicinity of the damage or loss that occurred. Upon review of the damage or loss, if it can be proved to be caused by the upstream oil and gas industry in Atlantic Canada, this program may be used as a mechanism for resolution.

2.4 Accord Acts

Proper titles for the term "Accord Acts" are as follows:

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Canada)

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act

Canada-Newfoundland and Labrador Atlantic Accord Implementation Act (Canada)

Canada-Newfoundland and Labrador Atlantic Accord Implementation (Newfoundland and Labrador) Act

Collectively, they are usually defined and referred to as the "Accord Acts".

3 Program Principles

The primary principle of this program is to provide fair and efficient compensation to aquaculturists and commercial fish harvesters who sustain actual loss because of damage to their fishing vessel, or because their fishing or aquaculture gear was lost or damaged as to the extent caused by upstream oil and gas activities within Canada's East Coast offshore areas, where the responsible operator is not known. The aim of the program is to compensate eligible aquaculturists or commercial fish harvesters, fully and fairly, for all such actual loss, leaving participants in no worse or better a position than before the damage occurred, for losses coming within the program, up to the per occurrence limit of the program. Refer to the sections below for the principles and process by which this will be carried out.

3.1 Program Operating Principles

CAPP and its members recognize that individual companies are distinct, independent entities. Each member company has its own preferred business model, its own way of operating, and its own strengths and limitations. This program respects those differences while recognizing the benefits of a common industry approach to non-attributable compensation. Recognizing that perspectives on the matter of compensation will change over time the program may be amended as considered appropriate by CAPP's members who operate in Canada's East Coast offshore.

Unless, based on a review of an incident, an operator is eliminated as a potentially responsible party, all participating operators potentially responsible for an incident will be included in the response to a claim. Once the evidence of damage has been collected and confirmed, and the damage can be definitively attributed to upstream oil and gas activity, the participating operators will, subject to determining the amount of loss, proceed expeditiously to resolve the claim and share equally in the payment of the claim. Should a review of the incident by participating operators identify a responsible operator, the claim will be referred to that operator and this program will no longer apply.

Based on the review of the claim all operators active or that were active in the area at the time of the incident will be included in the claim.

The claims process as described in section 5 a of this document applies to any aquaculturists or commercial fish harvesters who believes that damage to their vessel or gear is the result of upstream oil and gas industry activity and who choose to seek compensation through this program.

3.2 Compensable Losses

This program will, subject to the required proof of claim, cover the following costs where reasonably required as a consequence of the loss or damage:

- repairs to gear (fishing and aquaculture) or replacement of gear if required;

- repairs to vessels, or replacement if required;
- cleaning of gear/vessels;
- towing and dry dock charges;
- rental of substitute vessels;
- loss of wages to vessel crew; and/or
- loss of revenue due to damage.

As noted in section 3 a above, the claims process as described in section 5 a of this document applies to any aquaculturists or commercial fish harvesters who believe that damage to their vessel or gear is the result of upstream oil and gas industry activity and who chooses to seek compensation through this program. However, those claimants who, in the alternative, prefer to proceed with civil litigation are not eligible for this program. Where a claim is in progress under this program but is not settled before civil litigation would need to be commenced, the claimant and the affected operators should discuss the best course of action which could include, subject to the agreement of all concerned, a continuation of the process under this program. It is the responsibility of the claimant to pay careful attention to any legal limitation periods or similar conditions for bringing legal action and take care to preserve those rights until a settlement is reached.

3.3 Conditions for Claim Eligibility

Damage or loss must be caused by upstream oil and gas activities including exploration, development, and production or decommissioning activity in the Canadian East Coast offshore area.

1. The program is designed for aquaculturists or commercial fish harvesters only.
2. Claims shall be initiated and received by CAPP (Section 5 b. - Step 1) as soon as possible but in any event no later than twelve (12) months following discovery of the damage or loss.
3. The amount of the claim, per occurrence, shall not exceed \$1,000,000 CDN. Claims may be made on a “per occurrence” basis, however under the program, the maximum recovery, per occurrence, is \$1,000,000 CDN.

3.4 Program Ineligibility

Losses that are not compensable under the program include but are not limited to:

1. Claims attributable to a particular operator;
2. Claims for personal injury or loss of life;
3. Claims for losses sustained as a result of a vessel/gear being in a designated/statutory safety zone; and
4. With the exception of vessel crew loss of wages, the program will not cover third party losses, including but not limited to lost wages and revenues by fish processors.

4 Roles and Responsibilities

4.1 Roles and Responsibilities of CAPP

1. Provide copies of the program and claim forms to potential claimants.
2. Receive initial notification, in writing, on incidents, immediately assign a file number to the claim, which will be relayed back to the claimant for reference in all subsequent correspondence.
3. Transmit that information to operators, and receive from operators any information that will assist CAPP in its administrative role as set out in the points below.
4. Receive completed Damage Report Forms, Loss Claim Forms, supporting documentation and the subsequent Release Form, if applicable, from claimants. Claimants are responsible for the accurate completion of the forms. CAPP will, however, try to identify forms that are incomplete on their face and to promptly notify the claimant of the areas of deficiency.
5. Reviews the Damage Report Forms and the Loss Claim Forms submitted under point 4 to determine whether the claim falls under the program. If it does not, CAPP will inform the claimant. For greater certainty, CAPP will not adjudicate any matter in dispute but will look only at the face of the claim documents themselves to determine if the claim falls under the program.
6. Where the petroleum operator responsible for the damage is known, CAPP will consult with the operator and will promptly refer the claimant to that operator.
7. Where the claim falls under the program and the operator responsible is not known, CAPP will submit completed Damage Report Forms, Loss Claim Forms, supporting documentation and the subsequent Release Forms, if applicable, to all operators active or that were active in the area at the time of the loss or damage.
8. CAPP will advise claimants as soon as possible and, in any event, no later than 30 days following receipt of the completed Damage Report Forms and Loss Claim Forms, whether the claim is incomplete (point 4), whether the claim does not fall under the program (point 5), whether the claimant is to be referred to an identifiable operator (point 6), or whether the claim appears to be non-attributable and the forms have been submitted to operators under this program (point 7).
9. If the location of the claim is such that no operator accepts that the claim could, having regard to all the relevant circumstances, be reasonably attributed to its activities, CAPP is to be informed of this promptly by the operators and will promptly inform the claimant that it will not be possible to proceed with the claim under the program.
10. Once the operators have advised CAPP that they have appointed their representative(s), CAPP will so inform the claimants. CAPP does not assess damage nor determine the nature of the loss nor otherwise participate in settling the claim.

11. Pending the appointment by the operators of their representative(s), CAPP may receive requests from operators for additional information required from claimants and transmit such requests to the claimants.
12. Advise claimants of additional information required by operators (point 11); receive additional information from claimants and provide it to operators.
13. Should the operators come to a decision on the claim without appointing representative(s), CAPP may receive the operators' decision on the claim and communicate the decision to claimants. CAPP will be informed by the operators in all other cases as to the outcome of the claim.
14. The claims process and claim settlement amounts, if applicable, are to be considered confidential by all parties and shall not be publicly disclosed. This does not apply to disclosure that is necessary or incidental to the investigation or resolution of a claim.

IMPORTANT NOTE: The role of CAPP in the program is administrative only. CAPP is not an agent for, and in no way acts on behalf of, any claimant or operator.

4.2 Roles and Responsibilities of Operators

1. Respond quickly to initial information of an incident.
2. Provide CAPP with timely and accurate information directly related to the claim as required.
3. Promptly assess claims and determine if an award in favour of the claimant is to be made.
4. Designate representative(s) to communicate directly with the claimant on behalf of the operators in order to assess the damage, to determine the nature of the damage or loss claimed, or otherwise, to settle the claim.
5. If a claim is awarded under the program, it is the role of responsible operators to pay the claim as soon as possible.
6. The operators will inform CAPP whether or not the claim was resolved to the satisfaction of the claimants.
7. The claims process and claim settlement amounts, if applicable, are to be considered confidential by all parties and shall not be publicly disclosed. This does not apply to disclosure that is necessary or incidental to the investigation or resolution of a claim.

4.3 Roles and Responsibilities of Claimant

1. Where damage or loss is discovered, the claimant shall initiate the claim process by providing written notice to CAPP (Step 1-Section 5b) as soon as possible but in any event no later than twelve months following the discovery of the damage or loss.

2. Ensure that a claim file number has been immediately communicated by CAPP upon receipt of the claim initiation at CAPP's Atlantic Canada office.
3. Provide accurate and complete Damage Report (Appendix A) and Loss Claim (Appendix B) Forms; and ensure that these forms reflect the file number and are submitted to the CAPP office within 30 days (Appendix A) and 60 days (Appendix B), respectively, of initiating the claim.
4. Provide supporting documents that will assist with the processing of the claim (pictures or pieces of debris that would show the cause or the kind of damage) and additional information, as required, including information to establish the amount of the loss.
5. Provide information and access as may be needed by the representative(s) of the operators to assess the damage and the nature of the loss claimed, including such consents as may be reasonably be necessary to obtain information in the possession of third parties.
6. Generally provide co-operation and assistance as may reasonably be necessary to resolve the claim.
7. Respect the confidential nature of the process and any claim settlement amounts.

5 The Program

5.1 Claimant Process

If claimant believes that gear or a vessel has been damaged because of upstream oil and gas activities or debris in relation thereto, and the operator responsible is not known, and if it is safe to do so, a claimant should:

8. Do what needs to be done to prevent further damage.
9. Retrieve any material (e.g., pieces of debris) that would show the cause or the kind of damage.
10. Notify CAPP as soon as possible in writing by fax, or e-mail (refer to section 5 b for contact information) of the incident with initial information about what happened, where it happened, any operations that were going on in the area during the period of time when the claimant believes the damage occurred and anything else that is considered important to resolving the incident. The claimant must provide their name and other relevant contact information.
11. Complete the Damage Report Form (Appendix A) to record information (e.g., time, location, weather conditions, location of other vessels) about the incident and ensure that Appendix A is submitted within the timeframe outlined in 4 c. 3 above.
12. Gather the information needed to establish the amount of the loss.
13. Complete the Loss Claim Form (Appendix B) to record valuation amounts and expenses and ensure that Appendix B is submitted within the timeframe outlined in 4 c. 3 above.

IMPORTANT NOTE: If it is possible and safe, claimants are also expected to try to continue fishing following an incident.

5.2 Submitting a Claim

The claims process as described in section 5 of this document applies to any aquaculturists or commercial fish harvesters who believe that damage to their vessel or gear is the result of upstream oil and gas industry activity and who choose to seek compensation through this program.

To start a claim, as soon as possible after discovering the loss or damage a claimant must:

Step 1: Contact CAPP's Atlantic Canada office and provide, in writing, the initial information of the incident, as outlined in 5 a.3. above. Deliver, mail, fax or email to:

Canadian Association of Petroleum Producers
403, 235 Water Street
St. John's, NL A1C 1B6
Fax: (709) 724-4225
Email: communications@capp.ca

For further information, call (709)724-4200

Step 2: Deliver (mail or fax) a copy of the Damage Report Form (Appendix A) to the CAPP office. Appendix A must be completed and submitted to CAPP's Atlantic Canada office within 30 days of providing the initial information.

Step 3: Complete a Loss Claim Form (Appendix B) and deliver (mail or fax) it to the CAPP office. Appendix B must be completed and submitted to CAPP's Atlantic Canada office within 30 days of providing the Damage Report Form.

As soon as possible, a claimant must collect any supporting documents (e.g. fish plant settlement sheet/buyer's sales slips, photographs of damage, etc) needed to support the claim. CAPP understands that some supporting documents may not be able to be submitted within the 30 day timeframe. If supporting documents cannot be submitted, then the claimant must advise CAPP in writing and advise when the information will be provided. If the claim forms are not complete, the claimant may be asked to supply additional information.

6 Program Policies

Until a claim is settled, a resolution satisfactory to the claimant is not guaranteed. As a result, the claimant must pay careful attention to any legal limitation periods or similar conditions for commencing legal proceedings and take care to preserve those rights until a settlement is reached. CAPP does not assume any responsibility to any claimants for preserving any rights to bring legal action.

Should a claimant receive compensation under the program, the claimant is required to sign an End of Claim Release Form (Appendix C) confirming that a full and final settlement has been agreed to with respect to the loss and that the claimant is in agreement that compensation has been paid in full and that no further action will be taken by the claimant. An original copy of the completed Appendix C shall be sent to CAPP's Atlantic Canada office within 30 days of receipt of compensation.

For claims that include claims for employees' lost wages it is the responsibility of the claimant to inform his/her employees that a claim for compensation has been made to the Canadian East Coast Offshore Operators Non-attributable Fisheries Damage Compensation Program. It is also the responsibility of the claimant in such cases to inform the employees of the nature of the program and, in particular, that a resolution is not guaranteed.

6.1 Maximum Amount Recoverable Under the Program

The program is designed to honour claims that do not exceed \$1,000,000 CDN per occurrence. Individuals who feel that they have claims that exceed this amount should make a claim through the appropriate courts or other regulatory authorities.

6.2 Non-Binding Nature of the Program

In the event of a disagreement among the operators or between the claimants and operators it will be for the claimant and the operators to determine how best to proceed. The claimant is cautioned to preserve its avenues of legal recourse, such as access to court, until a binding outcome or process has been put in place.

Appendix A Damage Report Form (Confidential)

CONFIDENTIAL

Damage Report Form

Ref - File No. _____

For use by aquaculturists or commercial fish harvesters only.

Date of Report: _____

1. Person completing this Report: _____

Position _____

Telephone/Fax No: _____ / _____

Address: _____

2. Skipper at time of incident: _____

Telephone/Fax No: _____ / _____

Address: _____

3. Name of fishing vessel: _____

CFV No: _____

Vessel Owner: _____

Owner Address: _____

4. Licence or Permit holder's name _____

(of gear and/or vessel involved) _____

Position _____

Licence / Permit Held (+ No.) _____

Telephone/Fax No: _____ / _____

Address: _____

5. Person who will be making the _____

Appendix A – Damage Report Form continued

claim for this incident

Date of the loss/damage incident: _____

Approximate time of the incident: _____

Location of the incident or discovery: _____

Lat: _____ Long: _____

Wind / weather / visibility / sea state at time of incident or discovery:

Draw a sketch/diagram showing the position of your vessel/gear in relation to the vessel, debris, etc., which caused the damage (use separate sheet if necessary):

Describe the type of loss or damage sustained (e.g. quantity & description of gear damaged or affected):

Describe how the incident occurred (use separate sheet if necessary):

Describe measures you took to recover gear, or to stop or limit the damage or loss:

Names of other vessels in the area at the time of the incident (if known):

How was CAPP initially contacted (including time, name of contact)?

Was Canadian Coast Guard / DFO informed?

Yes No

If Yes, who was contacted? _____

When? _____

Identify any witnesses, debris collected, evidence of the damage (e.g. photographs) or other information you have about the incident (use separate sheet if necessary):

I hereby certify that the above information is, to the best of my knowledge, full and accurate in every detail.

Signed by:

At:

On:

Signature

Place

Date

Please Print Name

Appendix B Loss Claim Form (Confidential)

CONFIDENTIAL

Loss Claim Form

Ref - File No. _____

For use by aquaculturists or commercial fish harvesters only.

1. Person making this claim: _____

Position/Title _____

Telephone/Fax No: _____ / _____

Address: _____

2. Fish harvesting firm/enterprise: _____

Address: _____

Telephone/Fax No: _____ / _____

3. Brief description of loss/damage: _____

4. Date of incident: _____

5. Damage Report filed by: _____

6. Date Damage Report form filed: _____

(Note: A Damage Report must have been filed previously or at the same time as this Claim.)

7. Name of fishing vessel involved: _____

8. CFV No: _____

Are you making a claim that includes losses of people other than yourself? Yes No

Are you claiming a loss that is included in a claim made by another person? Yes No

If yes, by whom? _____

Valuation of Claim

Please itemize losses and costs you are claiming. (You will also be asked to support the value of this claim by providing purchase receipts/catch records, wage reports, etc.) Use additional sheets if necessary.

A. Damaged and/or Lost Vessel and Gear	Amount Claimed
Total claimed	

B. Expenses and/or lost revenue (if claiming for vessel crew lost wages or shares, include names, addresses and telephone numbers of all persons included).	Amount Claimed
Total	

I hereby certify that the above information is, to the best of my knowledge, full and accurate in every detail, to make claim to the East Coast Operators Non-attributable Fisheries Damage Compensation Program for compensation by the participating operators for the losses described.

Signed by:

At:

On:

Signature

Place

Date

Please Print Name

Appendix C End of Claim Release Form (Confidential)

CONFIDENTIAL

Claim Release Form

Ref - File No. _____

For use by aquaculturists or commercial fish harvesters only.

Please complete all sections of this form and return it with original signatures to CAPP's Atlantic Canada Office: 403, 235 Water Street, St. John's, NL A1C 1B6

I _____, residing at _____,
(Print Name) (Street)

_____, _____, _____
(City/Town/Village) (Province) (Postal Code)

(_____) _____
(Telephone Number)

made a claim under the Canadian East Coast Offshore Operators Non-attributable Fisheries Damage Compensation Program dated _____ under file number _____ for damages attributable to upstream oil and gas activity but not attributed to any identifiable operator.

In consideration of the sum of _____, the payment of which is without any admission of liability by any operator, the receipt of which is hereby acknowledged by me, and which I acknowledge is in full and complete satisfaction of any and all claims against the "released parties" (as defined below) that I may now or ever have in relation to this claim or the incident giving rise to this claim. I, for myself, my heirs and assigns, am in full agreement that compensation has been paid in full and that no further action will be taken by myself or my heirs or assigns against any operator with regards to this claim or the incident giving rise to this claim. I agree that the amount of the payment to me is confidential and I agree not to disclose this amount publicly.

The "Released Parties" are all East Coast Offshore operators, including (insert names) _____, and also includes CAPP, the members of CAPP, the respective employees, officers, governors and directors, agents and contractors of CAPP and of its members, and all shareholders of CAPP members, and this Release is for the benefit of all such Released Persons.

Claimant signature

Witness signature

(Print name)

(print name, address, telephone number)

(Date)

(Date)