



HIBERNIA MANAGEMENT AND DEVELOPMENT COMPANY, LTD

&

FISHERIES

CODE OF PRACTICE

Preamble

A Code of Practice has been established through dialogue between the fishing industry (the “Fisheries”) and Hibernia Management and Development Company Ltd. (the “Operator”) to assist in managing and monitoring relations between fishing and oil and gas exploration, development and production activities.

The code’s series of principles are intended to serve as the basis for the relationships, mechanisms and protocols affecting inter-industry relations in the marine environment. The Code’s purpose is to foster the safe co-existence of the Fisheries and the Operator’s activities.

The Operator recognizes that the Fisheries have a long tradition on the Grand Banks; however, both industries are legitimate users of the sea and the seabed. The Operator looks forward to working with the Fisheries to establish efficient and effective mechanisms and procedures to ensure that both industries can pursue their operations safely with the least possible interference and the greatest mutual benefit. The Operator will adopt this Code and its associated Fisheries Compensation Program for its licensed activity, hereafter referred to as the “Project”.

Due to the fact that operational impacts may change over the life of the Project, the Code should be both flexible and responsive to actual needs and changing circumstances. Ongoing liaison and consultations between both industries over the life of the Project will ensure that any unanticipated problems and issues are addressed and resolved to the mutual satisfaction of both industries.

It is further acknowledged that all components of the Code of Practice shall be in accordance with the legislative and regulatory requirements of Canada as described in relevant legislation, such as the *Canada-Newfoundland Labrador Atlantic Accord Implementation Act*, as administered by the Canada-Newfoundland Labrador Offshore Petroleum Board (CNLOPB).

Inter-Industry Liaison and Communications

Principle 1: Through the Code of Practice, and in consultation with Fisheries, the Operator will establish appropriate protocols and mechanisms to ensure effective communications and safe operating procedures between both industries in the Project area.

Principle 2: Within the constraints of safety and those imposed by the Project activities, the Operator’s management procedures will be designed to provide an operating environment which allows fishing without hindrance.

Principle 3: The Operator will establish procedures, and the Fisheries are encouraged to do likewise, to report the loss of any gear or equipment, or other marine hazards, which might pose a risk to fishing and project vessels, or cause damage to fishing gear or production facilities and equipment.

Principle 4: Fisheries are encouraged to keep the Operator informed of changes in fishing patterns, or gear utilization activities, in the Project area.

Principle 5: A Fisheries Liaison Group will ensure continued communications between both industries and address issues of mutual concern.

Principle 6: As part of its role of facilitating ongoing liaison and information exchange between the two industries, communications via the Fisheries Liaison Group will help ensure the Operator is fully aware of any longer-term changes in the pattern and location of Grand Banks fishing activities.

Marine Operations

Principle 7: Both the Operator and the Fisheries will make genuine efforts to prevent conflicts at sea through the general practice of mutual avoidance and mutual protection.

Principle 8: It is the intention of the Operator, for all Project-related vessels operating between the shore base and the offshore Project, to follow standard course at all possible times. Both industries will identify and agree on appropriate protocols and safe route operation procedures. These mechanisms will help ensure that both industries are aware of any short-term changes in either Fisheries or Project activities.

Principle 9: The Operator intends to be a full and responsible part of the marine community and operating environment on the Grand Banks. Although the Operator will not be involved in providing regular services and assistance to the offshore fishing community, the Operator may make available the following – weather and ice forecasts (through the appropriate authority), assistance with emergency communications or notifications to Fishers of known hazards.

Principle 10: In consultation with the Fishers, other marine user groups and relevant regulatory agencies such as CNOBP, Canadian Coast Guard and Transport Canada, the Operator will define a three nautical mile “hailing” (notification) zone (the “Hailing Zone”) beyond the current Safety Zone (Figure 1) as defined by the Canada- Newfoundland Atlantic Accord and its Regulations. Within the Hailing Zone, appropriate marine communications protocols will be employed: 1) to ensure the safety of all vessels operating in the vicinity of the platform, and 2) to ensure that Project’s facilities are not damaged by fishing (and other) vessels. Fishing activity will not be excluded from the Hailing Zone.

Principle 11: The Project Safety Zone has been established under relevant legislation and is not expected to have an economic impact on Grand Banks Fisheries. The Operator will undertake all reasonable and permitted measures to minimize interference with fishing activities beyond that Zone.

Compensation Program

Principle 12: In the event that the Fisheries sustain actual loss, beyond the established Safety Zone, due to damage to fishing gear or vessels or due to an oil spill caused by the Project, the Operator will enter into discussions to compensate the Fisheries fully and fairly for that loss to the extent prescribed by the statute.

Principle 13: In cooperation with the Fisheries, the Operator will establish a compensation program for all actual loss resulting from gear and vessel damage and oil spills where such losses are attributable to the Project.

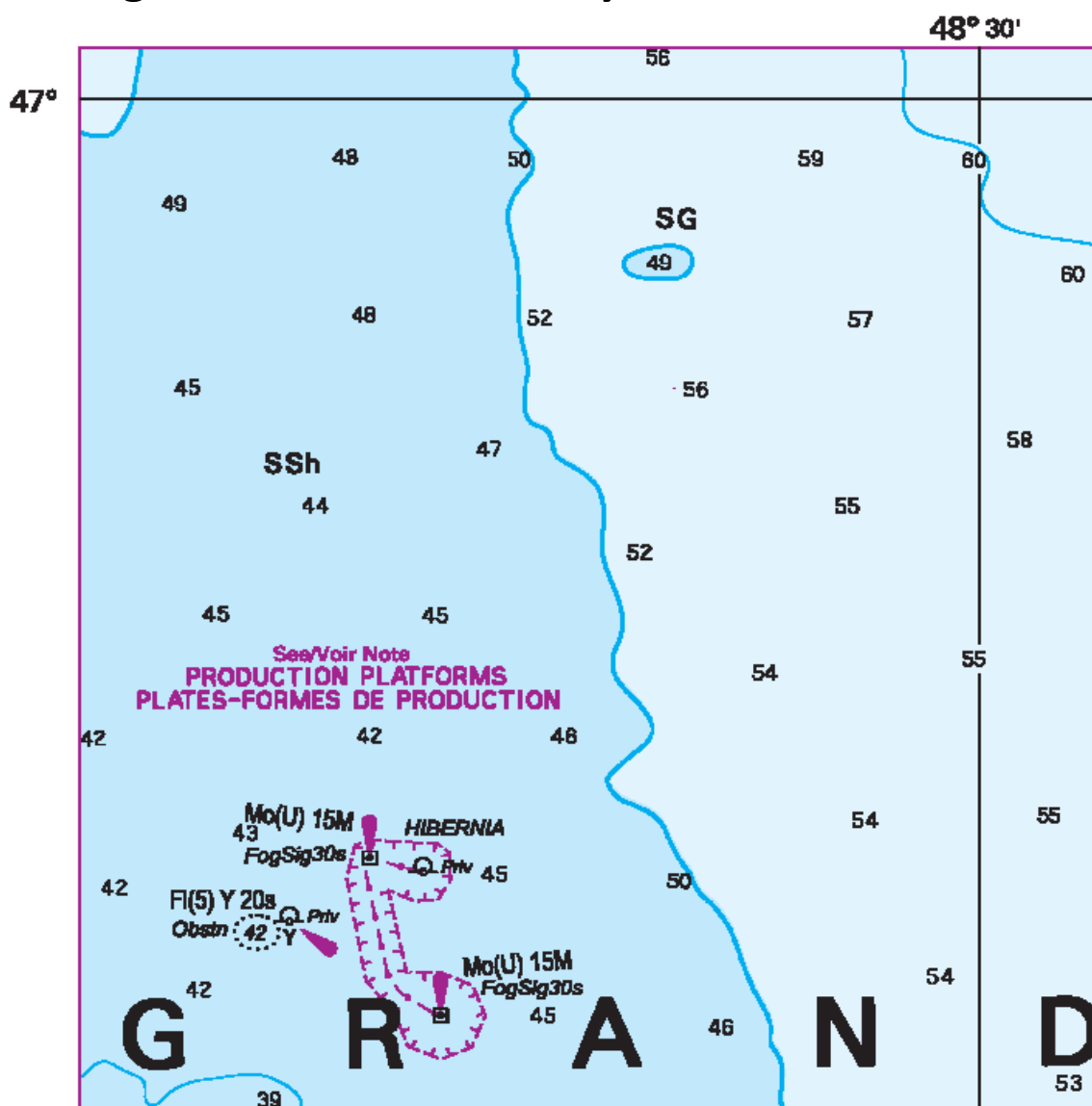
Principle 14: The intent and purpose of the Compensation Program is to offer a faster, more cost-efficient mechanism to provide fair and timely compensation. Alternatively, claims can be made through the legal system under the laws of Newfoundland and Canada.

Principle 15: The Compensation Program is intended to provide compensation for all Fisheries, which may be affected by Project marine activities.

Principle 16: As a result of any damage or losses, Fisheries claimants (including licensed processors) should be no worse off and no better off than they were before an incident occurred. They should be fairly protected in a timely manner from all resulting actual loss.

Principle 17: The Operator will participate in the oil and gas industry Non-attributable Compensation Program established by the Canadian Association of Petroleum Producers (CAPP).

Figure 1: Hibernia Safety



FOR CHART / POUR CARTE 8012

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For further information please contact: chsinfo@dfo-mpo.gc.ca
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HIBERNIA MANAGEMENT AND DEVELOPMENT COMPANY, LTD

FISHERIES COMPENSATION PROGRAM

FOR

GEAR AND VESSEL DAMAGE AND OIL SPILLS

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1.0 **Purpose**

The purpose of the Program is to provide fair and timely compensation to commercial fish harvesters and processors (the "Fisheries") who sustain actual loss because of damage to fishing gear or vessels or due to Oil Spills (as defined below) caused by Hibernia Management and Development Company, Ltd., including its contractors, (the "Operator"), in the course of their work on the Project.

The Operator recognizes the need to compensate Fisheries in a fairly and timely manner for all actual loss it may cause, with the aim of leaving the Fisheries in no worse or better a position than before the losses occurred.

This Program has been adopted by the Operator to provide the Fishers with an alternative to making a claim through the Courts or to the CNOPB, pursuant to the *Canada-Newfoundland Atlantic Accord Implementation Act* and its Regulations. Although claims for loss can be made under the laws of Canada, this Program offers a simpler, less expensive process for obtaining appropriate compensation. Its purpose is to provide a mechanism for a fair and swift resolution of all legitimate claims, and the opportunity for all parties to minimize costs.

Fisheries participants who use this Program do so voluntarily. However, by referring a Claim to the Program's Compensation Board (described below), the Claimant agrees to be bound by the Compensation Board decisions and by the other provisions of this Program. The Operator agrees to be similarly bound. Any compensation received may be reduced to the extent that the Claimant has recovered all or a portion of the loss from other sources or to the extent the Claimant by his / her actions may have contributed to the losses.

Participation in this Program by the Operator and the Fisheries does not admit any legal obligation on either party, or any rights to Fisheries or the Operator, other than those specifically granted under the terms of this Program.

2.0 **Application**

The Program will operate throughout the life of the Project, including production, drilling, and abandonment, and claims can continue to be initiated under the Program, subject to the time period set out in the relevant portions of Section 162(5) of the Atlantic Accord Act (Federal) as noted below, namely,

"Proceedings in respect of claims under this section may be instituted within three years after the day when the loss, damage cost or expense occurred but in no case after six years after the day the spill'... 'of petroleum occurred or, in the case of debris, after the day the installation or structure in question was abandoned or the material in question broke away or was jettisoned or displaced. "

Any claims made within the specified time frames can be carried through to completion.

The Program applies to actual losses, to harvesters and processors from:

- a) Damage to fishing gear and vessels as a result of interaction with Project vessels and / or debris. Damage includes the complete or partial destruction of fishing gear or fishing vessels and the associated actual losses, which occur as a result of Project-related activities of the Operator or its contractors, wherever they may travel in support of the Project. Fishing gear also includes docks and wharves.
- b) Oil Spills (as defined below) originating from activities within the Safety Zone of the Project and from Project-related vessels of Operator or its contractors (excluding tankers) wherever they may travel in support of the Project. Appendix B defines the extent of the Project Safety Zone. An "Oil Spill" is defined as a discharge, emission or escape of petroleum, other than one that is authorized pursuant to the regulations or any other federal law or that constitutes a discharge from a ship to which Part XV or XVI of the Canada Shipping Act applies. The appropriate authority must establish proof of occurrence before a claim can be made to the Compensation Board.

The Compensation Program does not apply as follows:

- 1) Claims may not be made under this Program for actual loss sustained as a result of a fishing vessel being within the Project's approved Safety Zone.
- 2) This Program cannot be used to settle a claim against the Operator already initiated under another process (such as through the Courts, CNOPB, CAPP), unless agreed by both the Operator and the Claimant, or unless a claim through the CAPP Non-Attributable Damage Program declares the Operator at fault.
- 3) Damage that cannot be shown to have been caused by the Project may be claimable under the Canadian Association of Petroleum Producers (CAPP) Non-attributable Damage Program, or its successor programs.
- 4) No part of a claim under this Program can be for loss resulting from loss of life or personal injury.

- 5) Oil Spill related claims arising from losses associated with tankers are not covered under this program.

There is no limit on the amount of compensation that may be agreed between the Operator and a Claimant before a Notice of Claim is filed with the Compensation Board. However, the Compensation Board may not award more than \$1,000,000 per incident, excepting in the case of an Oil Spill where the Board may not award more than \$5,000,000 per incident, unless the Operator waives these checkpoints on a case by case basis.

Claims or claimants not eligible under this Program should proceed through the Courts or other processes, such as the CNOPB procedure.

With the exception of those limits specified by law, time limits and/or deadlines specified in this Program may be lengthened by the mutual consent of the Claimant and the Operator or by the Chair and / or the Board for good cause.

Claims for actual loss resulting from oiled gear and vessels will be considered pursuant to the \$5,000,000 checkpoint.

3.0 Eligible Claimants

Those eligible to make claims under this Program must be duly licensed and/or registered commercial fish harvesters (including aquaculture lists) and fish processors who believe that they have sustained actual loss because of damage to fishing gear or vessels or because of Oil Spills resulting from Project activities. Only the holder of the relevant license (for example, fishing license or processing license) may make a claim.

In case of disputed eligibility, the Compensation Board may be called upon to make a ruling. If, for any reason, and at any time, the claim or applicant is found to be ineligible under the Program, the applicant is free to pursue the Claim through another avenue, such as through the CNOPB, the CAPP Non-attributable Program or the Courts.

Where a single incident affects more than one Claimant, Claimants may, with the Operator's approval, choose to make claims jointly through an "initiating Claimant." However, any claim payments will be made directly to the individual Claimants.

In this Program, "Claimant" means the eligible Claimant or a person duly authorized by the Claimant to represent him or her.

4.0 Coverage

This Program covers claims for all actual loss, to fishing enterprises, aquaculture lists and fish processors which has resulted from (1) damage to fishing gear or vessels or (2) an Oil Spill that are a result of project-related activities.

This includes, but is not is not limited to:

1. All actual loss related to damage to fishing gear or equipment, including (but not limited to) the cost of:
 - a) repair,
 - b) cleaning, and
 - c) replacing gear or equipment, which is lost or damaged beyond repair.
2. All actual loss related to damage to a fishing vessel and related equipment, including (but not limited to) the cost of:
 - a) repair,
 - b) cleaning,
 - c) towing,
 - d) dry-docking,
 - e) renting or leasing a substitute vessel, and
 - f) replacing a vessel which is lost or damaged beyond repair.
3. All actual loss to the harvester resulting directly from gear or vessel damage, including:
 - a) the estimated landed value (i.e. value at point of landing) of the fish caught and lost by a fishing vessel,
 - b) the estimated landed value of the fish not caught because the vessel could not fish,
 - c) the reduction in the quantity of catch landed because the vessel could not fish as efficiently, and

- d) the reduction in landed value of fish caught which deteriorated or spoiled as a result of the damage to the gear or vessel.
- 4. All actual loss to a fish processor resulting directly from a gear or vessel damage incident.
- 5. Actual loss of fishing income, including future income, resulting from:
 - a) loss of access to a fishing area affected directly by an Oil Spill,
 - b) reduced value of catch (to harvesters / processors) because of taint or spoiling by an Oil Spill, and
 - c) inability to fish because of damage to fishing gear or vessels or due to contact with an Oil Spill.

A portion of the claim may include reasonable expenses incurred directly by a Claimant in discovering and assessing the damage. At its discretion, the Compensation Board may also award preparation costs to the Claimant.

After sustaining damage, harvesters and processors must make genuine efforts to mitigate the damage and any subsequent loss, with due allowance for safety (e.g. by continuing to fish, if possible).

5.0 **If an Incident Occurs**

If a potential Claimant discovers damage which is believed to have been caused by the Project, he/she should without delay:

- 1. Take all reasonable action to prevent further or continuing actual loss, without risking the safety of the vessel or crew;
- 2. If it can be done safely, secure any materials (e.g. damaged / oiled nets), or other information (e.g. photograph of damage) which may be used as evidence to support a claim;
- 3. As soon as possible after discovering the damage, and no later than 72 hours afterwards, notify the Operator's Designated Contact (see Appendix A) in person or by telephone that an incident has occurred;
- 4. Complete a **Damage Report Form** (see Appendix C) and deliver, mail or fax it as indicated on the form. This should be done as soon as possible after the incident.

6.0 Making a Claim

To make a claim:

1. As soon as possible, the Claimant should secure any documents or records (e.g. fish plant settlement sheet / buyer's sales slip) which may be used as evidence to support a claim.
2. The Claimant must complete the appropriate Loss Claim Form (see Appendix D) and submit it to the Operator's Designated Contact (see Appendix A) within 45 days of the incident.

The Claimant will then be contacted by the Operator, and at that time may be asked to supply more information, or evidence to support the claim.

7.0 Evidence

It is the responsibility of the Claimant to provide evidence of actual loss and that the actual loss is attributable to the Operator's activities.

Both the Operator and the Claimant will co-operate fully with the Compensation Board (see below) established by this Program and with each other in the verification of claims. Neither the Claimant nor the Operator will withhold any relevant information.

A copy of any evidence the Claimant has been able to collect and / or record (e.g. photographs, past sales records, etc.) should be presented to the Operator with the initial claim.

8.0 If the Claim is Accepted by the Operator

After examining the information filed by the Claimant, the Operator will meet and discuss the matter with the Claimant to determine whether the Operator accepts that:

1. Claimant is eligible to make a claim under this Program.
2. Claim is eligible under this Program.
3. Claim is valid and justified.
4. Claim amount is appropriate.

The Operator will make its decision as soon as possible after the claim is filed, but, unless by mutual consent, no later than 14 business days after the filing of the **Loss Claim Form** (Appendix D). The Claimant will be notified of Operator's decision in writing. If a mutually acceptable agreement is reached, the Operator will pay the Claimant within 60 days of the signing of an **End of Claim Release Form** (Appendix F).

Before it is eligible to be submitted to the Compensation Board, the claim must be pursued with the Operator in this manner (i.e. between the two parties) until it is clear that no acceptable settlement can be reached.

9.0 If the Claim is Rejected the Operator

If the Operator rejects the claim or any part thereof, the reasons will be stated on the written notification to the Claimant. The Claimant may then:

1. drop the claim,
2. proceed with a claim through any other available avenue, such as the CNOPB or the Courts, or
3. pursue the claim further under this Program by referring it to the Compensation Board.

If the Claimant chooses to pursue the claim further under this program (i.e. option 3, above), he / she will file a **Notice of Claim to the Compensation Board Form** (Appendix E) and the proceedings will be as described below.

10.0 The Compensation Board

A description of the Compensation Board and its Terms of Reference are provided in Appendix G.

11.0 Making a Claim to the Compensation Board

To initiate a claim to the Compensation Board, the Claimant must notify the Chairperson of the Compensation Board within 45 days of receiving the Operator's written rejection of the claim. The Claimant will do this by completing and signing a **Notice of Claim to the Compensation Board Form** (Appendix E), and sending it, with a copy of the **Damage Report Form** (Appendix C), the **Loss Claim Form** (Appendix D) and the Operator's written rejection of the claim, to the Chairperson.

By signing the **Notice of Claim to the Compensation Board Form**, the Claimant agrees to be bound by the Compensation Board's decisions and by the other provisions of this Program. The Operator agrees to be similarly bound if the other provisions of this Program are met.

In signing the **Notice of Claim to the Compensation Board Form**, the Claimant agrees that no information originally presented by the Operator during the Compensation Board proceedings will be used in any other proceedings without Operator's consent, or without an order of the Court (except where the Board determines that either another party is at fault or that the damage is non-attributable, in which case the information may be used in a claim against another party or to CAPP). The Operator will be similarly bound with respect to information presented by the Claimant.

At any point before the start of the Compensation Board hearings, a Claimant may (in writing) choose to withdraw his / her claim from the Compensation Board arbitration process, and may then pursue his / her claim through another process (e.g. CNOPB or the Courts), and the Compensation Board will end its proceedings involving that Claimant without issuing a decision.

The Claimant may stop the claim at any time before a decision is rendered by signing an **End of Claim Release Form** (Appendix F). Signing this form means that the Claimant will make no further claim against the Operator in connection with this incident.

12.0 Proceedings of the Compensation Board

The day the first **Notice of Claim Form** is received by the Compensation Board will be the start of a 45-day waiting period. During this period no claims associated with the incident will be heard. At the end of this period, the Compensation Board will address claims received within the 45-day waiting period up to \$1,000,000 for gear and vessel damage and \$5,000,000 for oil spills, starting from the smallest claims and working upwards. Where it is apparent that there will be only one claim, the Board at its discretion, can dispense with the 45-day waiting period and proceed with processing the claim in advance of the 45-day waiting period

When claims received reach the designated checkpoints of \$1,000,000 (gear and vessel) or \$5,000,000 (Oil Spills), respectively, unless the Operator agrees in writing to increase the checkpoints, all other Claimants will be notified and have the opportunity to pursue their claims through other means. When the first group of claims has been adjudicated, and if less than the checkpoints have been awarded, then those Claimants remaining, or who have filed in the meantime, will be eligible to be

heard, starting with the smallest claim, and so on, until the checkpoints have been reached for that incident.

The Hearing will be convened as quickly as possible but no sooner than 15 days after the end of the waiting period and no later than 90 days after receiving the **Notice of Claim Form**, unless the total disputed claims exceed the respective checkpoints or unless this timeline is not feasible for good reason (e.g. a request by the Claimant or the Operator that the proceedings be delayed, e.g. because of fishing activities or because a vessel master was not available). If the total disputed claim exceeds the checkpoint(s), the first hearing will be held in the timeframe described above and other eligible claims will be scheduled in the order of their receipt by the Board. In all cases, the Operator and the Claimant will have at least 10 days' advance notice of the date of the Hearing. The Board will decide upon any request for a delay.

The Chairperson will notify the appropriate Compensation Board members, the Claimant and the Operator of the time and place of the Hearing, which will be decided by the Compensation Board Chairperson.

Both the Claimant and the Operator may submit any written material, affidavits, sales records, maps, illustrations, photographs and/or any other relevant evidence to the Chairperson for distribution to Compensation Board members and to the other party in the claim. The information presented may relate to both the proof of the claim and the amount of the claim.

Such materials must be submitted to the Compensation Board through the Board Secretary no later than 7 days before the day of the Hearing.

The Chairperson will also ensure that a copy of all submitted forms, the Operator's written rejection of the claim, and other notices, are circulated to Compensation Board members no later than 5 days before the day of the Hearing.

The Operator and the Claimant will provide such additional information or documentation as may reasonably be requested by the other party or by the Compensation Board. If, in the opinion of the Board, essential information has not been provided, the Board may decide not to proceed with the Hearing, and the Claimant may proceed with the claim through another process.

All information presented to the Compensation Board or at the Hearing will be held in confidence by all participants and shall not be disclosed to any third party, except as described above (Section 11, "Making a Claim to the Compensation Board").

13.0 The Hearing

Except as provided below, the Compensation Board will in general determine its own procedure. The proceedings will be fair and equitable, and suited to the specific claim being made.

If either the Claimant or the Operator chooses not to appear or be represented at the Hearing, the Compensation Board may proceed to consider the written submissions and the information presented at the Hearing by the party that does appear.

At the Hearing, the Claimant may represent himself / herself, or have any other individual represent him / her. If another person represents the Claimant, the Claimant must also be present (or available by other means, such as teleconference) to answer questions. The Operator may be represented by any person chosen by the Operator.

The Hearing will be tape-recorded.

If in dispute, the Compensation Board will consider whether:

1. The Claimant and the claim are eligible for consideration under this Program,
2. Operator is responsible for the loss or damage.

If the Claimant and the Operator agree these issues are not in dispute, the Board will hear evidence and decide on the amount of the award only.

During the Hearing, either party may bring forward witnesses, or legal affidavits of witnesses or other persons. The witness will be required to take an oath in order to provide any evidence and may be questioned by the Claimant, Compensation Board members or the Operator.

At the discretion of the Board, new documentation may be presented during the Hearing, with the provision that the other party can ask the Board for sufficient time to consider the new information before proceeding further.

If either the Operator or the Claimant wants to call witnesses who have not agreed to appear voluntarily (e.g. if the Claimant wants to call a Master of a Project contracted

vessel; a person employed by a contractor), the Compensation Board may order that the other party help secure the witness's appearance.

The Compensation Board may also consult with outside experts.

Hearings will continue (at times set by the Chairperson) until both the Claimant and Project have presented all the information they choose to bring forward and until the Chairperson, in consultation with the Board, is satisfied that it is ready to make a decision.

Prior to making its decision, the Compensation Board is entitled to deliberate the issues, without the Operator or the Claimant present. The Compensation Board is entitled to recall any person for further questioning, but both the Claimant and the Operator can be present for the questioning if they so choose.

Decision: During the proceedings, the Compensation Board may have to consider whether the Claimant and the claim are eligible for consideration under the Program, whether the Operator is responsible for causing the damage and associated loss and the amount of the award if one is to be made.

Considerations: The amount awarded should follow the principles of ensuring fair compensation and that the Claimant is no better or worse off than before the loss occurred. In general,

1. The amount of actual loss assessed will be at the discretion of the Compensation Board within the applicable checkpoint, unless waived by the Operator. Wherever possible and feasible, compensation will be for the cost of repairs.
2. Compensation for lost net income from fish sales will consider revenue, which might have been realized at both the harvesting and processing levels if the damage or loss had not occurred. The Compensation Board award will not include amounts for avoidable costs. (For the purpose of this Program, wages/shares for crew members and plant workers, and interest/carrying charges are not considered avoidable costs.) Such compensation is payable for the period from the date the damage occurred, or for the period from the date a spill began to cause actual loss to the Claimant, to the earlier of (a) the date of payment, (b) the date of replacement or repair of gear or vessel, or (c) the date when losses stopped or should reasonably have stopped (e.g. the date that full fishing activity resumed, or could have resumed). If the Board awards an amount for lost wages or shares, the specific amount will be identified in its written decision.

In establishing value of compensation to be paid in the case of an Oil Spill related claim, the Compensation Board may consider, but is not restricted to considering, such factors as:

- amount (e.g. quantity emitted) of the spill
 - extent of the slick
 - properties of the oil
 - duration of the spill
 - time of the spill and the species seasons affected
 - impact on resources
 - impact on quotas
 - species values in comparable unaffected areas
 - past catch / effort / production levels of the Claimant
3. Compensation for any future actual loss resulting from gear or vessel damage or Oil Spills (such as effects on product markets) may also be awarded by the Compensation Board.
 4. When making its award, the Compensation Board may also apportion fault for the cause of damage and adjust the amount of an award appropriately.
 5. It may also consider the Claimant's efforts to prevent more loss after the problem as discovered, or to mitigate the extent of the losses in other ways. A failure to mitigate appropriately and reasonably will be cause to reduce the amount of the award if further or continuing loss could have been avoided by the Claimant's reasonable actions.
 6. The Compensation Board may also include an amount for reasonable third-party costs associated with preparing the claim.
 7. If the Board determines that an award will exceed the checkpoint (i.e. \$1,000,000 or \$5,000,000), it will inform both the Claimant(s) and Operator before it issues its formal decision. The Operator may choose to agree to allow an award in excess of the respective checkpoint. The Operator must notify the Board of its decision in writing within 7 days of having been informed by the Compensation Board. If the Operator does not agree, the Claimant(s) may choose to limit the award to the amount that reaches the checkpoint, or pursue the claim through another process (e.g. the CNOPB or the Courts) and the Board will end its proceedings without issuing a decision.

14.0 Settling the Claim

The Claimant and the Operator will be notified in writing of the Compensation Board's decision, the award amount and the reasons for its decision, within three days of the Compensation Board's finalizing its decision. The Operator will then pay the award amount within 60 days of the decision. At the time of transfer of funds, the Claimant will execute the End of Claim Release Form to signify that the amount is being accepted as full and final settlement of any damages or costs incurred in relation to the incident.

Any and all amounts awarded in consideration of wages and / or shares by crewmembers and / or plant workers must be fairly disbursed by the Claimant, to the satisfaction of the Compensation Board, in accordance with the wage rate and / or share split to which those crew members and / or plant workers, in the normal course of that fishing enterprise, would have been entitled.

15.0 Further Proceedings

If the Compensation Board finds that damage was sustained but not attributable to the Operator/the Operator is released from any future claim concerning the same incident, but the Claimant is free to make a claim against another operator or against a non-attributable damage fund.

Where the Compensation Board finds that the Operator was not responsible for the damage, a letter stating the Board's decision will be forwarded to the CNOPB and CAPP (for non-attributable damage claims). If the Claimant indicates to the Compensation Board an intention to file a claim with the CAPP Non-attributable Program, a copy of all written evidence will be forwarded to the CAPP.

Except where a claim is made to the CAPP Non-attributable Program, the findings of the Compensation Board may not be introduced as evidence in any subsequent Court application, other compensation plan proceedings (with the exception of a claim to the Ship Source Oil Pollution Fund), or any proceeding before an administrative tribunal, without the written agreement of both parties, nor may any member of the Compensation Board be requested by the other party to appear as a witness.

Notwithstanding the above, either the Claimant or the Operator may apply to re-open the claim (concerning either Operator's responsibility for loss / damage or the amount of a previous award) if new evidence which was not available, and could not reasonably have been available at the time of the first Hearing, becomes available after a decision of the Compensation Board. In such cases, the Board will meet first to decide if the claim will be re-heard. A request for a re-hearing must be made within one year of the Compensation Board's original decision and within the term of the Program.

APPENDIX A

Hibernia Contact Information

Hibernia's Designated Contacts

SSHE Manager/Supervisor, Environment Advisor, Emergency Response Advisor

After Hours Emergency

24/7 Support Line 1-800-650-0046

Hibernia Management & Dev Co Ltd Address

20 Hebron Way

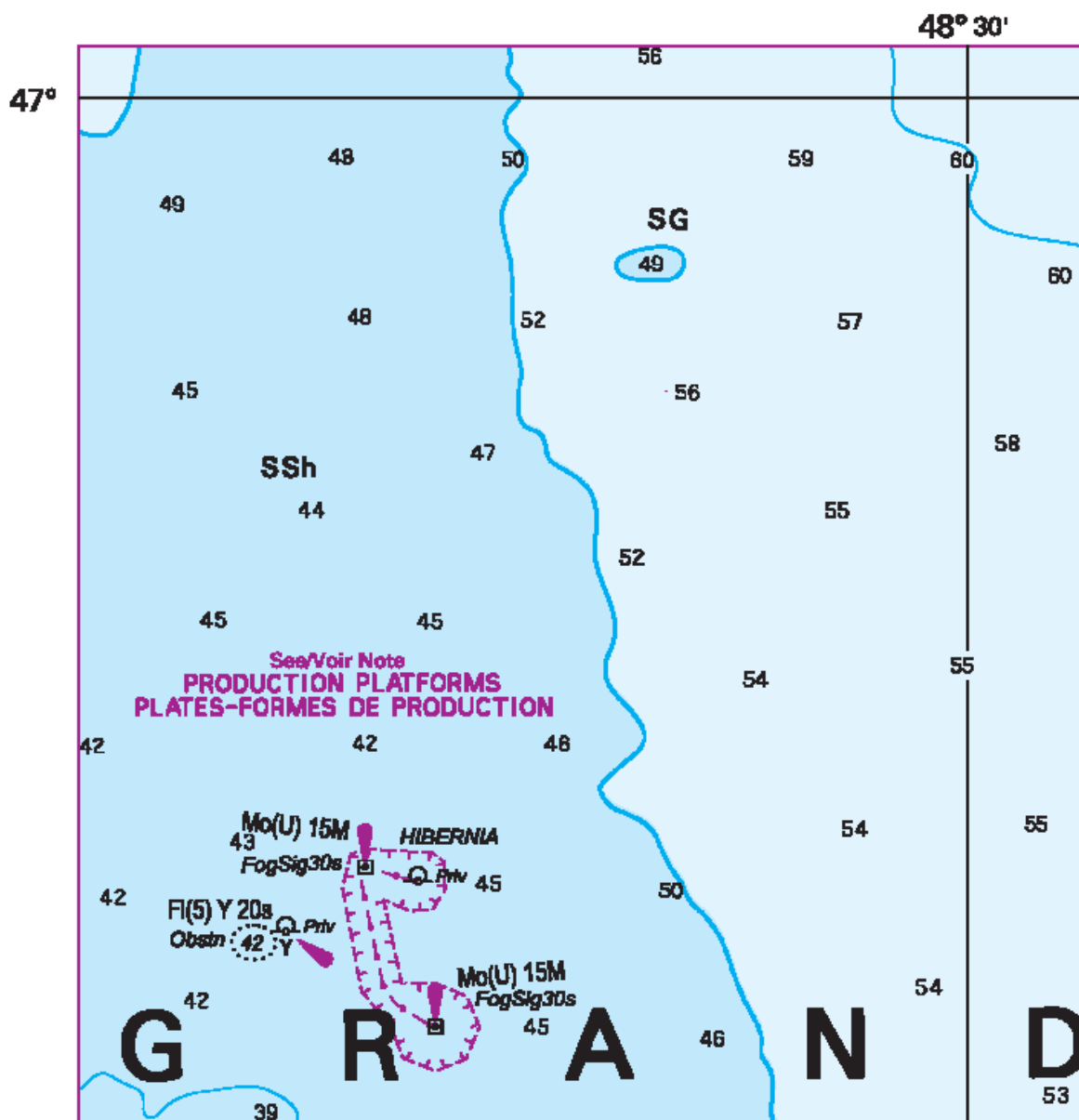
St. John's, Newfoundland

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APPENDIX B

HIBERNIA SAFETY ZONE

Note that this program does not cover damages due to debris, spills or damages from the activities of tankers, notwithstanding that such incidents may have taken place within the Hibernia Safety Zone



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For further information please contact: chsinfo@dfo-mpo.gc.ca
 Pour plus d'information, vous adresser à : shcinfo@dfo-mpo.gc.ca

APPENDIX C

DAMAGE REPORT FORM

Guide for Completing Damage Report (for Fish Harvesters)

This Guide outlines the steps Fish Harvesters should take to report an incident and begin a claim under the Program. (Fish Processors should see the Claim Guide for Fish Processors; Harvesting-Processing firms should follow both Guides and complete all forms referenced.)

All potential claimants should read the document entitled **Fisheries Compensation Program for Gear and Vessel Damage and Oil Spills** which fully describes Program coverage, eligible claims and incident reporting procedures.

Reporting an Incident

If you discover damage which you believe was caused by the Operator, you should:

1. take all reasonable action to prevent further or continuing damage, without risking the safety of the vessel or crew;
2. if it can be done safely, secure any materials (e.g. debris), or other information (photo of damage) which may be used as evidence to document the incident and/or support a claim;
3. as soon as possible after discovering the damage, and no later than 72 hours afterwards, notify the Operator's Designated Contact, as per Appendix A, that a damage incident has occurred; and
4. complete a **Damage Report Form** as soon as possible.

Making a Claim

If you want to make a claim for losses resulting from the incident, you should

1. secure any documents or records (e.g. fish plant settlement sheet/buyer's sales slip) which might be used as evidence to support a claim; and
2. complete a **Loss Claim Form**.

It is important that you complete all relevant parts of the forms so that your claim can be processed as quickly as possible. You can submit these forms separately or both together to the Operator's Designated Contact (see Appendix A).

Eligible Claims

Claims are not eligible under this Program if they

- are for damage which occurred because of being in Safety Zone,
- have been started against the Operator through another process such as the C-CNLOPB or the Courts).

No part of a claim may be for loss of life or personal injury.

Who Should Make the Claim

Those eligible to make a claim under this Program are either:

1. the operator or owner of the Canadian Fishing Vessel (CFV) involved in the incident (sustaining damage and / or using the gear that was damaged), or
2. the holder of the DFQ commercial fishing license related to the lost, or
3. the owner of the fishing enterprise' company.

If not the same person, you will need to decide together who should make the claim.

If you need assistance with any form or if you have questions about the Program or eligibility please contact the Hibernia designated contact noted in Appendix A.

Damage Report Form

Preliminary Report : _____ Final Report: _____ 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. License or Permit holder's name: _____

(Of gear and/or vessel involved)

Position: _____

License / Permit Held (Include Number): _____

Telephone/Fax No: _____ / _____

Address: _____

5. Person who will be making the

claim for this incident (if known): _____

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, spill 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 Hibernia 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 (Print): _____ **Signature:** _____

Location: _____

Date: _____

APPENDIX D

LOSS CLAIM FORM

Guide for Completing Loss Claim Form (for Fish Harvesters and Processors)

This Guide outlines the steps Fish Harvesters and Processors should take to claim under the Program. (Fish Harvesters should also see the Guide for Completing Damage Report; Harvesting-Processing firms should follow both Guides and complete all forms referenced.)

All potential claimants should read the document entitled Fisheries Compensation Program **for Gear and Vessel Damage and Oil Spills** which fully describes Program coverage, eligible claims and incident reporting procedures.

Making a Claim

If you believe that you have sustained a loss because of Gear or Vessel Damage or an Oil Spill caused by Hibernia, as soon as possible you should,

1. secure any documents or records (e.g. purchase receipts, sales slips) which may be used as evidence to support a claim;
2. determine whether the harvester sustaining the damage has reported the incident and filed a **Damage Report Form**; and
3. complete a **Loss Claim Form**.

If for some reason the Harvester who sustained the damage has not filed a Damage Report, inform the Operator immediately and give the full particulars to the best of your knowledge. You should also contact the harvester and ask him / her to supply information about the incident as quickly as possible, if a Damage Report has not already been filed.

It is important that you complete all relevant parts of the form so that your claim can be processed as quickly as possible and submit the form to the Operator's Designated Contact, as per Appendix A.

Eligible Claims

Claims are not eligible under, this Program if they:

- are for damage which occurred because of a vessel being in the Operator's Safety Zone,
- have been started against the Operator through another process (such as the Courts).

Who Should Make the Claim

Processors eligible to make a claim under this Program are either of the following - i) the licensed operator of the fish processing facility affected or ii) the owner of the fish processing enterprise/company. If not the same person, you will need to decide together who should make the claim.

If you need assistance with the Claim Form or if you have questions about the Program or eligibility please contact the Hibernia designated contact.

Loss Claim Form

1. Person making this claim: _____

Position/Title _____

Telephone/Fax No: _____/_____

Address: _____

2. Fish Harvesting Enterprise: _____ Fish Processing Enterprise: _____

Enterprise Name: _____

Address: _____

Telephone/Fax No: _____/_____

Fishing License Number: _____ Processing Permit Number: _____

3. Brief description of loss/damage incident:

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 representing other Claimants in a joint claim? Yes: ____ No: ____

Are you being represented by another Claimant in a joint claim? Yes: ____ No: ____

If yes, by whom are you being represented? _____

9. Please describe how/why loss occurred (use additional sheet if necessary):

10. Describe measures taken to use alternate grounds/find alternate suppliers or other measures taken to stop or limit losses (use additional sheet if necessary):

11. 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. Source and Type of Loss:	Amount Claimed
Total claimed	

B. Expenses and/or lost revenue not included above (if claiming for lost wages or shores, include names, FIN, address and the telephone numbers of all persons included):	Amount Claimed
Total claimed	

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

Signed by (Print): _____ **Signature:** _____

Location: _____

Date: _____

APPENDIX E

NOTICE OF CLAIM TO THE COMPENSATION BOARD FORM

Guide for Completing Notice of Claim to Compensation Board (for Fish Harvesters and Processors)

PLEASE READ CAREFULLY BEFORE SUBMITTING THE NOTICE OF CLAIM TO THE COMPENSATION BOARD

Please read the full text of the **Fisheries Compensation Program for Gear and Vessel Damage and Oil Spills** carefully. **If you need assistance on any part of the document, with making a claim to the Operator, or completing the Notice of Claim, please contact the Secretary to the Compensation Board.**

A claim to the Compensation Board can only be made if you have first made a claim directly to the Operator and have not been able to reach agreement about any or all aspects of the Claim.

It is your responsibility to submit a properly completed, signed and witnessed Notice of Claim within 45 days of receiving the Operator's written rejection of your claim or the claim amount.

You may submit the Notice of Claim by hand, or by certified/registered mail, to the Secretary of the Compensation Board.

The Notice of Claim may be submitted by fax as long as a signed original is delivered within three working days afterwards.

The **Notice of Claim** must be accompanied by the following items (don't forget to keep copies for yourself):

1. a copy of the original Damage Report (if available)
2. a copy of the original Claim Form(s), and
3. a copy of the Operator's written decision.

Please note that awards for amounts in excess of \$1,000,000 (for Gear and Vessel Damage) and \$5,000,000 (for Oil Spills) cannot be settled by the Board without the consent of the Operator.

Notice of Claim to the Compensation Board Form

This is a request by the undersigned that the Compensation Board (the Board) proceed with a binding claim resolution process as specified in the Fisheries Compensation Program (the Program) in the matter of a claim for an incident which occurred on:

(date) _____ involving

brought by (Name:) _____,

(Title/Position:) _____

of (Ship/Firm:) _____ based

in _____

against the Operator. The incident is described in the accompanying Damage Report Form (if available) signed by _____, dated ; and the losses claimed are described in the accompanying Loss Claim Form

Signed by: _____

Dated: _____

CLAIMANT TAKE NOTE: You have other options for making a claim against the Operator, such as proceedings in the Courts, or to the Canada-Newfoundland Offshore Petroleum Board (CNOPB) as provided for pursuant to the *Canada-Newfoundland Atlantic Accord Implementation Act* and its *Guidelines*. By signing this Notice of Claim, you agree to give up your right to make a claim through any other process (except as allowed under the Program) and agree to be bound by the Compensation Board's decision concerning the validity and the amount of the claim, and by the other provisions and conditions specified in the Program documents.

- 1) I understand and agree that this is a submission to a binding claim resolution process, as specified in the Program, of all matters arising between the parties with respect to the Claim under the provisions of the *Arbitration Act* unless otherwise specified in the Program, and that this submission is irrevocable by me. I hereby specifically waive any right to any other remedy including my right to make a claim through the Courts or to the CNOPB, except as allowed under the Program. The same rules bind the Operator.

2) I agree that the Compensation Board has all the powers conferred on an arbitrator under the *Arbitration Act*, and understand that this Act also shall be followed with respect to procedure. The Chairperson shall be responsible for and shall have full authority to determine all procedural matters, complying where necessary with the *Arbitration Act*.

Signed by (Print): _____ **Signature:** _____

Location: _____ **Date:** _____

Witnesses: _____ **Title:** _____

APPENDIX F

END OF CLAIM RELEASE FORM

End of Claim Release Form

FOR GOOD CONSIDERATION THE AMOUNT OF _____ (\$ CDN) AS THE AWARD MADE BY THE COMPENSATION BOARD IN RESPECT OF CLAIM NUMBER _____ (*): the undersigned hereby forever releases, discharges, acquits and forgives _____, its affiliates, contractors and subcontractors, representatives, agents, employees, servants, officers, successors and assigns from any and all claims, actions, suits, demands, agreements, liabilities and proceedings both at law and in equity arising from the beginning of time to the date of these presence and more particularly related to: _____.

It is further agreed that this consideration is given without any admission of liability or responsibility on the part of _____, its affiliates, contractors and subcontractors, representatives, agents, employees, servants, officers, successors and assigns, for the incident described above.

This release shall be binding upon and inure to the benefit of the parties, their successors, employees, contractors, subcontractors, assigns and representatives.

Signed this ____ th. day of 20__ .

Name: _____
(Print)

X _____
(Signature)

Of _____
(Address)

In the presence of:

X _____

Signature of Witness

*Claim number to be established by the Compensation Board

APPENDIX G

COMPENSATION BOARD – TERMS OF REFERENCE

Compensation Board - Terms of Reference

Purpose of the Board

The purpose of the Compensation Board (the "Board") is to decide on compensation claims arising through the Operator's Commercial Fisheries Compensation Program (the "Program").

The Board provides fair and timely resolution of such claims where agreement has not been reached between a Claimant and Hibernia, and if the Claimant chooses the binding claim resolution process through the Compensation Board.

The Board makes decisions and conducts other duties as described in the Program. Where there is an apparent conflict between these Terms of Reference and the Program, the Program document will take precedence.

Board Composition

The Compensation Board is made up of three persons for any one claim. All members will be independent of all parties and have no interest in the outcome of the proceedings:

1. a Chairperson acceptable to both the Operator and the fisheries industry
2. a member appointed by the Operator (not a current employee or contractor of the Operator or the petroleum industry), and
3. a member appointed by the fisheries industry (not a current employee of the commercial fisheries industry).

Other than the Chairperson, different members may be designated for the assessment of specific claims, based on the different sectors (i.e. inshore, mid-shore or offshore) involved. The Operator may similarly designate different appointees for different claims, if it so chooses.

The fisheries industry and the Operator will also identify acceptable alternates.

The Chairperson will be appointed for a three-year term, and other members will be appointed for two-year terms. All terms are renewable.

All members will be required to sign declarations of any potential conflicts of interest.

The Fisheries Liaison Group in consultation with the Chairperson will appoint a Secretary to the Board.

Neither the Hearing nor the Decisions phases of the proceedings may begin or continue without the full attendance of the appropriate Board or else their alternates. Substitution of an alternate will normally occur before the Hearing convenes; in exceptional circumstances (e.g. prolonged illness of a Member), and at the discretion of the Chairperson, an alternate may take the place of a Member after proceedings have begun. In such a case, the alternate must be given a full opportunity to study the information presented and the recordings and/or transcripts before the proceedings resume.

Duties

The Chairperson is responsible for ensuring that required procedures and deadlines are followed, and that the Hearings are conducted properly and fairly. The Chairperson is also responsible for supervising any voting that may be necessary.

Before the first Claim is heard, the Chairperson will arrange an orientation meeting(s) with all Board members and alternates, and with representatives of the Operator and the fishing industry.

The Secretary, under the direction of the Chairperson, is responsible for undertaking and managing the Board's administrative functions, for assisting the Chairperson and other Board members as requested, for circulating documents, and for keeping the official record of Board proceedings and decisions.

In general, the Chairperson is responsible for ensuring that the Program is followed properly once the Notice of Claim has been submitted. This includes ensuring that various Program criteria have been met and that all conditions of the Program have been satisfied.

Decisions of the Board

The Board may be called upon to make formal decisions, including the following: eligibility of the Claim or the Claimant, requests for delays in proceedings and deadlines, responsibility for the damage (whether it has occurred and/or whether or not it is attributable to the Operator), the value of the loss and associated expenses (i.e. an appropriate settlement amount), re-opening a terminated or previously settled Claim, releasing information to other parties (such as CAPP), and releasing a Claimant or the Operator from the terms of the Notice of Claim.

Board decisions will be made by a process of consensus among members; failing this, decisions will be made by a simple majority vote of the members. All members, including the Chairperson, may vote.

The Board will in general determine its procedure during the Hearing and deliberations, ensuring that all proceedings are fair and equitable to both parties, and suited to the specific Claim being made. Unless otherwise specified in the Program, the Board will follow the *Arbitration Act*.

The Hearing will continue (at times set by the Chairperson) until both the Claimant and the Operator have presented their information and until the Compensation Board is satisfied that it is ready to make a decision.

If the Board determines that the award will exceed (or is likely to exceed) \$1,000,000, or \$5,000,000 in the event of claims resulting from an oil spill, as soon as it is practical it will inform both the Claimant and the Operator before it issues its formal decision. At this point, the Operator may choose to agree to allow an award in excess of the respective limitation. If the Operator does not so agree, the Claimant may choose to pursue the Claim through another process (e.g. the Courts) and the Board will end its proceedings without issuing a decision. The Operator must notify the Board of their decisions in writing within 7 days of having been informed by the Compensation Board.

If some portion of an award is to be paid to third parties (e.g. employees of the Claimant), these amounts will also be specified by the Board.

The Secretary will ensure that all Hearings are tape recorded and will keep full and accurate minutes of all proceedings and all Board decisions.

Costs and Financial Accountability

All expenses related to the administration and operation of the Board will be paid by Operator. These include costs associated with the duties of the Chairperson, the operations of the Board, including administrative support, tape recording and transcription services, the Secretary to the Board, accounting fees, insurance, office expenses, fees for any experts required by the Board, and any fees for outside research, and travel and accommodation costs incurred by its members while they were engaged in the work of the Board. Funds will be transferred at the request of the Chairperson to an account in the name of the Board. The Chairperson and another designated Board Member shall have signing powers on behalf of the Board.

Honoraria will be paid at the following rates:

Chairperson (for time spent undertaking administrative duties, preparing Claim proceedings and during Board hearings/meetings) based on a *per diem* rate of \$500

Other Board Members (for time spent preparing for or attending Board hearings/meetings) based on a *per diem* rate of \$350

In addition, an annual stipend will be paid to the Chairperson and each Board member.

The Chairperson is responsible for ensuring that all monies are spent in an appropriate manner and will, upon request, provide audited statements to the Operator and/or the fishing industry.