

COMPENSATION HANDBOOK

FOR PORTS, HARBOURS AND MARINAS

OCTOBER 2024
EDITION



**Ship and Rail
Compensation Canada**
Ship Fund

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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First edition

Visit us at: www.ship-rail.gc.ca

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We paid \$172,675 to the Vancouver Fraser Port Authority (VFPA) for response costs for the spill caused by the bulk carrier *Marathassa* in Vancouver Harbour, BC in 2015. To date, this is the highest amount we have ever paid to a port, harbour, or marina. We then recovered the full amount from the vessel's insurer.

INTRODUCTION

Did you know that there is a federal Fund that compensates anyone affected by oil spills from ships or boats anywhere in Canadian waters?

Ports, harbours, and marinas can benefit from the Ship and Rail Compensation Canada – Ship Fund.

However, since 1989, we have received a small number of claims from your sector. In fact, they represent only about 5% of all claims. We are therefore increasing our outreach efforts to make sure you are not missing out!

We are committed to supporting access to justice. Our goal is to provide fair and timely compensation. Claimants who come to us don't need to hire a lawyer or go to court.

We cover many damages, including response operations, monitoring, decontamination, and economic damages. You will find this handbook useful for workers or operators of:

- Ports or port authorities,
- Harbours, harbour authorities or Small Craft Harbours,
- Marinas, wharfs, or other docking facilities,
- Terminals, or oil handling facilities.

Whether you are located on the coast, on a lake or a river, both on salt water and fresh water, we are here to help you or your organization recover financially!

We also strive to make the polluter pay. Once we pay a claim, we take all reasonable steps to recover the costs from the shipowner and any other person responsible.

If you have any questions about the claims process, we are here to help you!



WHAT TYPES OF DAMAGES AND LOSSES ARE COVERED?

WE COVER MOST DAMAGES AND LOSSES RESULTING FROM A SHIP OR BOAT OIL SPILL. WE'VE PROVIDED BELOW EXAMPLES SPECIFIC TO PORTS, HARBORS, AND MARINAS.



For all damages and losses, we can only reimburse reasonable costs and expenses. Oil doesn't necessarily need to be spilled. The threat of a spill is sufficient.



Response and clean-up costs

Costs of measures taken to prevent, monitor, repair, remedy, or minimize contamination, including the disposal of contaminated materials, such as sorbents and boom.



We cannot compensate for equipment purchased to prepare for an eventual spill. However, we pay for the replacement of equipment deployed in a response if it is no longer usable.

Examples:

- Usage of oil boom, absorbent pads, or spill kits;
- Removal, transportation, and disposal of oily waste;
- Wages and overtime of employees;
- Hiring a contractor for the response or clean-up;
- Preparing and distributing information to staff and the public to address their health and safety concerns arising from the spill.



Property damage

Any physical damage to property, including costs of cleaning, repairing, or replacing oil-contaminated property.

Examples:

- Cleaning, repairing, or replacing soiled gear, equipment, docks, wharves, and other infrastructures or facilities;
- Costs of cleaning oil-contaminated ships or boats (except the ship or boat that caused a spill).

Economic loss



Lost wages or profits.

! We can compensate economic loss that continues to occur even after an incident and after a claim has been submitted to us.

Examples:

- Lost income due to closures or blockages following an oil spill or its response, including:
 - Berthage, moorage, and utilities fees;
 - Wharfage and cargo transfer fees;
 - Shipyard or boatyard fees;
 - Tourism and fisheries losses;
- Lost value of real property at the time of sale.

Environmental measures



Costs of measures taken to accelerate the recovery of the environment after an oil spill, including environmental impact studies.

Examples:

- Remediation of oil-contaminated land or wetlands;
- Studies to better understand the environmental effects of a spill;
- Restoration projects to repopulate an affected fishing area or rebalance the ecosystem.

Costs to put your claim together



Administrative, accounting, legal or other professional services used to help you prepare your claim.



Did you know?

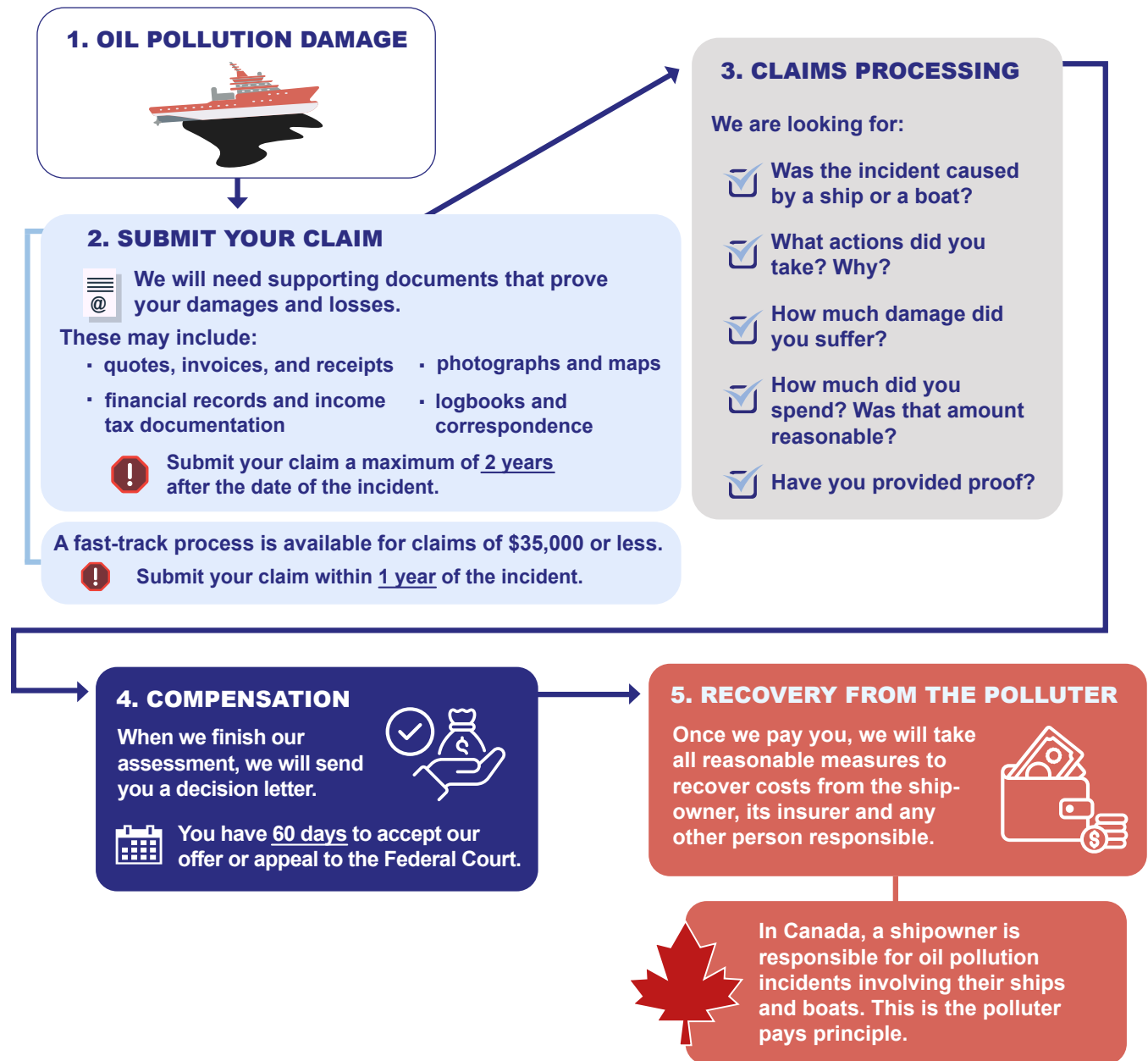
We can also pay compensation in the case of mystery spills, when you can't identify the ship or boat that caused the spill.



However, we cannot pay compensation if the evidence shows that a spill came either from:

- a land-based source; or
- a structure in the water that is not a ship or boat.

HOW DOES THE CLAIMS PROCESS WORK?



For more tools, forms, and resources, visit the “Submit a Claim to the Ship Fund” tab on our website at www.ship-rail.gc.ca.

You have **two years** from the date of the incident to submit a claim.

- For the Expedited Process for Small Claims, the submission deadline is **one year** after the incident.



We recommend that you submit your claim as soon as possible after damage has been suffered, as there are numerous benefits in doing so, such as:

- Supporting documentation is fresher and more readily available;
- There is less risk of missing the submission deadline;
- Compensation is received more promptly;
- Other potential claimants can be identified and contacted by us;
- Recovery efforts can start earlier.

If you missed the submission deadline, we cannot compensate your claim.



Did you know?

No maximum or minimum to compensation:

- There is no limit to how much compensation we can provide to claimants.
- There is no minimum amount: the smallest claim ever received was for just over \$200.
- For claims of \$35,000 or less, an expedited option is available.

CAN YOU GO DIRECTLY TO THE SHIPOWNER?

It is your choice. You have two options.

Option 1: Submit your claim directly to us

This is easy, fast, and inexpensive. You do not need to hire a lawyer or go to court.

We provide claims forms and manuals to guide you:

- Most claims go through our General claims process.
- If you have a claim of \$35,000 or less, you may be able to use our Expedited Process for Small Claims.

Option 2: Negotiate with or sue the shipowner

If you decide to sue the shipowner in court, this is what we call an indirect claim.

- In this case, we will not be able to support you in your legal actions. You may need to use legal services if you do this.

We will be added to the lawsuit while you pursue recovery from the shipowner.

QUESTIONS AND ANSWERS FROM YOUR SECTOR

TYPES OF DAMAGES

QUESTION

1

Can you be compensated if your infrastructure or equipment is contaminated by oil?

- Yes. We compensate for response and clean-up costs. For example, we can reimburse the cost of purchasing oil spill response equipment, as well as the cost of disposing of soiled equipment. If you already have this type of equipment, we can reimburse you for the replacement of this used equipment.

QUESTION

2

Is compensation available when a port can no longer accept new ships due to the presence of booms installed to contain oil pollution?

- Yes. If you were expecting to receive a certain number of ships per hour and this was not possible due to the incident or its response, the loss of revenue is compensable.

QUESTION

3

Can measures taken to prevent any ship, including abandoned or derelict vessels, from sinking be compensated?

- Yes. Compensation is available for measures to prevent or respond to oil pollution. A response could include raising the vessel, pumping out oil and deploying absorbent pads or a skimmer. In specific circumstances, it may also be reasonable to remove the vessel from the water.

QUESTION

4

Is compensation available if a spill occurs when someone is refuelling their boat? What about an oil transfer operation (bunkering or cargo) between a vessel and an oil handling facility (OHF)?

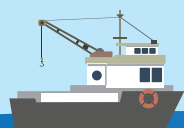
- It depends.
 - Yes, when the spill comes from a ship. For example, a spill resulting from overfilling might be covered.
 - No, if the spill doesn't come from the ship, such as a broken pipeline, a land-based facility, a truck or a generator on the docks.

QUESTION

5

Is advance funding available for spill preparedness?

- No. We can only reimburse response costs after an incident occurs.



CLAIMS PROCESSING

QUESTION 1

Is it possible for multiple claimants suffering similar damages from the same incident to bundle their claims in a single package?

- Yes, and by doing so, you might save time and money.
 - However, we will pay claimants individually based on their specific damages.

QUESTION 2

What proof of damages do you need to submit a claim?

- Submit the best evidence available to you, including a detailed description of the incident and your damages.
 - Visit our website under “Submit a claim to the Ship Fund” for more tools and forms to help you submit your claim.
- We know that some of you already prepare incident reports. In many cases, these reports will be the most important evidence you submit.
 - Depending on the damages you suffer, employee timesheets, notes, invoices, photos, and videos will also be very useful.

QUESTION 3

How long does it take you to process a claim?

- Our goal is to provide fair and timely compensation. Most claimants receive payment within six months.
 - If you qualify for the Expedited Process for Small Claims, you will receive payment within 60 days.

QUESTION 4

How difficult is it to submit a claim? Can you get assistance in submitting a claim?

- Our claims manuals and forms are easy to use. We are also here to help you through your compensation journey. Don't hesitate to reach out to our claims office.
- 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 it is reasonable, the cost for these services may be compensated.



WHO PAYS FOR AN OIL SPILL FROM A SHIP OR BOAT?

In Canada, a shipowner is responsible for oil pollution incidents involving their ships and boats. Fault or negligence doesn't have to be proven. This is the polluter pays principle.

- Liability and compensation are set out in the *Marine Liability Act*.

RECOVERY EFFORTS

Once we pay a claimant, we take all reasonable steps to recover the costs from the shipowner and any other person responsible. All funds that we recover through settlements and lawsuits go back into the Ship Fund for future claims.

We use many strategies to recover from shipowners, including settlements, lawsuits or arresting ships.



We are always ready to discuss settlement rather than going to court. However, we sometimes start a lawsuit, notably when the shipowner does not engage with us. Lawsuits are also used to preserve our legal rights, allowing settlement discussions to happen, sometimes as part of judicial mediation sessions. In some cases, we choose to seek judgment because it may give us leverage.



Chaulk Determination (2015) – Photo credit: Jacques Gauthier

We paid a total of \$73,849 to the Trois-Rivières Port Authority following the sinking of the tug *Chaulk Determination* in icy waters. This was the second-highest amount we have ever paid to a port, harbour, or marina.

APPENDIX: SUMMARY OF CLAIMS FROM PORTS, HARBOURS, AND MARINAS

NOTE: If you are interested in reading the full summaries of these and other incidents, visit the "Claims and decisions" page on our website.

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant Association of Canadian Port Authorities (ACPA) Members	DECISION Amount offered with interest (\$) (% offered vs. claimed)
British Columbia		
<i>Astronaut</i> 2022-12-06 Rushbrook Harbour, Prince Rupert Fishing vessel	\$45,794 2023-11-27 Port Edward Harbour Authority	\$20,110 (44%)
<i>Columbia</i> 2008-08-25 Steveston Harbour, Richmond Fishing vessel	\$81,471 2008-12-08 Steveston Harbour Authority	\$69,874 (86%)
<i>Dominion I</i> 2005-03-28 Victoria Ex-fishing vessel	\$8,521 2005-12-14 Greater Victoria Harbour Authority	\$7,170 (84%)
<i>Elva M II</i> 2016-11-05 Steveston Harbour, Richmond Fishing vessel	\$7,650 2017-02-09 Steveston Harbour Authority	\$7,736 (101%)
<i>Federal Ottawa</i> 1992-01-22 Vancouver Harbour Bulk carrier Bunker fuel	\$4,359 1994-12-20 Vancouver Port Corporation (VPC), now Vancouver Fraser Port Authority (VFPA) ACPA Member	\$3,644 (84%)

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant Association of Canadian Port Authorities (ACPA) Members	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Finella 2011-10-11 Deep Bay Fishing vessel Diesel	\$9,969 2012-03-22 Deep Bay Harbour Authority	\$10,099 (101%)
Iron Horse 2023-12-14 Campbell River Harbour Converted tug	\$862 2024-02-23 Campbell River Harbour Authority	\$885 (103%)
Marathassa 2015-04-08 English Bay, Vancouver Bulk carrier Bunker C Fuel Oil IFO 380	\$198,947 2017-04-05 Vancouver Fraser Port Authority (VFPA) ACPA Member	\$172,675 (87%)
Miss Universe 2016-12-10 South Gillnet Floats Fishing vessel	\$19,912 2017-07-12 Port Edward Harbour Authority	\$19,114 (96%)
Mystery Spill 2000-06-20 Seaboard Terminal, North Vancouver	\$20,376 2001-01-23 Vancouver Port Corporation (VPC), now Vancouver Fraser Port Authority (VFPA) ACPA Member	\$19,836 (97%)
Mystery Spill 2004-12-30 Fisherman's Wharf, Victoria	\$16,012 2005-12-14 Greater Victoria Harbour Authority	\$11,065 (69%)
Mystery spill 2023-12-22 Campbell River Harbour	\$3,260 2024-02-23 Campbell River Harbour Authority	\$3,342 (103%)
Oceanus 2023-05-08 Fishermen's Harbour, Port Alberni Ex-fishing vessel	\$34,072 2024-07-10 Port Alberni Port Authority (PAPA) ACPA Member	Assessment ongoing

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant Association of Canadian Port Authorities (ACPA) Members	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Sandpiper 2003-04-17 Steveston Harbour, Richmond Dredge	\$1,588 2003-07-09 Steveston Harbour Authority	\$2,042 (129%)
Silver Harvester 2010-04-02 Fishing vessel Diesel	\$17,957 2012-12-12 Esquimalt Harbour Management Authority	\$0 ¹
Skaubryn 2000-08-04 North Vancouver Wooden fishing vessel	\$13,008 2001-03-14 Vancouver Port Corporation (VPC), now Vancouver Fraser Port Authority (VFPA) ACPA Member	\$12,313 (95%)
Sky Princess 1994-05-16 Vancouver Harbour Cruise ship	\$46,046 1996-04-22 Vancouver Port Corporation (VPC), now Vancouver Fraser Port Authority (VFPA) ACPA Member	\$23,022 (50%)
Viking I 2016-08-10 Vancouver Fishing vessel Oil & Potential Fuel	\$31,458 2017-05-03 Nanaimo Port Authority ACPA Member	\$30,484 (97%)
Quebec		
Chaulk Determination 2014-12-26 Trois-Rivières Tug Diesel	\$71,910 2015-10-20 Trois-Rivières Port Authority ACPA Member	\$73,849 (103%)
Mystery Spill 1989-12-02 Baie des Ha Ha	\$9,185 1992-06-20 Port of Chicoutimi, now Saguenay Port Authority ACPA Member	\$6,500 (71%)

¹ Claims rejected due to the submission after the deadline

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant Association of Canadian Port Authorities (ACPA) Members	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Mystery Spill 2005-09-06 Port de Montréal	\$6,489 2006-02-09 La Société du Vieux Port de Montréal	\$5,958 (92%)
Mystery Spill 2017-03-08 Québec	\$43,806 2017-06-16 Québec Port Authority ACPA Member	\$44,418 (101%)
Mystery Spill 2016-11-24 Québec	\$12,298 2017-06-16 Québec Port Authority ACPA Member	\$12,603 (102%)
Mystery Spill 2013-04-08 Port of Montréal Oil	\$5,970 2013-11-01 Montreal Port Authority ACPA Member	\$6,150 (103%)
Ontario		
Big Bobber 2008-08-10 Royal Hamilton Yacht Club Pleasure craft Fuel Oil	\$2,730 2008-10-09 Hamilton Port Authority, now Hamilton-Oshawa Port Authority ACPA Member	\$2,768 (101%)
Mystery Spill 2008-04-24 Hamilton Harbour Diesel	\$23,641 2008-06-06 Hamilton Port Authority, now Hamilton-Oshawa Port Authority ACPA Member	\$20,525 (87%)
Mystery Spill 2009-12-14 Hamilton Harbour Diesel/waste oil	\$10,960 2010-04-12 Hamilton Port Authority, now Hamilton-Oshawa Port Authority ACPA Member	\$11,107 (101%)

INCIDENT	CLAIMS SUBMITTED	DECISION
Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	Amount claimed Date of submission Name of claimant Association of Canadian Port Authorities (ACPA) Members	Amount offered with interest (\$) (% offered vs. claimed)
<i>Rhea</i> 1997-10-04 Oshawa Houseboat (former US navy mine sweeper) Heating oil; diesel; lubricating oil	\$99,054 1998-08-26 Oshawa Harbour Commission, now Hamilton-Oshawa Port Authority ACPA Member	\$60,211 (61%)
Newfoundland and Labrador		
<i>Baffin Sound</i> 2021-12-16 St. Anthony Fishing vessel Unknown	\$151,724 2022-05-03 St. Anthony Port Authority Inc.	\$0 ²
<i>Michael Marie III</i> 2022-04-09 Arnold's Cove Wharf Fishing vessel Diesel	\$4,682 2022-04-28 Harbour Authority of Arnold's Cove	\$4,715 (101%)

² Claim rejected in part because the response costs had not yet been incurred by the claimant