

COMPENSATION HANDBOOK

FOR FISHERIES, AQUACULTURE AND
RELATED ACTIVITIES

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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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Source: Bligh Island Shipwreck Unified Command

In 2022, we received a claim of \$47,875 from a shellfish farming business for damages related to the sinking of the *Schiedyk* in 1968. However, the limitation period for this historic incident had already passed. Therefore, the claim was not eligible.

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?

Fishers, aquaculturists, and anyone else involved in the fishing sector, are among the groups that can benefit from the Ship and Rail Compensation Canada – Ship Fund.

However, since 1989, we have received a very small number of claims from your sector. In fact, they represent slightly over 2% 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 economic losses, clean-up and response operations, monitoring, and decontamination.

This handbook is especially useful for those involved in the fishing sectors, including workers and business owners, Indigenous communities, and those pursuing commercial and non-commercial activities. These activities include:

- fishing
- aquaculture
- harvesting
- hunting
- and processing.

More broadly, all those who sell or otherwise use or depend upon fish, shellfish, seafood, seaweed and marine plants, crustaceans, molluscs, and other animals are covered.

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!

While those in the fishing sectors can benefit from the Ship Fund as claimants, ships used by the sectors can also cause oil pollution. Once we pay a claimant, we take all reasonable steps to recover the costs from the shipowner and any other person responsible. This is the polluter pays principle.

Therefore, this Handbook provides general information for both potential claimants and responsible shipowners.

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 RESULTING FROM A SHIP OR BOAT OIL SPILL. WE'VE PROVIDED BELOW EXAMPLES SPECIFIC TO THE FISHING SECTORS:



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 booms.



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 sorbent materials, spill kits, or containment booms to protect property such as boats, equipment, or aquaculture facilities;
- Measures taken to protect fishing or harvesting grounds, such as a clam bed or beach;
- Removal, transportation, and disposal of oily waste;
- Wages and overtime of employees;
- Hiring a contractor for the response or clean-up.

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 fishing boats (except the ship or boat that caused a spill);
- Oil-contaminated catches, seafood or other products.

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:

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

Environmental measures



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

Examples:

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

Loss of subsistence living and some cultural losses



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

Examples:

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

Costs to put your claim together



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



Did you know?

We have received a dozen claims for damages sustained by fishers. These claims have led to payment of approximately \$170,700 from us.

- This represents just 0.6% of the total claims we have paid out to all claimants in 35 years. These claims involved mostly the loss of shellfish, at both the fishing and processing stages.



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.

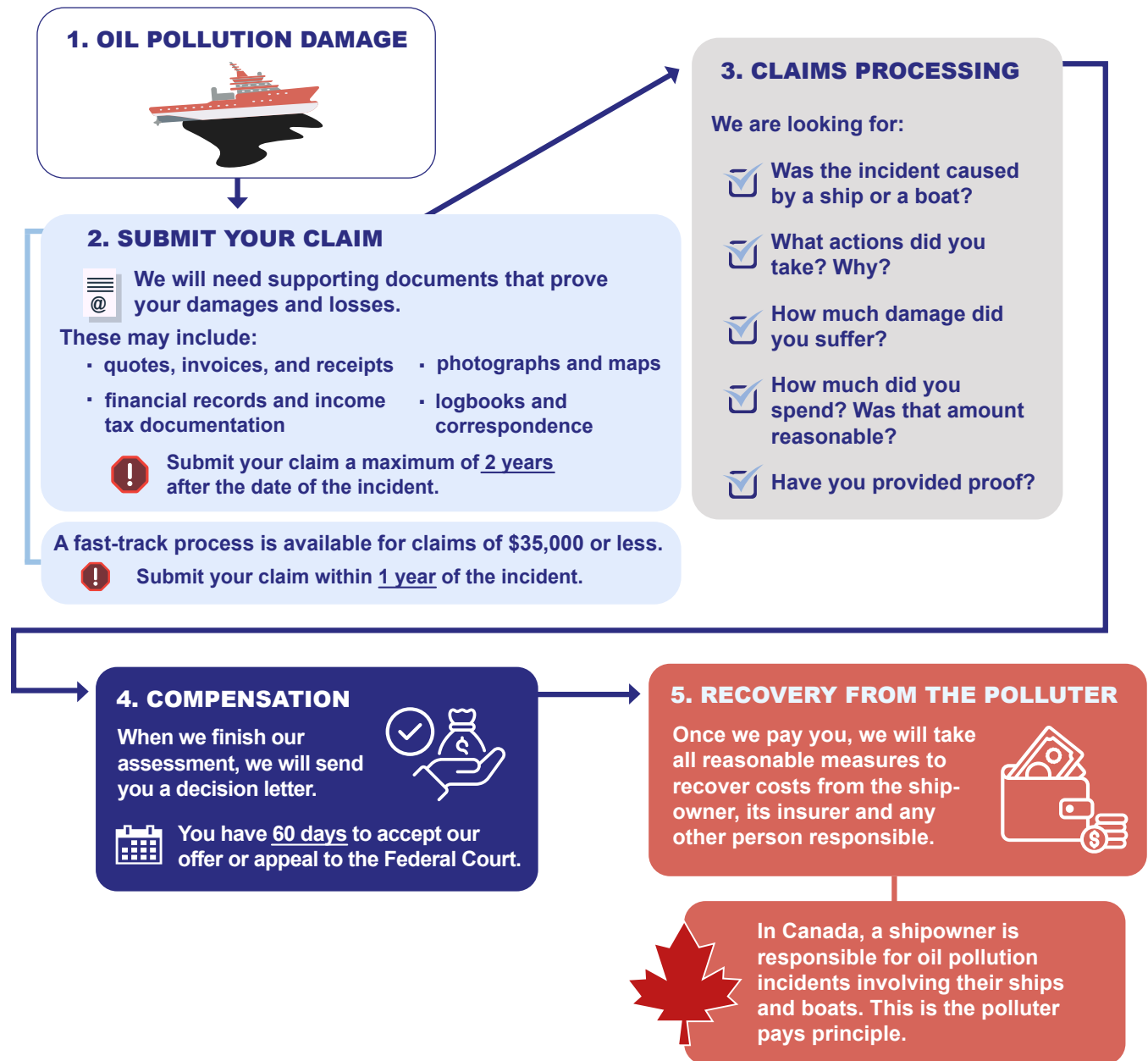


However, we cannot pay compensation if the evidence shows that a spill came either from:

- 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

Is compensation available if access to a harbour or fishing areas is not possible due to preventive measures taken to minimize oil pollution damage?

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

QUESTION

2

Can you submit a claim if you suffered damages outside of Canadian waters?

- We compensate only damages that occur in Canada's rivers, lakes, and coastal waters up to 200 nautical miles from shore.
-

QUESTION

3

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

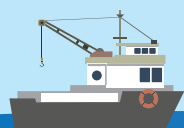
- Yes. We compensate for response and clean-up costs. For example, we can reimburse the cost of purchasing oil spill response equipment, as well as the cost of disposing of soiled equipment. If you already have this type of equipment, we can reimburse you for the replacement of this used equipment.
-

QUESTION

4

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 putting your claims together.
 - However, we will pay claimants individually based on their specific damages.

QUESTION

2

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

3

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.
- In case you already prepare incident reports, these 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

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.



Did you know?

Fishing vessels have been responsible for almost one in three claims we received over the past 35 years.



In 2020, we paid compensation to the Canadian Coast Guard in the amount of \$8,193 for its response to an incident involving the fishing vessel *Lady Miranda* in Cow Head, Newfoundland and Labrador. We then recovered \$8,640 (full amount paid plus the accrued interest) from the shipowner's insurance, after having filed an action in the Federal Court against the owner of the vessel.

APPENDIX: SUMMARY OF CLAIMS FROM THE FISHING SECTORS

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	DECISION Amount offered with interest (\$) (% offered vs. claimed)
British Columbia		
<i>Black Dragon</i> 2003-10-26 Barkley Sound Chinese flag fishing vessel Diesel	\$167,665 2005-01-05 Toquaht First Nation	\$0 ¹
<i>Nathan E. Stewart</i> 2016-10-13 Seaforth Channel, Bella Bella Tug Diesel and lube oils	Pending ² 2019-10-11 Heiltsuk Tribal Council	Ongoing
<i>Schiedyk</i> 1968-01-03 Zuciarde Channel, Nootka Sound Cargo ship Type C bunker fuel	\$47,875 2022-11-10 Nootka Sound Shellfish Ltd.	\$0 ³
Quebec		
<i>Gordon C. Leitch</i> 1999-03-23 Saint-Pierre Harbour Bulk carrier Fuel oil, no. 5	\$539,559 ⁴ 2002-03-22 Conseil des Innus de Ekuanitshit and all the members of the Ekuanitshit First Nation Band.	\$10,000 ⁵ (2%)

¹ The file was closed due to a lack of documentation from the claimant.

² The matter is currently in court, and we have also received a direct claim.

³ This claim was for a historic incident. As a result, the limitation period had passed. Therefore, the claim was not eligible.

⁴ The claimants sued the shipowner, and we were a party to that lawsuit.

⁵ The claimants reached a settlement with the shipowner and us where we ultimately paid \$10,000.

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	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Newfoundland and Labrador		
Mystery Spill 1990-05-10 St. John's Bilge oil	Amount claimed not available 1990-06-11 Small group of lobster fishers	\$0 ⁶
Nova Scotia		
Amy & Sisters 1990-07-20 Gabarus Harbour Fishing vessel Diesel	\$23,414 1990-09-18 Two lobster fishers and a seafood processing company	\$23,414 (100%)
Mystery Spill 1989-06-09 Gabarus Harbour Bunker C oil	Amount claimed not available 1989-07-26 Lobster fisher	\$18,976
Mystery Spill 1989-06-09 Gabarus Harbour Bunker C oil	Amount claimed not available 1989-08-30 Small group of seafood processing companies	\$50,000
Mystery Spill 1992-03-19 Lockeport Diesel	\$63,980 1992-04-16 R. Baker Fisheries Ltd.	\$59,350 (93%)
Mystery Spill 1993-01-07 Lockeport Diesel	\$2,294 1993-04-04 D. & L. Williams Fisheries Ltd.	\$2,294 (100%)
Mystery Spill 1995-07-13 Neil's Harbour Diesel	\$6,856 1995-07-31 Victoria Co-Operative Fisheries Ltd.	\$5,922 (86%)

⁶ The file was closed due to a lack of documentation from the claimants.