



## E&P – EAST COAST

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| <b>REVISION SUMMARY FORM</b> |                                       |                      |
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**TABLE OF CONTENTS**

|   | <b>Page</b> |
|---|-------------|
| <b>REVISION SUMMARY FORM</b> .....  | <b>i</b>    |
| <b>REVIEWER SUMMARY</b> .....   | <b>i</b>    |
| <b>1.0 Purpose</b> .....  | <b>1</b>    |
| <b>2.0 Scope</b> .....  | <b>1</b>    |
| <b>3.0 Hierarchy of Documents</b> .....   | <b>1</b>    |
| <b>4.0 Fisheries Principles</b> .....   | <b>2</b>    |
| 4.1 Inter-Industry Liaison and Communications Principles .....                  | 2           |
| 4.2 Marine Operations Principles .....  | 3           |
| 4.3 Compensation for Loss Resulting from Gear and Vessel Damage Principles..... | 4           |
| 4.4 Oil Spill Compensation Principles.....                                      | 5           |
| 4.5 Environmental Effects and Compliance Monitoring Principles.....             | 5           |
| <b>5.0 Commercial Fisheries Compensation Program</b> .....                      | <b>6</b>    |
| 5.1 Application .....   | 6           |
| 5.2 Eligible Claimants .....  | 7           |
| 5.3 Coverage .....  | 8           |
| 5.4 If an Incident Occurs.....  | 9           |
| 5.5 Making a Claim.....   | 10          |
| 5.6 Evidence.....   | 10          |
| 5.7 If the Claim is accepted by Suncor .....                                    | 10          |
| 5.8 If the Claim is rejected by Suncor .....                                    | 11          |
| 5.9 Compensation Board.....   | 11          |
| 5.10 Making a Claim to the Compensation Board .....                             | 12          |
| 5.11 Proceedings of the Compensation Board .....                                | 12          |
| 5.12 The Hearing.....   | 13          |
| 5.13 Amount of Award .....  | 14          |
| 5.14 Settling the Claim .....   | 16          |
| 5.15 Further Proceedings .....  | 16          |
| <b>6.0 References</b> .....   | <b>17</b>   |
| <b>7.0 Appendices</b> .....   | <b>17</b>   |

**LIST OF APPENDICES**

**Appendix**

**Damage Report Form.....A**

**Loss Claim Form .....B**

**Notice of Claim to the Compensation Board .....C**

**Compensation Board Terms of Reference.....D**

**End of Claim Release Form.....E**

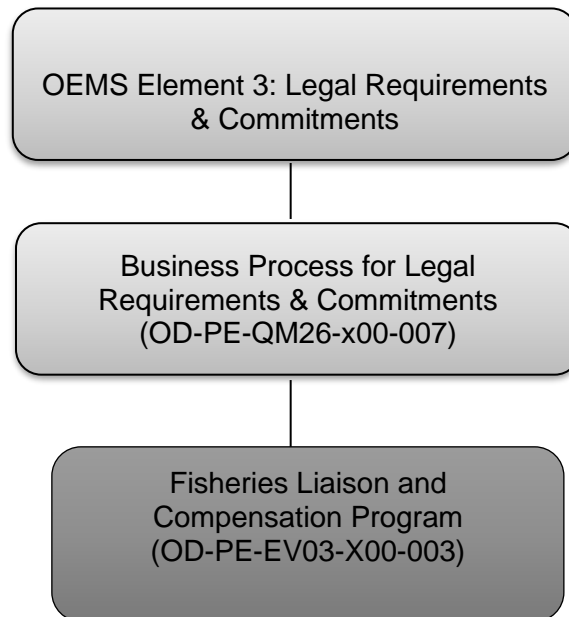
## 1.0 PURPOSE

This document provides a reference guide to Suncor's Fisheries Code of Practice and to handling claims arising from fisheries gear and vessel damage that are directly attributable to Suncor's East Coast Operations in the Newfoundland and Labrador offshore area as defined by the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*.

## 2.0 SCOPE

The Fisheries Liaison and Compensation Program applies to claims arising from damage to fishing gear and vessels that are directly attributable to Suncor's East Coast Operations. Additional information on the application of the Program is contained in Section 4.1 of this document.

## 3.0 HIERARCHY OF DOCUMENTS



#### 4.0 FISHERIES PRINCIPLES

The Principles outlined in this document are based on those established in 1998 by the Hibernia Fisheries Liaison Group (FLG) and subsequently adopted by the Canadian Association of Petroleum Producers (CAPP) as basis for an effective and efficient fisheries damage compensation procedure for the Newfoundland and Labrador offshore area. These Principles will assist in managing and monitoring relations between Suncor and the fishing industry and foster the safe co-existence of both industries during all phases of Suncor's East Coast operations.

Suncor undertakes various exploration and production activities in the Newfoundland and Labrador offshore area. The Terra Nova Development, which is operated by Suncor, takes place within a small area (~ 4 km<sup>2</sup>) of Unit Area 3Lt which covers approximately 25,000 square kilometres. Suncor's operations, including Terra Nova, are not expected to have significant operational impacts on commercial fishing vessels nor reduce catches in any manner. However, Suncor recognizes that the fishing industry has a long tradition of fishing on the Grand Banks and Suncor will work with the fishing industry to establish efficient and effective mechanisms and procedures to ensure that both industries can pursue their operations safely and with the least possible interference and the greatest mutual benefit.

Because potential impacts may change over the life of Suncor's operations, it is agreed by both industries that the Code of Practice should be both flexible and responsive to actual needs and changing circumstances. Ongoing liaison and consultations between both industries will ensure that any unanticipated problems and issues can be addressed and resolved to the mutual satisfaction of both industries. It is further acknowledged that all components of the Code of Practice should abide fully with the legislative and regulatory requirements of Canada as described in relevant legislation, such as the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act and Compensation Guidelines Respecting Damages Related to Offshore Petroleum Activity – November 2017*.

#### 4.1 Inter-Industry Liaison and Communications Principles

1. Through this Code of Practice, and in conjunction with the fisheries industry, Suncor will establish appropriate protocols and mechanisms to ensure effective communications and safe operating procedures between both industries. In addition, Suncor will endeavour, wherever possible, to synergize practices and procedures with other oil and gas industry operators in the Newfoundland and Labrador offshore area.
2. Within the constraints of safety and those imposed by Suncor's activities, procedures will be designed to provide an operating environment which allows fishing without hindrance.

3. Suncor and the fishing industry will establish procedures for fishers to report the loss of any fishing gear or equipment, or other marine hazards, which might pose a risk to Suncor's vessels along agreed traffic routes, or cause damage to Suncor's facilities and operations.
4. The fisheries industry directly, or via One Ocean (See Principles 5 and 6 below), will endeavour to keep Suncor informed of changes in fishing patterns, or gear utilization activities in the offshore area.
5. The One Ocean mechanism will be used to ensure continued liaison and consultations between both industries and to address issues of mutual concern.
6. As part of its role of facilitating ongoing liaison and information exchange between the two industries, communications through One Ocean will help ensure that Suncor is fully aware of any longer-term changes in the pattern and location of fishing activities in the Newfoundland and Labrador offshore area.

#### **4.2 Marine Operations Principles**

1. Both Suncor and the fisheries industry will make genuine efforts to prevent conflicts at sea through the general practice of mutual avoidance and mutual protection.
2. It is the intention of Suncor that vessels operating between its shore base and offshore facilities and operations shall follow standard courses at all times. Both industries will identify and agree on appropriate protocols and safe route operation procedures. These mechanisms will also help ensure that both industries are aware of any short-term changes in either fishing or Suncor activities.
3. Suncor intends to be a full and responsible part of the marine community and operating environment in the Newfoundland and Labrador offshore area. Although Suncor would not be involved in providing regular services and assistance to the offshore fisheries community, it could make available the following: weather and ice forecasts (through the appropriate authority), assistance with emergency communications or notification to fishers of known hazards.
4. In consultation with the fishing industry, other marine users groups and relevant regulatory agencies (i.e., C-NLOPB, Canadian Coast Guard and Transport Canada), Suncor has defined a three nautical mile hailing (notification) area within the current Terra Nova Safety Zone. Within the hailing zone, appropriate marine communications protocols (Terra Nova Marine and Aviation Operations Manual and Terra Nova Field Marine Traffic Management Plan ) will be

employed to (i) ensure the safety of all vessels operating in the vicinity of the FPSO and the MODU, and (ii) ensure that Terra Nova's production and drilling facilities are not damaged by fishing (and other) vessels. Fishing activity will not be prohibited from the hailing zone.

Four areas have been defined around the Terra Nova Field: the five mile (5M) Exclusion Zone (extending 500 meters horizontally and vertically from the centre of the installation), the five mile (5M) Safety Zone, the three nautical mile (3NM) Traffic Zone and the ten nautical mile (10NM) Precautionary Zone (see the Terra Nova Field – Marine Traffic Management Plan TN-PE-MR04-X00-005). These zones have been recognized by Transport Canada under the Canada Shipping Act and internationally by the International Maritime Organization (IMO).

5. The Terra Nova Exclusion Zone (within the Terra Nova Safety Zone) has been established under relevant legislation and is not expected to have an economic impact on Grand Banks commercial fisheries. Suncor will undertake all reasonable and permitted measures to minimize interference with fishing activities beyond that area.
6. In the event that the fishing industry does sustain actual loss as a result of Suncor's operations beyond the established Safety Zone, Suncor will enter into discussions to compensate the fisheries industry fully and fairly for that loss to the extent prescribed by the statute.

#### **4.3 Compensation for Loss Resulting from Gear and Vessel Damage Principles**

1. In cooperation with the fisheries industry, Suncor will establish a compensation program for loss resulting from gear and vessel damage directly attributable to its operations, and will also participate in industry-wide un-attributable damage compensation policies and mechanisms established by the Canadian Association of Petroleum Producers (CAPP Document No.: 2007 0002 ).
2. The intent and purpose of the Suncor program is to offer a fast and cost-efficient mechanism to provide full and fair compensation. Alternatively, claims can be made through the legal system under the laws of Canada.
3. The program established by Suncor provides compensation for applicable fisheries industry enterprises that may be affected by Suncor's operations.
4. As a result of any gear and vessel damage, fisheries industry participants (including licensed processors) should be no worse off and no better off than they were before Suncor's operations were established; they should be fully and fairly protected from all resulting actual loss.



**4.4 Oil Spill Compensation Principles**

1. Suncor will establish a compensation program covering all actual loss to the fishing industry due to a spill of oil originating from its operations.

**4.5 Environmental Effects and Compliance Monitoring Principles**

1. As per regulatory requirements, all emissions and discharges from offshore production and drilling installations will be strictly controlled and monitored. In the event that discharges exceed permitted levels, Suncor will report these findings to the appropriate regulatory agencies..
2. Suncor has designed and implemented a comprehensive environmental effects monitoring program for the Terra Nova Development in consultation with interested stakeholders. This program is designed to provide early warning of potential negative effects related to the Terra Nova and to ensure protection of the marine environment.
3. All pertinent information from these programs will be fully and openly shared on a continuing basis with the C-NLOPB.

## 5.0 COMMERCIAL FISHERIES COMPENSATION PROGRAM

The purpose of the Commercial Fisheries Compensation Program is to provide fair and timely compensation to commercial fish harvesters and processors who sustain actual loss because of damage to fishing gear or vessels or due resulting from Suncor's or one of its contractor's operations.

Suncor recognizes the need to compensate fisheries industry participants fully and fairly for all actual loss it may cause, with the aim of leaving fisheries industry participants in no worse or better a position than before the damage occurred.

This Program has been prepared by Suncor as an alternative to making a claim through the Courts or to the C-NLOPB, pursuant to the *Canada-Newfoundland Atlantic Accord Act* and its Regulations. Although claims for loss or damage 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 industry 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's decisions and by the other provisions of this Program. Suncor agrees to be similarly bound. Participation in this Program by Suncor and the fisheries industry does not admit any legal obligation on either party, or any rights to fisheries industry participants or Suncor, other than those specifically granted under the terms of this Program.

### 5.1 Application

The Program will operate throughout the life of Suncor's East Coast operations, including exploration, development, production, and decommissioning, and claims can continue to be initiated under the Program for three years after the termination of Suncor's activities. Claims made within this time-frame can be carried through to completion. However, the Claimant must initiate all claims for loss within two years of the alleged loss or of becoming aware of the alleged loss to be included under the Program.

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

- Damage to fishing gear and vessels resulting from interactions with Suncor's vessels and/or debris. Damage includes the complete or partial destruction of fishing gear or fishing vessels and the associated actual losses, related activities of the Operator or its contractors, wherever they may travel in support of Suncor's operations. Fishing gear also includes docks and wharves; or

- Oil Spills (see definition below) originating from Suncor related operations and from Project related vessels of the Operator or its contractors (excluding tankers) wherever they may travel in support of the Suncor operations. An “oil spill” is defined as a discharge or emission or escape of petroleum, other than one 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.

Claims may not be made under this Program for loss sustained as a result of a fishing vessel being within Suncor’s approved Safety Zone (i.e., the area in which vessels are excluded by government regulation). Additional information on the Safety Zone can be found in Terra Nova Field – Marine Traffic Management Plan TN-PE-MR04-X00-005.

This Program cannot be used to settle a claim against Suncor already initiated under another process (e.g., through the Courts), unless agreed by both the Claimant and Suncor.

No part of a claim under this Program can be for loss resulting from loss of life or personal injury.

There is no limit on the amount of compensation that may be agreed between the Claimant and Suncor before a Notice of Claim is filed with the Compensation Board. However, the Compensation Board may not award more than \$1,000,000 to any Claimant for any single claim, unless this award limit (on a claim-by-claim basis) is waived by Suncor.

Damages which cannot be shown to have been caused by Suncor and that are not eligible under this Program, may be claimable under the Canadian Association of Petroleum Producers (CAPP) Non-Attributable Damage Program, or its successor programs, or should proceed through the Courts or other processes, such as the C-NLOPB.

Oil spill related claims arising from losses associated with tanker operations are not covered under this Program.

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

## 5.2 Eligible Claimants

Those eligible to make claims under this Program are duly licensed and/or registered commercial fish harvesters, aquaculturists and fish processors who

believe that they have sustained actual loss because of damage to fishing vessels and/or gear resulting from an oil spill from Suncor's operations. Claims may only be made by the holder of the relevant license (e.g., fishing license or processing license).

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 Claimant is found to be ineligible under the Program, the Claimant is free to pursue the Claim through another avenue, such as through the C-NLOPB, the CAPP Non-attributable Compensation Program or the Courts.

Where a single incident affects more than one Claimant, with Suncor's approval, Claimants may choose to make claims jointly through an "initiating Claimant." However, the \$1,000,000 limitation will be applied separately to each claimant as if the claims were not made jointly. Any claim payments will be made directly to the individual Claimants. In this Program, Claimant means either the eligible Claimant or a person duly authorized by the Claimant to represent him/her.

### 5.3 Coverage

This Program covers damage to duly licensed and/or registered commercial fish harvesters, aquaculturists and fish processors who believe that they have sustained actual loss because of damage to fishing vessels and/or gear resulting from an oil spill from Suncor's operations.

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
  - 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
  - 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 a vessel could not fish
  - c) the reduction in the quantity of catch landed because the vessel could not fish as efficiently
  - d) the reduction in landed value of fish caught which deteriorated or spoiled as a result of the damage.
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 directly affected by an Oil Spill
    - b) reduced value of catch (to harvesters / processors) because of taint or spoiling by an Oil Spill
    - 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, it is expected that harvesters and processors will make genuine efforts to mitigate the damage and any subsequent loss, with due allowance for safety (e.g., by continuing to fish, if possible).

#### **5.4 If an Incident Occurs**

If a potential Claimant discovers damage which is believed to have been caused by Suncor, the claimant should without delay:

1. Take all reasonable action to prevent further or continuing damage and/or loss, without risking the safety of the crew or vessel ;
2. If it can be done safely, secure any materials (e.g., 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 Suncor's designated Program contact in person, by radio (VHF Channel 16 or 74) or by telephone (1-709-778-3500; EH&S Manager – or alternate/designate) that a damage incident has occurred; and

4. Complete a **Damage Report Form** (Appendix A) and deliver, mail or fax it as indicated on the form. This should be done as soon as possible after the incident.

## 5.5 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 **Loss Claim Form** (Appendix B) and submit it, as indicated on the form, within one year of the occurrence or discovery of the damage; and

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

## 5.6 Evidence

It is the responsibility of the Claimant to show that gear and/or a vessel was damaged, and to provide evidence that the damage was attributable to Suncor's operations.

Both the Claimant and Suncor will co-operate fully with the Compensation Board established by this Program (see Section 5.9 – Compensation Board) and with each other in the verification of claims. Neither the Claimant nor Suncor will withhold any relevant information.

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

## 5.7 If the Claim is accepted by Suncor

After examining the information presented by the Claimant, Suncor will meet and discuss the matter with the Claimant to determine whether it accepts that:

- The Claimant is eligible to make a claim under this Program;
- The claim is eligible under this Program;
- The claim is valid and justified; and
- The amount of the claim is appropriate.

Suncor will make its decision as soon as possible after the filing of the **Loss Claim Form**. The Claimant will be notified of Suncor's decision in writing. If a mutually

acceptable agreement is reached, Suncor will pay the Claimant within twenty-eight (28) days of the signing of an **End of Claim Release Form** (Appendix E).

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

### 5.8 If the Claim is rejected by Suncor

If Suncor rejects the claim, the reasons will be stated on the written notification to the Claimant. The Claimant may then:

- Drop the claim;
- Proceed with a claim through any other available avenue, such as CAPP, C-NLOPB or the courts, or
- Pursue the claim further under this program by referring it to the Compensation Board.

If Suncor accepts the eligibility and validity of the claim but an agreement cannot be reached on the amount of the claim, the Claimant can pursue the claim through another avenue, such as through the C-NLOPB or the Court, or can apply to the Compensation Board for a decision on the amount of the award, using the **Notice of Claim to the Compensation Board** form (Appendix C). In such a case, the proceedings would be as described below, except that only information relating to the "Amount of Award" will be presented. A decision, on the value of the claim only, will be made by the Compensation Board in such cases.

### 5.9 Compensation Board

If the Claimant decides to pursue the claim further under this Program, the claim will be decided by the appropriate Compensation Board.

Each Compensation Board is made up of three members: an independent Chairperson acceptable to both Suncor and the fisheries industry representatives of One Ocean; a member appointed by Suncor; and a member appointed by the fisheries industry that has been recommended by the fisheries industry members of One Ocean. All members must file a conflict of interest declaration. Compensation Board Terms of Reference are provided in Appendix D.

The Compensation Board will be assisted in the performance of their duties by a Secretary appointed by Suncor in consultation with One Ocean's Chairperson.

### 5.10 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 Suncor's written rejection of the claim. The Claimant will do this by completing and signing a **Notice of Claim to the Compensation Board** (Appendix C), and sending it with a copy of the **Damage Report Form** (Appendix A) and Suncor's written rejection of the claim to the Chairperson.

By signing this 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. Suncor agrees to be similarly bound if the other provisions of this Program are met.

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

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

### 5.11 Proceedings of the Compensation Board

Within 14 days of receiving the Notice of Claim, the Compensation Board Chairperson will set a date for a hearing before the Compensation Board to assess the claim.

The hearing will be convened as quickly as possible but no sooner than 14 days and no later than 28 days after receiving the Notice of Claim, unless this is not feasible for good reason (e.g., a request by the Claimant or Suncor that the proceedings be delayed because of fishing activities, a vessel master was not available, etc.). In all cases, the Claimant and Suncor will have at least 7 days advance notice of the date of the hearing. Any request for a delay will be decided upon by the Compensation Board.

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



Both the Claimant and Suncor may submit any written material, affidavits, 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 through the Compensation Board Secretary no later than 10 days before the day of the Hearing.

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

The Claimant and Suncor 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 Compensation Board, essential information has not been provided, the Compensation 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, except as described above (see Section 5.10 – Making a Claim to the Compensation Board).

## 5.12 The Hearing

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

If either the Claimant or Suncor 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. Suncor may be represented by any person chosen by Suncor.

If in dispute, the Compensation Board will consider whether:

- The Claimant and the claim are eligible for consideration under this Program; and
- Suncor is responsible for the loss or damage.

If 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. Witnesses may be questioned by the Claimant, Compensation Board members or Suncor.

At the discretion of the Board, new information 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 Claimant or Suncor want to call witnesses who have not agreed to appear voluntarily (e.g., if the Claimant wants to call the Master of a Suncor contracted vessel), 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 the Chairperson, in consultation with the Compensation Board, is satisfied that it is ready to make a decision.

Before the Compensation Board makes its decisions, it will also discuss the claim privately, without the Claimant or Suncor present. The Compensation Board may choose to recall any person for further questioning, but both the Claimant and Suncor can be present for the questioning, if they so choose.

### **5.13 Amount of Award**

If the Compensation Board decides that Suncor is to pay damages, the Compensation Board will also have to determine a fair amount for the claim. To assess the amount of the claim, the Compensation Board will consider the information already presented, but it may also consult with outside experts, or request more information from the Claimant and/or Suncor.

The amount awarded should ensure that the Claimant is no better or worse off than before the damage occurred. In general the following should be considered:

1. The amount assessed for damage to fishing gear and vessels will be at the discretion of the Compensation Board. 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 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 to the earlier of (a) the date of payment, (b) the date of replacement or repair, or (c) the date when losses should reasonably have stopped. If the Compensation Board awards an amount for lost wages or shares, the specific amount will be identified in its written decision.

3. Compensation for any future actual loss resulting from the gear or vessel damage (such as effects on product markets) may also be awarded by the Compensation Board.

When making its award, the Compensation Board may also apportion fault for the cause of the damage and adjust the amount of the award appropriately. It may also consider the Claimant's efforts to prevent more damage after the problem was discovered, or to mitigate the extent of the damage in other ways. A failure to mitigate appropriately and reasonably will be cause to reduce the amount of the award if further or continuing damage or loss could have been avoided by the Claimant's reasonable actions.

The Compensation Board may also include an amount for reasonable third-party costs associated with preparing the claim.

If the Compensation Board determines that the award could or will exceed \$1,000,000, it will inform both the Claimant and Suncor before it issues its formal decision. Suncor may choose to agree to allow an award in excess of the \$1,000,000 limitation. Suncor must notify the Compensation Board of its decision in writing within seven days of having been informed by the Compensation Board. If Suncor does not agree, the Claimant may choose to limit the award amount to \$1,000,000 or pursue the claim through another process (e.g., CAPP, the C-NLOPB or the Courts) and the Compensation Board will end its proceedings without issuing a decision.

#### **5.14 Settling the Claim**

The Claimant and Suncor will be notified in writing of the Compensation Board's decision, the amount awarded and the reasons for its decision, within three days of the Compensation Board's finalizing its decision. Suncor will then pay any amount awarded within 14 days of the award.

Any and all amounts awarded in consideration of wages and/or shares by crew members and/or plant workers must be fairly disbursed by the Claimant, to the satisfaction of the Compensation Board.

#### **5.15 Further Proceedings**

If the Compensation Board finds that damage was sustained but not attributable to Suncor, Suncor is released from any future claim concerning the same incident, but the Claimant is free to make a claim through another mechanism (e.g., CAPP, C-NLOPB or the Courts).

Where the Compensation Board finds that Suncor was not responsible for the damage, a letter stating the Compensation Board's decision will be forwarded to the CAPP Compensation Committee (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 Compensation Committee.

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 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 Suncor may apply to re-open the claim (concerning either Suncor's responsibility for 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. If relevant, this could include the findings of the CAPP Non-attributable Program's Compensation Appeal Board. In such cases, the Compensation 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.

## 6.0 REFERENCES

- Terra Nova Field - Marine Traffic Management Plan (TN-PE-MR04-X00-005)
- Marine and Aviation Operations Manual (TN-PE-MR04-X00-001)

## 7.0 APPENDICES

- Appendix A – Damage Report Form
- Appendix B – Loss Claim Form
- Appendix C – Notice of Claim to the Compensation Board
- Appendix D – Compensation Board Terms of Reference
- Appendix E – End of Claim Release Form

**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's Address \_\_\_\_\_

4. **License or permit holder's name**  
(of Gear and/or Vessel involved)

Position \_\_\_\_\_

License / Permit Held (+No.) \_\_\_\_\_

Telephone / Fax No. \_\_\_\_\_

Address \_\_\_\_\_

5. **Person who will be making the claim for this incident (if known)**

Date of 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)



# Damage Report Form

Describe measures taken 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 Suncor Energy initially contacted (including time, name of contact)?

Was Canadian Coast Guard / DFO informed?  Yes  No

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:**

Signature

At

Date

**APPENDIX B  
LOSS CLAIM FORM**

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## Guide for Damage Reports and Claims (for Fish Harvesters)

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The Suncor Energy Commercial Fisheries Compensation Program has been established to provide compensation to commercial fish harvesters and processors who sustain loss as a result of damage to fishing gear or vessels caused by Suncor Energy or one of its contractors. The Program is an alternative to making a claim through other means, such as CAPP, the C-NLOPB or the Courts.

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.)

Additional information for potential claimants may be obtained in the Suncor East Coast document entitled *Fisheries Liaison and Compensation Program (OD-PE-EV03-X00-003)*, which describes Program coverage, eligible claims and incident reporting procedures.

### **Reporting an Incident**

If you discover damage which you believe was caused by Suncor Energy, 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 Suncor's designated Program contact in person by telephone (709-778-3500; EH&S Manager or alternate/designate) 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;
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** for Fish Harvesters.

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

It is important that you complete all relevant parts of the forms so that your claim can be processed as quickly as possible. Submit these forms to Suncor's EH&S Manager.

## **Eligible Claims (Fish Harvesters)**

Claims are *not* eligible under this Program if they:

- are for damage which occurred because of a vessel being in a recognized Safety Zone of a Suncor offshore asset or ,
- have been started against Suncor Energy through another process (such as the Courts).

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

## **Who Should Make the Claim (Fish Harvesters)**

Processors eligible to make a claim under this Program are either of the following:

1. The licensed operator of the fish processing facility affected, or
2. 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 aren't sure about your eligibility under the Program, or don't know who should make the claim, contact the Secretary to the Compensation Board as soon as possible.

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

## Fish Harvester Claim Form (For Use by Fish Harvesters)

1. **Person making this claim**

Position/Title

Telephone / Fax No.

Address

2. **Fish harvesting firm / enterprise**

Telephone / Fax No.

Address

3. **Brief description of loss / damage**

4. **Date of incident**

5. **Damage Report Form filed by**

6. **Date Damage Report Form filed**

(Note: A **Damage Report Form** 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 Claimed   |                |

***I hereby certify that the above information is, to the best of my knowledge, full and accurate in every detail, to make claim to Suncor Energy for compensation for the losses described.***

**Signed by:**

\_\_\_\_\_ At \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Please Print Name

## Processor Loss Claim Form (For Use by Fish Processors)

1. **Person making this claim**

Position/Title

Telephone / Fax No.

Address

2. **Fish processing firm**

Telephone / Fax No.

Address

Processing Permit No.

Plant locations affected

3. **Date of incident**

**Damage Report Form** filed by

Date **Damage Report Form** filed

4. **Name of fishing vessels involved**

CFV No.(s)

Are you representing other Claimants in a joint claim?

Yes

No

Are you represented by another Claimant in a joint claim?

Yes

No

If yes, by whom are you being represented?



Please describe why and how the processing operation suffered loss as a result of the gear / vessel or oil spill damage incident:

Describe measures taken to find alternative suppliers, or other measures to stop or limit the loss:

## 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 and sales records / wage reports, etc.) Use additional sheets, if necessary.

| <b>Fisheries related losses</b><br>(if claiming for lost wages, include names and SIN(s) of all persons included) | Amount Claimed |
|---|----------------|
|   |                |
| Total Claimed   |                |

Note: This claim must be signed by a qualified Claimant (see Guide and other Programs documents)

***I hereby certify that the above information is, to the best of my knowledge, full and accurate in every detail, to make claim to Suncor Energy for compensation for the losses described.***

**Signed by:**

\_\_\_\_\_ At \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Please Print Name

**APPENDIX C**

**NOTICE OF CLAIM TO THE COMPENSATION BOARD**

## Notice of Claim to the Compensation Board

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

Please read the full text of Suncor Energy's *Commercial Fisheries Compensation Program* carefully. ***If you need assistance on any part of the document, with making a claim to Suncor Energy, or completing the Notice of Claim, please contact the EH&S Manager***

A claim to the Compensation Board can only be made if you have first made a claim directly to Suncor Energy (709-778-3500; EH&S Manager or alternate/designate) 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 Suncor Energy'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 with your Name, Address, and Telephone/Fax/Email.

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, submitted to Suncor Energy (if available);
2. A copy of the original Claim form(s) submitted to Suncor Energy; and
3. A copy of Suncor Energy's written decision.

Please note that awards for amounts in excess of \$1,000,000 cannot be settled by the Compensation Board without the consent of Suncor Energy.

# Notice of Claim Form

To the Suncor Energy Gear and Vessel Damage Compensation Board

This is a request by the undersigned that the Suncor Energy Gear and Vessel Damage Compensation Board (the Compensation Board) proceed with a binding claim resolution process as specified in Suncor Energy's Fisheries Compensation Program (the Program) in the manner of a claim for an incident which occurred on: (date) \_\_\_\_\_ Involving:

brought by (Name), \_\_\_\_\_, (Title/Position), \_\_\_\_\_,

of (Ship/Firm:), \_\_\_\_\_, based in, \_\_\_\_\_,

against Suncor Energy of St. John's, Newfoundland. The incident is described in the accompanying Damage Report (if available)

signed by: \_\_\_\_\_ dated: \_\_\_\_\_

and the losses claimed by described in the accompanying Loss Claim Form

signed by: \_\_\_\_\_ dated: \_\_\_\_\_

**CLAIMANT TAKE NOTE: You have other options for making a claim against Suncor Energy, such as Proceeding in the Courts, the Canadian Association of Petroleum Producers (CAPP), or to the Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) as provided 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 any other provisions and conditions specified in the Program documents.**

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 C-NLOPB, except as allowed under the Program. The same rules bind Suncor Energy.

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:**

\_\_\_\_\_  
Signature At Date

**APPENDIX D**  
**COMPENSATION BOARD TERMS OF REFERENCE**

## 1.0 Purpose of the Board

The purpose of the Compensation Board is to decide compensation claims arising through Suncor Energy's *Fisheries Damage Compensation Program* (the Program).

The Compensation Board provides fair and timely resolution of such claims where agreement has not been reached between a Claimant<sup>1</sup> and Suncor Energy, and if the Claimant chooses the binding claim resolution process through the Compensation Board.

The Compensation 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.

## 2.0 Compensation Board Composition

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

- A Chairperson: acceptable to both the offshore oil and gas operator and the fisheries industry representatives of One Ocean;
- A member: appointed by the offshore oil and gas operator; and
- A member: appointed by the fisheries industry, recommended by the fisheries industry members of One Ocean.

Where an agreement on a claim initiated under the program cannot be reached, Suncor, working with One Ocean, will as soon as possible set up the Compensation Board.

The fishing 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 must sign declarations of any potential conflicts of interest.

A Secretary to the Board will be appointed by One Ocean in consultation with the Chairperson.

Neither the hearing nor the Compensation Board decisions phases of the proceedings may begin or continue without the full attendance of the Compensation Board or 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 recordings and/or transcripts before the proceedings resume.

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<sup>1</sup> Within the Program, *Claimant* means either the eligible Claimant or a person duly authorized by the Claimant to represent him/her.

## 3.0 Duties

The Chairperson is responsible for ensuring that required procedures, waiting periods 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 Compensation Board members and alternates, and with representatives of Suncor Energy and One Ocean.

The Secretary, under the direction of the Chairperson, is responsible for undertaking and managing the Compensation Board's administrative functions, for assisting the Chair and other Compensation Board members as requested, for circulating documents, and for keeping the official record of Compensation Board proceedings and decisions. (Job description to be developed by the Chair and One Ocean.)

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.

## 4.0 Decisions of the Compensation Board

The Compensation Board or its Chairperson may be called upon to make formal decisions, including the following:

1. Eligibility of the Claim or the Claimant;
2. Determining the sequence of hearing disputed claims (*i.e.* selecting claimants based on the procedures described in the Program under "Sequence of Hearing Disputed Claims");
3. Requests for delays in proceedings and deadlines;
4. The value of the loss and associated expenses (*i.e.* an appropriate settlement amount);
5. Re-opening a terminated or previously settled Claim;
6. Releasing information to other parties (such as the courts); and
7. Releasing a Claimant or Suncor Energy from the terms of the Notice of Claim.

Decisions concerning the occurrence and extent of a spill and/or of environmental impacts on fish stocks or a fishery resulting from that spill will be made by the appropriate regulatory agencies before claims proceed to the Compensation Board.

Compensation 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 Compensation 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 Compensation Board will follow the *Arbitration Act*.

The hearing will continue (at times set by the Chairperson) until both the Claimant and Suncor Energy have presented all the information they choose to bring forward, and until the Compensation Board is satisfied that it is ready to make a decision.



If, after following the procedures described in the Program under "Sequence of Hearing Disputed Claims", the Compensation Board determines that an award, or the total monies awarded by the Compensation Board to all Claimants for any single event will exceed (or is likely to exceed) \$1,000,000, as soon as it is practical it will inform Suncor Energy and any remaining claimants before issuing any further decisions. At this point Suncor Energy may choose to agree to allow an award or awards which will exceed \$1,000,000. If Suncor Energy does not so agree, any remaining Claimants may choose to pursue the Claim through another process (e.g. the Courts) and the Compensation Board will end its proceedings without issuing any further decision. Suncor Energy must notify the Compensation Board of their decisions in writing within seven working 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 Compensation Board.

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

## 5.0 Costs and Financial Accountability

All expenses related to the administration and operation of the Compensation Board will be cost shared by Suncor Energy, Husky Energy and Hibernia. These include costs associated with the duties of the Chairperson, the operations of the Compensation Board, including administrative support, transcription services, the Secretary to the Compensation Board, accounting fees, insurance, office expenses, fees for any experts required by the Compensation 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 Compensation Board. Funds will be transferred at the request of the Chairperson to an account in the name of the Compensation Board. The Chair and one other designated Compensation Board Member shall have signing powers on behalf of the Compensation Board.

Honoraria will be paid at the following rates or as agreed by Suncor and members of the Board:

- Chairperson (per day, undertaking administrative duties, preparing Claim proceedings and during Compensation Board hearings/meetings) ..... \$500
  
- Other Board Members (per day, or part day of Compensation Board hearings/meetings) ..... \$350

The Chairperson is responsible for ensuring that all monies are spent in an appropriate manner and will, upon request, provide audited statements.

**APPENDIX E**

**END OF CLAIM RELEASE FORM**

## FINAL RELEASE

THIS RELEASE is in respect of the property damage and related costs sustained by the fishing vessel (Name and CFV No.) \_\_\_\_\_, owned and operated by \_\_\_\_\_ of \_\_\_\_\_, as a result of \_\_\_\_\_ on or about \_\_\_\_\_ (the "Incident").

IN CONSIDERATION of payment in the amount of \$ \_\_\_\_\_ (inclusive of HST) to replace / repair The following items at the per unit costs shown in the table below:

| Item(s) | Cost Per Unit    | \$ Value |
|---------|------------------|----------|
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         |                  |          |
|         | <b>Sub-total</b> |          |
|         | <b>HST (15%)</b> |          |
|         | <b>Total</b>     |          |

THE UNDERSIGNED, \_\_\_\_\_, hereby for himself/herself, his/her heirs, executors, Administrators, successors and assigns:

- (i) releases and forever discharges Suncor its affiliates, contractors and sub-contractors (herein referred to as the "Releasees") from any and all actions, causes of action, claim and demands for, upon or by reason of any damage, loss or injury to person and property, including for lost time, loss of income, expenses or damages which occurred as a result of the Incident;
- (ii) agrees not to make any claim or take proceedings against any person or corporation who might claim contribution or indemnity from the Releasees under the provisions of any statute or otherwise;
- (iii) agrees that the said payment is not deemed to be an admission of liability on the part of the Releasees;
- (iv) declares that the terms of this settlement are fully understood, that the amount stated herein is the sole consideration of this Release and that such amount is accepted voluntarily as a full and final settlement of any and all claims which might arise out of the Incident; and

(v) agrees to accept all liability for sharing the payment specified above, if necessary, and for any other claim the individuals named might have in respect of the Incident.

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
In the presence of

\_\_\_\_\_  
Witness



**The following individuals have approved and signed this document.**

Name: Kelly, Karen  
Title: General Manager, East  
Coast Assets  
Date: 6/25/2021 5:06:50 AM  
Meaning: Approver 1 signed