

## **1.0 Commercial Fishers Compensation Program for Loss Resulting From West White Rose Project Marine Activities**

### **(Revised)**

#### **1.1 Purpose**

The purpose of the Program is to provide fair and timely compensation to commercial fish harvesters who sustain actual loss because of disruption to fishing activities and species habitat as a result of Cenovus's West White Rose Project dredging program in Argentia Harbour in 2024-2025 and marine activities within Placentia Bay in 2025, including the tow-out and ballasting of the concrete gravity structure ("Cenovus's Activities").

Cenovus 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 activity occurred.

This Program has been prepared by Cenovus as an alternative to forcing fisheries industry participants to pursue claims for damages through the courts. Although claims for loss can be made under the laws of Canada, this Program offers a simpler, less expensive process for obtaining appropriate compensation. Its purpose is to provide a mechanism for a fair and efficient resolution of all legitimate claims and to minimize costs for all parties.

Fishing industry participants who use this Program do so voluntarily. However, by referring a claim to the Program's Compensation Arbiter (described below), the Claimant agrees to be bound by the Compensation Arbiter's decision and by the other provisions of this Program. Cenovus agrees to be similarly bound.

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

#### **1.2 Application**

With respect to any claims pertaining to Cenovus' dredging activity in Argentia Harbour, the Program will operate from 1 November 2024, the commencement of the dredging activity, and continue for three subsequent fishing seasons, ending 31 October 2027. Claims related to losses during the Program term can continue to be initiated under the Program for one year after the end of the Program. Any claims made within this timeframe can be carried through to completion.

With respect to any claims pertaining to Cenovus' tow-out and ballasting of the concrete gravity structure within Placentia Bay, the Program will operate from May 9, 2025, until May 31, 2026. Any claims made within this timeframe can be carried through to completion.

The Program applies to actual loss of harvesting efficiency, fishing opportunities or fishing income to harvesters, where that actual loss may be reasonably linked to Cenovus's Activities.

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

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 Cenovus and a Claimant before a Notice of Claim is filed with the Compensation Arbiter. However, the Compensation Arbiter may not award more than \$250,000 to any Claimant for any single claim, unless this award limit (on a claim-by-claim basis) is waived by Cenovus.

Claims or claimants not eligible under this Program should proceed through the Courts or other processes.

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 Cenovus for good cause.

### **1.3 Eligible Claimants**

Those eligible to make claims under this Program are duly licensed and/or registered commercial fish harvesters who believe that they have sustained actual loss because of loss of harvesting efficiency, fishing opportunities or fishing from Cenovus's Activities. Claims may only be made by the holder of the relevant licence (e.g. fishing licence). Claimants will have to demonstrate history of fishing activity impacted by the Cenovus Activities.

In case of a dispute between a claimant and Cenovus as to eligibility or the amount of compensation, the Compensation Arbiter 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 the Courts.

### **1.4 Coverage**

This Program covers actual losses of harvesting efficiency, fishing opportunities or fishing income sustained by fishing enterprises as a result of Cenovus's Activities in the Argentia Harbour and Placentia Bay areas, including:

1. The estimated landed value of the fish not caught because of the effects of Cenovus's Activities in historic fishing areas; and
2. The reduction in the quantity of catch landed because of the effects of Cenovus's Activities in historic fishing areas,

to the species potentially occurring in and near the potentially affected areas set out in the DFO 3PSc landings data for recent years and historical catch and effort data included in the 2012 Environmental Assessment, and based on input from affected local area fishers, being as follows:

- (i) Snow crab;
- (ii) Lobster;
- (iii) Cod and other groundfish;
- (iv) Herring;
- (v) Scallops; and
- (vi) Other species.

After sustaining damage, harvesters are required to make genuine efforts to mitigate any loss, with due allowance for safety (e.g. by continuing to fish, if possible).

## 2.0 Claim Process

### 2.1 Making a Claim

To make a claim:

- 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.
- The Claimant must complete the appropriate **Loss Claim Form** and submit it, as indicated on the form, within one year of the occurrence or discovery of the loss (see Appendix A).
- The Claimant will then be contacted by Cenovus, and at that time may be asked to supply more information or evidence to support the claim.

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(Revision) Prior to making a claim, Claimants should be aware of the following:

- Compensation already received or payable to the Claimant from Cenovus pursuant to the agreements between Cenovus and the Fisheries Liaison Committee included compensation for (1) losses for 2024 cod and scallop harvesting and (2) losses relating to the tow out activities of the CGS from Argentia Harbour.
  - Cenovus will deduct such compensation already paid or payable to the Claimant against any claim in respect of dredging or tow out activities. As a result, any claim for less than the amount of compensation already paid or payable will be rejected, and claims in excess would only be eligible to have the additional amounts paid, if supporting evidence as set out below is provided and the claim is accepted by Cenovus.
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## **2.2 Evidence**

It is the responsibility of the Claimant to show a reduction of harvesting efficiency, fishing opportunities or fishing income, and to provide evidence that the loss was attributable to Cenovus's Activities.

Both Cenovus and the Claimant will co-operate fully with the Compensation Arbiter established by this Program (see below) and with each other in the verification of claims. Neither the Claimant nor Cenovus 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.

## **2.3 If the Claim is accepted by Cenovus**

After examining the information presented by the Claimant, Cenovus 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.

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

Before it is eligible to be submitted to the Compensation Arbiter, 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.

## **2.4 If the Claim is rejected by Cenovus**

If Cenovus 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 another available avenue; or
- Pursue the claim further under this program by referring it to the Compensation Arbiter.

If Cenovus accepts the eligibility and validity of the claim but agreement cannot be reached on the amount of the claim, the Claimant can pursue the claim through another avenue or can apply to the Compensation Arbiter for a decision on the

amount of the award, using the **Notice of Claim to the Compensation Arbiter** form (Appendix B). 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 Arbiter in such cases.

### 3.0 The Compensation Arbiter

#### 3.1 Making a Claim to the Compensation Arbiter

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

To initiate a claim to the Compensation Arbiter, the Claimant must notify Cenovus within forty five (45) days of receiving Cenovus's written rejection of the claim by completing and signing a **Notice of Claim to the Compensation Arbiter** and providing it and Cenovus's written rejection of the claim to the following email address, specifically set up for notice of such disputes: [FisheriesClaims@cenovus.com](mailto:FisheriesClaims@cenovus.com).

By signing the Notice of Claim form, the Claimant agrees to be bound by the Compensation Arbiter's decisions and by the other provisions of this Program. Cenovus 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 Cenovus during the Compensation Arbiter proceedings will be used in any other proceedings without Cenovus's consent, or without an order of the Court. Cenovus 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 C). Signing this form means that the Claimant will make no further claim against Cenovus in connection with this incident.

#### 3.2 Selecting a Compensation Arbiter

Cenovus shall maintain and post alongside this Program on its website a list of at least three (3) individuals identified as being potential Compensation Arbiters under this Program. The list of Compensation Arbiters shall be developed by Cenovus in consultation with the FFAW.

In order to qualify as a Compensation Arbiter, an individual shall have no financial or personal interest in the business affairs of either of the parties and shall have experience in the fishing industry in Newfoundland and Labrador.

Upon receipt of a **Notice of Claim to the Compensation Arbiter**, Cenovus shall within five (5) business days refer the Claim to one of the identified Compensation Arbiters. The Compensation Arbiter selected from the list will be dependent upon

the availability of the individuals and the objective of rotating claims amongst individuals on the list.

### **3.3 Proceedings**

Within fourteen (14) days of receiving the Notice of Claim, the Compensation Arbiter will set a date for a Hearing to assess the claim.

The Hearing will be convened as quickly as possible but no sooner than fourteen (14) days and no later than twenty eight (28) days after receiving the Notice of Claim, unless the Claimant and Cenovus otherwise agree. In all cases, Cenovus and the Claimant will have at least seven (7) days' advance notice of the date of the Hearing. Any request for a delay will be decided upon by the Compensation Arbiter.

The Compensation Arbiter will notify the Claimant and Cenovus of the time and place of the Hearing, which will be decided by the Compensation Arbiter. In the event one of the parties is unable to attend the Hearing due to a reasonable scheduling conflict, the Compensation Arbiter will decide on a new time and place for the Hearing, with the objective to have the Hearing convened as quickly as possible.

Both the Claimant and Cenovus may submit any written material, affidavits, maps, illustrations, photographs and/or any other relevant evidence to the Compensation Arbiter and to the other party in the claim no later than ten (10) days before the start of the Hearing. The information presented may relate to both the proof of the claim and the amount of the claim.

Cenovus and the Claimant will provide such additional information or documentation as may reasonably be requested by the other party or by the Compensation Arbiter. If, in the opinion of the Compensation Arbiter, essential information has not been provided, the Compensation Arbiter 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 Arbiter or at the Hearing will be held in confidence by all participants, except as described above (under "Making a Claim to the Compensation Arbiter").

### **3.4 The Hearing**

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

If either the Claimant or Cenovus chooses not to appear or be represented at the Hearing, the Compensation Arbiter 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. Cenovus may be represented by any person chosen by Cenovus.

If in dispute, the Compensation Arbiter will consider whether:

- The Claimant and the claim are eligible for consideration under this Program.
- Cenovus is responsible for the loss.

If these issues are not in dispute, the Compensation Arbiter 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 Arbiter or Cenovus.

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

If either Cenovus or the Claimant wants to call witnesses who have not agreed to appear voluntarily (e.g. if the Claimant wants to call the Master of a Cenovus contracted vessel), the Compensation Arbiter may order that the other party help secure the witness's appearance.

The Compensation Arbiter may also consult with outside experts.

Hearings will continue until the Compensation Arbiter is ready to make a decision.

The Compensation Arbiter may choose to recall any person for further questioning, but both the Claimant and Cenovus can be present for the questioning, if they so choose.

### **3.5 Amount of Award**

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

**Considerations.** The amount awarded should ensure that the Claimant is no better or worse off than before the loss occurred. In general:

1. The amount assessed for loss of fishing income will be at the discretion of the Compensation Arbiter.
2. Compensation for lost net income from fish sales will consider revenue, which might have been realized at the harvesting if the loss had not occurred. The

Compensation Arbiter 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 loss occurred to the earlier of (a) the date of payment or (b) the date when losses should reasonably have stopped. If the Compensation Arbiter awards an amount for lost wages or shares, the specific amount will be identified in its written decision.

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

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

If the Compensation Arbiter determines that the award will exceed \$250,000, it will inform both the Claimant and Cenovus before it issues its formal decision. Cenovus may choose to agree to allow an award in excess of the \$250,000 limitation. Cenovus must notify the Compensation Arbiter of its decision in writing within seven (7) days of having been informed by the Compensation Arbiter. If Cenovus does not agree, the Claimant may choose to limit the award amount to \$250,000 or pursue the claim through another process and the Compensation Arbiter will end its proceedings without issuing a decision.

### **3.6 Settling the Claim**

The Claimant and Cenovus will be notified in writing of the Compensation Arbiter's decision, the amount awarded and the reasons for its decision, within three (3) days of the Compensation Arbiter's finalizing the decision. Cenovus will then pay any amount awarded within fourteen (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 Arbiter.

### **3.7 Further Proceedings**

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

The findings of the Compensation Arbiter 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 the Compensation Arbiter be requested by the other party to appear as a witness.

Notwithstanding the above, either the Claimant or Cenovus may apply to re-open the claim (concerning either Cenovus'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 Arbiter.

A request for a re-hearing must be made within ninety (90) days of the Compensation Arbiter's original decision and within the term of the Program.

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