

## ARTICLE 14

### WILDLIFE COMPENSATION

14.1 In this Article:

“*arbitrators*” means a panel of arbitrators appointed pursuant to provisions of Article 24;

“*claimant*” means Nunavik Inuit or a Nunavik Inuk;

“*compensation*” means monetary compensation, including cash payment in a lump sum or by instalments, and also includes non-monetary compensation such as the cost of temporary or permanent relocation, replacement or repair of property, and reimbursement in kind subject to conservation limits, or any combination thereof;

“*developer*” means any person engaged in development activity;

“*development activity*” means any commercial or industrial undertaking, or extension thereof, including those undertaken by any municipal, territorial, provincial or federal government in the NMR but does not include:

(a) marine transportation; or

(b) any wildlife measure or use approved in accordance with Article 5.

“*fortuitous event*” means an act of war, hostilities, civil war, insurrection or natural phenomenon of an exceptional, inevitable and irresistible character.

14.2 Unless inconsistent with a specific provision of this Article, Article 24 shall apply to an arbitration undertaken pursuant to this Article.

14.3 For greater certainty, in the case of development activities, if any, begun prior to and continuing on the effective date of this Agreement, this Article applies only in respect of that portion of those development activities occurring on or after the coming into effect of this Agreement.

14.4 Subject to section 14.5, this Article shall apply to marine transportation occurring on or after the effective date of this Agreement that is directly associated with any commercial or industrial or any municipal, territorial, provincial or federal government undertaking, or any extension thereof, in the NMR but does not apply to marine transportation not directly associated with such undertakings.

- 14.5 There shall be a person, a fund or both, specified by the Government of Canada capable of assuming liability for marine transportation imposed under this Article by section 14.4 and that specified person, or fund, or both shall be considered to be a developer and that marine transportation shall be considered to be a development activity for the purpose of this section.
- 14.6 A developer is liable absolutely, without proof of fault or negligence, for loss or damage suffered by a claimant as a result of its development activities in respect of:
- (a) loss or damage to property or equipment used in wildlife harvesting or to wildlife reduced into possession;
  - (b) present and future loss of income from wildlife harvesting; and
  - (c) present and future loss of wildlife harvested for personal use by claimants.
- 14.7 A developer is not liable where that developer establishes that the loss or damage was wholly the result of a fortuitous event.
- 14.8 With respect to flora, a developer is liable under section 14.6 only for those species contained in Schedule 14-1. Schedule 14-1 shall be reviewed by the parties every five (5) years for the purposes of updating the list of species in Schedule 14-1, if necessary, on the anniversary date of the execution of this Agreement.
- 14.9 Legislation may provide for appropriate limits of liability of developers or the methods of setting such limits and shall also require proof of fiscal responsibility and may also provide for security deposits and any other matters not inconsistent with this Article. Limits on liability will be set at levels sufficient to cover reasonably foreseeable damages in relation to various development activities. Recognizing Nunavik Inuit concerns regarding enforcement of compensation decisions, Government will give consideration to including enforcement mechanisms in legislation.
- 14.10 Claimants shall make all reasonable efforts to mitigate against any loss or damage.
- 14.11 A claimant or a MDO on behalf of a claimant shall make a claim for loss or damage in writing to the developer. If the claim is not settled within thirty (30) days of receipt by the developer, the developer or the claimant or a MDO on behalf of the claimant may submit the claim to arbitration.
- 14.12 In hearing a claim, the arbitrators are not bound by strict rules of evidence and may take into account any information which they consider relevant. The arbitrators, in hearing a claim, shall give due weight to Nunavik Inuit knowledge of wildlife and the environment and shall take into account the social, cultural and economic importance of wildlife to Nunavik Inuit.
- 14.13 The arbitrators may appoint experts and may call witnesses.

- 14.14 As a general principle, compensation shall not be a guaranteed annual income in perpetuity. A compensation award may be reviewed by the arbitrators at the request of either party to the hearing.
- 14.15 A claim must be made within three (3) years of the date on which the loss or damage occurred, or within three (3) years of the date on which the loss or damage became known to the claimant.
- 14.16 The arbitrators shall hear the case and determine liability and compensation within one hundred and eighty (180) days of the date that the claim was submitted to them or within such further period of time as the parties to the hearing may otherwise agree in writing. The arbitrators shall make a decision within thirty (30) days of completing the hearing of a claim.
- 14.17 Recognizing that it is the intention that loss or damage suffered by a claimant should be minimized by expeditious processing of claims and payment of compensation, the arbitrators may:
- (a) deal with a claim in respect of loss or damage to property or equipment used in wildlife harvesting or to wildlife reduced into possession before proceeding to hear evidence on any other loss or damage;
  - (b) require that interest be paid on monetary compensation at a rate set by the arbitrators; and
  - (c) provide for additional compensation to cover any additional loss or damage, or costs, including costs of collection, that may result from any delay in fulfilling the terms of the compensation decision.
- 14.18 At the request of a claimant, the arbitrators shall register the compensation decision in the Nunavut Court of Justice and the claimant may use that court to enforce the decision. The arbitrators may provide assistance in the enforcement of its their decision.
- 14.19 In deciding upon the location of a hearing of the arbitration, the convenience of the claimant shall be a major factor in the decision of the arbitrators.
- 14.20 When the arbitrators determine that loss or damage was caused by more than one developer, those developers shall be severally liable. The arbitrators shall apportion liability in accordance with generally accepted principles of statute and common law.
- 14.21 The remuneration and expenses incurred by the arbitrators in determining claims under this Article shall be borne by the Government of Canada.
- 14.22 The provisions of this Article are without prejudice to any other rights or remedies that a claimant may have under laws of general application with respect to loss or damage arising out of a development activity. However, if the claim is referred to the appropriate arbitration under section 14.11, the decision of the arbitrators shall be conclusive in relation to all losses and damages described in section 14.6 subject only to review by the Federal Court of Appeal under Article 28 of the *Federal Court Act*,

R.S.C. 1985, c.F-7. If the claim against a developer is dismissed, a claimant is not precluded from claiming the same loss or damage against a different developer.

- 14.23 Nothing in this Article shall be construed as limiting or restricting any right of recourse that a developer who is found liable under this Article may have against any person other than the claimant.
- 14.24 Nothing in this Agreement shall prevent Nunavik Inuit and a developer from entering into a wildlife compensation agreement that would replace all other obligations in relation to wildlife compensation under this Agreement.

## **SCHEDULE 14-1**

### **LIST OF FLORA**

#### Brown Seaweed:

*Fucus sp.* (Rockweeds)

*Fucus vesiculosus*

*Fucus evenescens*

*Fucus filiformis*

*Ascophyllum nodosum* (Knotted Wrack)

*Ascophyllum mackaii*

#### Kelp

*Laminaria longicurris* (Hollow-Stemmed Kelp)

*Laminaria agardhii* (Common Kelp)

*Laminaria digitata* (Horsetail Kelp)

*Agarum cribrosum* (Sea Colander)

*Alaria sp.* (Edible Kelp)

#### Red Seaweed:

*Porphyra sp.*

*Euthora sp.*

*Ahnfeltia sp.*

*Phyllophora sp.*

*Gigartina stellata* (Tufted Red Weed)

*Rhodomenia palmata* (Dulse)

#### Green Seaweed:

*Enteromorpha sp.* (Hollow Green Weeds)

*Ulva lactuca* (Sea Lettuce)