

**LIABILITY AND COMPENSATION****APPLICATION FOR APPROVAL  
OF THE DEVELOPMENT PLAN FOR  
NIGLINTGAK FIELD  
PROJECT DESCRIPTION****LIABILITY****15.1.1 SCOPE**

The construction, operation and abandonment of projects such as the Niglntgak field development expose a proponent to potential liability. Federal legislation and policy expressly impose liability on operators engaging in activities that could potentially harm the environment. For example, the *Fisheries Act* will impose liability on those responsible for an uncontrolled or unauthorized release of harmful substances into the environment in a way that threatens fish or fish habitat.

In addition to federal legislation and policies, several territorial statutes, such as the *Territorial Waters Act*, impose liability with respect to the operations and abandonment of oil and gas developments in the North. Liability might also arise as a result of agreements entered into between the proponent and private landowners, such as the Inuvialuit.

Even if the issue of liability is addressed within a statutory regime, civil liability could still arise as a result of project-related activities. Because legislation and government policy are subject to change, further liabilities could possibly arise over the expected life of Niglntgak.

**15.1.2 CANADA OIL AND GAS OPERATIONS ACT**

Under the *Canada Oil and Gas Operations Act* (COGOA), an operator can be held liable for failing to comply with the requirements outlined in COGOA or any orders made under that Act. As well as preserving civil liabilities and remedies, COGOA imposes liability for:

- loss or damage suffered by any person as a consequence of a spill or an authorized release of oil or gas
- costs reasonably incurred by the Government of Canada in taking any action in relation to a spill or authorized release of oil or gas

**15.1.3 INUVIALUIT FINAL AGREEMENT**

The *Inuvialuit Final Agreement* also outlines the potential liability issues associated with compensation to wildlife harvesters as a result of development activities.

**15.1.3.1 Wildlife Harvester Provisions**

Where it is established that a development has or will cause wildlife harvest loss or future wildlife harvest loss, a developer will be required to provide a remedy, which could include compensation, property replacement, or remediation and reclamation of damaged wildlife habitat. The *Inuvialuit Final Agreement* does not require any proof of fault or negligence, as the liability is considered absolute.

**15.1.3.2 Worst Case Scenario Assessment**

The *Inuvialuit Final Agreement* mandates the Inuvialuit Environmental Impact Review Board to assess the worst-case scenario associated with a proposed development in the Inuvialuit Settlement Region. As part of this assessment, the Board is to provide an estimate of the developer's potential liability. The Joint Review Panel that has been established to perform the environmental review of the Mackenzie Gas Project, including Niglntgak, will assess the potential liability that might arise from the worst-case scenario.

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PROJECT DESCRIPTION****COMPENSATION****15.2.1 SCOPE**

The proponent of a project, such as Niglntgak, might be required to provide compensation for damages and losses caused by its development. The compensation requirements are set out in legislation, but might also be found in freely negotiated agreements or agreements arising from various dispute resolution mechanisms.

**15.2.2 HARVESTERS' COMPENSATION AGREEMENT**

In accordance with the terms of the *Inuvialuit Final Agreement*, once the determination of the worst-case scenario for Niglntgak is made, Shell and the Inuvialuit Game Council will complete their negotiation of a Harvesters' Compensation Agreement. This agreement will deal with wildlife harvest loss and might address compensation, property replacement, remediation and reclamation of damaged wildlife habitat.

**15.2.3 ENVIRONMENTAL AGREEMENT**

Shell is also engaged in negotiating an environmental agreement with the Government of the Northwest Territories. This agreement is intended, in part, to address the potential liabilities that could arise as a consequence of the development of Niglntgak.

**15.2.4 PROOF OF FINANCIAL CAPABILITY**

Under COGOA and the related Canada Oil and Gas Production and Conservation Regulations, Shell will be required to provide proof of financial capability to complete the work proposed under its Development Plan. The proof could take any form satisfactory to the NEB, including a line of credit, a guarantee or an indemnity bond. In addition, proof of financial capability might be required by territorial legislation or mandated in the agreements entered into with the Inuvialuit Game Council and the Government of the Northwest Territories.

