

Japanese Nuclear Liability Regime

in light of the TEPCO Fukushima Daiichi NPP Accident

Stephen G. Burns (Head of Legal Affairs)
Ximena Vásquez-Maignan (Senior Legal Adviser)
OECD Nuclear Energy Agency

WHO SUFFERED FROM THE ACCIDENT ?

71,124 evacuated (as of 11 February 2012 according to the Fire and Disaster Management Agency)

¥ 16.9 trillion of damaged stocks in disaster areas, which account for 4% of the total stock (Japan GDP: ¥500 trillion)

Affected area accounts for 2.5% of the Japanese economy in terms of industrial production

Who can legally claim compensation ?

*Operator shall be liable if **nuclear damage is caused**
as a result of the operation of its nuclear installation
(Section 3 § 1 Compensation Act)*

Entitled person: a person, whether an individual or a company, who can prove a causal link between the damage suffered and the occurrence at the operator's nuclear installation

Causality: considered under the law of the competent court (i.e. national law):

- in most States, not all causes of damage are legally relevant (e.g. remote causes may not be considered)
- in many States, the law requires « adequate causality », i.e. a cause is relevant if that cause is generally likely to cause damage of the kind suffered

What damage may be compensated ?

Nature, form, extent and equitable distribution of compensation are usually determined by the law of the country with jurisdiction (where accident occurred)

- **By civil courts**
on a case by case basis pursuant to the « reasonable causation » principle
- **By Dispute Reconciliation Committee for Nuclear Damage Compensation (*Reconciliation Committee*)**
 - **Established April 2011** under the Ministry of Education, Culture, Sports, Science and Technology (MEXT) pursuant to Compensation Act
 - **Roles:**
 - Issues guidelines (not legally binding) to determine heads of damage to be compensated
 - Mediates any dispute arising between a victim and TEPO relating to the payment of compensation

Guidelines issued since the Accident

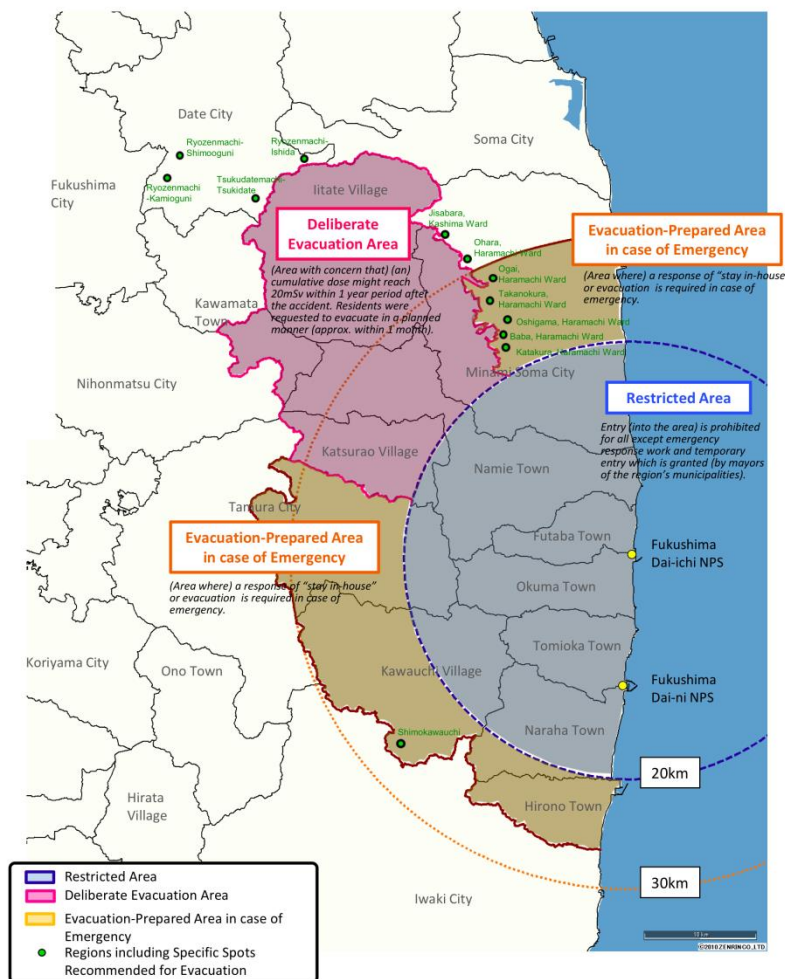
Preliminary Guidelines on Determination of the Scope of Nuclear Damage Resulting from the Accident	28 April 2011
Secondary Guidelines on Determination of the Scope of Nuclear Damage Resulting from the Accident	31 May 2011
Supplement to Secondary Guidelines	20 June 2011
Interim Guidelines on the Determination of the Scope of Nuclear Damage from the Accident <i>= Supersede the Preliminary and Secondary Guidelines with respect to matters thereof and provide overall picture of nuclear damage</i>	5 August 2011
Outline of Interim Guidelines	5 August 2011
Supplement to Interim Guidelines (<i>Voluntary Evacuation</i>)	6 Decembre 2011
Second Supplement to Interim Guidelines (<i>Revision of evacuation areas</i>)	16 March 2012
Outline of Second Supplement to Interim Guidelines	16 March 2012

Basic approach of the Reconciliation Committee

- **Precedent:** criticality accident at the JCO Plant Co., Ltd. Tokai Plant Nuclear Accident of 30 September 1999
- **Causality:** So long as a causal link between the nuclear accident itself and the damage suffered is logically and reasonably established based upon social convention
- **Distinguishing damages caused by the earthquake/tsunami from those caused by the Accident:** for certain damages not possible to make a clear distinction in some cases between those caused by the Accident and those caused by the earthquake/tsunami; presume to a reasonable extent whether or not a damage constitutes a « nuclear damage », e.g. through comparison with damage in areas affected by the Great East Japan Earthquake but less impacted by the Accident

Damages related to evacuation instructions

Restricted Area, Deliberate Evacuation Area, Evacuation-Prepared Area in case of Emergency
And Regions including Specific Spots Recommended for Evacuation (As of August 3, 2011)



Source: METI

Damages related to evacuation instructions

- Examination expenses
- Evacuation expenses
 - Travel expenses, removal of belongings from household
 - Accommodation related expenses
 - Increase in living expenses
- Injury or death
- Mental anguish arising from the evacuation / being forced to live as an evacuee or forced to take shelter indoors
- Business damages (reduction in income / additional expenses incurred)
- Damages arising from incapacity to work for an employer (loss of income)
- Examination expenses concerning property/products
- Loss or decrease of movable and immovable property value
- Temporary access expenses
- Homecoming expenses (following lifting of indoor sheltering area on 22 April 2011)

Damages related to evacuation instructions

Calculation method for damages take into account ...

- **Eligible persons:**
 - those forced to leave the affected area
 - those who were outside the area at the time of the Accident and who were forced to continue to stay outside despite having their main home within the affected area
 - those who were forced to take shelter indoors in the affected area
- **Difficulties of providing proof**

compensations usually a predetermined amount based on an estimate using objective criteria, e.g. statistical data

Damages related to evacuation instructions

Calculation method for damages take into account ...

- The Period**

Period 1	Accident + 6 months	11 March 2011 – 11 Sept 2011
Period 2	End of Period 1 + 6 months	11 Sept 2011 – 11 March 2012
Period 3	From the end of Period 2 to termination	Termination = prospect for an end to evacuation emerges and positive approach can be taken, e.g. preparing to return home

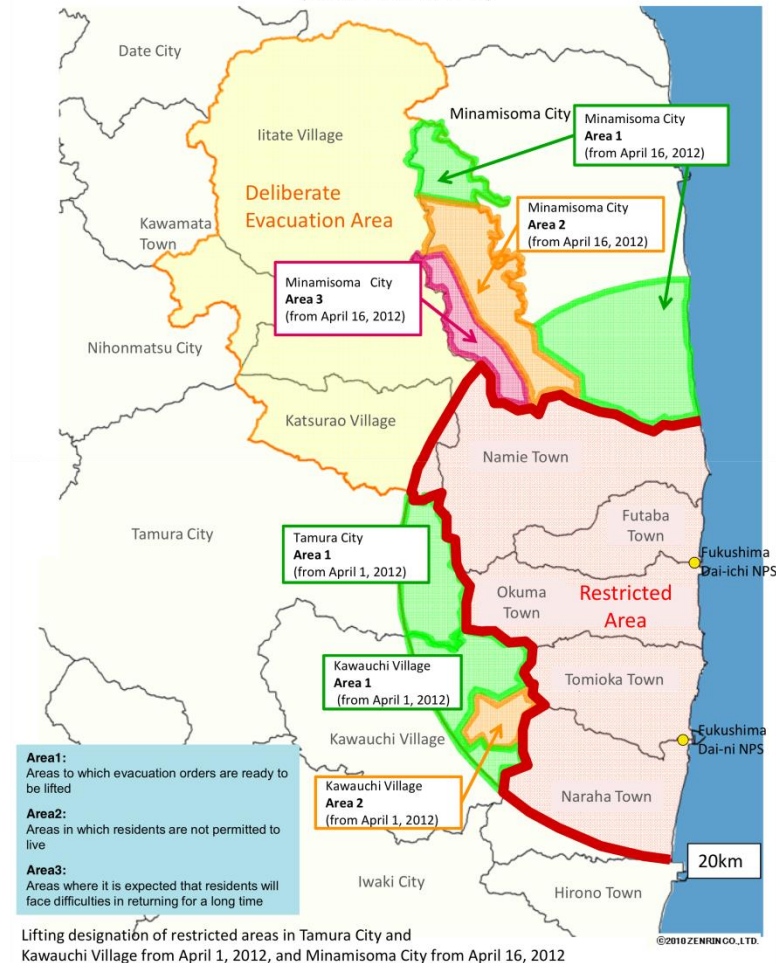
Damages related to evacuation instructions

Calculation method take into account ...

- **Change of evacuation areas**
 - **Restricted Area:** 20 km radius of the plant
 - **Deliberate Evacuation Area:** annual accumulated radiation may reach 20 mSv
 - Areas established by Second Supplement to Interim Guidelines (March 2012)

	Annual accumulated radiation
AREA 1 preparing for lifting of evacuation instructions	Definitely confirmed ≤ 20 mSv
AREA 2 still subject to living restrictions	Could exceed 20mSv requiring continued evacuation
AREA 3 in which homecoming is difficult	Currently exceeding 50mSv and may not fall below 20mSv even over a long period (specifically after 5 years)

Restricted areas and areas to which evacuation orders have been issued
(From April 1, 2012)



Damages related to Voluntary Evacuation

- **Eligible persons:**
 - those who have their main home in one of the Fukushima Prefecture defined as Voluntary Evacuation Area , and
 - who either are outside or within the said area
- **Special conditions** for children and their care takers / pregnant women
- **Types of damages:**
 - increased cost of living expenses
 - mental anguish arising from the evacuation
 - removal expenses required for evacuation and homecoming

Damages related to Voluntary Evacuation

- **Area concerned:**

the applicable areas (23 municipalities in Fukushima Prefecture, excluding areas subject to evacuation instructions, etc.) are broadly taking into consideration distance from the plant, proximity to areas subject to evacuation instructions, etc., information about radiation levels published by the Government, etc.

- **Compensation:**

- voluntary evacuees and residents: fixed sum combining pain and suffering damages and the increased cost of living expenses, etc.
- people with their home inside an area subject to voluntary evacuation, etc. at the time the accident occurred are as follows:
 - Child/pregnant woman living in an applicable area: ¥ 400,000
(Damages from occurrence of the accident until 31 December 2012)
 - Persons other than the above: ¥80,000
(Damages at the time of initial occurrence of the accident)

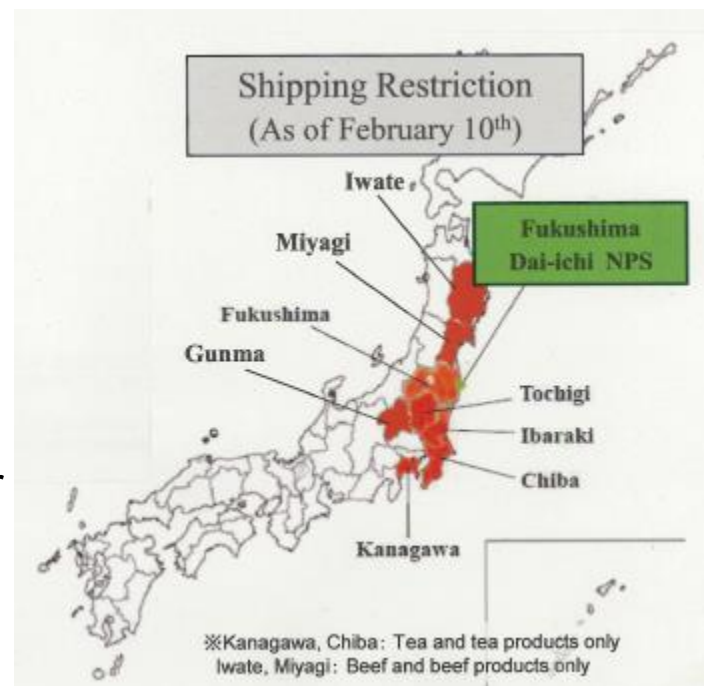
Damages related to Designation of a Navigation Danger Zones

- **Eligible persons:**
 - Fishing operator forced to abandon operations in the area
 - Persons engaged in coastal shipping or coastal passengers transport operations
- **Area concerned:**

30km radius centres on the Fukushima Daiichi NPP
- **Types of damages:**
 - business damages (loss / decrease of business income; increased costs due to need to circumnavigate affected area)
 - damages arising from incapacity to work for an employer

Damages related to Shipping Restriction Orders

- **Sectors concerned:**
 - agriculture, forestry and fisheries
 - producers / distributors of commodities
- **Types of damages:**
 - business damages (loss / decrease of business income; increased costs due to need to circumnavigate affected area)
 - damages arising from incapacity to work for an employer
 - damages related to abandoned planting of commodity items covered by shipping restriction orders
 - damages arising after the lifting of shipping restriction orders (e.g. additional expenses to re-start the shipment, operation or planting)



Damages related to Planting Restriction Orders

- **Eligible persons:**
 - Farmers forced to wholly or partially abandon the planting of a commodity item or other farming-related actions such as the provision of grazing and pasture grass
- **Area concerned:**

Restricted grazing or pasture grass provision; voluntary restraint in relation to planting or other farming
- **Types of damages:**
 - business damages
 - damages arising from incapacity to work for an employee

Rumour-related Damages

- **No established definition of « rumour-related damages »:** when leading consumers/trading partners refrain from purchasing or stop trading due to concerns regarding contamination based on facts widely known through media reports and such concern is considered reasonable from an average, ordinary person perspective
- **Causal link:** when consumer/trading partner is concerned about contamination risk in relation to product/service, and such psychological concern is reasonable from the perspective of an average ordinary person => to be considered on a case by case basis
- **Sectors concerned:**
 - agriculture, forestry and fisheries
 - food industry, tourism, manufacturing, services, exports
- **Types of damages:**
 - business damages (loss of income and reasonable additional expenses)
 - damages arising from incapacity to work for an employee
 - examination expenses

Rumour-related Damages

Rumor damage related to agriculture/forestry/fisheries, food industry

[Agricultural/forestry products (excluding tea and livestock products, limited to use in food)]

Fukushima, Ibaraki, Tochigi, Gunma, Chiba, Saitama prefectures

[Tea] Fukushima, Ibaraki, Tochigi, Gunma, Chiba, Saitama, Kanagawa, Shizuoka prefectures

[Livestock products (limited to use in food)]

Fukushima, Ibaraki, Tochigi prefectures

[Fisheries products (limited to use in food and animal feed)]

Fukushima, Ibaraki, Tochigi, Gunma, Chiba prefectures

[Flowers] Fukushima, Ibaraki, Tochigi prefectures

[Other agricultural/forestry/fisheries products (timber, etc.)] Fukushima prefecture

[Agricultural/forestry/fisheries processed products, foods]

- Main office or factory is in Fukushima prefecture
- Main raw material is among the abovementioned produce etc.

[Damage other than the above]

- Compensation is allowable where a sufficient causal relationship exists, taking into consideration factors such as reluctance in purchasing and shipment restrictions.

Beef (beef cattle contaminated with cesium)
Hokkaido, Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima, Ibaraki, Tochigi, Gunma, Saitama, Chiba, Niigata, Gifu, Shizuoka, Mie, Shimane*

*Note: The same treatment shall apply if a fall in beef prices is confirmed in prefectures other than those listed above, due to distribution/use of newly contaminated rice straw.

Rumor damage related to the manufacturing and service sectors, etc.

[Domestic manufacturing/services, etc.]

- Damage related to goods/services, etc. made or sold in Fukushima prefecture
E.g.: Textile products manufactured in Fukushima prefecture, rejection of cargo by operators from outside the prefecture
- Damages resulting from operators refusing to visit Fukushima prefecture (E.g.: Refusal of transport operators to visit, cancellation of events such as art exhibitions)
- Damages arising from avoidance of collecting sludge from water and sewerage systems (including products that are raw materials)

[Services dependent on foreign visitors, etc.]

- Cancellations up until 31 May 2011 (the whole of Japan)
(E.g.: Refusal of foreign artists to visit, refusal of foreign vessels to call at port)

Rumor damage related to tourism

[Areas in which at least a sufficient causal relationship is acknowledged]

Fukushima, Ibaraki, Tochigi, Gunma prefectures

[Damage related to foreign tourists]

Cancellations exceeding the normal cancellation rate up until 31 May 2011 (Whole of Japan (excluding the above 4 prefectures))

[Damage other than the above]

- Compensation will be allowable, regardless of the region, according to the individual, specific circumstances, where a sufficient causal relationship exists in relation to damage resulting from cancellation, reluctance in booking, etc.

Rumour damage related to exports

[Costs of testing, issuance of certificates, etc. requested by destination countries]

- Costs of testing, issuance of certificates, etc. due to import regulations in destination countries or where requested by customers, etc. (for the time being, the whole of Japan)

[Damage resulting from refusal to import]

- Damages arising at the point of refusal to import by a destination country (import regulations or refusal by customer), where the goods have already been exported or production/manufacturing has started (the whole of Japan)

Outline of Interim Guidelines

Areas subject to government instructions, etc.

I Damage associated with evacuation, etc.
(Evacuation Area [Restricted Area], In-house Evacuation Area, Deliberate Evacuation Area, Evacuation-Prepared Area in Case of Emergency, Evacuation Recommendation Spot, areas for which temporary evacuation was requested by Minami-soma City)

- Evacuation, temporary entry, homecoming expenses
- Evacuation expenses (transport and accommodation expenses, removal expenses for household belongings, etc.)
- Examination expenses (human)
- Injury or death
- Medical treatment expenses, etc. due to deterioration in state of health, etc. resulting from evacuation, etc.
- Mental anguish
- ¥100,000/month for 6 months after accident (Period 1) (¥120,000 for gymnasium, etc.)
- ¥50,000/month for the 6-month period from the end of Period 1 (Period 2) etc.
- Loss or reduction, etc. of property value
- Business damage
(Agriculture, forestry & fisheries, general industry including manufacturing)
- Fall in revenue from sales, trading, etc.
- Additional costs such as product disposal expenses, office relocation
- Damages due to incapacity to work
- Examination expenses (material)
- Cost of testing for products for contamination

II Damage related to establishment of navigation danger zone, no-fly zone

- Business damages (fishing operator, shipping operator, passenger shipping operator, air carrier, etc.)
- Fall in revenue due to operational difficulty
- Increase in costs due to circumnavigation
- Damages due to incapacity to work

III Damage associated with shipping restriction orders for agricultural/forestry/fisheries products (incl. processed goods) and food products

(shipment/planting restrictions, restricted grazing or pasture grass provision, sales ban, testing based on Food Sanitation Act, etc.)

- Business damages (operator engaged in agriculture/forestry/fisheries, distributor, etc.)
- Fall in revenue due to shipment being abandoned, etc.
- Additional costs such as product disposal expenses
- Damages due to incapacity to work
- Examination expenses (material)

IV Other damages associated with government instructions, etc.

(Restrictions on the consumption of drinking water, guidance on the handling of water supply and sewerage by-products, notices concerning the use of school facilities/yards, etc.)

- Business damages
- Cost of measures to provide replacement water, store sludge, reduce radiation levels in school yards, etc.
- Damages due to incapacity to work
- Examination expenses (material)

Areas not subject to government instructions, etc.

V So-called "rumor damage" (see next page)

[General criteria]

- The psychological state of wanting to avoid something due to concern about the risk of contamination with radioactive material is reasonable from the perspective of an average, ordinary person.
- As a general rule, indicate the types that are allowable as damage.

○Business damages

- Fall in revenue due to drop in trading volume, price reductions
- Additional costs such as product disposal expenses

○Damages due to incapacity to work

○Examination expenses (material)

Note: Categorized into different types including agriculture/forestry/fisheries, food industry, tourism, manufacturing (see next page for details)

VI So-called "indirect damages"

In connection with a primary victim who has sustained damages under I-V above, the following is allowed as damages with a sufficient causal relationship: "a case in which trading is non-replaceable (where damage is inevitable as customers or suppliers are limited geographically, due to the nature of the business)".

(Example of business damages of indirect victim)

- A store adjacent to an evacuation area in which the majority of customers have evacuated, which has seen a fall in sales, etc.
- Ice maker, broker, etc. in a fishing port where no fish are being landed due to business being suspended

VII Others

[Damage resulting from exposure to radiation]

- Acute and late-onset radiation damage suffered by nuclear power plant workers and self-defense force officials engaged in the recovery effort, civilians, etc.

[Adjustment between various benefits, etc. and damage compensation payments]

[Property damage sustained by local governments, etc.]

Decontamination

Act on Special Measures concerning the Handling of Environment Pollution by Radioactive Materials Discharged by the Nuclear Power Station Accident Associated with the Tohoku District – Off the Pacific Ocean Earthquake that Occurred on March 11, 2011

- **Approved by the Diet on 26 September 2011 and entered into force on 1 January 2012** to deal with the remediation program of the areas affected by radioactive pollution.
- Government to develop this Act through specific policy documents including the basic principles and standards
- Decontamination to be carried out by the Government (¥250 billion in FY2011 budget / ¥450 billion in FY2012 draft budget)
- TEPCO shall bear the costs of the measures pursuant to the Act

END OF SECOND PART OF LEGAL SESSION