

Client Services Procedure Manual

Procedure: 404.00
Subject: The Fishing Industry

404.01 Introduction

Coverage for commercial fishers is provided for under Section 40 of the Workplace Health, Safety and Compensation Act (the Act) and under the Workplace Health, Safety and Compensation Regulations CNLR 1025/96 (the Regulations), Section 5. The issues covered by the Regulations include the right of fishers to claim compensation for injury, the responsibilities of a vessel owner, reporting requirements of employers in the fishing industry and the payment of assessments on the value of fish landed.

Section 2(f) of the Regulations defines fish as “a species of animal living in the water”. Fish species include but are not limited to: cod, shellfish, sea urchins, sea cucumbers, molluscs and seals. Assessments are charged on the value of fish purchased, which includes the value of fish products. Fish products include but are not limited to: cod tongues, cod liver and oil, fish roe, fish heads and any other fish products. In most situations assessments are paid by the fish processing establishment that purchases the fish. However, due to the unique and diverse activities that comprise the commercial fishing industry, it is often required that the assessment responsibility be based on the circumstances and merits of each case.

Similar to other industries, a fish processing establishment, commercial buyer or commercial recipient, cannot deduct from payments to commercial fishers to cover or reduce assessments on fish purchases or earnings. However under certain circumstances, as discussed below, fishers may be required to pay the assessment on their earnings should they require coverage.

404.02 Coverage – Fishing Industry

Commercial fishers living in Newfoundland and Labrador are covered under the Act if they are engaged in work activities directly related to their occupation as commercial fishers in Newfoundland and Labrador at the time of injury.

Under Section 2(b) of the Regulations, a commercial fisher includes:

- a master or member of a crew of a licensed commercial fishing vessel;
- a master or member of a crew of a vessel which is engaged in fish packing, fish collecting or fish buying for commercial sale or use; or
- any person who, in the opinion of WorkplaceNL, contributes to the catching or landing of fish for commercial sale or use.

When Does Coverage Exist?

Coverage for a commercial fisher applies each day throughout the normal fishing season. Activities for which coverage applies during this time include:

- daily preparations for the voyage;
- catching and landing of fish;

- repair of equipment;
- provisioning of supplies;
- emergency situations that arise in the fishery: or
- any other directly related activities as determined based on individual circumstances.

A commercial fisher however, is not covered for injuries which may occur in the off-season. Off-season is considered to be that period of time between when a fisher ceases his or her operation, with a reasonable period before and after for preparing and concluding the season's work. A reasonable period for "winding down" and "gearing up" operations is accepted at the close and opening of the fishing season for securing or readying the boat, equipment, supplies and fishing premises.

Off-season pursuits of commercial fishers, such as construction of or modifications to boats, nets, traps, on-shore facilities, etc. are not covered under the Act, unless individual applications for optional personal coverage are accepted; or the commercial fisher is compensated by the fishing enterprise. In the case of compensation to the commercial fisher by the fishing enterprise, the fishing enterprise would register and report payroll in the usual manner. In other situations, the commercial fisher may obtain coverage for certain off-season activities by completing an individual application for optional personal coverage. All applications are subject to approval by WorkplaceNL. Please refer to Procedure 103.00, Optional Personal Coverage and Householder Coverage for additional details. If the commercial fisher or fishing enterprise is unsure if coverage exists, or requires information on how to obtain coverage, they should contact WorkplaceNL at 709.778.1000.

404.03 Registration

Registration in the fishing industry differs between industry components. The three main industry components to consider are fish harvesting, fish buying and fish processing.

1. Fish Harvesting

Fish harvesting refers to a commercial fisher, as discussed above, who is covered under the Act. Commercial fishers are usually not required to register and are generally covered by the assessments paid by fish processing establishments, other fish buyers, vessel owners or fishing enterprises.

However, there are several instances where a commercial fisher or fishing enterprise may be required to register with and pay assessments to WorkplaceNL, including:

- if a commercial fisher or fishing enterprise hires a worker who is not a commercial fisher to engage in onshore activities, such as maintenance or minor repairs;
- if a commercial fisher or fishing enterprise is involved in the construction of its fishing vessel or completing major repairs on that vessel;
- if a person is engaged in the transportation of fish by vessel between ports in the province that does not involve the actual collection of fish, then the vessel's crew are not commercial fishers and assessments must be paid on the payroll of the vessel's crew;
- if the vessel's catch is not sold to a fish buyer required to register with WorkplaceNL (i.e. the fish is sold outside of the province), then the person who engaged the master or crew of the fishing boat, or the person or organization that transmitted the crew's share of the sales must

register with WorkplaceNL. This may be the vessel owner, fishing enterprise or the person or organization that controls or decides where the fish is sold; or

- if a fishing enterprise directly exports their own catch without selling to a commercial buyer or commercial recipient within the province, then the enterprise must pay the assessment on the fish, since the master and crew are commercial fishers. An example is a fishing master and crew who ship their catch by air to Japan and sell it to a buyer there.

2. Fish Buying

Fish buyers must register with WorkplaceNL and pay assessments on the value of fish purchased from commercial fishers. Fish purchase accounts must be opened by the following:

- fish processing establishments that purchase fish either directly or indirectly from commercial fishers, unless the fish is acquired from another processing establishment. The initial processor that purchases the fish must register and pay the assessments, even if it does not process the fish;
- commercial buyers who purchase fish directly from commercial fishers and who do not resell the fish to a fish processing establishment;
- food premises (i.e. restaurants) holding a restricted fish buyers license from the Department of Fisheries and Aquaculture;
- a commercial buyer who acquires fish from a commercial fisher for sale to a buyer outside Newfoundland and Labrador must pay assessments on the fish. However, if the outside firm for whom the buyer is an agent is registered and paying assessments on the fish acquired through the agent, then the agent may be excused from the responsibility for paying;
- managing owners or persons employing crew members on a boat, vessel or ship engaged in the fishing industry in Newfoundland and Labrador, who land all or part of the boat's catch outside the province;
- a fish processing establishment located in Newfoundland and Labrador must pay assessments on fish acquired from a commercial buyer or recipient, who is acting as an agent for a commercial fisher; or
- a person engaged within the province in transmitting payment to a Newfoundland and Labrador commercial fisher from the commercial sale of fish landed outside the province must pay assessments on such payment.

Even if the buyer acquires fish from a fishing venture that operates as a proprietorship, partnership or incorporated company and pays its own fishers, the buyer is still responsible for payment of the assessment on the fish.

Fish buyers may have two or more accounts with WorkplaceNL: one (or more) for assessable earnings of workers and another solely for fish purchases.

Section 404.06, Reporting, is also applicable specifically to fish buyers.

3. Fish Processing

Employers who operate a fish processing establishment or a factory freezer vessel must also register with WorkplaceNL and pay assessments based on the payroll of its workers. An employer operating a fish processing operation will usually have two accounts with WorkplaceNL: one for their fish

processing operations and one for their fish purchases. Reporting for the fish processing operation would encompass all workers incidental and supportive to the operation; for example, administrative staff, marketing staff, as well as fish processing staff.

404.04 Out of Province Coverage

In the fishing industry, individuals who do not reside in the province may be hired as commercial fishers. Coverage for these fishers is dependent upon where the vessel is stationed, where the fish is landed, who pays the fisher, the location of the commercial fisher, or a combination of these factors.

Coverage is provided in the following situations:

- when a Newfoundland and Labrador fishing enterprise engages a person who is not living in this province as a crew member of a fishing vessel operating in Newfoundland and Labrador;
- when a Newfoundland and Labrador fishing enterprise is temporarily operating outside Newfoundland and Labrador and paying assessments to WorkplaceNL for the fishing activity outside the province; and
- in order to provide coverage, when a Newfoundland and Labrador fishing enterprise operating out of a Newfoundland and Labrador port sells some of its catch outside the province, the managing owner, or the person engaging the vessel's crew, must register and pay assessments on the value of fish landed outside the province.

For a fishing enterprise from outside the province, no assessments are payable on the value of fish landed in Newfoundland and Labrador, or on the earnings of the master and crew of a fishing vessel from outside the province. Thus, no compensation is available to crew members of the vessel.

404.05 Other Coverage

Section 8(c) of the Regulations indicate that a person or entity who engages the services of a master or crew for a fishing vessel must pay assessments on any earnings of the master or crew, in respect of which assessments are not paid or payable under any of the situations outlined above.

Other examples of when coverage may be granted may include:

- a commercial fisher within the province who wishes to pursue his/her occupation in another jurisdiction for a temporary period may obtain coverage from WorkplaceNL for the period he/she fishes in that jurisdiction;
- a fisher who sells directly to the public within the province; or
- a fishing master or crew engaged in contracted scientific research related to the fishery.

The arrangement would be subject to acceptance by WorkplaceNL and could not be made if the person sells to a commercial buyer, commercial recipient or processing establishment within Newfoundland and Labrador.

404.06 Reporting

Fish Landings

For fish buyers, the assessment year is divided into quarterly purchasing periods. Purchases of fish and fish products from commercial fishers during each period must be reported at the end of the period. WorkplaceNL provides a Fish Buyer's Quarterly Statement of Purchases to fish buyers prior to the end of each quarter. The fish buyer must return the completed statement according to the following schedule:

Quarterly Statement of Purchases	Reporting Deadline
1 st Quarter (Jan 1 – Mar 31)	April 15
2 nd Quarter (Apr 1 – Jun 30)	July 15
3 rd Quarter (Jul 1 – Sept 30)	October 15
4 th Quarter (Oct 1 – Dec 31)	January 15

Payment is due in full 30 days from the invoice date.

Failure to meet the quarterly reporting deadlines will result in late reporting penalties. Even if there are no purchases to report, the statement must be completed to indicate zero purchases and filed with WorkplaceNL on time.

There is no maximum assessable limit for fish purchases, thus no reductions are permitted for excess earnings or excess purchase value. Also, no reduction is permitted for any value-added service the buyer may pay for, such as gutting and cleaning. Assessments must be paid on the full cost of the fish to the buyer.

A processing establishment that also has a vessel operation must report the full value of fish landed at market rate. They must report the value as if the fish was purchased from a harvester that is not employed by the operation.

Fish Processing

Employers operating a fish processing establishment or factory freezer vessel will report in the same manner as other industries in Newfoundland and Labrador that have payroll. Refer to Procedure 402.00, Assessable Earnings, for information on what earnings are subject to assessment.

Reference: Workplace Health, Safety and Compensation Act, Sections 40, 51 and 103
Workplace Health, Safety and Compensation Regulations, Sections 2, 5, 6, 7, 8, 9, 10, 11, 12, 13
and 25.1
Procedures: 103.00, Optional Personal Coverage and Householder Coverage
402.00, Assessable Earnings

Amendment History

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