

Client Services Policy Manual

Policy Number: **CO-01**
Subject: **Coverage for Commercial Fishers**
Chapter: **Coverage**

Policy Statement

Section 40 of the Workplace Health, Safety and Compensation Act (the Act) provides that WorkplaceNL may make rules and give decisions as it considers fair and appropriate with the intent that fishers shall, as far as possible, receive the benefit of and be subject to the provisions of the Act.

Regulations made pursuant to the Act define commercial fishers employment as the work activities directly related to their occupation as a commercial fisher.

Commercial fishers are recognized under these special legislative provisions as having a unique occupation for which they are entitled to the same workers' compensation coverage as all other workers under the Act.

General

Adjudication Guidelines

Adjudicative practices, since the enactment of the special legislative provisions for fishers, have established basic parameters of coverage. The following criteria serve as a guide to the adjudication of individual cases:

Workers' Compensation Coverage

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 their injury.

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 fish;
- repairing equipment;
- provisioning supplies;

Client Services Policy Manual

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- emergency situations that arise in the fishery: or
- any other directly related activities as determined based on individual circumstances.

A commercial fisher is not covered for injuries which may occur in the off-season unless emergency circumstances prevail (i.e., where a skipper summons the crew to keep their boat from sinking). The off-season period is the time between when a fisher ceases their operation and then starts for the next season. A reasonable period for winding down and gearing up operations is accepted at the close and opening of the fishing season to secure or ready the boat, equipment, supplies and fishing premises.

Off-season pursuits of commercial fishers, such as constructing or modifying boats, nets, traps, or on-shore facilities are not covered under the Act; unless the fisher obtains optional personal coverage from WorkplaceNL or the fisher is compensated by the fishing enterprise, where the fishing enterprise registers and reports payroll in the usual manner. In other situations, the commercial fisher may obtain optional personal coverage from WorkplaceNL for certain off-season activities. All applications for optional personal coverage are subject to approval by WorkplaceNL.

Like the majority of workers, travel is generally not covered for fishers to and from their regular work site (i.e., the regular docking facility). A commercial fisher is ordinarily considered to be in the course of employment from the time they arrive at the fishing enterprise site each day until they leave at the end of each day.

Earnings Loss Benefit Calculation for Fishers

Wages for commercial fishers are generally based on a share of the catch where a predetermined percentage is allocated to each sharesperson or crew member. In other cases, crew members may be paid a flat rate. In either case, a deduction must be made from the reported wages for fishing expenses

Client Services Policy Manual

Policy Number: **CO-01**
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Chapter: **Coverage**

that must be paid by the shareperson or crew member and are deductible for income tax purposes. Such expenses are related to food, gear, equipment, fees, etc.

WorkplaceNL views these as operational expenses of the fishing occupation and makes a deduction for these expenses before applying the income replacement rate to the net average earnings of fishers. This deduction is applied for both the initial short-term compensation rate and the long-term compensation rate established at 13 weeks.

The percentage of the catch allocated for the owner or operator of the boat is higher as they pay operating expenses for the fishing boat. Such expenses include fuel, insurance, licensing, etc.

Compensation rates are established for commercial fishers' claims using the following guidelines for deducting fishing expenses from reported payments for the catch:

1. Where the worker is the boat owner or operator:
 - 25 per cent of gross earnings is deducted for boats less than 35 feet in length; or
 - 40 per cent of gross earnings is deducted for boats 35 feet or greater in length.
2. Where the worker is a shareperson or crew member, 5 per cent of gross earnings is deducted.

Where the worker believes that the application of these guidelines is unfair or inequitable, WorkplaceNL will consider actual deductions for fishing expenses. This evidence must be confirmed by the employer or Canada Revenue Agency. Deductions will be based on the confirmed amount.

Where average earnings are based on earnings that include sources other than fishing (e.g., employment insurance income), the deduction for fishing expenses will only be applied to the fishing income portion.

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Exceptional Circumstances

In cases where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or unintended result, WorkplaceNL will decide the case based on its individual merits and justice. Such a decision will be considered for that specific case only and will not be precedent setting.

Reference: Workplace Health, Safety and Compensation Act, Section 40
Workplace Health, Safety and Compensation Regulations,
Sections 5-13
Policies: EL-01 Earnings Loss: Benefit Calculation
EN-20 Arising Out of and in the Course of Employment
ES-01 Optional Coverage
EN-22 Merits and Justice
Procedure 103.00 Optional Personal Coverage
Procedure 404.00 The Fishing Industry

Amendment History

Original Effective Date	1991 11 28
Revision #1	2004 05 13
Revision #2	2021 09 27
Next Review Date	2026 09 27