

Client Services Policy Manual

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

Policy Statement

Section 40 of the Act provides that WorkplaceNL may make rules and give decisions as it considers fair and appropriate with the intent that all 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 a commercial fisher's employment as his or her work activities directly related to his or her 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

The unique and diverse activities that comprise a commercial fisher's occupation require that the individual determination of entitlement to workers' compensation must be based on the circumstances and merits of each case.

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:

1. Like the majority of workers, travel for fishers to and from their regular work site, for example the regular docking facility, is generally not covered. A commercial fisher is ordinarily considered in the course of employment from the time he or she arrives at the site of the fishing enterprise each day until he or she leaves at the end of the day. Coverage applies each day throughout the normal fishing season.
2. 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.
3. Off-season pursuits of a commercial fisher, whether or not oriented toward the fishing enterprise, are considered activities for which the special provisions of coverage for fishers would

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not apply. For example, off-season activities, such as construction of or modifications to boats, nets, traps, on-shore facilities, etc., are not covered unless individual applications for coverage are accepted. Coverage for certain off-season activities can be obtained by making individual application to WorkplaceNL for coverage at the appropriate assessment rate as assigned by WorkplaceNL for the activity being performed. (see Policy ES-01 Personal Coverage).

4. A commercial fisher is not considered to be in the course of his or her employment during the off season (that period between the time when a fisher ceases his or her operation, with a reasonable period before and after for preparing and concluding the season's work) unless emergency circumstances prevail, for example where a skipper summons his or her crew to keep their boat from sinking.
5. The activities for which workers' compensation coverage applies during the active fishing season normally include: the daily preparations for the voyage; the catching and landing of the fish; the repair of equipment; the provisioning of supplies; emergency situations that arise in the fishery; or any other activity directly related to the fishing season.

Earnings Loss Benefit Calculation for Fishers

Generally, wages for commercial fishers are based on a "share of the catch" whereby 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 that must be paid by the sharesperson 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 compensable income replacement rate to the net average earnings of fishers. This deduction will be applied for both the initial short term compensation rate and the long term compensation rate established at 13-weeks.

For the owner/operator of the boat, the percentage of the catch

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allocated is much higher, as additional more costly expenses for the fishing boat must be paid. Such expenses include fuel, insurance, licensing, etc.

When establishing the compensation rate for all claims for commercial fishers, the following guidelines will apply to the deductions for fishing expenses on the reported payment for catch:

1. Where the worker is the boat owner or owner/operator:
 - a. 25% of gross earnings for boats less than 35 feet in length will be deducted; or
 - b. 40% of gross earnings for boats 35 feet or greater in length will be deducted;
2. Where the worker is a sharesperson or crew member, 5% of gross earnings will be 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.

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.

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Reference: *Workplace Health, Safety and Compensation Act (the "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 Personal Coverage.

Amendment History

<i>Original Effective Date</i>	1991 11 28
<i>Revision #1</i>	2004 05 13