



TSB Recommendation M23-09

Oversight of occupational health and safety on fishing vessels registered in the Canadian territories

The Transportation Safety Board of Canada recommends that the Department of Transport, in collaboration with the Department of Employment and Social Development and the territorial governments, review the occupational health and safety oversight of fishing vessels registered in the territories to ensure effective workplace safety oversight.

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| Marine transportation safety investigation report | M21C0214 |
| Date the recommendation was issued | 07 December 2023 |
| Date of the latest response | March 2024 |
| Date of the latest assessment | May 2024 |
| Rating of the latest response | Satisfactory in Part |
| File status | Active |

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Summary of the occurrence

On 26 August 2021 at 0310 Newfoundland Daylight Time, a crew member on the fishing vessel *Suvak* went overboard while setting gillnets in Davis Strait, approximately 120 nautical miles northeast of Qikiqtarjuaq, Nunavut.

At the time, the *Suvak* was nearing the end of a 2-week fishing trip. Two crew members who were hauling and setting nets had been working long hours to complete all the fishing operation activities required before the vessel departed for port. They had set and hauled nets and completed other fishing operation activities throughout the day on 25 August and into the night, with 1 break of 1.75 hours. At the time of the occurrence, they had been awake for over 21 consecutive hours. The intention was for the crew members to have a rest period once the vessel departed. However, while setting nets in the early hours of the morning, one of the two crew members was pulled overboard after his arm became entangled in the buoy line. The crew

member was recovered from the water and, despite significant lifesaving efforts, was later pronounced dead.

The investigation found that the 2 crew members who were setting the nets on the *Suvak* were experiencing sleep-related fatigue from a combination of acute and chronic sleep disruption, continuous wakefulness, and circadian rhythm disruptions, which reduced their cognitive abilities, including their ability to remain vigilant against risks. The crew member who went overboard had a smaller physical stature and had adapted the procedure for picking up the coils of buoy line to keep up the pace. In combination with mental and physical fatigue, this adaptation led to his arm becoming entangled in the buoy line.

The investigation identified risks related to the absence of fatigue management plans and risk assessments for operating procedures. It also identified a need for fishing allocation policies to take safety into account, and for emergency procedures, equipment, and drills for responding to entanglement situations to be implemented on board.

The Board concluded its investigation and released report M21C0214 on 07 December 2023.

Rationale for the recommendation

On 26 August 2021, at 0310 Newfoundland Daylight Time, a crew member on the fishing vessel *Suvak* went overboard while setting gillnets in Davis Strait, approximately 120 nautical miles northeast of Qikiqtarjuaq, Nunavut. The crew member was recovered from the water and later pronounced dead.

The investigation into this occurrence determined that the *Suvak's* port of registry was Iqaluit, Nunavut, and that the vessel had workplace insurance coverage with the Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut (WSCC), the agency responsible for administering legislation on workers' compensation and workplace health and safety in Nunavut. WSCC has occupational health and safety (OHS) inspectors who conduct inspections in northern workplaces to ensure that Nunavut's safe workplace laws are being followed. However, WSCC considered fishing vessels to be under the jurisdiction of Transport Canada (TC), and there had been no OHS inspections of the vessel by WSCC. The same was true for the 9 other fishing vessels registered in Nunavut.

The investigation found similar situations in the other Canadian territories. WSCC is also the agency responsible for workplace health and safety in the Northwest Territories. There are 24 fishing vessels registered in the Northwest Territories. As in Nunavut, the WSCC considers fishing vessels to be under TC's jurisdiction and does not conduct OHS inspections on these vessels. In the Yukon, the agency responsible for workplace health and safety is the Workers' Safety and Compensation Board – Yukon (WSCB). There are 4 fishing vessels registered in the Yukon. Similar to the WSCC, the WSCB does not perform OHS inspections on fishing vessels registered in the Yukon.

TC has a significant regulatory role when it comes to commercial fishing safety and provides a national regulatory framework that applies to many aspects of fishing vessels.¹ Although Employment and Social Development Canada is responsible for the application of the *Canada Labour Code*, TC is delegated the responsibility to apply and enforce the *Maritime Occupational Health and Safety Regulations*.

The territories have jurisdiction over “property and civil rights” within their borders, which encompasses OHS on board fishing vessels.^{2,3,4} In order to ensure effective oversight of safety on board fishing vessels registered in the territories, including occupational health and safety, coordination between jurisdictions is required. If there is no oversight of OHS on fishing vessels registered in the territories, there is a risk that crews of those vessels will be subject to OHS hazards in the workplace.

Therefore, the Board recommended that

the Department of Transport, in collaboration with the Department of Employment and Social Development and the territorial governments, review the occupational health and safety oversight of fishing vessels registered in the territories to ensure effective workplace safety oversight.

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Previous responses and assessments

N/A

Latest response and assessment

March 2024: response from Transport Canada

The role of Transport Canada, as mandated by Parliament, is to maintain and enhance marine safety to protect life, health, property and the marine environment. This includes providing services that are directed by the *Canada Shipping Act, 2001* and its associated regulations.

With respect to federally regulated workplaces in the transportation sector, Transport Canada administers and enforces Part II of the *Canada Labour Code* and the Marine Occupational Health and Safety Regulations on behalf Employment and Social Development Canada’s Labour Program under a memorandum of understanding that dates back to 1986.

¹ Examples of Transport Canada legislation and regulations that apply to fishing vessels include the Canada Shipping Act, 2001, the Large Fishing Vessel Inspection Regulations, the Fishing Vessel Safety Regulations, the Vessel Safety Certificates Regulations, the Navigation Safety Regulations, 2020, the Safe Working Practices Regulations, the Fire and Boats Drill Regulations, and the Marine Personnel Regulations.

² Government of Canada, *Nunavut Act* (S.C. 1993, c. 28).

³ Government of Canada, *Northwest Territories Act* (S.C. 2014, c. 2, s. 2).

⁴ Government of Canada, *Yukon Act* (S.C. 2002, c. 7).

It should be noted that neither Part II of the *Canada Labour Code* nor the Marine Occupational Health and Safety Regulations apply to commercial fishing vessels, because this sector does not fall under federal jurisdiction, despite the fact that crew changes were occurring in Greenland.

Transport Canada is prepared to work with Employment and Social Development Canada's Labour Program and reach out to offer guidance to territorial governments. The department will also meet with officials from the Government of Nunavut to confirm the understanding of the roles and responsibilities with respect to occupational health and safety onboard fishing vessels.

March 2024: response from Employment and Social Development Canada

Occupational health and safety in the federal jurisdiction is addressed under Part II of the *Canada Labor Code* (the Code), which establishes provisions to prevent accidents, occurrences of harassment and violence and physical or psychological injuries, including occupational illnesses related to employment within federally regulated workplaces.

Federal labour jurisdiction arises from the right to regulate certain subjects expressly assigned to Parliament, or expressly excepted from provincial and territorial jurisdiction by the *Constitution Act*. Section 91 of the *Constitution Act* outlines 29 classes of subjects that are covered under federal jurisdiction. Additionally, subsection 92(10) contains a list of classes of works and undertakings that, although wholly situated within a province, have been declared by Parliament to be for the general advantage of Canada or for the advantage of two provinces and fall under federal jurisdiction.

In 1925, a landmark judicial decision, *Toronto Electric Commissioners v. Snider*, established that the provinces and territories have primary jurisdiction in the field of employer and employee relations. As a result, labour relations are provincially or territorially regulated and federal jurisdiction over labour relations is an exception.

There are two important court cases that establish commercial fishing as an activity subject to provincial and territorial jurisdiction:

- *Great Lakes Fishermen and Allied Workers' Union v. Omstead Foods Limited, 1986 CanLII 1522* – this case confirmed that labour relations for the commercial fishing industry, including occupational health and safety and employment standards, is subject to provincial and territorial jurisdiction.
- *R. v. Mersey Seafoods Ltd., 2008 NSCA 67 (CanLII)* – in this case, the judge asserted that the labour relations of a provincially based fishing undertaking are regulated by the province, even if the vessels carry out fishing in waters outside provincial boundaries, further confirming provincial jurisdiction for the commercial fishing industry.

The role of Transport Canada Marine Safety, mandated by Parliament, is to maintain and enhance marine safety to protect life, health, property and the marine environment. Transport Canada Marine Safety administers and enforces Part II of the Code and the *Marine Occupational*

Health and Safety Regulations on behalf of Employment and Social Development Canada's Labour Program, under a memorandum of understanding dating back to 1986. They do not apply the Code and *Maritime Occupational Health and Safety Regulations* to commercial fishing vessels because this sector does not fall under federal jurisdiction.

The Labour Program is committed to promoting fair, safe and healthy workplaces across Canada to help employers ensure that all employees are protected from harm in the workplace. We work closely with provincial and territorial counterparts, through the Canadian Association of Administrators of Labour Legislation, on occupational health and safety matters. At an upcoming Canadian Association of Administrators of Labour Legislation meeting, the Labour Program officials will share TSB Recommendation M23-09 to encourage discussion amongst the jurisdictions.

Additionally, Transport Canada has developed a free online Fatigue Management training course for all Seafarers that will further support the health and safety requirements of the industry across jurisdictions. The Canadian Centre for Occupational Health and Safety will host this training on their platform, which should be available in early March.

The safety of Canadian workers is paramount to the Government of Canada, and we are dedicated to keeping workplaces safe, fair, and productive.

May 2024: TSB assessment of the responses

Transport Canada (Satisfactory in Part)

Transport Canada's (TC) response acknowledges the department's responsibility in enforcing Part II of the *Canada Labour Code* and the *Maritime Occupational Health and Safety Regulations* on behalf of ESDC's Labour Program in federally regulated workplaces; however, it also notes that fishing vessels do not fall under this classification. However, TC states that it is prepared to work with ESDC's Labour Program to offer guidance to territorial governments. Departmental officials will also meet with officials from the Government of Nunavut to confirm roles and responsibilities in regards to occupational health and safety on board fishing vessels.

The Board is encouraged to see that TC has proposed collaborating with ESDC to offer guidance to territorial governments. While occupational health and safety falls under the responsibility of the territorial government, fishing vessel safety more broadly is a shared responsibility between levels of government. Given that the Government of Nunavut did not consider fishing vessels to be under territorial jurisdiction for occupational health and safety, the Board continues to believe that an intergovernmental review by all responsible departments will be required to address the underlying deficiency. Therefore, the Board considers the response to Recommendation M23-09 from TC to be **Satisfactory in Part**.

Employment and Social Development Canada (Satisfactory in Part)

Employment and Social Development Canada's (ESDC) response provides an overview of the federal, provincial, and territorial responsibilities regarding occupational health and safety and

references several precedent-setting court cases. Its response also mentions Transport Canada's (TC) responsibility in marine safety, but highlights that the Labour Program within ESDC does not apply the Code and *Maritime Occupational Health and Safety Regulations* to commercial fishing vessels because this sector does not fall under federal jurisdiction. Finally, the Minister highlights that the Labour Program works closely with provincial and territorial counterparts under the the Canadian Association of Administrators of Labour Legislation on occupational health and safety matters and that they will share this recommendation for discussion at their next meeting.

The Board is encouraged that ESDC will promote TC's fatigue awareness training. However, the Board believes that in order to ensure effective oversight of occupational health and safety on board fishing vessels registered in the territories, active coordination and a shared understanding of the respective jurisdictions of TC, ESDC, and the territories is required. The Board notes that the recommendation will be part of upcoming federal-provincial-territorial discussions and looks forward to hearing the results of these discussions. Therefore, the Board finds the response to Recommendation M23-09 from ESDC to be **Satisfactory in Part**.

File status

The TSB will continue to monitor the proposed actions from Transport Canada and Employment and Social Development Canada.

This deficiency file is **Active**.