

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE
WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

AND

TRANSPORT CANADA

RESPECTING

OPERATIONAL SAFETY AND OCCUPATIONAL SAFETY AND
HEALTH JURISDICTION ON FISHING VESSELS IN THE PROVINCE
OF BRITISH COLUMBIA

Prevention Division
Workers' Compensation Board of BC

Marine Safety
Transport Canada

| | | |
|-----|--|---|
| 1. | Table of Contents | 1 |
| 2. | Definitions | 2 |
| 3. | Authorization and Purpose | 2 |
| 4. | Principles and Commitments | 2 |
| 5. | Authorities and Responsibilities | 3 |
| 6. | Jurisdiction | 3 |
| 7. | Interventions | 3 |
| 8. | Compliance Measures | 4 |
| 9. | Officer Training | 4 |
| 10. | Support Services | 4 |
| 11. | Activity Coordination | 5 |
| 12. | Information Gathering and Exchange | 6 |
| 13. | Evaluation | 6 |
| 14. | Dispute Resolution | 6 |
| 15. | Amendments and Termination | 7 |
| 16. | Entire Agreement | 7 |
| | Annexes | |
| | ANNEX A - Authorities | 8 |
| | ANNEX B - Jurisdiction | 9 |

2. Definitions

For the purpose of this memorandum of understanding:

“CSA” means Canada Shipping Act, R.S. 1985, c. S-9.

“FIPPA” means B.C. Freedom of Information and Protection of Privacy Act.

“HRDC” means Human Resources Development Canada.

“MOU” means this memorandum of understanding.

“Officer” means a WCB officer authorized to conduct OSH activities, or an officer of TCMS authorized to conduct shipping and navigation activities in the commercial fishing industry.

“Operational Safety” means fishing vessel operational safety requirements intrinsic to shipping and navigation.

“OSH” means occupational health and safety on commercial fishing vessels operating in interior and adjacent waters of British Columbia.

“Program” means all enforcement, promotion and administrative activities in support of OSH or operational safety.

“TC” means Transport Canada.

“TCMS” means Transport Canada, Marine Safety.

“WCA” means the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto.

“WCB” means the Workers’ Compensation Board of British Columbia.

3. Authorization and Purpose

The purpose of this MOU is to establish a joint administrative agreement between the WCB and TC to facilitate the fulfillment of their jurisdictional authorities and responsibilities as described in ANNEX A to this MOU.

4. Principles and Commitments

4.1. WCB and TC are committed to enter into a joint agreement defining independent jurisdiction, joint jurisdiction, training, education, information sharing and funding.

4.2. This MOU is an administrative arrangement aimed at ensuring effective and efficient program delivery.

- 4.3. The WCB and TC are committed to providing timely notification and appropriate consultation whenever the activities and responsibilities of one department directly affect the activities and responsibilities of the other.
- 4.4. The WCB and TC will work cooperatively and communicate openly in the application, communication and enforcement of program requirements on commercial fishing vessels in the Province of British Columbia.
- 4.5. This MOU is a public document.

5. Authorities and Responsibilities

- 5.1. TC has sole responsibility to Parliament for the application and enforcement of the operational safety provisions of the CSA.
- 5.2. The WCB has sole responsibility to the Government of British Columbia for the application and enforcement of occupational safety and health provisions of the WCA.
- 5.3. The WCB and TC will be responsible to make recommendations respecting Regulations within their respective areas of jurisdiction and responsibility.
- 5.4. The WCB and TC may issue public communications advising the commercial fishing industry and the public of program issues and the general causes of investigated OSH accidents.

6. Jurisdiction

- 6.1. The jurisdiction of the WCB includes programs and activities related to OSH.
- 6.2. The jurisdiction of TC includes programs and activities related to shipping and navigation.
- 6.3. These areas of jurisdiction are specified in ANNEX B.

7. Interventions

- 7.1. Every request for assistance from an employer or an employee shall receive prompt response from the WCB or TC, depending on jurisdiction.
- 7.2. WCB Officers exercise all powers, duties and functions required to enforce the WCA and the Regulations made thereunder, in accordance with WCB's Prevention Policy and the Guidelines issued by the Prevention Division of the WCB.
- 7.3. TC officers exercise all the powers, duties, functions required to enforce the CSA and the Regulations made thereunder, in accordance with program policy procedures and guidelines issued by TC.

8. Compliance Measures

- 8.1. Program compliance activities conducted by Officers shall be in accordance with program legislation, policies and directives of their respective administration.
- 8.2. The WCB and TC may work cooperatively and jointly with each other in the development of program promotional activities aimed at employers or employees within the commercial fishing sector.
- 8.3. The WCB and TC will cooperate in the production and distribution of program educational and advisory material and in the provision of technical and educational related services, as required, to further industry awareness of commercial fishing related hazards.
- 8.4. Where Health and Safety Committees are comprised of commercial fishers, WCB will have sole responsibility in providing assistance to this committee. TC will offer assistance, as requested by WCB or the committee, in matters that fall within TC jurisdiction as contemplated by this MOU.

9. Officer Training

- 9.1. The WCB and TC shall ensure that Officers receive the necessary training and recurrent training to maintain the level of knowledge and skills required to effectively conduct their respective program activities.
- 9.2. The WCB and TC will work together and support each other's training sessions by providing technical expertise (on request and with appropriate notice), sharing training plans and course calendars and making training sessions available to each other's employees (as space permits and with appropriate sharing of costs).

10. Support Services

- 10.1. The WCB maintains central technical OSH support to assist in the application and enforcement of OSH requirements. These include:
 - 10.1.1. Occupational Hygienists
 - 10.1.2. Laboratory Services
 - 10.1.3. Library Services
 - 10.1.4. Civil, Mechanical, Acoustical, Electrical and Structural Engineers
 - 10.1.5. Technical Writers, and
 - 10.1.6. Educational Departments

- 10.2. TC maintains access to the same resources as stated in 10.1, within TC, through agreement with other government departments and contractually with private enterprise.
- 10.3. Upon request and as required, support services available to one Party will, when resources allow, be made available to the other Party to avoid duplication of effort.

11. Activity Coordination

- 11.1. A cross-jurisdictional committee will be established to ensure the coordinated, effective and consistent application and enforcement of federal and provincial program legislation.
- 11.2. The cross-jurisdictional committee will be co-chaired by the WCB, Focus Sector Manager, Fishing and the TC Regional Director, Marine, Pacific. The WCB and TC will each select at least two additional employees as members of the committee.
- 11.3. The cross-jurisdictional committee meetings will coincide with the semi-annual Regional Canadian Marine Advisory Council Meetings.
- 11.4. The specific responsibilities of the cross-jurisdictional committee will include, but not be limited to, participating or assisting in:
 - 11.4.1. Strategic planning, including the use of performance measurement systems to monitor the effectiveness of program activities and their impact on fishing vessel operational and occupational workplace incidents;
 - 11.4.2. The development, review and revision of standards and guidelines;
 - 11.4.3. The review and recommendation of changes to federal and provincial program legislation;
 - 11.4.4. The establishment of priorities in areas of mutual concern relating to program legislation;
 - 11.4.5. The review of and making recommendations for amendment to this MOU or Annexes made thereunder;
 - 11.4.6. The examination and resolution of policy and other issues as they may relate to the administration of this MOU.

- 11.5. The WCB and TC will consult with each other directly when making recommendations or are preparing briefing materials to the Minister or Vice-President, as applicable, on issues impacting the others' program area of responsibility.

12. Information Gathering and Exchange

- 12.1. TC collects and maintains extensive program data regarding operational safety and has access to program information in various other data banks to monitor program performance.
- 12.2. WCB collects and maintains extensive program data on injuries and trends in OSH. This information is stored on various databases.
- 12.3. The WCB and TC may request information from each other. Where resources allow, no reasonable request for information will be refused.
- 12.4. Upon request, and subject to the provisions of this MOU or any Annex attached to this MOU, the WCB and TC will exchange copies and/or summaries of records of inspections, investigations and other reports produced by an Officer.
- 12.5. The WCB and TC will treat Personal Information received from the other party in accordance with respectively, the FIPPA and Canada's Access to Information Act and Privacy Act.

13. Evaluation

- 13.1. The WCB and TC will produce a Semi-annual Report describing the activities that they undertook with respect to the program and shall supply each other with a copy of that report. The reports will run from 01 January to 30 June and from 01 July to 31 December of each year and must be made available to the other Party within 2 months of the end of the half-year (28 February and 31 August respectively).
- 13.2. Reports will be exchanged between the Regional Director, Marine, Pacific Region and the WCB, Focus Sector Manager, Fishing.
- 13.3. The reports will be reviewed and discussed at the semi-annual cross-jurisdictional meetings to determine program focus and priorities.

14. Dispute Resolution

- 14.1. The WCB, Focus Sector Manager, Fishing and the Regional Director, Marine, Pacific Region, TC will resolve disputes between the two parties relating to this MOU.

14.2. If the dispute is not resolved as stated in 14.1 above then the dispute will be resolved, jointly, by the Vice President, Prevention Division, WCB and the Director General, Marine Safety, TC.

15. Amendments and Termination

15.1. Amendments specific to this agreement shall be made in writing and signed by the Vice President, Prevention Division, for WCB and the Director General, Marine Safety, TC.

15.2. This MOU shall remain in force until the Vice-President, Prevention Division, WCB or the Director General, Marine Safety, TC gives written notice of intention to terminate the MOU and 60 days elapse.

16. Entire Agreement

16.1. The Parties agree that this MOU, and its Annexes constitute the entire agreement between them as it relates to program activities in the commercial fishing industry and supercedes all previous negotiations, communications and other agreements relating to the subject matter unless otherwise incorporated by reference in this MOU.

Roberta Ellis
Vice President, Prevention Division
Workers' Compensation Board of BC

Bud Streeter
Director General, Marine Safety,
Transport Canada

Date

Date

ANNEX A – Authorities

- A.1. S.114(1) of the WCA authorizes the WCB to enter into agreements or arrangements with other “appropriate authorities” including the Government of Canada; and
- A.2. S.26 of the FIPPA authorizes the WCB to obtain personal information that relates directly to and is necessary for an operating program or activity of the WCB; and
- A.3. S.33(c) of the FIPPA authorizes the WCB to disclose personal information for the purpose for which it was compiled or for a use consistent with that purpose; and
- A.4. S.33(d) of the FIPPA authorizes the WCB to disclose personal information “for the purpose of complying with an arrangement or agreement made under an enactment of, British Columbia or Canada”; and
- A.5. S.4. of the Privacy Act, authorizes TC to obtain personal information that relates directly to an operating program or activity of TC; and
- A.6. S.8(2)(f) of the Privacy Act authorizes TC to disclose personal information, under an agreement or arrangement, from a federal government institution to, among other institutions, an institution of a provincial government “for the purpose of administering or enforcing any law or carrying out a lawful investigation”; and
- A.7. Recommendation M99-01 in Transportation Safety Board, Marine Occurrence Report Number, M96M0144, referencing an incident on board the Fishing Vessel ‘S.S. Brothers’ advised TC to coordinate with “appropriate provincial authorities” to ensure that regulatory provisions administered by both levels of government, for the overall safety on fishing vessels, “are harmonized and enforced to achieve their intended objectives”.

ANNEX B - Jurisdiction

- B.1. As conferred by the Constitution Act, 1982, the Government of Canada has authority, under s.91(10), for Navigation and Shipping. TC administers this authority through the CSA.
- B.2. As conferred by the Constitution Act, 1982, Provincial Governments have authority, under s.92(13), for Property and Civil Rights in the Province. The WCB administers this authority for health and safety in workplaces through the WCA.
- B.3. Case law from Labour Boards and Law Courts have defined the ‘business of fishing’ as falling primarily within provincial jurisdiction. All other jurisdictional aspects of fishing vessel shipping and navigation operations, crew certification and vessel construction standards fall primarily within the federal jurisdiction.
- B.4. The WCB and TC agree, for the purpose of this MOU and for the purposes of clarifying jurisdictional boundaries, that:
 - B.4.1. The ‘Business of Fishing’, being the activities of the crew and the operation of the vessel and its gear, while fishing in British Columbia waters, are the jurisdiction of the WCB.
 - B.4.2. Shipping and navigation operations, certification of crewmembers and the application of vessel construction standards are the jurisdiction of TC.
 - B.4.3. Activities on board commercial fishing vessels that are outside of, but incidental to, the strict definition of the ‘business of fishing’, such as stowing cargo and catch, setting and retrieving the vessel’s anchor, engine room procedures, and conducting emergency drills, as defined by Regulation, are the joint focus of the WCB and TC. Both WCB and TC are actively involved in addressing these program concerns.
- B.5. When dual jurisdiction occurs, the WCB and TC may operate jointly and co-operatively or independently to ensure their respective program mandates are fulfilled.