



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.

Marine transportation safety investigation report	M21C0214
Date the recommendation was issued	07 December 2023
Date of the latest response	December 2025
Date of the latest assessment	March 2026
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

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.

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.

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).

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 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 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**.

Latest response and assessment

December 2025: response from Transport Canada

Transport Canada recognizes the importance of intergovernmental dialogue on jurisdictional matters pertaining to fishing vessel safety. This topic has been raised during discussions at the Canadian Association of Administrators of Labour Legislation (CAALL), which brings together senior officials from federal, provincial, and territorial governments to collaborate on key labour issues.

In addition, TC and ESDC-Labour senior officials have met with Government of Nunavut counterparts to outline that authorities for occupational health and safety related to fishing vessels fall under territorial jurisdiction. Federal officials have extended an offer of support to the Government of Nunavut, if required, when the territory establishes a marine occupational health and safety program.

A consensus position on the matter has not been reached with the Government of Nunavut. As a result, TC and ESDC-Labour are jointly conducting an independent jurisdictional investigation to help advance the intergovernmental discussions.

December 2025: response from the Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut

The WSCC [Workers' Safety and Compensation Commission] acknowledges and agrees with the importance of Recommendation M23-09. The WSCC is committed to ensuring that occupational health and safety is effectively regulated in the territories to ensure effective workplace safety oversight.

On February 28, 2025, the WSCC and Canada conducted a call in order to discuss issues arising from Marine Transportation Safety Investigation Report M21C0214.

The WSCC has actively reviewed its jurisdiction in relation to fishing vessels registered in the Northwest Territories and Nunavut. The WSCC has no knowledge of any offshore fishing vessels registered in the Northwest Territories. Information was obtained from three companies

operating the seven offshore vessels registered in Nunavut in relation to the activities of the respective vessels. The vessels were found to all have strong international and inter-provincial connections. In August 2025, the WSCC communicated with the owner of offshore fishing vessels registered with the WSCC in relation to jurisdiction for occupational health and safety on the respective vessels. A representative of the Canadian Economic and Social Development Labour Programs was copied on the correspondence.

In addition to reviewing its jurisdiction for occupational health and safety in relation to the fishing vessels currently registered in the Northwest Territories and Nunavut, the WSCC is conducting a review in order to determine what changes to the *Occupational Health and Safety Regulations* in respective territories may be required. If identified, necessary updates to the *Occupational Health and Safety Regulations* would assist the Northwest Territories and Nunavut to adapt to changes that may occur as a result of the continued development of offshore fishing in Canada's North.

It is anticipated that a comprehensive review of regulations related to marine vessels and fisheries will be completed within the next 12 to 18 months. The WSCC will determine what changes are necessary and take steps to introduce the required regulatory changes.

Given the prevailing conditions related to offshore fishing, the WSCC is not of the view that there are currently vessels under its jurisdiction. The reason for this conclusion is that the territories for which the WSCC is responsible do not currently have facilities for storage or repairing these vessels and are not capable of processing the catch. Consequently, vessels registered in the territory undertake crew changes, offload catch and overwinter in other jurisdictions. The WSCC acknowledges that changes in industry and in the climate may lead to a rapidly changing environment and the Commission is actively preparing for the future.

February 2026: response from Employment and Social Development Canada (ESDC)

ESDC-Labour Program partially agrees with the TSB recommendation. While we fully endorse the necessity of enhancing workplace safety oversight for commercial fishing vessels, we find ourselves at odds with the assertion that commercial fishing vessels are federally regulated and governed by the *Canada Labour Code*.

Canada's labour relations are governed by a combination of federal and provincial legislation, with the federal government having jurisdiction over specific industries. Most employer-employee matters are regulated at the provincial or territorial level, making federal jurisdiction the exception rather than the rule.

Due to the complexity of this issue, we agree that establishing clear jurisdictional boundaries is crucial to prevent confusion over responsibilities regarding worker health and safety in the fishing sector. We are currently preparing to carry out jurisdictional investigations to clarify these matters.

Since the issuance of the TSB's recommendation, the ESDC-Labour Program has engaged in the following proactive measures:

- meetings were held with officials from Transport Canada to closely examine the TSB report and align our collaborative efforts;
- an overview of the TSB's findings and recommendations were presented at the Canadian Association of Administrators of Labour Legislation – OHS [Occupational Health and Safety] Advisory Committee meeting. This engagement provided a platform for provincial and territorial government representatives to address their perspectives on OHS oversight; and
- representatives from Nunavut met with government officials to discuss jurisdiction and share resources to implement effective OHS measures on fishing vessels.

We have devised the below action plan to ensure effective implementation of the TSB recommendations:

- We are actively compiling resources available for employers, including the Canadian Centre for Occupational Health and Safety Seafarers Fatigue Course, to strengthen awareness and training on OHS protocols in the fishing industry. Engagement with territories and coastal provinces is also ongoing to explore collaborative strategies for enhancing OHS oversight.
- ESDC is initiating jurisdictional investigations into individual employers operating in Nunavut, in partnership with Transport Canada. Nunavut will be invited to participate in these activities.
- We are committed to continuing dialogues with Nunavut and coastal provinces to establish a clear OHS jurisdictional framework, specifically for commercial fishing industry, and support the expertise needed to ensure compliance.

Following the jurisdictional investigation, if employers operating in Nunavut are established as federal, ESDC-Labour Program would proactively encourage voluntary compliance by collaborating with stakeholders, promoting OHS initiatives, and facilitating awareness through guidance resources that adhere to best practices.

To date, Labour Program officials have not conclusively observed substantial changes related to OHS compliance within the commercial fishing industry specifically. However, the Labour Program monitors general OHS trends, and through discussions at the Canadian Association of Administrators of Labour Legislation – OHS Advisory Committee table, it was noted that New Brunswick recently amended its legislation, recognizing the OHS responsibilities related to the commercial fishing industry.

- As of June 1, 2024, New Brunswick has amended their regulations to authorize investigations of hazardous occurrences on fishing vessels, which could serve as a precedent for other jurisdictions.

We are actively working on the steps outlined above in our response to question 3. However, if these efforts prove ineffective, we will continue to seek resolutions as it is crucial to establish clear OHS oversight for employers and guarantee the safety of workers.

We understand that closing this recommendation requires ESDC-Labour Program to demonstrate low residual risk. To achieve this, it is essential to clearly define jurisdictional responsibilities and enforce safety protocols and training for fishing vessel operations.

Additionally, ongoing jurisdictional assessments and dialogue with key stakeholders will help foster clarity and efficiency in operations. However, we acknowledge that the current overlaps between federal and territorial jurisdictions pose a significant challenge that must be addressed.

We value TSB's commitment to marine safety and are dedicated to collaboratively enhancing OHS standards for fishing vessels.

March 2026: TSB assessment of the responses

Transport Canada (Satisfactory in Part)

Transport Canada's (TC) response notes that jurisdiction for fishing vessel safety was discussed during a meeting of the Canadian Association of Administrators of Labour Legislation. TC and ESDC-Labour also met with the Government of Nunavut to discuss the authorities for occupational health and safety (OHS) related to fishing vessels. TC is working with ESDC-Labour to investigate the jurisdiction and have offered support to the Government of Nunavut, if required, when the territory establishes a marine occupational health and safety program.

The Board is encouraged that discussions between TC and ESDC-Labour and the Government of Nunavut have begun and that support to the territory will be made available. Although clear jurisdiction for commercial fishing vessel OHS oversight has not yet been established, the jurisdictional assessment process undertaken by TC, in collaboration with the ESDC-Labour Program, will be a significant step toward resolving the jurisdiction over OHS on fishing vessels registered in all territories. The Board invites TC to provide a timeline for this assessment as well as any work the department will undertake to support effective workplace safety oversight on these vessels.

Therefore, the Board continues to consider the response to Recommendation M23-09 from TC to be **Satisfactory in Part**.

Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut (Satisfactory in Part)

The Workers' Safety and Compensation Commission (WSCC) agrees with Recommendation M23-09, and is committed to ensuring that occupational health and safety (OHS) is effectively regulated in the territories. WSCC noted they conducted a call in order to discuss issues arising from TSB Investigation M21C0214 with federal departments. Additionally, WSCC obtained information from 3 companies operating 7 vessels registered in Nunavut; each vessel had strong international and inter-provincial connections. The WSCC has also undertaken a review of the *Occupational Health and Safety Regulations* for the respective territories, to identify where changes may be required. As necessary, it plans to take steps to update the *Occupational*

Health and Safety Regulations, then assist the Northwest Territories and Nunavut to adapt as a result of the continued development of offshore fishing in Canada's North.

Although clear jurisdiction for commercial fishing vessel OHS oversight has not yet been established, the Board is encouraged that WSCC has taken steps to obtain more information about commercial fishing operations in the Northwest Territories and Nunavut, and to review the OHS regulations in both territories. The Board encourages WSCC to identify and implement any required changes in a timely fashion so that the 29 fishing vessels registered in the Northwest Territories and Nunavut have effective workplace safety oversight.

Therefore, the Board finds the response to Recommendation M23-09 from WSCC to be **Satisfactory in Part**.

Employment and Social Development Canada (Satisfactory in Part)

ESDC-Labour Program notes that it agrees it is necessary to enhance safety oversight for fishing vessels, but that it only partially agrees with the recommendation. ESDC-Labour Program is currently investigating the complex issue of jurisdiction to establish clear boundaries. In addition to its investigation, ESDC-Labour Program described multiple measures taken since the recommendation, including holding collaborative meetings with TC; presenting the TSB report and discussing perspectives of OHS oversight with provincial and territorial government representatives during an OHS Advisory Committee meeting at the Canadian Association of Administrators of Labour Legislation; and meeting with representatives from Nunavut to discuss jurisdiction and share resources to implement effective OHS measures on fishing vessels. ESDC-Labour Program also described further plans to address OHS oversight for the commercial fishing industry and support the expertise needed to ensure compliance.

The Board would like to clarify that it did not intend to assert that the *Canada Labour Code* (CLC) applied to fishing vessels in the Canadian territories. Rather, the Board highlighted the lack of common understanding of which government is responsible for workplace safety on commercial fishing vessels registered in the territories, and it recommended that the parties review the existing oversight to ensure that workplace safety oversight was effective. Given ESDC's expertise in the application of the CLC, the Board considered it essential for departmental officials to play a role in clarifying the application of the CLC on these vessels.

The Board is encouraged by the combination of ESDC-Labour Program's actions taken and future plans. Although clear jurisdiction for commercial fishing vessel OHS oversight has not yet been established, the jurisdictional assessment process undertaken by the ESDC-Labour Program, in collaboration with Transport Canada, is a significant step toward resolving the jurisdictional issue. The Board invites ESDC-Labour to provide a timeline for this assessment as well as any work the department will undertake to support effective workplace safety oversight on these vessels.

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, Employment and Social Development Canada, and the Workers Safety and Compensation Commission.

This deficiency file is **Active**.