



## REASSESSMENT OF THE RESPONSE TO TSB RECOMMENDATION M99-02

### Workplace safety on fishing vessels

#### Background

The *S.S. Brothers* was hauling in the scallop rake in good weather conditions. Two deck-hands were positioned, one at the winch controls and the other to guide the incoming wire onto the winch barrel. No guard was fitted to the winch. Once the hauling process had started, the deck-hand at the winch controls left the controls unattended to begin the task of washing down the deck in preparation for the return to Yarmouth. When the deck-hand who was engaged in guiding the incoming wire saw the 25-fathom warning mark on the wire, he left his post and attempted to climb over the winch to reach the controls. He slipped and fell to the deck. His right leg was drawn into the winch and crushed between the incoming wire and the winch barrel.

The Board determined that the accident was caused by the deck-hand attempting to step over the winch to gain access to the controls. Factors contributing to the accident were: the deck winch was uninspected and not fitted with a machinery guard; the deck-hand was operating the winch alone; the deck and the surfaces of the winch were slippery. It is also likely that the deck-hand's ability to make a reasoned decision on the safe operation of the winch was adversely affected by fatigue caused by his work/rest schedule.

The Board concluded its investigation and released Marine Investigation Report M96M0144 on 11 June 1999.

#### TSB Recommendation M99-02 (September 1999)

Safety of fishing vessels and their crews is governed by both federal and provincial regulations. Transport Canada Marine Safety (TCMS) provides fishermen with a national regulatory framework that applies to the structural and operational safety of the vessel. TCMS also administers the Safe Working Practices Regulations, which provide direction and guidance to a vessel's crew on safe operating practices and procedures. The workplace safety of crews, while they are engaged in the "business of fishing," is not within federal jurisdiction.

Provincial governments have the responsibility to ensure that the "business of fishing" is conducted in a safe manner. However, provincial regulatory framework – as applicable to fishing vessel safety – is not consistent across the country, and some provinces still do not have adequate fishing-sector-specific provisions in place. In addition, due to the lack of resources, the provinces do not routinely conduct preventative safety inspections of work areas and practices, but generally rely on self-enforcement by the employer and/or employees. In the fishing industry, most provinces apply generic labour legislation, which is

often complex and not easily understood by the fishermen to whom it applies. As a result, the legislation is not effective as a self-enforcement mechanism; work spaces and equipment aboard fishing vessels are not being effectively monitored, nor are unsafe conditions being effectively targeted for corrective action.

The occurrence on the *S. S. Brothers* is not an isolated incident; the absence of an effective enforcement mechanism has permitted unsafe conditions to exist for several years. Indeed, as indicated in the report, there were over 150 reportable accidents on board fishing vessels for the period 1992–1996. Over 40 injuries, and at least 3 fatalities, resulted from accidents involving fishing gear and moving machinery.

The Board believes that the overall safe operation of a vessel (which is within federal jurisdiction) often depends on the level of safety in the “business of fishing” (which is within provincial jurisdiction.) Typically, fishing vessels are crewed with a small complement, working long hours and performing multiple tasks. Hence, in the event of the injury or incapacitation of any of the crew, the overall safe operation of the vessel is adversely affected.

The TSB database contains information on several accidents where practices associated with fishing operations have resulted in the loss of the vessel. In 1994, while salmon-fishing off Quadra Island, B.C., the seiner *Louvel III* capsized when the net being hauled on board became hung-up on the starboard side vertical roller, causing the vessel to acquire a large list and to downflood (TSB Report No. M94W0069). Again in 1994, the *Shauna-Christi*, while fishing for mackerel off Rocky Harbour, Newfoundland, capsized suddenly when the amount of fish in the net pursed and secured to the starboard side was underestimated, which caused the vessel to heel and downflood through an open hatch (TSB Report No. M94N0020). In 1995 in Johnstone Strait, B.C., the *Inskip* suddenly capsized when the weight of a large catch was transferred to the derrick head, which raised the vessel’s centre of gravity and resulted in a loss of stability (TSB Report No. M95W0121). In 1996 the fishing vessel *Bounty Hunter* capsized and sank off Estevan Point, B.C., when the port warp parted. With the engine set at full power, the vessel heeled and the deck flooded (TSB Report No. M96W0062).

The Board understands that periodic inspections are routinely carried out by TCMS, while inspections under the provincial labour legislation are infrequent. As such, the jurisdictional division between the two levels of government over regulatory provisions and enforcement may allow unsafe acts and conditions on fishing vessels to persist. The Board believes that enhanced workplace safety and overall operational safety of fishing vessels could be better achieved through an approach that is coordinated and harmonized between the federal and provincial authorities.

The provinces’ generic labour legislation is complex and may not be easily understood by those to whom it applies. Given that the provinces rely heavily on self-enforcement, the Board is concerned that the complexity of the legislation hinders effective compliance by fishermen to achieve the legislation’s intended safety objectives. Therefore, in the interim, the Board recommends that:

the provinces review their workplace legislation with a view to presenting it in a manner that will be readily understood by those to whom it applies, to

help ensure that the enforcement mechanism and the regulatory regime complement each other.

**TSB Recommendation M99-02**

**Transport Canada's response to Recommendation M99-02 (November 1999)**

Recommendation M99-02 indicates that each province should review its legislation and how it applies to the business of fishing to promote better safety in the fishing industry. This recommendation will be forwarded to the appropriate Ministry staff for consideration.

**Saskatchewan's response to Recommendation M99-02 (October 1999)**

I would like to first correct some assumptions in the report, which undoubtedly influenced the specific recommendations as referred to in your letter. On page eight, the report states that the primary instrument for enforcing generic occupational health and safety legislation in the provinces is self-enforcement. It also states that most provinces, for the most part, take a reactive approach to inspections.

Occupational Health and Safety is about preventing injuries and illness at work. We know that the best way to prevent accidents is to make sure everyone on the job works together cooperatively to prevent accidents. This approach is sometimes called the "internal responsibility system", and it has been part of Saskatchewan's occupational health and safety legislation for more than 25 years.

It means that everyone, from the chief executive officer to the newest worker hired, is required to make health and safety part of everything they do at work. Employers have the most responsibility for health and safety because they have the most control over the workplace. However, that does not relieve workers and supervisors from their obligation to cooperate on health and safety efforts, and take precautions to protect themselves and others from workplace hazards.

Active participation and support of workers is essential for effective health and safety in the workplace. That's why Saskatchewan's legislation mandates joint occupational health committees to help identify and control workplace hazards and deal with workers' health and safety concerns. That's also why provincial law protects three basic rights of workers:

- **The right to know** about their health and safety rights and responsibilities, the hazards in the workplace, and how to protect themselves from those hazards.
- **The right to participate** in occupational health and safety decision making without fear of reprisal.
- **The right to refuse** unusually dangerous work without fear of reprisal.

However, I should emphasize, that this approach to occupational health and safety also depends upon proper enforcement by government. Saskatchewan Labour takes its responsibility for enforcing health and safety legislation very seriously. The Occupational Health and Safety Division regularly inspects workplaces and takes action, including prosecutions, to ensure health and safety requirements are met. Inspections are prioritized according to the level of hazard in a particular industry or a particular firm.

I noted that Transport Canada Marine Safety (TCMS) conducted only four inspections of the vessel in question over the 15 years that it was in service. I also noted that during the inspections, Marine Surveyors may note deficiencies and encourage owners to comply with the Safe Work Practices Regulations, but the information is passed on verbally and no written record is kept.

It is apparent that better coordination is required between federal and provincial agencies with regard to health and safety on commercial fishing vessels. Whether or not that requires regulatory harmonization remains to be seen.

However, since until very recently it was understood that marine workplaces fell under federal jurisdiction, it may be advisable for Transport Canada to begin working with provincial jurisdictions towards mutually acceptable agreements which would see TCMS staff again authorized to enforce occupational health and safety requirements on fishing vessels.

With regard to Recommendation M99-02, I would point out that Saskatchewan and other Canadian jurisdictions publish “plain language” guidelines to regulatory requirements. Rather than recommending that provinces review their legislation with a view to making it more understandable, it would be more constructive to recommend that affected federal and provincial agencies develop the necessary plain language guidelines for commercial fishing.

#### **Alberta’s response to Recommendation M99-02 (October 1999)**

The second recommendation addresses a need for simplicity of provincial regulations as applied to the fishing industry. Alberta does not have industry-specific regulations, as most workplace hazards are common to more than one industry. Certain industry-specific safety standards are included in our WHS regulations if they are of relevance to the Alberta situation. One of the objectives of our review process is to make regulations simple and easy to understand by employers and workers, in agreement with the Board recommendation. Our approach to providing an effective compliance program is by targeting poor health and safety performers, and uncontrolled hazards in Alberta workplaces. We believe that the targeting approach is the most effective use of resources.

The statement in the report that “the provinces rely heavily on self-enforcement” is misleading. All provincial workplace health and safety legislation is based on the internal responsibility system. “Internal responsibility system” is not “self-enforcement.” Each province has its own compliance policy in dealing with contravention. Alberta uses a stepwise progression of (1) voluntary compliance, (2) orders and (3) court orders for achieving compliance with WHS regulations.

#### **Manitoba’s response to Recommendation M99-02 (October 1999)**

In Manitoba, the fishing industry is a small but important part of the rural and northern economies. We appreciate the work of your Board in keeping us informed of developments. We will continue to monitor safety matters in the fishing sector in Manitoba to see if there is a need for further action.

### **Prince Edward Island's response to Recommendation M99-02 (November 1999)**

The issue of workplace safety, as it relates to the commercial fishery, has presented all provincial/territorial jurisdictions that have responsibility for Occupational Health and Safety legislation, particularly those in Atlantic Canada, with a dilemma.

As you may be aware, funding for the enforcement, compliance and promotion of the Occupational Health and Safety Program is provided out of the accident fund of the Workers Compensation Board of Prince Edward Island. This is common for most provincial/territorial jurisdictions. At the present time, in all Atlantic jurisdictions, the commercial fishing sector is not required by legislation to provide Workers Compensation coverage for their employees and historically, very few fishers have opted for Workers Compensation benefits for their employees. The issue is further compounded with the fact that the fishing boat is not a typical workplace and resources required to inspect a fishing operation are not generally available to Occupational Health and Safety jurisdictions in Atlantic Canada.

Needless to say, the employers who are required by provincial legislation to carry Workers Compensation coverage do not agree that there is equity in their having to fund a safety program for employers who are not required to have workers compensation coverage and, hence, assist in paying the cost of the program. To begin to address this problem, the Workplace Health, Safety and Compensation Commission of New Brunswick (WI-ISCC) is attempting to put together a joint jurisdictional project focusing on educating the inshore fishing industry on safety standards, following the British Columbia approach in which they have developed a booklet entitled *Safe Work Practices for Fishing in B. C.* The first meeting for the joint project was October 27, 1999, in Moncton, hosted by the New Brunswick Workplace Health, Safety and Compensation Commission. I am looking forward to hearing more on this joint initiative.

I am also concerned for the funding source for Occupational Health and Safety coverage for commercial fishing in Prince Edward Island. Perhaps there is a manner by which the Transportation Safety Board of Canada could assist.

There should be no question about the importance of providing safety training to the commercial fishery but joint efforts by all concerned stakeholders will be necessary to successfully resolve this challenge.

### **British Columbia's response to Recommendation M99-02 (November 1999)**

As for the second recommendation, in response to the Royal Commission on Workers' Compensation, British Columbia introduced new occupational health and safety legislation under the *Workers' Compensation Act*, which came into effect October 1, 1999. This new legislation is designed to promote occupational health and safety and to protect workers from work-related risks to their health and safety. This legislation was drafted using plain language to the greatest possible extent. As well, industry and labour representatives reviewed drafts of the legislation for clarity prior to its introduction in the In-House.

Under the new legislation, the Workers' Compensation Board is required to undertake a process of ongoing review of its regulations to ensure relevancy with current workplace

practices. This review must include consultation with affected stakeholders. The Board is responsible for assisting employers and workers in knowing their obligations under the legislation, as well as the Board's regulations.

Although the Board is generally responsible for workplace safety regulations, I should also point out that under the *Employment Standards Act*, an employer must not require or allow an employee to work excessive hours or hours detrimental to the employee's health or safety. This includes people working as fishers. If an employee files a complaint of working excessive hours, the Director of Employment Standards may make a determination that the employer must reduce the hours and may impose a penalty for violation of the Director's determination.

### **Workers' Compensation Board of British Columbia's response to Recommendation M99-02 (December 1999)**

TSB Recommendation M99-02 requests that provinces review their legislation to render it more readily understood and to ensure that enforcement mechanisms and regulatory regimens complement each other. Again, as the Workers' Compensation Board (WCB) requirements were derived after much employer and worker consultation and, as the end product was subjected to plain language scrutiny, the part of the occupational health and safety (OHS) Regulation that applies is clear and enforceable. Again, if the Department of Transport wished to work with the WCB to derive a National enforcement strategy for the fishing industry, we would be most willing to have input.

The OHS Regulation has been in effect since April 1999. On-going review and update will be a feature of the new regulation review process. We will be commencing our first updating exercise shortly. The Policy Bureau would welcome any Department of Transport comment and suggestion.

### **Nova Scotia's response to Recommendation M99-02 (December 1999)**

One initiative was identified in your report (Recommendation M99-02) suggesting that industry requirements should be presented in a manner that is readily understood. To this end, the provinces of Nova Scotia, Prince Edward Island, and New Brunswick, with the assistance of the Marine Safety Branch of Transport Canada, are working on the development of a new guideline for the fishing industry. This self-help booklet will be based on the current documents available from Transport Canada and the Workers' Compensation Board of British Columbia.

### **Transport Canada's response to Recommendation M99-02 (December 1999)**

The Minister notes the recommendation. The Department would appreciate receiving from the Transportation Safety Board of Canada any information regarding the provinces' responses to this recommendation.

### **Ontario's response to Recommendation M99-02 (February 2000)**

The Minister of Labour of Ontario responded that they would be pleased to continue cooperative efforts with the Department of Transport in its review of federal and provincial

legislation as it applies to overall operational safety onboard fishing vessels and workplace safety associated with the business of fishing. The Minister also indicated that he would forward recommendation M99-02 to appropriate Ministry staff for consideration.

### **Board assessment of the response to Recommendation M99-02 (March 2000)**

Since the recommendation was directed to the provinces, most provinces responded to the recommendation. However, to date, no separate responses have been received from the provinces of Quebec, New Brunswick,<sup>1</sup> and Newfoundland.

The response by the Minister of the Nova Scotia Department of Labour (SDL) indicated that the Department has had on-going discussions with Transport Canada Marine Safety officials since the early 1990's. Together, they identified concerns, shared information and provided assistance based on resources available and areas of expertise. With the assistance of the Marine Safety Branch of Transport Canada, the Atlantic Provinces (Nova Scotia, Prince Edward Island, and New Brunswick) are working on the development of a new guideline based on the current documents available from Transport Canada and the Workers' Compensation Board (WCB) of British Columbia.

The Minister for Prince Edward Island recognizes the importance of health and safety standards to prevent similar accidents from occurring. However, the Minister cited the lack of funding as a problem for enforcement, compliance and promotion of the issue of workplace safety in the commercial fishery. To address this problem, the Workplace Health, Safety and Compensation Commission (WHSCC) of New Brunswick is putting together a joint jurisdictional project focusing on educating the inshore fishing industry on safety standards following the British Columbia approach. The first meeting for the joint project (Nova Scotia, PEI, and New Brunswick) took place on October 27, 1999. The response indicated real concern and new initiatives are being taken to find funding solutions to address the deficiencies.

The Minister of Labour for the province of Ontario indicated that it will continue co-operative efforts with Transport Canada (TC) in its review of federal and provincial legislation as it applies to overall operational safety onboard fishing vessels and workplace safety associated with the business of fishing. The ministerial staff will consider reviewing its legislation and how it applies to the business of fishing.

Although commercial fishing is not a significant industry in the Prairie Provinces, the responses from Alberta, Saskatchewan and Manitoba indicated general agreement with the intent of the recommendation. Alberta was in the process of reviewing Workplace Health and Safety (WHS) regulations. The review involves comprehensive stakeholder consultation, including, the federal Department of Transport. The response by the province of Saskatchewan indicated the support for "plain language" guidelines to regulatory requirements. It also indicated the province's desire for TC to begin working with provincial

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<sup>1</sup> It is noted that the province of New Brunswick is working on a joint project, with the provinces of Nova Scotia and Prince Edward Island, to develop safety guidelines for the fishing industry.

jurisdictions towards mutually acceptable agreements in which TCMS will enforce occupational health and safety requirements on fishing vessels. Manitoba indicated that the fishing industry is a small but important part of rural and northern economies. As such, the Province will continue to monitor safety matters in the fishing sector in Manitoba to see if there is a need for further action. No specific plan or schedule was provided.

The province of British Columbia continues to set an example in addressing the workplace safety of commercial fishing vessel operations. Its approach, regulatory framework, and safety materials are being used as references by other provinces.

Further, BC recently conducted a review of the *Workers' Compensation Act* and regulations and the extensive consultation process that led the WCB of BC to review the fishing Safety requirements with regard to workplace safety inspections. (TSB will be informed of the progress and final results of this legislative revision.)

In summary, all responses from the provinces indicated agreement with the intent of the recommendation and expressed their willingness to work together with TC in addressing the deficiencies. While some provinces have taken some specific actions, others have indicated their intention to do so. In most cases, no specific plan or schedule was provided. However, some provinces offered to provide the TSB with information on the progress of their activities. Given the continuous efforts to resolve the safety concern in collaboration with TC, and recent initiatives to develop new guidelines and to review existing regulations for the fishing industry, the responses from the provinces are deemed to be **Satisfactory Intent**.

### **Board reassessment of the response to Recommendation M99-02 (May 2005)**

There was no substantial change to address the safety deficiency since the last re-assessment.

#### **TSB action**

The file was assigned an Inactive status in 2005.

On 01 April 2015, the Board changed the status of this recommendation to Active.

### **Provincial responses to Recommendation M99-02 (2015)**

#### **Response from Service NL – Newfoundland and Labrador (September 2015)**

In its response of September 2015, Newfoundland and Labrador indicated the following:

DFA [Department of Fisheries and Aquaculture] recognizes that working in the fishing industry is a dangerous environment. The department partners with industry representatives from all sectors in the fishing industry to support safety. These include the Professional Fish Harvesters Certification Board (PFHCB), the Canadian Coast Guard, Transport Canada, the Department of Environment and Conservation, Fisheries and Oceans Canada, the Fisheries and Marine Institute of Memorial University of Newfoundland, the Transportation Safety Board and the Institute for Ocean Technology. By partnering with key stakeholders, it enables government to make valuable contributions to the sector by drawing attention to issues related to fishing



vessel safety and promoting awareness amongst harvesters of the critical need to address the hazards of the workplace.

The Government of Newfoundland and Labrador through a partnership between DFA, WHSCC and the PFHCB supported the establishment of the Newfoundland and Labrador Fish Harvesting Safety Association (NL-FHSA) in 2012. The NL-FHSA works with all fish harvesters, both owners/operators and crew members across all fleet sectors and in collaboration with other industry stakeholders to improve safety practices and promote a culture of safety through education and awareness initiatives designed to reduce workplace injuries, illness and fatalities in the fishing industry.

The government has also supported projects to reinforce a safety culture within the fish harvesting sector with the ultimate goal of reducing injuries and decreasing incidents that results in lives lost at sea. Some of these projects include:

The production of a video on fishing vessel safety.

Continuing fishing industry safety efforts through vessel safety seminars.

New simulator software that teaches best safety practices for fish harvesters.

In 2009, the *Occupational Health and Safety Regulations* underwent significant revision. In particular, Part XXIII of these regulations, specific to diving and marine operations, directly relates to fishing vessel and fishery related commercial diving operations. To ensure effective and appropriate enforcement activity our OHS Division prepares industry specific enforcement initiatives, including fishing industry related activity. It has also developed strategies for dealing with key hazards impacting fish harvesters. For example, from January 1, 2012 to present we have conducted a total of 90 inspections of fishing vessels of various lengths, issued 638 orders and also issued 37 Stop Work Orders. These fishing vessels were operated by 36 different employers and since 2000 there were also four prosecutions relating to fishing vessel operations.

Our Occupational Health and Safety Division and the WHSCC have created positions dedicated to enforcement and prevention activities respectively in the fish processing and fish harvesting. Our OHS Senior Officer III (Fishery) has been actively involved in requesting and reviewing documentation around safety management systems and other OHS requirements specific to fishing vessel operations. Guidance documentation, including a Hazard Alert specific to fishing vessel hydraulic systems, was prepared and distributed to key stakeholders in the fish harvesting sector.

This brief summary outlines the some of the key activities in this province to promote safety in the fishing industry which help to ensure that fish harvesters are aware of, understand and apply safety practice.

The Government of Newfoundland and Labrador also recognizes that regulation alone is not sufficient to instill a culture of safety in the fishery. A concerted and cooperative effort is required by all industry stakeholders including federal and provincial government departments and entities with a mandate for safety or the fishery.

**Response from Nova Scotia – Department of Labour and Advanced Education (July 2015)**

In its response of July 2015, Nova Scotia indicated the following:

The Province of Nova Scotia has a very detailed Act and a number of Regulations related to work place safety. This legislation is not specific to fishing but to all workplaces in the province. As you can appreciate this legislation is reviewed on a regular basis with the intent to ensure all workers in the province are protected.

The province recognizes the importance of the fishing industry and the safety of everyone working within the industry. With this in mind we have worked with the Provinces of New Brunswick, Prince Edward Island as well as Transport Canada Marine and fishing safety partners within the province have developed a handbook for commercial fishing and aquaculture called Fish Safe. A copy can be found at <http://www.novascotia.ca/lae/healthandsafety/docs/FishSafe.pdf>. This handbook is not only available online but widely distributed by Nova Scotia Fisheries Sector Council, Fisheries Safety Association of Nova Scotia, Nova Scotia Community College School of Fisheries, Workers Compensation Board of Nova Scotia and our provincial departments of Labour and Fisheries.

The province has been heavily involved in prevention and education in the fishing industry and has a number of partnerships. One such partnership is with Nova Scotia Fisheries Sector Council, Fisheries Safety Association of Nova Scotia, Nova Scotia Community College School of Fisheries, Workers Compensation Board and our Department of Labour and Advanced Education. This team has members of each organization going out into the fishing communities and doing safety and prevention presentations. One of these programs is Man Overboard Drills. These drills involve using a local fishing boat and putting a diver in the water and asking the local fishermen to recover the person. This drill quickly turns into a recover exercise and starts a very strong focus on fishing safety. This is the third year for these drills and we have done over 30 drills in 2014. This team promotes the use of PFD on board all fishing vessels. They have laminated handouts detailing all of our basic Safety Act and Regulations that fishermen should be aware of for their workplace. These presentations have increased the use of PFD's by fishermen in our province. We have also seen a great increase in request by fishing organization to have this safety group do presentations at their local association meetings.

Our department has charged several companies and employees in the past several years with violations under our Act and Regulations in dealing with fatalities in the fishing industry. Our Provincial Crown Prosecutors are very involved in these sentencing of fishing workplaces. Although a number of companies have received substantial fines, these individuals have been ordered by the courts to do presentations throughout the province. These presentations are by fishermen to fishermen detailing how they could have save lives by doing hazard risk assessments and using prevention methods such as all crew members wearing PFD's.

Our department in partnership with Workers Compensation Board of NS, Department of Fisheries and Aquaculture, Fisheries Safety Association of Nova Scotia and Nova Scotia Fisheries Sector Council have been working together to facilitate the development of an industry-led action plan that will aim to reduce fatalities and improve safety in Nova Scotia's fisheries sector. An industry group called the Safe at Sea Alliance was formed this year. This is a group which consists of representatives from the fishing industry across the province and including fishermen, company owners and some family members. The Safe at Sea Alliance has had several meetings and are looking at recommendations to improve safety in the fisheries. This alliance has met with a Task Force, consisting of partners at the provincial and federal government levels. The Task Force includes the Department of Fisheries and Oceans Canada (DFO), Transport Canada (TC), Transportation Safety Board (TSB), Environment Canada, Canadian Coast Guard, Nova Scotia Community College-School of Fisheries, and the Department of Labour and Advanced Education of Nova Scotia. These meetings allow fishermen to work with their provincial and federal partners and discuss their issues. Our department and our partners will continue to work with the Safe at Sea Alliance. It is our hope that the industry led action plan will reduce fatalities and improve safety in our fishing industry.

**Response from Prince Edward Island – Department of Environment, Labour and Justice (January 2015)**

In its response of January 2015, Prince Edward Island indicated the following:

Since this recommendation was made, the Occupational Health and Safety (OH&S) Division of the Workers Compensation Board (WCB) has developed several guidance documents intended to explain OH&S legislation to those whom it applies. Some examples include:

- Information on Workplace Health & Safety
- Guide to Workplace Health & Safety Act
- Guide to Workplace Health & Safety Committees
- Guide to Workplace Health & Safety Policy
- Guide to Workplace Health & Safety Programs
- Guide to Workplace Health & Safety Representatives
- Guide to Cold Stress at Work
- Guide to Fall Protection Regulations
- Guide to the Prevention of Heat Stress at Work
- Defining Low Hazard Work under OH&S First Aid Regulations

The WCB of PEI has recently embarked on an initiative to further simplify resource documents intended to provide clarification on legislation. The WCB is currently working with an external Plain language Consultant to develop a document that consolidates several existing OH&S guides into one plain language document titled, "Guide to Workplace Health & Safety".

**Response from Prince Edward Island – Labour and Industrial Relations, Department of Justice and Public Safety (June 2015)**

In its response of June 2015, Prince Edward Island indicated the following:

The circumstances surrounding workplace safety legislation and its application to fishers and fishing vessels in Prince Edward Island have a history dating back many years. Jurisdictional responsibility and application of legislation are factors which continue to be a challenge.

In jurisdictions such as Prince Edward Island, where Occupational Health and Safety legislation resides with the Workers Compensation Board, the application of the two intertwined pieces of legislation to the Fisheries Sector creates a unique situation. The Fisheries Sector is not required by law to participate in the Workers Compensation system which is entirely funded by employers of Prince Edward Island but the sector does have an obligation under the Occupational Health and Safety Act to provide safe work places. Very few fishers provide WCB coverage for their workers. Historically, the Workers Compensation organization believed that because of this exemption, it would create inequity to the employers who fund the system to provide safety and prevention programs to a sector exempt from the Workers Compensation Act and its ensuing levies and assessments. Consequently, service provided to the Fisheries Sector has been limited to investigation after the fact.

The Workers Compensation Board of Prince Edward Island has made safety and prevention a strategic priority for all workers and employers in Island workplaces. Recent and significant legislative reviews have recognized that primary industry sectors on PEI fall outside the scope of the law thus creating a vulnerability for workers employed in these sectors. As such, government has mandated WCB to consult with those sectors to examine the unique circumstances that must be considered in bringing those sectors into the scope of the legislation. The Fisheries Sector is one industry identified as requiring that type of examination.

**Response from New Brunswick – Department of Post-Secondary Education, Training and Labour (February 2015)**

In its response of February 2015, New Brunswick indicated the following:

The issue of workplace safety in the fishing industry has certainly been on government and WorkSafeNB's radar dating back at least as far as the *S.S. Brothers* decision, which recognized that there was some provincial jurisdiction in that industry. WorkSafeNB has worked with both the aquaculture and fishing industries for well over a decade, but the difficulty back then, and now, is that the current legislation defines workplaces in such a way that we don't have jurisdiction over fishing vessels.

In April 2013, New Brunswick announced a comprehensive legislative review of workers compensation, which is a collaborative initiative between the government of New Brunswick and WorkSafeNB. The comprehensive review will be completed over three phases (approximately three years). Phase One

was undertaken in 2014 with the next two phases occurring in 2015 and 2016 respectively.

Phase Three (2016) will include examining areas currently excluded by legislation from workers' compensation, such as fishing vessels and small business owners. Currently, only fishing enterprises with at least 25 employees are required to have coverage, but some fishermen voluntarily register for insurance coverage. The issue of jurisdiction would be considered at this time.

In its follow-up response in May 2016, New Brunswick indicated the following:

Phase Two of the comprehensive legislative review of workers' compensation has taken longer than expected due to the substantive nature of the topics on which we consulted, namely governance and benefits.

We have not determined when we will be consulting on the third phase, which will include areas currently excluded from workers' compensation such as fishing vessels that employ less than twenty-five people. We still need to seek direction from government to consult.

**Response from Quebec - Commission de la santé et de la sécurité du travail (February 2015)**

In its response of February 2015, Quebec indicated the following [free translation from French]:

In Quebec, the Commission de la santé et de la sécurité au travail (CSST) is responsible for reviewing and applying legislative and regulatory provisions concerning occupational health and safety. Thus, various measures have been taken since that recommendation was made in 1999.

With regard to prevention, commercial fishing companies are subject to the *Act Respecting Occupational Health and Safety* and the related regulations, particularly the *Regulation Respecting Occupational Health and Safety*. In addition to the occupational health and safety obligations contained in it, the occupational safety of fishers is also captured by the measures contained in the guide entitled *Health and Safety on Fishing Boats*, published by the CSST in 2008. That information is available in the *Safety Issues Investigation into Fishing Safety in Canada*, published in 2012 by the Transportation Safety Board of Canada (TSB), to which you make reference.

In addition, as mentioned in that report, in 2011, the CSST signed a memorandum of understanding with Transport Canada, Marine Safety, in order to clarify each regulating authority's responsibilities, considering that they are complementary and that they may sometimes be common and shared. That agreement defines the framework of their cooperation.

With regard to cooperation, as you also point out in the 2012 report, the CSST takes part in meetings with the Canadian Marine Advisory Council and with the Quebec Regional Standing Committee on Fishing Vessel Safety.

Also, in addition to conducting investigations when accidents occur and in order to document causes to better prevent them, the CSST works with the

Institut de recherche Robert-Sauvé en santé et en sécurité du travail to conduct in-depth reviews of specific risks. That is the case, in particular, with a review that is underway to prevent overboard falls on lobster boats, on which various stakeholders in the field (associations, representatives, and captains) are closely collaborating. The findings of that review are expected in 2015.

On the subject of lobster boat safety, prevention awareness activities are also conducted in certain coastal regions. That is the case in the Gaspé Peninsula and in the Magdalen Islands, with a radio publicity campaign conducted by the CSST in 2013 and 2014, which was part of an action plan for safety on lobster boats, implemented in spring 2012. In particular, these activities revealed the lobster boat community's adherence to safety principles.

Lastly, in 2013, the CSST published a guide entitled *Secourisme en milieu de travail – secteur maritime*. This complements the reference manual entitled *Secourisme en milieu de travail* and its purpose is to meet federal government requirements concerning the elements to be covered in a marine first aid course.

#### **Response from Ontario – Ministry of Labour (February 2015)**

In its response of February 2015, Ontario indicated the following:

Ontario's *Occupational Health and Safety Act* applies to workers in this province, such as fishermen, who are not covered by the *Canada Labour Code*. The act requires employers and supervisors to take every precaution reasonable in the circumstances to protect the health and safety of workers. Precautions include employers' duties to acquaint workers with any hazard in the work, and to provide information, instruction and supervision to workers to protect their health or safety. When determining reasonable precautions for the protection of fishermen, Ontario's occupational health and safety inspectors may use out-of-province resources such as your organization's report, *Marine Investigation Report: Safety Issues Investigation into Fishing Safety in Canada* (M09Z0001), and WorkSafeBC publications concerning fishing work.

I am pleased to respond to the Transportation Safety Board of Canada's request for an update concerning the Province of Ontario's information on workplace safety legislation as it applies to fishermen and fishing vessels. Since 1999, when the board's recommendation M99-02 was issued, Ontario has taken various steps toward this objective. The Ministry of Labour has increased the accessibility of many materials available online on its website—compliance guidance materials are written in plain language, and are available in both official languages. In addition, the ministry has put in place an agreement with the Canadian Standards Association (CSA) so that all CSA standards referenced in provincial regulations are available to view, without purchase.

We are working to make regulations easier to understand as well. For example, in 2009 the ministry consolidated 11 designated substance regulations into one. Vital expert and ongoing advice is received from sector

professionals - via committees appointed by the Minister of Labour under the *Occupational Health and Safety Act* - about regulatory changes, including changes to make the regulations easier to understand. Province-wide, Ontario's online library of all provincial laws and regulations ([www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)) contains current and previous versions of the legislation and regulations.

**Response from Manitoba – Department of Labour and Immigration (February 2015)**

In its response of February 2015, Manitoba indicated the following:

In 2002, Workplace Safety and Health initiated discussions with Manitoba Conservation and Transport Canada to develop an appropriate inspection program for the fishing industry in Manitoba. Since then, WSH has conducted vessel inspections as part of the Branch's targeted initiatives, and continues to assess and review the safety and health needs of the fishing industry and all industries in Manitoba.

In 2006, Manitoba's Workplace Safety and Health regulations were consolidated in order to provide clearer direction to employers and workers, assisting in further reducing workplace injuries and illnesses. This consolidation, along with legislated reviews of *The Workplace Safety and Health Act* and its associated regulations helps ensure requirements are easy to understand and comply with, and contributes to greater consistency in enforcement.

Reviews of the Act and regulations involve extensive consultation with stakeholders, including employer, labour and technical representatives. Open dialogue is maintained throughout the review and drafting stages in order to address stakeholder interests, and to ensure the majority of changes reflect stakeholder consensus.

Employers and workers in the fishing and vessel industry can access prevention resources, tools, and training through Manitoba's injury and illness prevention entity, SAFE Work Manitoba at [www.safemanitoba.com](http://www.safemanitoba.com). SAFE Work Bulletin No. 240: *Open Water Commercial Fishing in Manitoba* is specific to the industry.

Manitoba welcomes the opportunity to discuss ways to continue to ensure safety and health laws are reasonable, practical, and consistent with other jurisdictions, and looks forward to continuing to work together to ensure that appropriate systems are in place to protect the safety and health of workers in Canada's fishing industry.

**Response from Saskatchewan – Ministry of Labour Relations and Workplace Safety (February 2015)**

In its response of February 2015, Saskatchewan indicated the following:

The Saskatchewan Workers' Compensation Board (WCB) and the Ministry of Labour Relations and Workplace Safety work collaboratively; however, they are separate entities and perform different functions. The WCB acts as an insurer for employers and compensates workers for illness and injury arising

out of their employment. The WCB also maintains provincial statistics on workplace incidents. The Ministry of Labour Relations and Workplace Safety enforces *The Saskatchewan Employment Act* and its associated regulations.

In terms of regulatory oversight, *The Saskatchewan Employment Act* and *The Saskatchewan Occupational Health and Safety Regulations, 1996*, do apply to commercial fishing operations conducted within the province. These regulations are applicable to all industries, and there are no regulations specific to commercial fishing.

In speaking to your recommendation for a review of Saskatchewan's workplace safety legislation, such a review was recently completed. However, with a review of OHS regulations pending, the development of a national standard for the commercial fishing industry that could be adopted by the provinces, as needed, would be of interest.

#### **Response from Alberta - Ministry of Jobs, Skills, Training and Labour (January 2015)**

In its response of January 2015, Alberta indicated the following:

Alberta regulates Occupational Health and Safety (OHS) through the OHS Act, Regulation and Code. The OHS Code contains the workplace health and safety rules applicable to all industries as most hazards are common to more than one industry. Industry-specific rules are included if they are of relevance to Alberta situations. The Code is reviewed regularly to ensure the rules are current and relevant.

In 2003, Alberta reviewed our OHS legislation and subsequently consolidated 11 Regulations into one Code. While not specifically done in response to the Transportation Safety Board of Canada's Recommendation M99-02, the changes combined the rules and adequately addresses the hazards workers could be exposed to when working on a fishing vessel.

In Alberta, the foundation of the safety rules rests on the mandatory requirement for an employer to perform hazard assessment of the work site (Part 2 of the Code). Employers have an obligation to identify existing and potential workplace hazards and implement proper measures to control the hazards to ensure health and safety of the workers. Other safety rules hold employers responsible to ensure workers are competent to perform the assigned task (Section 13 of the Regulation) and workers are protected from coming in contact with moving parts of machinery or equipment (Part 22 of the Code).

Alberta continues its effort in promoting awareness of OHS and workplace health and safety rules through publications, media and awareness campaigns. JSTL is currently running a successful "Work Right" campaign with the objective of raising public awareness about occupational health and safety and employment standards.

Enforcement of OHS, including the use of orders, ticketing, administrative penalties and prosecutions, is available and applies to employers who choose to ignore the law and their obligation to protect their workers.



## Response from British Columbia – WorkSafeBC (March 2015)

In its response of March 2015, British Columbia indicated the following:

Occupational health and safety (OHS) regulations, including those related to fishing safety, are made and enforced by WorkSafeBC. Part 24 of the Occupational Health and Safety Regulation (OHSR) contains regulations related to fishing operations; these regulations apply to all owners, masters, and crewmembers of licensed commercial fishing vessels. WorkSafeBC regularly reviews and updates the OHSR as mandated by the *Workers Compensation Act* (Act). This includes a regular review of the fishing regulations to ensure they are consistent with current workplace practices, technological advances, and any other changes affecting occupational health and safety and occupational environment.

In developing amendments to the OHSR, WorkSafeBC works with the Office of Legislative Counsel to ensure that the regulations are drafted using plain language to the greatest possible extent. In addition, WorkSafeBC reviews, and makes amendments to, the OHSR in consultation with affected stakeholders. This helps to ensure that the OHSR is understood by those to whom it applies. Stakeholders are able to suggest possible amendments to WorkSafeBC and are consulted on all proposed amendments. In developing the regulatory amendment workplan, WorkSafeBC considers requests from a number of sources, including external stakeholders. WorkSafeBC has recently made it easier for external stakeholders to suggest changes to the OHSR by providing an online feedback form on its website.

Section 226 of the Act specifies two requirements that WorkSafeBC must meet before making or amending a regulation: (1) hold at least one public hearing on the proposed regulations, and (2) notify stakeholders of the public hearing and regulatory proposals. In order to ensure that the regulations are clear to stakeholders, WorkSafeBC's regulatory amendment process goes beyond the requirements of the Act. WorkSafeBC begins by holding pre-consultation sessions with a small number of external subject matter experts; these sessions provide an opportunity for these subject matter experts to review draft regulatory proposals and clarify any issues they may have with the proposed amendments. The draft regulatory amendments are then released to the general public for feedback. Based on the results of this consultation, the draft proposals are revised as necessary and released to public hearings. The public hearings provide the public with another opportunity to review the proposals and provide feedback.

As part of the 2016 regulatory amendments, WorkSafeBC is considering a proposed amendment to Part 24 of the OHSR that would clarify when lifejackets and personal flotation devices are required to be worn on commercial fishing vessels. WorkSafeBC will consult with stakeholders in the commercial fishing industry to help ensure the clarity of the proposed amendment.

As well, WorkSafeBC is currently reviewing its Prevention Policies on Part 24 of the OHSR (OHS Policies provide legally binding guidance to WorkSafeBC and the Workers' Compensation Appeal Tribunal). The Part 24 policy review

will clarify requirements, eliminate redundancies, and correct inconsistencies between the requirements in Part 24 of the OHSR, the related OHS Policies, and associated OHS Guidelines.

WorkSafeBC is also undertaking a number of Prevention initiatives to improve worker safety in the commercial fishing industry. WorkSafeBC has developed the Marine Initiative to address serious injuries and work-related deaths in commercial fishing. The Marine Initiative focuses on three main issues: vessel stability, the effects of cold water immersion, and emergency preparedness. In addition, workplace inspections by Prevention Officers include a continued focus on the use of personal flotation devices in all marine sectors where there is a risk of drowning. This will include at sea inspections and observation of work activities to determine compliance levels in the various sectors.

A total of 3.25 full-time equivalent Prevention Officer positions are assigned to marine activities. This provides for a targeted 487 officer days in the field conducting dockside and at-sea inspections. In 2014, 451 inspection reports were issued. This resulted in 364 initiating orders written and 353 follow-up orders issued. In total, 70 officer days were spent conducting at-sea inspections in 2014. In the past few years, there has been an increased focus on trap fishing (crab and prawn) and seafood harvest vessels as a result of concerns regarding work-related deaths and serious injuries in these fisheries. In 2015 additional focus will be placed on safe work practices to address serious injuries in commercial fishing.

In order to support the Prevention effort and help employers and workers comply with their obligations, WorkSafeBC publishes OHS Guidelines. Over the past 10 years, OHS Guidelines have been developed to address the following issues related to marine safety: vessel stability assessment and standards, vessel preparation, responsibilities of owners and masters, on-board documentation requirements, and acceptable standards for immersion suits and personal flotation devices. These Guidelines are being considered as part of the Part 24 Policy review.

WorkSafeBC also funds the BC Seafood Alliance's Fish Safe Program by allocating up to \$400,000 a year through additional assessments applied to the fishing industry classifications. Fish Safe coordinates and develops safety tools and programs for fishermen by:

- Serving as an advocate for health and safety within the fishing industry
- Coordinating industry advice to regulatory agencies on health and safety issues and regulations
- Developing training tools for fishermen
- Monitoring and communicating accident patterns
- Improving safety awareness and procedures on board vessels
- Coordinating the B.C. Fish Safe Advisory Committee and courses and workshops on safety.

Other Prevention initiatives in the marine sector include semi-annual meetings and reporting to Transport Canada on issues such as vessel stability, participation at Canadian Marine Advisory Council meetings, outreach to stakeholders, and the development of bulletins and other educational materials on safety topics.

### **Board reassessment of the response to Recommendation M99-02 (October 2016)**

Eight of the 10 provinces have workplace legislation that is applicable to fishing vessels. The provinces that do not are New Brunswick and Prince Edward Island where workplace legislation continues to define workplaces in such a way that the province has no jurisdiction over fishing vessels. New Brunswick is planning a review in 2017 to clarify its jurisdictional responsibility for fishing safety.

Only two provinces, British Columbia and Newfoundland and Labrador, have workplace legislation that is specific to fishing vessels. For the remaining provinces, workplace legislation is, for the most part, more general, and not specific to fishing vessels. Consequently, it may not adequately address the dangers unique to working on a fishing vessel.

The provinces have made some progress in creating plain-language or easier-to-understand documentation regarding workplace legislation as it applies to fishing vessels. Prince Edward Island is currently working to clarify its legislation, and Ontario is working to make its regulations easier to understand.

In addition, some provinces have been working with Transport Canada, the Department of Fisheries and Oceans Canada, and fishermen's organizations and unions in Newfoundland and Labrador, Atlantic Canada, Quebec, and British Columbia to further promote fishing safety. Some of the key groups involved with promoting safety within the fishing sector include the Newfoundland and Labrador Fish Harvesting Safety Association, the Fisheries Safety Association of Nova Scotia, Quebec Standing committee of Fishing Vessel Safety, and Fish Safe in BC.

Resource materials such as booklets, handbooks, and guides have been developed to help fishermen carry out their responsibilities with regard to operational and occupational safety on board vessels. Newfoundland and Labrador, Nova Scotia, Quebec, and British Columbia have developed detailed booklets, guides, or handbooks specifically for the commercial fishing industry. While not specific to the fishing sector, the Aquaculture Safety Code of Practice developed by Prince Edward Island is also an awareness tool for employers and workers in the aquaculture industry. Some provinces are also using or referring to products such as reports or guides developed by other provinces.

Most reports of fatalities and injuries received by the TSB involve fishermen working on small fishing vessels. These fishermen are most likely to be made aware of safe work practices through face-to-face meetings with fishing safety associations, inspections, and on-site prevention awareness activities. Information provided by the provinces indicates that, for the most part, inspections have been limited to investigations following occurrences. Some provinces, such as Nova Scotia and Quebec, have conducted awareness activities or

drills focused on prevention, while British Columbia has also conducted dockside and at-sea inspections to ensure regulatory compliance.

Although there may still be some confusion among fishermen as to what aspects of federal or provincial legislation apply to their vessels, the collaborative efforts of the provinces, fishing safety associations, and federal government departments have resulted in a more coordinated approach to improve overall safety awareness on board fishing vessels. It is expected that the ongoing work to create plain-language legislation that is easier to understand, as well as the work of the various fishing safety associations to promote safety, will substantially reduce the safety deficiency associated with this recommendation.

Until all of the remaining provinces ensure that their workplace legislation and its application to fishermen is readily understood and enforced, the reassessment of their responses remains **Satisfactory in Part**.

#### **British Columbia's (WorkSafeBC) response to Recommendation M99-02 (February 2017)**

In its response of February 22, 2017, British Columbia indicated the following:

As previously outlined in WorkSafeBC's March 2015 letter to the TSB, Occupational health and safety (OHS) regulations, including those related to fishing safety, are made and enforced by WorkSafeBC. Part 24 of the *Occupational Health and Safety Regulation* (OHSR) contains regulations related to fishing operations. These regulations apply to all owners, masters, and crew members of licensed commercial fishing vessels.

As part of its 2017 regulatory amendment process, WorkSafeBC is considering a proposed amendment to Part 24 of the OHSR that would clarify when lifejackets and personal flotation devices (PFDs) are required to be worn on commercial fishing vessels. WorkSafeBC will consult with stakeholders in the commercial fishing industry to help ensure the clarity of the proposed amendment.

As well, WorkSafeBC is continuing its review of its Prevention Policies in Part 24 of the OHSR. The Part 24 policy review will clarify requirements, eliminate redundancies, and correct inconsistencies between the requirements in Part 24 of the OHSR, the related OHS Policies, and associated OHS Guidelines.

WorkSafeBC has also continued with a number of its Prevention initiatives to improve worker safety in the commercial fishing industry. WorkSafeBC's Marine Initiative, which was developed to address serious injuries and work-related deaths in commercial fishing, focuses on three main issues: vessel stability, the effects of cold water immersion, and emergency preparedness. In addition, workplace inspections by specially trained Marine based Prevention Officers include a continued focus on the use of PFDs in all marine sectors where there is a risk of drowning. The Marine Initiative will include proactive at-sea inspections and observation of work activities to determine compliance in the marine sector. In 2017, a strategic marketing campaign will be launched to get the message out to skippers and fishermen that PFDs save lives. The

initiative will utilize Municipal Harbour Authorities as a conduit for the placement of key messages and awareness materials.

WorkSafeBC's Marine Team also utilizes a focused inspectional approach throughout the year to inspect short duration fisheries as they are occurring (e.g. prawn and herring). All Marine based Prevention Officers are utilized for inspections during these events. These Officers also conduct a series of smaller initiatives to focus on specific industry sectors. For example, officers may focus all of their time conducting trawl vessel inspections during a 2-3 week period, or use a similar approach for the commercial dive fisheries at various times during the year.

For 2017, a total of five full-time equivalent Prevention Officer positions have been assigned to marine activities. This provides for a targeted 622 officer days in the field conducting dockside and at-sea inspections. In 2016, 403 inspection reports were issued resulting in 334 initiating orders written and 414 follow-up orders issued. In total, 73 officer days were spent conducting at-sea inspections in 2016. There continues to be a focus on trap fishing (crab and prawn) and seafood harvest (dive) vessels as a result of concerns regarding work-related deaths and serious injuries in these fisheries.

WorkSafeBC continues to fund the BC Seafood Alliance's Fish Safe Program by allocating up to \$400,000 a year through additional assessments applied to the fishing industry classifications. Fish Safe coordinates and develops safety tools and programs for fishermen by:

- Serving as an advocate for health and safety within the fishing industry;
- Coordinating industry advice to regulatory agencies on health and safety issues and regulations;
- Developing training tools for fishermen;
- Monitoring and communicating accident patterns;
- Improving safety awareness and procedures on board vessels;
- Coordinating the B.C. Fish Safe Advisory Committee and courses and workshops on safety.

WorkSafeBC also continues to meet with Transport Canada on a semi-annual basis and report on issues such as vessel stability, participate at Canadian Marine Advisory Council meetings, outreach to stakeholders, and develop bulletins and other educational materials on safety topics.

WorkSafeBC has a number of tools available to enforce the OHSR and other general health and safety provisions of the *Act*, including the use of orders, warning letters, administrative penalties, injunctions, and prosecutions.

In 2015, legislative changes to the *Act* under Bills 9 and 35 introduced new enforcement tools and strengthened others.

The goals of the Bill 9 changes were to improve workplace health and safety and strengthen the tools that WorkSafeBC uses to enforce the *Act* and the OHSR. These changes included:

- Expanded stop work order powers;

- Changes to employer incident investigations including a requirement to complete a preliminary investigation within 48 hours of an incident and a full investigation within 30 days of the incident;
- Expanded injunction powers;
- Changes to penalty due diligence requirements by placing the onus of proving due diligence on the employer facing an administrative penalty;
- Introducing OHS compliance agreements;
- Providing for a new shorter timeline for requesting a review of a prevention decision;
- Expanding the number of WorkSafeBC's Board of Directors to include two new directors;
- Introducing OHS citations.

The Bill 35 amendments built on the legislative changes made under Bill 9 by expanding the role of joint occupational health and safety committees in workplace safety, and adding a requirement to immediately report to WorkSafeBC all workplace fires or explosions that had the potential to cause serious injury to a worker.

In closing, we trust the information provided supports a better understanding of workplace legislation as it applies to fishermen and fishing vessels in British Columbia as well as on WorkSafeBC's current and proposed actions taken in response to the TSB's recommendation M99-02.

We appreciate the opportunity to provide an update on WorkSafeBC's legislation and Prevention initiatives relating to commercial fishing in British Columbia.

#### **Alberta's (Ministry of Labour) response to Recommendation M99-02 (March 2017)**

In its response of March 6, 2017, Alberta indicated the following:

Alberta regulates Occupational Health and Safety (OHS) through the OHS Act, Regulation and Code. The OHS Code contains the workplace health and safety rules applicable to all industries, including the fishing industry, as most hazards are common to more than one industry. Industry-specific rules are included if they are of relevance to Alberta situations.

In Alberta, the foundation of the safety rules rests on the mandatory requirement for an employer to perform hazard assessment of the work site (Part 2 of the Code). Employers have an obligation to identify existing and potential workplace hazards and implement proper measures to control the hazards to ensure health and safety of the workers. Other safety rules hold employers responsible to ensure workers are competent to perform the assigned task (Section 13 of the Regulation) and workers are protected from coming in contact with moving parts of machinery or equipment (Part 22 of the Code). Alberta continues its effort in promoting awareness of OHS and workplace health and safety rules through publications, media and awareness campaigns.

The Government of Alberta is fully committed to ensuring Alberta has modern, fair and family-friendly labour law; however, decision on industry specific rules for the fishing industry will need to be made when we turn our attention to updating the OHS Code.

**Saskatchewan's (Ministry of Labour Relations and Workplace Safety) response to Recommendation M99-02 (February 2017)**

In its response of February 9, 2017, Saskatchewan indicated the following:

In Saskatchewan there are no regulations specific to commercial fishing. *The Saskatchewan Employment Act* and *The Saskatchewan Occupational Health and Safety Regulations, 1996*, apply to all industries, including commercial fishing operations conducted within the province.

A comprehensive review of *The Occupational Health and Safety Regulations, 1996*, will take place in the coming years. With this review pending, the development of a national standard for the commercial fishing industry that could be adopted by the provinces, as needed, would be of interest to Saskatchewan.

**Manitoba's (Department of Growth, Enterprise and Trade) response to Recommendation M99-02 (January 2017)**

In its response of January 23, 2017, Manitoba responded as follows:

On behalf of the Honourable Cliff Cullen, Minister of Growth, Enterprise and Trade, I would like to acknowledge receipt of your letter dated January 17, 2017, with enclosures. Please be assured that your correspondence will be brought to the Minister's attention.

**Ontario's (Ministry of Labour) response to Recommendation M99-02 (May 2017)**

In its response of May 25, 2017, Ontario indicated the following:

The health and safety of workers in Ontario is one of the Ministry of Labour's top priorities. As you are aware, the *Occupational Health and Safety Act (OHSA)* applies to workers in Ontario, such as fishermen, who are not covered by the *Canada Labour Code*.

The *OHSA* requires employers and supervisors to take every precaution reasonable in the circumstances to protect the health and safety of workers. Precautions include the duties of employers to acquaint workers with any hazard in the work, and to provide information, instruction and supervision to workers to protect their health or safety. When determining reasonable precautions for the protection of fishermen, Ontario's occupational health and safety inspectors may use external resources such as those available from your organization and WorkSafeBC regarding fishing work.

I am pleased to respond to the Transportation Safety Board of Canada's request for an update concerning the Province of Ontario's information on workplace safety legislation as it applies to fishermen and fishing vessels.

Since 1999, when the board's recommendation M99-02 was issued, Ontario has reported to your organization the various steps toward this objective.

You will be interested to know that a new Noise Regulation under the *OHS*A came into force on July 1, 2016, which applies to all workplaces under *OHS*A, including fishing operations. A guideline for the regulation was released in December 2016 to assist workplace parties in understanding the regulation's requirements.

Ontario also amended the *OHS*A (Sections 37, 38, 40 and 40.1) and the Workplace Hazardous Materials Information System (WHMIS) Regulation (R.R.O. 1990, Regulation 860) effective July 1, 2016. The amendments adopted new, international standards that are part of the Globally Harmonized System of Classification and Labelling of Chemicals.

The *OHS*A was also amended to enhance employer duties with respect to workplace harassment. Subsection 1(1) and Sections 32.0.6 and 32.0.7 of the *OHS*A were amended and Subsection 1(4), and Sections 32.0.8 and 55.3 of the *OHS*A were added. These amendments were effective as of September 8, 2016, and apply to all Ontario workplaces.

To assist the needs of small businesses, in April 2016, the Ministry of Labour created the Health and Safety Checklist, a new resource that serves as a starting point for workplace parties to understand the main requirements of the *OHS*A. It is accessible from the Small Business webpage on the ministry website at [www.labour.gov.on.ca/english/atwork/smallbusiness.php](http://www.labour.gov.on.ca/english/atwork/smallbusiness.php).

On July 10, 2017, Ontario further added the following:

Thank you for your correspondence regarding safety oversight for commercial fishing operations. I was saddened to hear of the incident involving the fishing vessel *Bessie E.*, and my thoughts are with the people who had been on board, all of whom thankfully survived this incident.

Concerning the health and safety of workers in Ontario, the Ministry of Labour is enforcing occupational health and safety legislation and working with our partners to make Ontario workplaces among the safest in the world.

You have indicated in your letter that your "investigation has determined that the Ministry of Labour only applies the Act to fishermen engaged in aquaculture." As noted in my previous correspondence, the *Occupational Health and Safety Act (OHS*A) applies to workers in Ontario, such as fishermen, who are not covered by the *Canada Labour Code*.

The ministry promotes worker safety through its preventative enforcement strategy, *Safe At Work Ontario*. As part of this strategy, ministry inspectors enforce the *OHS*A and its regulations in all categories of provincially regulated workplaces, including fisheries and commercial fishing, where appropriate.

The ministry was given an opportunity to review the Transportation Safety Board of Canada (TSB) draft report on the *Bessie E.* incident, and Deputy Minister of Labour Sophie Dennis recently commented on the report in a letter sent to her counterpart at the Ministry of Natural Resources and Forestry. The



letter was copied to the TSB. Enclosed is a copy for your convenience. In the letter, Deputy Minister Dennis confirms the Ministry of Labour's consistent position that the *OHS*A applies to fishermen who are engaged in commercial fishing in a provincially regulated workplace.

Whether any particular undertaking is governed by the *OHS*A or the *Canada Labour Code* is determined case-by-case after examining the nature, operations and habitual activities of the undertaking. The province works closely with the federal government when making these determinations.

Fisheries and commercial fishing on inland waters, including but not limited to aquaculture, are generally examples of provincially regulated undertakings.

**Quebec's (Commission de la santé et de la sécurité du travail) response to Recommendation M99-02 (February 2017)**

In its response of February 21, 2017, the Province of Quebec indicated the following:

The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) is the organization mandated by the Government of Quebec to review and enforce the legislative and regulatory provisions on occupational health and safety. To respond to the request that you sent in February 2015, here is the updated information concerning the labour legislation that applies to fishers and fishing boats in Quebec.

In prevention matters, commercial fishing businesses are subject to the *Act respecting occupational health and safety*. To facilitate the oversight of occupational health and safety in this industry, the CNESST just updated the information guide *Health and Safety on Fishing Boats* in 2016. It establishes the preventative measures and safety rules to regulate professional fishing more specifically. This information guide was indicated in the *Safety Issues Investigation into Fishing Safety in Canada* that was published in 2012 by the Transportation Safety Board of Canada (TSB), to which you referred.

As already highlighted in that report, in 2011, the CNESST signed a memorandum of understanding with Transport Canada Marine Safety to clarify the responsibilities of each regulatory organization, considering that their responsibilities are complementary and can sometimes be common and shared. That memorandum defines the framework of their cooperation.

In terms of cooperation, the CNESST no longer participates in the Canadian Marine Advisory Council. However, it serves as vice-chair of the Standing Committee on Quebec Fishing Vessel Safety.

When accidents occur on fishing vessels, the CNESST conducts its own investigations for various purposes, such as documenting accident causes in order to better prevent them in the future. It also organizes prevention awareness activities in certain coastal regions. For example, in the Gaspésie region and the Magdalen Islands, an action plan for safety on lobster boats was implemented in 2012, which provided for various actions, including a radio publicity campaign in 2013 and 2014. Note that as part of that action plan, around 150 interventions were carried out with the goal of making it

mandatory to wear a life jacket on deck. Moreover, that action plan allowed us to witness the lobster boat community's adherence to safety principles.

Furthermore, the CNESST updated its guide *First Aid in the Workplace - Marine Sector* in 2015. It is a supplement to the reference guide *First Aid in the Workplace*, and it aims to meet federal requirements regarding points to be addressed during marine first aid training.

Finally, the CNESST also contributes to the in-depth study of risks specific to commercial fishing with the Institut de recherche Robert-Sauvé en santé et en sécurité du travail. For example, a study was carried out to curb falling overboard on lobster boats, in which various stakeholders (representative associations, captains) closely collaborated.

Rest assured that the CNESST works in partnership with various organizations and stakeholders to improve the safety of fishing activities.

#### **Nova Scotia's (Department of Labour and Advanced Education) response to Recommendation M99-02 (March 2017)**

In its response of March 15, 2017, Nova Scotia indicated the following:

Over the past several years, the Department of Labour and Advanced Education (LAE) has been working closely with our partners in the fishing sector to improve fishing safety awareness and compliance. In 2013, changes were made to the *Occupational Health and Safety Act and Regulations* to improve clarity on the use of PFDs where a risk of drowning is present.

Understanding that compliance requires more than just enforcement, we have created partnerships with a number of government and regulatory bodies, including the federal Department of Fisheries and Oceans, Nova Scotia Department of Fisheries and Aquaculture, Coast Guard, Nova Scotia Community College (NSCC), and Workers' Compensation Board (WCB) of Nova Scotia. LAE has also engaged regularly with the Nova Scotia Fisheries Sector Council, Fisheries Safety Association of Nova Scotia, fishermen, and other fishermen associations. In our efforts to meet recommendation M99-02, we have been employing various compliance techniques such as education and outreach, compliance promotion, monitoring, and enforcement, all of which have contributed to improved compliance and safety outcomes.

In cooperation with the WCB, we have launched media campaigns on television encouraging PFD use and the very impactful 'What Matters Most' announcements that included the fishing sector. Through our partnerships with the Fisheries Safety Association of Nova Scotia and the Nova Scotia Fisheries Sector Council, we have supported development of fishing safe work protocols, delivered presentations at town hall/association meetings, and have been improving awareness and understanding of safety requirements in current regulations. The development of the *Fishing Safety Now* document specifically speaks to how this work has evolved and is being clearly supported by fishermen themselves.

During this past fishing season, department staff interacted directly with over 1000 fishermen and visited over 100 wharfs around the province, speaking to

the use of PFDs and explaining workplace regulations that apply to them. Officers also developed and distributed vessel checklists for fishermen to follow during their own inspections and conducted vessel inspections for interested fishermen. In addition, we attended 24 Man Overboard Drills.

All of this activity is directly in support of recommendation M99-02.

Moving forward, LAE will continue its engagement with the fishing community and work with the industry to develop solutions to compliance issues (a recent example of which are hoists). We will also continue to monitor for compliance through inspections and enforce regulations when required. Use of PFDs will remain an area of focus.

**New Brunswick's (Department of Post-Secondary Education, Training and Labour) response to Recommendation M99-02 (January 2017)**

In its response of January 24, 2017, New Brunswick indicated the following:

As the Minister responsible for the Department of Post-Secondary Education, Training and Labour, my role is to focus on the legislation that governs workers' compensation in New Brunswick. However, it is WorkSafeNB that is responsible for implementation of workers' compensation legislation including the *Occupational Health and Safety Act*.

Although provincial labour legislation applies to commercial fishing vessels, the definition of "Place of Employment" in the New Brunswick *Occupational Health and Safety Act* does not apply to fishing vessels. That said, the New Brunswick *Workers' Compensation Act* establishes assessments and provides coverage for the fishing industry, but does so for "...undertakings in which twenty-five or more workers are at the same time usually employed" or on a voluntary basis for fishing enterprises that qualify for voluntary coverage.

Over the past 15 years, there have been several attempts at addressing the occupational health and safety regulatory gap in the commercial fishing sector. In general, industry stakeholder groups have not supported the idea of additional health and safety regulations for commercial fishing vessels.

The safety of fishermen continues to be of concern and remains under review. As mentioned by the former Minister of Post-Secondary Education, Training and Labour, Francine Landry, in her correspondence to you on February 5, 2016, Phase III will include a review of the *Occupational Health and Safety Act*, which will include occupational health and safety in the fishing industry. Although it had been expected that Phase III would be underway by end of 2016, a firm date for commencement has not yet been determined until the completion of Phase II.

**Board reassessment of the response to Recommendation M99-02 (May 2019)**

Oversight of commercial fishing safety is a complementary and shared responsibility between federal and provincial authorities, and industry stakeholders. Efforts to improve fishing safety should be collaborative and must involve fish harvesters themselves.

### **British Columbia, Quebec, Nova Scotia, and Newfoundland and Labrador**

The provinces of British Columbia, Quebec, Nova Scotia, and Newfoundland and Labrador, through collaboration with provincial government agencies, departments, boards, federal partners (Transport Canada, Department of Fisheries and Oceans), sector councils, safety and fishing associations, and unions, have worked to improve fishing safety. Much of the collaboration and provincial initiatives such as at sea inspections, distribution of reference material, media campaigns, and on-site prevention awareness activities, have helped make current workplace legislation more understandable and consistent with federal regulations. Each of these provinces has a regulatory framework and guidance materials that are available to and easily understood by most fish harvesters. These provinces represent approximately 68% of Canadian commercial fish harvesters.

The collaborative efforts within these provinces have resulted in a more coordinated approach to improve overall safety awareness on board fishing vessels. The Board is satisfied with the actions taken by these 4 provinces to date; it is expected that their ongoing work will make workplace legislation easier for fish harvesters to understand and will substantially reduce the safety deficiency associated with this recommendation. The Board considers the responses to Recommendation M99-02 for these provinces to be **Fully Satisfactory**.

### **New Brunswick**

The Board notes the province of New Brunswick's efforts to begin an education, awareness, and training campaign, as well as its implementation of a provincial fishing safety working group. The province indicated that progress has been made on industry consultations over possible amendments to the provincial *Occupational Health and Safety Act*. These amendments focus on including fishing vessels in the provincial definition of place of employment. The Board is pleased to see the progress that has been made, and encourages the province to continue these industry consultations. The Board acknowledges the actions taken by the province to date. New Brunswick represents approximately 14% of the Canadian commercial fish harvesters. The Board considers the response to Recommendation M99-02 from the province of New Brunswick to show **Satisfactory Intent**.

### **Prince Edward Island**

The TSB did not receive a response to its 2017 or 2018 requests for an update on the provincial workplace legislation as it applies to fish harvesters and fishing vessels in Prince Edward Island. The province indicated in its 2015 response that jurisdictional responsibility and workplace legislation did not apply to the fisheries sector. The Workers Compensation Board of Prince Edward Island was planning a consultation with the fisheries sector to consider bringing the sector into the scope of provincial workplace legislation. This province represents approximately 10% of the Canadian commercial fish harvesters. Given the lack of response from the province of Prince Edward Island, the Board assesses the response to Recommendation M99-02 to be **Unsatisfactory**.

### **Alberta, Saskatchewan, Manitoba, and Ontario**

The provinces of Alberta, Saskatchewan, Manitoba, and Ontario represent 8% of Canadian commercial fish harvesters.

### *Alberta*

The Board notes that the province of Alberta regulates occupational health and safety through the OHS Act, regulation and code. These apply to all industries and are not specific to the fishing industry. The Board assesses the response from the province of Alberta to Recommendation M99-02 as **Unable to assess**.

### *Saskatchewan*

The Board notes that the province of Saskatchewan does not have any regulations specific to commercial fishing and that the *Saskatchewan Employment Act* and *The Saskatchewan Occupational Health and Safety Regulations, 1996*, apply to all industries, including commercial fishing operations. The Board also notes that the province of Saskatchewan is planning a comprehensive review of the *Occupational Health and Safety Regulations, 1996* in the future. However, the province is interested in having a national standard for the commercial fishing industry. The Board assesses the response from the province of Saskatchewan to Recommendation M99-02 as **Unable to assess**.

### *Manitoba*

The Board notes that the province of Manitoba indicated that this recommendation would be brought to the attention of the Minister of Growth, Enterprise and Trade. However, a detailed response was not received. Therefore, the Board assesses the response from the province of Manitoba to Recommendation M99-02 as **Unable to assess**.

### *Ontario*

The Board notes that the province of Ontario indicated that the *Occupational Health and Safety Act (OHSA)* applies to all workers in the province including fisheries and commercial fishing on inland waters and only to fishermen not covered by the *Canada Labour Code*. The Board also notes that the province liaises with the federal Government to determine jurisdiction and looks to other resources such as WorkSafeBC for further assistance. However, the Board is concerned that there are no regulations specific to the fishing industry. The Board assesses the response from the province of Ontario to Recommendation M99-02 as **Satisfactory in Part**.

Until those provinces with a sizable population of commercial fish harvesters ensure that their workplace legislation applies to fish harvesters and is readily understood by them, the underlying safety deficiency will remain. Therefore, the Board considers the response to Recommendation M99-02 to be **Satisfactory in Part**.

### **Ontario's (Ministry of Labour) response to Recommendation M99-02 (January 2020)**

In its response of January 21, 2020, Ontario indicated the following:

The health and safety of workers in Ontario is one of the Minister of Labour's top priorities. The Ministry of Labour, Training and Skills Development enforces the *Occupational Health and Safety Act (OHSA)* to protect all workers in the province's jurisdiction. This includes fishermen who are not covered by the *Canada Labour Code*.

Many sub-sectors in Ontario, such as fisheries, are not covered by a specific regulation under the *OHSA*. In general, hazards and workplaces that are not covered by a specific regulation are covered by the general duty clause 25(2)(h) of the *OHSA*, which states that employers must take every precaution reasonable to protect workers from hazards. In addition, employers are required to acquaint workers with any hazard in the work and to provide information, instruction and supervision to workers to protect their health and safety. The *OHSA* has similar requirements respecting supervisor duties.

Fisheries are a sub-sector of the ministry's Industrial Health and Safety Program. Key hazards that health and safety inspectors are currently focusing on at fishery workplaces include: activities that may lead to musculoskeletal disorders (MSDs); machine and equipment hazards such as improper lockout and unguarded powered equipment; material handling hazards (that could expose workers to being struck by objects, or caught or crushed between objects); slips, trips and falls; and water hazards.

**New Brunswick's (Department of Post-Secondary Education, Training and Labour) response to Recommendation M99-02 (March 2020)**

In its response of March 12, 2020, New Brunswick indicated the following:

The Province has been in the process of implementing a two-pronged approach to address workplace safety on fishing vessels.

In phase I WorkSafeNB initiated an Education, Awareness and Training Campaign with the cooperation of industry and a fishing safety working group which was established in consultation with fishers and suppliers, and using initiatives such as wharf visits, family pledges, an elementary school poster contest, advertising and design testing to increase awareness of the importance of wearing personal flotation devices (PFDs). The second phase of this approach included consultations with industry led by WorkSafeNB in consideration of possible amendments to the *Occupational Health and Safety Act* to include fishing vessels in the definition of place of employment and the requirement for persons to wear PFDs on fishing vessels. These consultations concluded December 31, 2019. WorkSafeNB is in the process of preparing recommendations related to these consultations for submission to the Department.

The Department will work closely with WorkSafeNB on possible amendments to the legislation related to these recommendations in due course. Furthermore, the government recognizes the need to focus on a safe work culture that will lead to a decline in workplace injuries on fishing vessels.

**Board reassessment of the response to Recommendation M99-02 (March 2020)**

*Ontario*

The Board notes that the province of Ontario indicated that the *Occupational Health and Safety Act (OHSA)* applies to all workers in the province, including fisheries and commercial fishing on inland waters and also to fishermen not covered by the *Canada Labour Code*. The province also indicated that fisheries are a sub-sector of the ministry's Industrial Health and Safety program and that safety inspectors are focusing on workplace activities and hazards. While the Board is concerned that there are no regulations specific to the fishing industry, it

does note the efforts taken by the province, by way of inspections, to focus on aspects of the fishing industry covered under the *Occupational Health and Safety Act (OHSA)*. However, the province has not indicated the effectiveness of these inspections as a means to measure and ensure that existing regulations are understood or being complied with in the fishing industry. Until the province demonstrates that its workplace legislation is being applied specifically to fish harvesters and is readily understood by them, the underlying safety deficiency will remain. The Board assesses the response from the province of Ontario to Recommendation M99-02 to be **Satisfactory in Part**.

#### *New Brunswick*

The Board notes the efforts by the province of New Brunswick and WorksafeNB in developing an education, awareness, and training campaign, as well as its initiative in establishing a provincial fishing safety working group. The Board also notes that WorksafeNB concluded consultations with industry in December 2019 on possible amendments to the provincial *Occupational Health and Safety Act*. These possible amendments could address the inclusion of fishing vessels in the provincial definition of place of employment and the requirement to wear PFDs on fishing vessels. The Board also notes the province's intention to work with WorkSafeNB on recommendations for possible amendments to the legislation in the future.

The Board acknowledges the actions taken by the province to date as well as their relative importance given that New Brunswick represents approximately 14% of Canadian commercial fish harvesters. The Board encourages the province to continue its education program and to advance amendments to the governing legislation in light of the recent industry consultations.

The Board considers the response to Recommendation M99-02 from the province of New Brunswick to show **Satisfactory Intent**.

#### **Prince Edward Island**

The TSB did not receive a response to its 2017, 2018, or 2019 requests for an update on the provincial workplace legislation as it applies to fish harvesters and fishing vessels in Prince Edward Island. The province indicated in its 2015 response that jurisdictional responsibility and workplace legislation did not apply to the fisheries sector. The Workers Compensation Board of Prince Edward Island was planning a consultation with the fisheries sector to consider bringing the sector into the scope of provincial workplace legislation. This province represents approximately 10% of the Canadian commercial fish harvesters. Given the lack of response from the province of Prince Edward Island, the Board assesses the response to Recommendation M99-02 to be **Unsatisfactory**.

Until the provinces of **Ontario, New Brunswick and Prince Edward Island** ensure that their workplace legislation is being applied to fish harvesters and is readily understood by them, the underlying safety deficiency will remain. Therefore, the Board considers the response to Recommendation M99-02 to be **Satisfactory in Part**.

## **Next TSB action**

The TSB will continue its outreach efforts with the provinces of **Ontario, Prince Edward Island** and **New Brunswick**, and will monitor these provinces until they have taken actions to address the safety deficiency identified in Recommendation M99-02. The TSB will monitor whether provincial workplace legislation is being applied to the commercial fishing industry, whether it is presented in a manner that is readily understood by those working in the industry, and whether provincial enforcement mechanisms and regulatory regimes complement each other.

For these provinces, this deficiency file is **Active**.