



# Third-party liability insurance for fishing vessels

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## The aim of this policy brief is to

- explain what third-party liability insurance is;
- discuss why Governments in the Caribbean region are considering third-party liability insurance for fishing vessels;
- examine the benefits of third-party liability insurance for small-scale fishers;
- describe how third-party liability insurance works;
- show the legislative reforms needed to give force of law to a compulsory third-party liability insurance requirement for fishing vessels.

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## What is the problem?

Capture fishery is among the most dangerous and risky occupations in the world. FAO estimates that every year, more than 32 000 fishers worldwide die during fishing operations, and many more fishers get injured. In case of injury, fisherfolk may not be able to work for some time or they could end up disabled.

In the Caribbean only 3 percent of the fishing vessels are insured and less than 20 percent of the fishers have life and/or health insurance cover. Lack of insurance affects all those involved in fishing activities, as it may lead to many losses not being duly compensated when a fishing vessel owner does not have sufficient means to meet his liabilities. These losses may include fishing vessel loss or damage, loss of life or injury of crewmembers, damage to third-party property, as well as loss of life or personal injury of third parties. When these losses are not duly compensated, it creates financial and social hardship for fishers and their families.

Compulsory insurance is not new. In fact, the proposed fishing vessel insurance will work in a similar manner to the third-party liability insurance for motor vehicles. Driving a vehicle on the road entails a certain amount of risk. As a result, and bearing in mind the large number of accidents that occur on the roads, most States have imposed a requirement of compulsory third-party liability insurance from which compensation can be provided to victims of accidents. Strangely, while many accidents happen at sea, a similar insurance requirement for vessels is often not in place.



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# How can insurance help solving the problem?

Third-party liability insurance in fisheries is of utmost importance. This type of insurance covers a wide variety of claims, including claims for loss of life or personal injury, as well as claims relating to loss or damage caused by a fishing vessel to another vessel or other property.

By making third-party liability insurance for fishing vessels compulsory - whether this is provided by Protection and Indemnity (P&I) Clubs, private insurance companies or other providers of financial security - we can promote a safer fishing environment and reduce the number of claims that are not adequately compensated. A sustainable fisheries industry should not only be sustainable in environmental terms, but also in social and economic terms. Insurance, particularly third-party liability insurance, can play an essential role in developing a truly sustainable industry.

# Key Policy Messages

- Fisheries is often listed as the most deadly occupation, based on existing global fatality rates. While accident and fatality rates in many industries and sectors are decreasing due to stringent safety measures, this is not the case in fisheries. FAO estimates that there are annually 80 to 90 fatal accidents among fishers Caribbean-wide.
- The 116 000 small-scale fishers in the Caribbean Community (CARICOM), their families and fishing communities carry the burden of accidents and fatalities in the region.
- At the moment, owners of small and medium scale fishing vessels are not obliged to purchase third-party liability insurance. Less than 1000 fishing vessels (only 3%) are currently insured (under hull insurance cover) out of the 33 000 commercial capture fishing vessels in the CARICOM countries. It is therefore crucial to increase the level of insurance cover with the help of Governments in the region.
- Third-party liability insurance for fishing vessels provides compensation for damages and losses if the owner of a fishing vessel cannot do so. At present, without such insurance, injured and disabled fishers become dependent on the Government social security and disability support programmes, while those having caused the damage generally do not provide any compensation. A typical "free rider" issue.



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## What is third party-liability insurance?

It is widely recognized that insurance is a risk-transfer mechanism that provides financial compensation for loss or damage caused. By requiring fishing vessels to obtain third-party liability insurance, governments seek to achieve a balance between a substantial financial exposure of the owners of fishing vessels when faced with third-party claims for loss or damage caused by their vessels and the opportunity for aggrieved third parties to be promptly and adequately compensated for their loss or damage.

### COMPULSORY THIRD-PARTY LIABILITY INSURANCE

Compulsory third-party liability insurance has proven to be one of the most important commercial tools in the maritime industry. It helps ensure prompt and adequate compensation for the victims of incidents, even when the vessel owner is unknown, or the vessel is lost. The introduction of the “right of direct action” (the capacity of victims to initiate a legal action directly against the insurer), allows in situations where the vessel owner cannot be found to still obtain compensation.

Compulsory third-party liability insurance can also contribute to higher safety standards on board fishing vessels. This is because the risks associated with a particular vessel will be reflected in the insurance premiums (the greater the expected loss or the likelihood of the loss to take place in the view of the insurer, the higher will be the insurance premium). Hence, although the primary role of compulsory third-party liability insurance is to ensure that the vessel owner can provide compensation for any wrong caused, such insurance has also a preventive effect.



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## How does it work?

- When incorporated as part of national legislation, the compulsory third-party liability insurance requirement will be imposed on the owner of the fishing vessel. At registering the vessel or applying for a license to operate in the designated waters, the owner of the fishing vessels will have to submit proof of insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability towards third-party claims.
- Insurance or other financial security for fishing vessels, depending on the size of the vessel, can be provided by P&I Clubs, or in the case of small fishing vessels, by local insurance companies.
- Given the novelty of the concept in the fishing industry, governments may consider subsidies to partially cover the premium costs, especially for small-scale fishing vessels whose activities sustain their livelihood.

To protect all the stakeholders in the fishing industry, some governments in the Caribbean region, with the help of the FAO and building on good practices from elsewhere, are considering the introduction of compulsory third-party liability insurance for fishing vessels.

## What are the benefits and costs involved for vessel owners, crew and governments?

With compulsory third-party liability insurance in place, owners of small-scale fishing vessels will not have to face hardships due to large claims brought against them. In addition, only those vessels, which have compulsory insurance will be licensed for operation in the waters of Caribbean countries, thus ensuring that in the event of any casualty, victims will be promptly compensated.

The introduction of the compulsory (third-party liability) insurance protects:

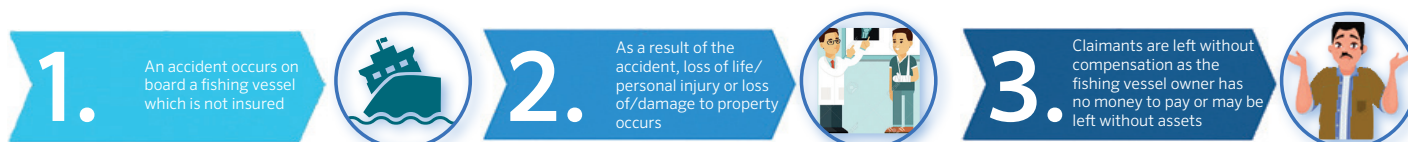
- **Claimants (whether members of the crew or third parties)** → *who may obtain prompt and effective compensation for claims against the owner of the fishing vessel (even in cases where the claims exceed the value of the possessed assets).*
- **The vessel owner** → *who may satisfy claims brought against him/her by third parties without facing the risk of bankruptcy following a tragic event, as insurance cover will provide protection.*
- **Society in general** → *as the introduction of compulsory insurance can also contribute to higher standards of safety and working conditions on board and could reduce the social security claims by injured fishers.*

Moreover, foreign fishing vessels operating in or passing through the Exclusive Economic Zone (EEZ) of a country can be obliged to carry similar insurance cover. Doing so will make the EEZ for everyone a safer place.



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## What happens when a vessel is not insured?



## What happens when a vessel is insured?



# International standards and requirements

Marine insurance is one of the oldest forms of protection against losses suffered and has become a significant element in international trade in general and maritime transport in particular. During the course of a marine adventure the vessel owner may be exposed to the loss of his vessel, or damages it may suffer. A vessel owner may also incur liabilities to third parties for losses or damage that may occur in the course of the operation of the vessel. Such situations predetermine the vitality of marine insurance.

The introduction of compulsory insurance for third-party claims became the subject of discussion only in the twentieth century. Starting from the compulsory motor vehicle insurance introduced in many countries in the 1930s, it found its way to the introduction of compulsory insurance for ships under modern international conventions and national legislation.

Maritime transportation in general is considered a high-risk business. Therefore, the International Maritime Organization (IMO) introduced compulsory insurance requirements in order to increase the effectiveness of the international maritime safety standards. Following the *Torrey Canyon* incident in 1967, a number of international conventions, including the International Convention on Civil Liability for Oil Pollution Damage (CLC), were adopted. The CLC provides an adequate compensatory regime that allows victims of pollution damage from tankers to obtain compensation. The Convention introduced the concept of strict liability (thus omitting the requirement of proving fault to obtain compensation), and also introduced the concept of compulsory insurance which allows claimants to obtain prompt and effective compensation even in cases where the shipowner may have lost all his assets.

These concepts have become somewhat “standard” and were later incorporated in other international conventions including the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention), the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (Athens Convention 2002), the Nairobi International Convention on the Removal of Wrecks 2007 (Wreck Removal Convention), as well as in other international instruments, such as the Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the Insurance of Shipowners for Maritime Claims.



## How to introduce third-party liability insurance for fishing vessels in the Caribbean

All the Caribbean countries have adopted maritime and fisheries legislation. They have adopted Fisheries Acts, which regulate fisheries in the waters under their jurisdiction. These Acts refer to procedures for the licensing of the fishing vessels and measures that the national authorities can take in case of contravention of the Acts. The majority of the Caribbean countries, have also adopted legislation on shipping matters (e.g. a Merchant Shipping Act), making provisions for the requirement of compulsory third-party liability insurance in accordance with the international instruments, to which the countries are State Parties.

Recommendations have been made by fisheries authorities throughout the Caribbean for introducing third-party liability insurance for commercial fishing vessels. Fisherfolk organizations are also generally supportive of such insurance, as it reduces significantly the vulnerability of fishers and their families to shocks caused by accidents that occur during fishing activities, and will contribute to sustainable livelihoods. Moreover, a Stakeholder Meeting on Fisheries Insurance Legislative Frameworks for the Caribbean, held on 15 November 2019 in Barbados, demonstrated a large interest among the representatives of fisheries and maritime authorities to introduce third-party liability insurance for fishing vessels.

## Legislative amendments to support introduction of third-party liability insurance for fishing vessels

States may find support for compulsory insurance measures in the international recognition of the importance of insurance for the fishing industry. In this respect, reference can be made to the FAO Code of Conduct for Responsible Fisheries, which in Article 8.2.8 states that:

*“Flag States should promote access to insurance coverage by owners and charterers of fishing vessels. Owners or charterers of fishing vessels should carry sufficient insurance cover to protect the crew of such vessels and their interests, to indemnify third parties against loss or damage and to protect their own interests.”*





Furthermore, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), stress the importance of insurance for small-scale fisheries in Article 6.4 where it is stated that:

*“States should support the development of and access to other services that are appropriate for small-scale fishing communities with regard to, for example, savings, credit and insurance schemes, with special emphasis on ensuring the access of women to such services”.*

Bearing the above in mind, and in order to facilitate the introduction of compulsory third-party liability under national legislation, FAO prepared the “Compulsory Third-Party Liability Insurance for Fishing Vessels Regulations 2020”. These model Regulations were based on the requirements imposed by several international maritime conventions, adapted to apply to the fisheries sector.

The model Regulations provide, *inter alia*, for:

1. the requirement of compulsory insurance up to an amount to be determined by the national Authority (but in all cases not exceeding an amount calculated in accordance with article 6 of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended – as may be applicable to each State),
2. the issue of a compulsory insurance certificate (including a description of all the necessary information and providing a model certificate),
3. the right of direct action,
4. the obligation on the State to ensure that no vessel flying its flag may operate without insurance and that no vessel – regardless of its flag – may enter or leave its ports without insurance,
5. penalties for non-compliance,
6. the power to detain non-compliant fishing vessels, and
7. compensation for unjustified detention.

The introduction of a compulsory third-party liability insurance requirement can be achieved through the incorporation of the model Regulations into national legislation, either under the Fisheries Act or the Merchant Shipping Act.

The model Regulations, combined with information to support fishers’ awareness raising and capacity building on fisheries insurance and supported by some technical and legal assistance, will facilitate the countries to introduce compulsory third-party liability insurance for fishing vessels.

## Concluding remarks

This policy brief has highlighted the importance of the introduction of compulsory third-party liability insurance for fishing vessels. The introduction of such insurance for fishing vessels in the Caribbean will contribute to improving the working conditions of fishers, their safety and to responsible fishing practices. Efforts are being made to ensure that insurance services are available at reasonable premiums, thus enabling compliance by all fishing vessels. In most Caribbean countries marine insurers and insurance brokers are offering third-party liability insurance services. If this type of insurance becomes compulsory in fisheries, then insurance premiums can be reduced. FAO is assisting governments in the legislative enactments that may be necessary for the introduction of this insurance requirement. Fisherfolk generally embrace this development and can be assured that the introduction of compulsory third-party liability insurance for fishing vessels will benefit the whole fishing industry.



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