

Getting the Most Value When Buying Fishing Vessel Insurance



Table of Contents

Introduction	1
Consider the Range of Risks an Operator Faces	2
Insurance Terms	3
Components of a Fishing Vessel Insurance Policy	4
Voiding a Policy	7
How Much Insurance Is Enough?	8
Getting the Best Value	8
Some Cost Reduction and Risk Management Tips	9
Non-Vessel Related Insurance	10
Sources	11

Introduction

Commercial fishing is a risky business. How risky? One measure is the dollar value of recent injury and wrongful death settlements paid on fishing vessel accidents. Examples: broken finger—\$200,000; knee injury—\$500,000; ankle injury—\$700,000; fractured legs in a skiff accident—\$1 million; bait chopper hand injury—\$1.9 million; boat sinking wrongful death—\$4 million. Wrongful death of a crab boat crewmember whose estate claimed that he was inadequately trained to launch a life raft—\$8 million. One crewman was awarded \$200,000 for *stress* resulting from the *near sinking* of a vessel.

Every vessel owner knows that financial success in the business depends in part on effective risk management. Insurance is one form of risk management you can actually buy.

By Terry Johnson



ALASKA SEA GRANT
MARINE ADVISORY PROGRAM
ASG-62 2016
<http://doi.org/10.4027/gmvwbvfi.2016>



Purse seiners in Whittier, Alaska. K. Byers photo.

Some vessel owners resist spending money on insurance. They go “**bareback**” or “**naked**” in the industry slang, and carry no insurance at all or try to **self-insure** by setting aside sufficient funds to cover any anticipated losses, though this may not be possible if marinas, repair yards, and other services require it (see Moorage Insurance on p. 7). Some attempt to use **incorporation** to shield some of their assets. Others purchase insurance through **pools, cooperatives, or mutuels** that are essentially customer-owned nonprofit insurance companies. Still others purchase commercial policies but only the **bare minimum** coverage. Most, however, go to the commercial insurance markets and try to get the right policy at the best price. The question for many is: **How much insurance is enough?**

Consider the Range of Risks an Operator Faces

- ◆ **Damage to or total loss of the vessel** due to collision, sinking, grounding, fire, extreme sea conditions, or any number of other hazards. Also the damage or loss of vessel equipment including engines, operating systems, electronics, deck equipment, and fishing gear.
- ◆ **Liability of the owner** for damage to another vessel or any facility, personal injury of the vessel’s or another vessel’s crew. There is also liability for wreck removal should the vessel be grounded or sunk where it constitutes a hazard, and for pollution removal from fuel and oil spilled or lost.
- ◆ There may be loss or destruction of **cargo** including fisheries products. There can be other risks related to **passengers** aboard, to the consequences of a **charter** arrangement, for a **hired skipper, product recall** or **product liability** (direct marketers), or for operations in **extreme environments**.

These different classes of risk require different kinds insurance, or at least different clauses within a given policy. It helps to understand some basic insurance industry

terminology. Marine insurance professionals like to say that they don't insure boats: they insure small businesses whose main piece of heavy equipment is a boat.

Insurance Terms

Agent or broker: A person or company who sells the policy, either an agent affiliated with a single underwriter (“direct writer”), or an “independent agent” who sells policies for many insurers. Direct writers may have advantages in terms of corporate relationships and efficiency, while independents can shop around and find the best policy or combination of policies at the best price.

Constructive total loss: When a vessel is so damaged that the cost to repair it would be greater than the amount it is insured for, as opposed to total loss which is when, for example, it sinks in deep water and cannot be recovered.

Jones Act and general maritime law: Two broad areas of federal law that, among other things, afford seamen and other vessel repair, maintenance, and marine industry shore workers with extensive rights to compensation for damages and injury.

Policy: a contract between the insured (you) and an underwriter that spells out terms under which the underwriting company will pay you in case of a loss, how much the payment will be, what conditions you have to meet to qualify that payment, and how much you pay in **premiums**.

Re-insurance: Also called excess coverage, re-insurance is a type of policy that increases the total amount of coverage but is subordinate to the primary policy. Re-insurance is used to cover very high liability (personal injury, wrongful death) awards if they are greater than the limit of the protection and indemnity (P&I) policy.

Underwriter: The company or companies that calculate the risks, set rates, and make payments. They may be individual corporations or syndicates of companies and work together to share risk. Underwriters invest premiums in the financial markets in hopes of realizing significant gains. Usually premiums alone are not enough to cover payouts



Bristol Bay gillnetters in Dillingham, Alaska.
T. Johnson photo.

and return a profit. If market returns are low, or claims are high, underwriters raise premiums, become more selective in who they will cover, or drop out of the riskier markets altogether.

Components of a Fishing Vessel Insurance Policy

The **hull and machinery** policy pays the costs of repair or replacement of the vessel, including engine, deck machinery, and attached equipment in the case of a sinking, grounding, fire, collision, theft, or certain other kinds of loss. Policies normally pay for replacement of engines, propeller shafts, or other equipment that breaks down if the cause is “latent defect” and not abuse or normal wear and tear.

It is possible to get additional **skiff and machinery** and **net and gear** coverage on some policies.

While “all-risk” policies used to afford the broadest coverage, most fishing vessel policies now cover only “named hazards,” otherwise called “perils of the sea,” leaving a small chance that the vessel will suffer a calamity not on the list.

A policy may include a “sue and labor” clause that provides for a payment in excess of the insured amount to cover the cost of trying to save the vessel, or securing it while the insurer’s surveyor determines how much the damage is. It may also include coverage for “negligent repairs” if work was done on the boat by someone other than the owner.

Hull policies carry a deductible, which means that the owner has to pay the first several thousand dollars of a loss out of pocket. Normally the deductible is waived in the case of a constructive total loss or a total loss. The maximum payout on a hull policy usually is established by the market value of the boat, or the cost of replacing it with another of similar age, equipment, and condition, as determined by a marine survey, and is specified in the policy. Don’t assume, however, that the maximum amount of your hull and machinery policy is what you will collect in the event of an accident that doesn’t result in total loss of the vessel. If the cost of repair is less than the insured value it will pay only that amount. If the vessel was surveyed and insured when new but was operated for a season, the insurer may apply a depreciation factor to the payout.

Premiums are a percentage of the insured value. Typically, the rate for hull and machinery coverage on a well-maintained vessel is 1.5–3.5% of the survey value. The hull policy rate is set by the underwriters based on several factors, including type, age, use, and condition of the vessel. Underwriters prefer to write policies for the full value of the vessel, plus or minus a few percentage points. Lenders require a boat to be insured at least to the amount still owed on it.

Protection and Indemnity (P&I) is liability insurance. It covers the owner’s responsibility for personal injury to the vessel’s own crewmen (but not owner) and to crew of other vessels for damage to other vessels and equipment, and to facilities, caused by the insured vessel. A rider on a P&I policy, or a separate policy, can cover pollution abatement and spill cleanup in the case of leaking fuel or oil, and for wreck removal.

P&I policies usually are sold in conjunction with hull and machinery, but it is possible to get P&I without the other. Setnetters who work from the beach or from inexpensive skiffs who opt not to carry hull insurance, and some people with boats that have little value or are uninsurable due to condition and age, may still purchase P&I coverage.

Crew injuries are among the most frequent and expensive P&I claims. Crewmembers can file a claim under two provisions of federal law. Under the Jones Act, vessel owners are liable for injuries sustained due to operator negligence or an **unseaworthy** vessel. Courts have defined unseaworthiness very broadly to include almost any situation in which a crewmember gets hurt, other than intentional self-inflicted injury. Never mind if a crewmember did something stupid or even ignored the skipper’s orders. Classic cases include winches lacking safety shields, decks and rails rendered slippery by fish gurry, and open hatches through which crewmen have fallen. Furthermore, crewmembers



Classic wooden salmon troller. T. Johnson photo.

have successfully sued after being injured in a car accident while on shore leave and after falling while trying to board the boat in an intoxicated condition. If a crewmember gets angry at another and beats him up the victim can successfully sue the owner on the grounds that a “defective” crewmember renders the vessel “unseaworthy.” A determination of unseaworthiness can be made independent of evidence of negligence.

Injured crew, at a minimum, get full compensation for their expenses. Often they demand additional sums for “pain and suffering” or punitive damages. Commonly they demand the wages or crew share they would have earned if they completed the season, and sometimes vocational retraining. If they suffer permanent disability they may go for a lifetime income. The demands are calculated in light of the 30-40% of the settlement that the plaintiff’s attorneys will get.

Virtually any accidental fatality aboard a vessel can be pursued as a “wrongful death.” Law firms advertising in maritime publications stand ready to pursue million-plus-dollar settlements for injured crewmembers or the families of dead ones.

The other provision comes under general maritime law and requires payment of “**maintenance, cure, and wages**” to a crewmember or person who works on the boat and is hurt *or becomes ill* while in service to the vessel, regardless of the cause of the injury or illness. The plaintiff doesn’t even have to claim negligence by the operator or unseaworthiness of the vessel. The provision applies whether the vessel is operating, at dockside, or even hauled out as long as it has not been decommissioned. In the case of a serious illness or injury the period of maintenance and cure can extend for months or beyond. Aside from medical care and a basic daily subsistence payment, the law provides for them to be paid their wages until the end of the trip or their scheduled employment.

While crewmembers may carry their own health/medical insurance, this does not absolve the vessel owner of responsibility for paying maintenance and cure. The law, interpreted under the *Townsend* case, requires the vessel to pay the claim before the

injured crewman or his insurance company gets it, and the injured party's insurer is entitled to recover from the vessel owner anything it has paid.

Million or multimillion dollar settlements are not rare, but most are for far less money. But a couple hundred thousand, or just the cost to defend a lawsuit, may be enough to kill a small fishing business so the P&I policy is the owner's best defense. The insurer's attorneys will defend the case or attempt an out-of-court settlement. Some serious cases are settled for a sum equivalent to the P&I policy limit if the plaintiff decides that litigating over more would result in a less favorable outcome. In some cases claims are exaggerated or totally bogus and the insurance company's legal team can settle out of court by paying a small sum to the plaintiff in a nuisance suit, or get



Tender running down the Alaska Peninsula coast. T. Johnson photo.

the whole thing dismissed. Furthermore, the company's claims agents and attorneys are skilled negotiators who often can persuade the claimant to moderate demands by offering quick response and thorough treatment and projecting a sympathetic image of the vessel owner and insurance company.

Crew coverage on a P&I policy is a variable that is applied when the policy is written. There may be a charge for each crewmember. If so, the owner should avoid the temptation of paying for only one on the assumption that it is unlikely that more than one crewmember would be injured in an incident. If the underwriter should conduct an investigation and find that more crewmembers were employed, they could find "breach of material fact" and cancel the policy (see Breach of Warranty on p. 7).

P&I policy limits are agreed upon at the time of writing. Normally there is a per-incident figure and a larger (aggregate) figure for cumulative claims during a single

insured period. Typical small fishing vessel P&I policies are written for \$250,000–\$500,000 aggregate. Owners of boats with several crewmembers, such as a purse seiner, typically purchase excess P&I to a limit of \$1 million, and a large vessel or fleet owner would carry at least \$2 million.

Excess liability, or excess P&I, often is obtained by the broker from a separate underwriter. Generally it is less expensive for the dollar value than the primary P&I policy because the chance of it being used is less. Though payouts from excess policies can involve very large sums, they often are included as part of a “structured settlement” in which the injured party is paid partly in cash and the remainder through a lifetime annuity.

Pollution and **wreck removal** provisions should be part of a P&I policy. Insurers are recommending at least \$1 million in pollution coverage.

Cargo insurance can cover materials and items aboard your boat that are not permanently affixed to it and not covered by the hull policy. Fishing gear could be included, as well as supplies, household goods you are transporting for a friend, and even the catch itself. Cargo insurance won't cover fishing gear that is in use at the time of the loss. Tender operators may want to carry cargo insurance on the fish they haul to the processor.

Bareboat charters or vessel leases present special risk for vessel owners, and since primary liability lies with the vessel owner, agents recommend that owners require a certificate of insurance for P&I coverage and a hold-harmless agreement from the charterer. Bareboat charter coverage is available on some policies, as well as **hired skipper** and **alternate operator** riders.

Moorage insurance and **port risk** coverages apply when the boat is out of service and put away for the year. Not all of the perils of the sea are at sea. Boats sink, catch fire, spill oil and fuel, are run into by other boats, are targets of theft and vandalism, and can be dangerous to people who board them right in the boat harbor or storage yard. In general terms, port risk protects the boat, at lower cost, during the layup period. Moorage insurance is similar to P&I in that it is intended to cover liabilities to the harbor or marina, or to other vessel owners due to pollution or fire. Moorage insurance typically has three components: **general liability**, which is like P&I; **legal liability**, which covers legal costs; and **pollution liability**, which covers the costs of recovering oil and other pollutants. Many public boat harbors and most commercial marinas require a policy to be in place and typical policy minimums are \$300,000 to \$500,000. Ports and marinas commonly require that they are named **additional insured** on the policy.

Marine general liability, or simply **general liability**, is a class of coverage that can provide protection for a range of possible problems including bodily injury caused by actions or facilities of the vessel's owner company, foodborne illnesses caused by products the vessel carries, product recall, and business interruption, any of which may be used by fishermen who do onboard processing and direct marketing. A “**bumbershoot**” or umbrella policy is similar to policies issued to other businesses and to private citizens.

Breach of warranty insurance protects a lender in case the hull and P&I policies are rendered invalid due to actions or omissions by the policy holder (see Voiding a Policy below). Violation of any of the guarantees (warranties) by the policy holder could invalidate it, leaving the mortgage holder unprotected, so they normally require that the borrower also purchase a breach of warranty policy. If the insurer notifies the lender that policy is lapsing, the lender will order it reinstated and will charge the borrower's account. Normally a breach of warranty policy pays only what is owed to the lender.

Voiding a Policy

Each policy has a number of “warranties” that are guarantees by the owner that specified conditions will be met. They may include geographical limits of operations (“trading warranty”), seasonal layup periods, numbers of crewmembers, legal operations (no drugs or operating drunk), required licenses and safety equipment, and so on. Violating any of these warranties can invalidate a policy. Failure to make timely payment of premiums can cause cancellation. “Misrepresentation of a material fact” means concealing information or providing incorrect information, even if the prospective insurer didn’t ask. Federal maritime law allows a company to void a policy whether the deception was intentional or just negligent.

It’s often possible to modify a policy after it is written. For example, if a boat needs to be moved outside its geographical limits or operated during the normal layup season, your agent can request a rider or extension that keeps the policy in effect. There may be a modest charge but not necessarily as long as the company is consulted in advance about what you plan to do.

How Much Insurance Is Enough?

The answer to that question is another question: How much can you afford to lose?

Hull and machinery coverage is set by the boat’s value, as determined by a marine survey. The owner can exercise some control over that. Make sure the vessel “shows” well—that it’s clean and orderly and in good repair. Make all the documentation available to the surveyor, and make sure he or she is aware of all the equipment and amenities. The higher the survey value the more you can collect should anything bad happen, provided you get that value into the contract. Since owners tend to add equipment and upgrade their boats over time it is prudent to update surveys to avoid undervaluing their vessels when it is time to renew insurance.

P&I is another matter. There are several considerations. One is **how much in personal assets are at risk** in a liability claim. If all you have is a worn out old boat and a rusty Subaru, you might reason that if you are hit by a big judgment you can just declare bankruptcy and walk away from it. On the other hand, if your boat and gear, home, savings and investments, and other assets are substantial you’ll want to protect them to the fullest extent possible. Keep in mind that personal injury awards have been gradually increasing, in part due to the dramatic increases in costs of medical treatment related to new technologies and growing financial expectations in the medical and legal industries.

Another is a moral one. You operate a large piece of powerful machinery that is capable of inflicting a lot of damage on other people and their property. You have to be responsible for the consequences of your actions. Furthermore, you may employ crewmembers who are friends, neighbors, or family, and they are working for you to support their families. Do you feel an obligation to ensure that they are well cared for if they are hurt or lose their livelihood?

Your agent is probably the best advisor on the question of what is the right amount of P&I to carry, or your friends with similar operations. You’ll probably find that for a small boat \$1 million is the minimum now, and with a bigger boat and a few crewmembers \$2 million probably is reasonable.

Getting the Best Value

Insurance costs vary widely as do coverages. Pools or “mutuals” tend to have the lowest premiums, because they operate as nonprofits and because typically they have high standards for admitting new members so claims tend to be low. Some pools actually return money to members after years of claim-free operations.

Commercial insurance rates vary because different underwriters evaluate risk differently and because there are so many variables in a commercial vessel policy. They

include vessel condition, operator experience and loss record, operating area and length of season, deductibles, and features of the policy. For example—Are personal goods covered? What about pollution and wreck removal? What are all the named hazards? Is military action or acts of war one of them?

Brokers and agents can combine multiple coverages into a single policy that is tailored to the client, but it is up to the client to ensure that he/she is getting the needed coverage.

Different agents and brokers will offer policies at prices that differ from one another, and it's not a bad idea to shop around for the best deal. But keep in mind that there is a limited number of underwriting companies that all the agents are representing, so there is a good chance that several agents are approaching the same underwriters. It takes time and effort for them to submit applications and they don't want to duplicate efforts of other agents. Besides, loyalty to a given agent or broker can pay off in personalized treatment down the road, which can manifest in lower cost.

Here are some ways to minimize insurance costs:

- ◆ Choose the highest deductible you can afford (and that your bank will allow, if required).
- ◆ Select the longest layup periods possible, without limiting your money-making options. Additional operating days can be added if new opportunities come up.
- ◆ Same with geographical limits—don't pay for coverage outside your normal area if you don't expect to leave it. Again, you can add additional range later if needed.

As with all contracts it is prudent to **read the fine print**. It's in legalese but ask the agent to explain anything you don't understand, or take it to your own lawyer. A single marine policy may be made up of two or more separate agreements so it is important to understand the whole package. The companies' business is to protect you, but first they protect themselves so be sure the contract doesn't put you at a disadvantage. Policies are negotiable; you can question or object to individual provisions or request additional ones and your agent should go to bat to get what you want.



Classic halibut schooner,
Resurrection Bay, Alaska.
T. Johnson photo.



Pocket seiner, Kenai Peninsula, Alaska. T. Johnson photo.

Some Cost Reduction and Risk Management Tips

Crew contracts: Use them. Include a requirement of full disclosure of pre-existing health and injuries. Disclosures can decrease your liability if an injury/illness had previously occurred, or if the crewmember failed to fully disclose previous conditions. Consider criminal background, medical history, and drug testing as part of the contract.

Procedures: Print out policies and procedures, including emergency procedures, inspection schedule, and incident report forms. Ensure that all crewmembers read them and acknowledge with initials or signatures that they have read and understand them, and store these signed documents in a safe place where they can be located in case of a subsequent problem.

Training and drills: Conducting regular training and drills shows due regard for safety, imparts a safety consciousness in the crew, and hones essential skills. It also establishes a record of safety culture on your boat, which might be helpful in litigation.

Vessel inspections: Even if not required, a voluntary Coast Guard safety inspection may alert you to safety equipment deficiencies, and serves as evidence of responsible vessel management.

In the case of an accident, and especially if there is personal injury, **take immediate, thorough, and compassionate action.** If an injured crewmember or third party is treated immediately it is less likely that person will go after an excessive settlement. Big lawsuits commonly arise because vessel owners or their insurers lost control of the situation by not being quickly and appropriately responsive to people who were injured or harmed.

Non-Vessel Related Insurance

Some industry professionals refer to business owners as “target defendants” because of the impression that people like commercial fishermen and vessel owners have lots of valuable assets. They recommend buying maximum level coverage on automobile liability, homeowner’s insurance, and personal liability, and they recommend a personal umbrella policy of at least \$1 million.

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Terry Johnson is an Alaska Sea Grant Marine Advisory agent and University of Alaska professor, based in Anchorage.

ALASKA SEA GRANT

alaskaseagrant.org

Paula Cullenberg
Director
(907) 274-9692
paula.cullenberg@alaska.edu

ANCHORAGE

Alaska Sea Grant
University of Alaska Fairbanks
1007 W. 3rd Avenue, Suite 100
Anchorage, Alaska 99501
(907) 274-9691

FAIRBANKS

Alaska Sea Grant
University of Alaska Fairbanks
903 Koyukuk Drive, Suite 201
Fairbanks, Alaska 99775-5040
(907) 474-7086

JUNEAU

Ginny Eckert
Associate Director for Research
17101 Point Lena Loop Road
Juneau, AK 99801-8344
(907) 796-5450
ginny.eckert@alaska.edu

KODIAK

Astrid Rose
Program Assistant
(907) 486-1500



MARINE ADVISORY PROGRAM FACULTY

ANCHORAGE

Davin Holen
Coastal Community Resilience
Specialist
(907) 274-9697
dlholen@alaska.edu

Terry Johnson
Marine Recreation and Tourism
Specialist
(907) 274-9695
terry.johnson@alaska.edu

Marilyn Sigman
Marine Education Specialist
(907) 274-9612
marilyn.sigman@alaska.edu

CORDOVA

Torie Baker
MAP Associate Leader
Marine Advisory Agent
P.O. Box 814
Cordova, Alaska 99574
(907) 424-7542
torie.baker@alaska.edu

DILLINGHAM

Gabe Dunham
Marine Advisory Agent
P.O. Box 1070
Dillingham, Alaska 99576
(907) 842-8321
gabe.dunham@alaska.edu

KETCHIKAN

Gary Freitag
Marine Advisory Agent
600 Stedman Street
Ketchikan, Alaska 99901
(907) 228-4551
gary.freitag@alaska.edu

KODIAK

Kodiak Seafood and Marine Science
Center
118 Trident Way
Kodiak, Alaska 99615
(907) 486-1500

Quentin Fong
Seafood Marketing Specialist
(907) 486-1516
qsfong@alaska.edu

Brian Himelbloom
Seafood Specialist
(907) 486-1529
bhimelbloom@alaska.edu

Julie Matweyou
Marine Advisory Agent
(907) 486-1514
julie.matweyou@alaska.edu

Chris Sannito
Seafood Quality Specialist
(907) 486-1535
csannito@alaska.edu

NOME

Gay Sheffield
Marine Advisory Agent
400 E. Front St.
Nome, Alaska 99672
(907) 443-2397
gay.sheffield@alaska.edu

PETERSBURG

Sunny Rice
MAP Associate Leader
Marine Advisory Agent
P.O. Box 1329
Petersburg, Alaska 99833
(907) 772-3381
sunny.rice@alaska.edu

UNALASKA

Melissa Good
Marine Advisory Agent
P.O. Box 248
Unalaska, Alaska 99685
(907) 581-1876
melissa.good@alaska.edu

Alaska Sea Grant is a marine research, education, and extension service headquartered at the University of Alaska Fairbanks School of Fisheries and Ocean Sciences. Alaska Sea Grant is supported by the National Oceanic and Atmospheric Administration Office of Sea Grant, Department of Commerce, under grant no. NA14OAR4170079 (project A/153-32) and by the University of Alaska with funds appropriated by the state.

