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Aquaculture Insurance

A Primer



If you are raising or harvesting clams, oysters, mussels, or similar seafood products, this white paper provides an insurance starting point. It will outline insurance basics and how they apply to aquaculture, in a broad sense. We recognize you need to control cash flow and determine which insurance coverages are most important to you. To that end, cost estimates are provided.

Insurance for the aquaculture industry is classified into five general groups: Crop Mortality, Property, Liability, Auto, Commercial Boat, and Workers' Compensation/Jones Act.

Crop Mortality

If you are fortunate enough to be raising **clams** in Accomack or Northampton counties in Virginia, or select counties in Florida, Massachusetts, or South Carolina, traditional crop insurance is available. This coverage is subsidized by the federal government and covers losses to clams for disease, ice, change in salinity, and other perils. For Accomack and Northampton counties, prices are around \$300 to \$650 per year per million clams depending upon clam age and level of coverage. That works out to around 1,500 clams insured for \$1. Additionally, **oysters** are an insurable crop in Louisiana. Several efforts are underway by various parties to expand these offerings.

The Farm Services Agency has a nice program called the Noninsured Crop Disaster Assistance Program (NAP) which provides basic coverage at an affordable price. Contact your local FSA office for more information.

- Find your local FSA office: <https://offices.sc.egov.usda.gov/locator/app>
- FSA website: <https://www.fsa.usda.gov/>

Liability

This coverage protects you for liability associated with your products and business operations.

- **General Liability:** This is usually the first coverage a startup business asks for. This coverage protects you for liability as a result of 1) bodily injury, and 2) property damage. In other words, if you hurt somebody or something, this protects you. There are exclusions for automobiles, boats, and workers compensation.

For an aquaculturalist, it means you have protection if a customer or buyer hurts themselves while visiting. More importantly, it protects you for your products, such as if someone gets sick on your oysters or clams. If your policy has a virus or bacteria exclusion, check to ensure the exclusion does not apply to products meant for bodily consumption (food).

Policies start out at around \$450/year to \$750/year for a startup grower for \$1,000,000 in coverage. We recently insured a grower with \$225,000/year in sales at \$910/year. One of our seafood wholesale clients (no growing) with 3,000,000 in sales pays around \$2,000/year.

- **Umbrella Liability:** This coverage is an extra layer of protection above your general liability. It can also spread over your auto liability and workers compensation if desired. If you start supplying a distributor that needs more than the standard \$1,000,000 general liability policy, this may be what you need. Prices are around \$1,400 for the first \$1,000,000 in coverage and \$1,000 for every \$1,000,000 after that. The larger your sales, the more the premium, because the more risk the insurance company assumes.

- **Miscellaneous:**
 - **Employment Practices Liability:** Recently, this is one of the most requested coverages. Protects for liability for sexual harassment (from employer or other employee), discrimination, wrongful termination, or refusal to hire.

 - **Directors and Officers:** Protects the directors and officers of a company for a variety of acts that are not covered under general liability including failure to faithfully discharge the duties of their position.

 - **Fiduciary Liability:** Do you sign checks on behalf of the company? If you act as a fiduciary in any capacity, you have an exposure and this coverage protects you.

 - **Employee Benefits Liability:** Do you manage any sort of employee benefits plan? If so, this coverage should be a consideration.

 - **Cyber Liability:** Do you retain customer or employee information, in print or electronic? If so, you have a responsibility to guard it. If you were to lose personal information or someone hacks your computer system and steals their information, you have a liability exposure.

Business Auto

If you tow your commercial boat with your pickup, or deliver your own oysters, your personal auto policy may not cover you. Most personal auto policies specifically exclude anything having to do with business use. If you use your vehicle in a business capacity, be sure to tell your insurance agent. The best way to insure an auto used in a business capacity is with a business auto policy.

Auto policies insure against your liability associated with its operation. They can also protect the vehicle itself against physical damage. Business auto insurance can cover regular passenger type autos, commercial trucks, trailers, and most anything else.

Business auto policies need to be written to include all possible exposures. If employees ever drive their own vehicles on company business (get mail, get supplies, salespeople visit clients, deliver product, etc.) then you could be liable if they are in an accident. In this case, you need to ensure your policy covers you for "hired and non-owned liability".

Costs vary widely based on levels of coverage, driver history, and claim history. We recently insured one grower with two trucks, **liability only**, \$500,000 insurance limits, for \$1,365 per year total.

Property

Property coverage is not limited to protecting your building. It can also cover physical damage to your contents, lost income (in case you lose a key building), and many other items. Be sure to understand your wind and hail deductibles, especially if near open water.

- **Building:** Cost is driven by amount of coverage, age of the building, how it is constructed, how it has been updated, etc. Near the water, expect to see rates from 0.5% to 1.0% of insured value.
- **Contents:** Contents are usually covered only while at or near the building. Contents can be your tools, equipment, inventory, and stock. Rates are the same as that mentioned above. If your contents move around or away from your premises, be sure to talk to your insurance agent to have them covered properly while in transit or away.
- **Business Income with Extra Expense:** If you lose a building, this coverage replaces your business' lost income along with necessary continuing and extra expenses while that building is being rebuilt. This is a vital coverage since many businesses that suffer a serious fire or other disaster cannot re-open because they do not have income in the meantime. They may lose customers to competitors during the rebuild. In short, building insurance puts your building back up, but business income insurance puts your business back up. You don't need to own your building to have this coverage.
- **Miscellaneous Coverages and Notes**
 - If you operate a hatchery or nursery, one of your larger risks is losing water circulation due to loss of power or equipment failure. In this instance, your seed clams/oysters or other stock will likely be excluded from all coverages, even from spoilage, because they are considered "live animals". You need special coverage to address this risk. It can be covered by special contents coverage, special business income coverage, or several other means.
 - **Spoilage Insurance:** If you keep seafood (not live) or other perishables refrigerated and have a power outage, this coverage protects you for spoilage due to power loss (even if no damage occurred at your premises), equipment failure, and other perils.
 - **Inland Marine Insurance:** A separate coverage for mobile equipment and miscellaneous items that are often in transit or used away from the main premises.
 - **Flood Insurance:** Loss by flood is not covered under your property policy. It is that simple. You do not need to be near water to have a flood loss, or to get flood insurance.

- **Employee Dishonesty Insurance:** Covers loss due to employee theft or other acts of dishonesty.
- **Data Processing (Computer) Insurance:** Covers hardware, software, and the expense of putting the two together and getting it all back up and running.

Workers' Compensation and/or Jones Act

Due to recent court cases, it has become apparent that it is possible for an injured aquaculture worker to sue their employer in federal court under the Jones Act. State workers' compensation will NOT protect you, your employees, or provide any coverage for Jones Act exposure. If the injury falls under the Jones Act, state workers' compensation will not apply. Conversely, if the Jones Act doesn't apply, then state workers' compensation does.

We clearly communicate to our workers' compensation carriers what our clients' operations entail, however that is no guarantee that in the future a claim will not be denied by an adjuster who believes Jones Act coverage applies. The cost to defend a Jones Act case in federal court can be \$50,000 - \$150,000 and up, not including settlement.

Analyze Your Operations

The first step to determine whether you need to obtain coverage for the Jones Act is to determine if you employ any Jones Act seamen. So, who is a Jones Act seamen? In true insurance agent style, our official answer is "Ask your jury." Court cases and opinions vary from one federal district to another. Realizing that answer provides little value, here is what we understand to be a litmus test for a Jones Act seamen:

1. Is assigned to a boat or fleet of boats - if all the boats are owned by the same person, that usually meets the definition of a fleet,
2. Works on commercially navigable water - any tidal water that empties into the Chesapeake Bay or the ocean fits this definition, and
3. Contributes to the function of the boat - if they pilot it, load it, unload it, work on it, etc., they contribute to its function. If someone does this approximately 30% or more of the time, they typically are considered a seaman.

Resolution

So, how do you plug the Jones Act hole? ***The best way to provide full coverage is to carry both state workers' compensation and crew (Jones Act) coverage.*** Here are a few points of interest:

- The first thing to do is to determine which employees you think are Jones Act seamen – see paragraph above.

- Next, get a quote for A) state workers' compensation and B) crew coverage.
- As long as you track payroll separately, you are permitted to break out payroll/headcount for workers' compensation and crew coverage. This helps ensure you don't double-pay for coverage.
- Just because someone is injured while ashore doesn't mean they lose their Jones Act status. Generally, a Jones Act seaman is still a Jones Act seaman as long as they are in service of the vessel. However, if they are not in service of the vessel at the time of the injury, chances are that would be a workers' compensation claim.
- Policies are not written by employee name. They are based on payroll and/or headcount estimates.

Workers Compensation

- State regulated protection that covers you and your employees for injury. It pays for their healthcare bills and lost wages, while protecting your business from liability for the same.
- Most people you pay are considered an employee under workers' compensation law, despite whether you pay by 1099 or not. An employee is someone you pay, someone to whom you provide the tools to do their job, and someone you tell what/how to do their job. If there is a gray area, it will probably be decided in favor of the employee.
- This coverage typically does NOT cover you for suits brought under the Jones Act. It can provide such coverage under code 7016, but at the time this paper was written, that coverage is limited to only \$25,000.
- Costs
 - Varies based on levels of coverage and claim history. Also varies widely by state.
 - For aquaculture workers, Virginia is around 2.35% of payroll, South Carolina is around 8% of payroll.
 - For the code 7016 discussed above, costs can be 15% or more.

Protection and Indemnity (P&I) and Crew

- Can cover your boat, liability arising out of the use of your boat, and crew.
- P&I is similar to auto coverage for your boat.

- Crew coverage will protect the employee and the business for exposures under the Jones Act. Beware some policies can exclude coverage once the crew is off the boat (in the water working the beds/cages).
- Crew coverage pays for transportation, wages, maintenance, and cure, which is the maritime equivalent of workers' compensation.
- Costs
 - **Full Crew Coverage:**
 - Hull: 1.5% - 2.5% of insured value
 - P&I (boat liability): \$1,000,000 coverage for about \$600 per boat per year
 - Crew: \$1,000,000 coverage for \$1,200 to \$1,500 per crew member per year
 - A "bumbershoot" policy can go over your P&I including crew to provide higher levels of coverage, similar to an umbrella liability policy.
 - **On-Boat-Only crew coverage:** The following are from an insurance company with whom we have negotiated special rates, available in OH, MA, PA, NJ, DE, MD, VA, & NC.
 - Hull: 2% - 3% of insured value
 - P&I (boat liability): \$500,000 coverage for \$410 per boat per year
 - Crew, on boat coverage only: \$300,000 coverage for \$300 per crew member per year

USL&H

- In the interest of thoroughness, we also need to briefly address the United States Longshore And Harbor Workers' Compensation Act (USL&HWCA). This is a separate act from the Jones Act and clearly EXCLUDES aquaculture workers as being subject to this act. Reference Pamphlet LS-560 at <http://www.dol.gov/owcp/dlhwc/LS-560pam.htm> or view the law at <http://www.dol.gov/owcp/dlhwc/lhwca.htm#902> and reference section 902 definitions. However, this does not mean you can't be sued under USL&H. You can be sued for anything. To ensure you have a measure of protection for USL&H, your workers' policy would need to include the correct USL&H classification codes.

Other Exposures/Insurance types to consider:

- **Inland Marine:** Can cover tools, equipment, machinery, and many other items. This coverage is usually used for items that frequently go off premises. You can also cover many kinds of contents under inland marine, but it may cost more to do so. The nice thing about inland marine is that the items covered are not tied to a location and flood is a covered peril.
- **Maritime Employers Liability:** This provides protection against liability arising from a variety of exposures under general maritime law. Price varies too widely by business operations, location, and size of business to provide generalities.
- **Bumbershoot:** The same idea as umbrella but over your boat and/or crew policy.
- **Transportation:** Covers stock, inventory, or other property while it is being shipped within the US.
- **Ocean Marine:** Covers stock, inventory, or other property while it is being shipped over the ocean.
- **Health, Life, Disability, Long Term Care:** Group or individual.