

The New Longshore Insurance Requirements

What Changed & How It Could Affect You

News: The Department of Labor has revised its regulations on the Longshore Harbor Workers' Compensation Act (LHWCA), which may affect whether your marine business is required to provide Longshore Insurance for your employees.

Background:

For over 25 years, Congress recognized that recreational boat building, repair, and dismantling for repair presents different risks than those traditionally covered by federal Longshore Insurance. In addition, Congress understood that these different risks were adequately addressed by state workman's compensation programs. Effective January 2012, marine businesses that build, repair, or dismantle recreational boats will be governed by new Department of Labor regulations. **Marine businesses should be aware of these revised requirements to save money, comply with the law, and make informed business decisions.**

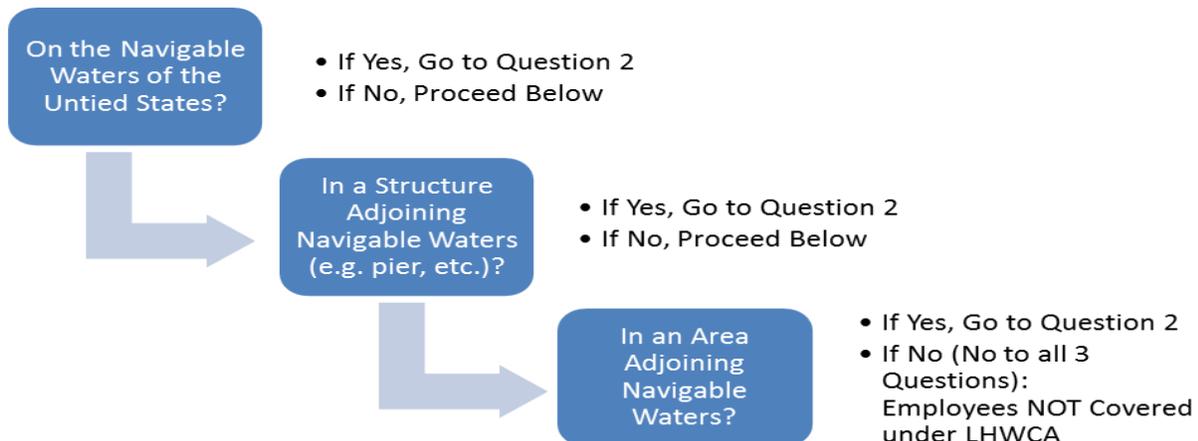
What Changed?

The LHWCA determines whether marine employees require federal Longshore insurance or if they can rely on state workman's compensation coverage. In 2009, Congress amended the LHWCA to exempt a new class of recreational boat employees from federal Longshore Insurance requirements. Recent Department of Labor regulations have put these new requirements into place. These revised rules exclude certain marine employees from Longshore Insurance requirements if they build or repair certain recreational boats. As a result of the recent changes, the **number of your employees requiring Longshore Insurance who are involved with the manufacture, repair, or dismantling of recreational boats may change.**

What Should I Do as an Employer?

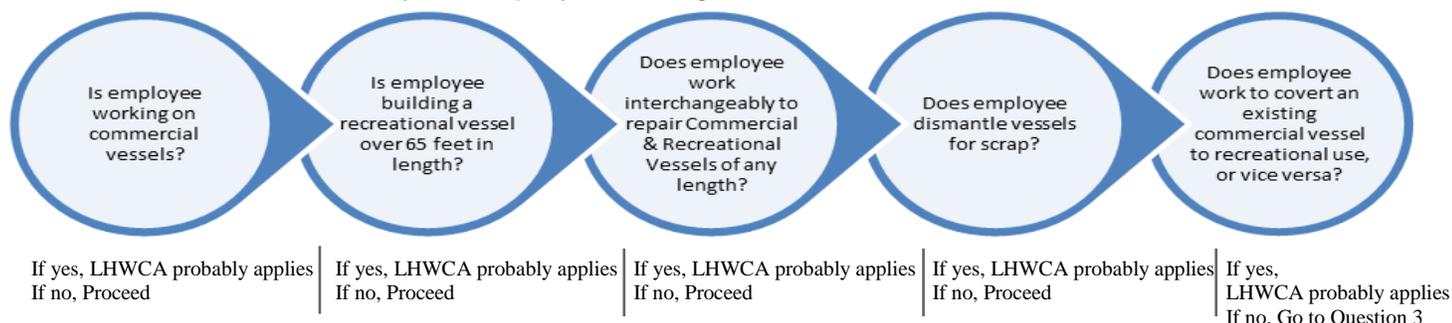
Marine employers should be generally familiar with the rules for Longshore Insurance and work with their insurer to make sure that they have the coverage that makes sense for their operations. If you know what activities may trigger Longshore coverage for your business, you can make an informed business decision and potentially save money. To determine whether your operations trigger Longshore Insurance provisions, consult your insurer after collecting answers to the following questions. The answers to these questions will determine what kind, if any, of Longshore coverage you need.

QUESTION 1: Where are your marine employees working?



Workers requiring Longshore Insurance must work on or near navigable waters. If your employees do not meet this so-called "situs" requirement, they are likely exempt from LHWCA requirements.

QUESTION 2: What are your employees doing?



The type of work a marine employee is a trigger for federal Longshore requirements. You may have some employees who work on one or more types of boats. **Remember that coverage requirements are specific to each employee and their work.**

QUESTION 3: Are you covered by state workman's comp?

Does Employer Have State Workman's Comp Insurance Coverage?

- If Yes, LHWCA Exemption Can Apply
- If No, LHWCA Exemptions CANNOT apply

If a marine employer is not covered by state workman's compensation, the LHWCA exemptions cannot apply. The regulations mandate that marine employees are either covered by federal Longshore insurance or state workman's compensation.

I'm a Recreational Boat Manufacturer, How Will the Changes Affect Me?

Longshore requirements vary by the location of your facility as well as the type and size of boat you're building. First, **federal Longshore provisions only apply if you are conducting activities on or adjacent to navigable waters.** If your facility or work is not on such a location, the LHWCA requirements do not apply. [76 Fed. Reg. 82118](#).¹ Second, **employees building boats may require Longshore coverage depending on the type of boat they are building.** If they are building a boat that appears designed and constructed for recreational use, the LHWCA exemptions for recreational boat building may apply; however, if employees build commercial boats or those that carry passengers for hire, they may fall under federal Longshore provisions. Third, **the size of the recreational boat is a trigger for Longshore coverage.** Employees producing recreational boats under 65 feet in length may be exempted from the LHWCA and federal Longshore requirements, but those employees building boats over 65 feet long do not fall under these exemptions.

¹ See also [33 U.S.C. § 903 \(3\)\(a\)](#): "Except as otherwise provided in this section, compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel)."

I Conduct Boat Repair, Will I Be Affected By the Changes?

Maybe. **Repairing a recreational boat of any size or dismantling it for repair will not trigger the federal Longshore requirements.** Repairing foreign-flagged vessels in the country for recreational use also falls under the LHWCA exception. However, repairing a recreational boat frequently used for non-recreational purposes may prompt Longshore coverage. [76 Fed. Reg. 82118](#). **Repairing a non-recreational boat or dismantling for scrap could trigger Longshore Insurance requirements for your employees.** Having your employees work on non-recreational boats could mean ensuring those employees have additional coverage. **Only those employees who work exclusively on recreational boats are exempt.** If your workers work on some non-recreational vessels, those employees may need federal Longshore coverage. Outfitting a recreational boat for non-recreational uses, such as carrying passengers for hire, or vice versa may also trigger Longshore coverage requirements.

What About Police Boats and Other Public Vessels?

Certain police boats are exempted from the LHWCA as well as other boats which appear intended as recreational boats by their design and construction. Therefore, you can repair or build these publicly-owned boats without triggering federal Longshore requirements. However, vessels engaged in military, commercial, or traditionally commercial activities, such as ferrying, are not exempted from Longshore requirements and may trigger requisite coverage. [76 Fed. Reg. 82128](#).

Where Can I Learn More?

The Department of Labor's [Frequently Asked Questions page](#) is a particularly helpful place to start. The Department also discussed its final rule and its rule-making process in the *Federal Register*. [76 Fed. Reg. 82117](#). In addition, NMMA has produced a [comparison chart](#) and held a [webinar](#) regarding the changes and how they may affect marine businesses. NMMA recommends with an insurer that has taken the time to become knowledgeable about the new rules and review their coverage needs in light of these recent changes. In some cases, the changes could result in reduced premiums so it is a conversation worth having.

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