



Employment Insurance and Seasonal Employment in the Fishing Industry and Other Relevant Sectors

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This report reviews the role of the Employment Insurance system in the fishing industry and other seasonal industries (and communities). We review the current system and its implications for fish harvesters, focusing on ways it supports or constrains their ongoing involvement in the industry and their ability to pursue additional employment to supplement fishing income. Key issues are highlighted, based on a review of relevant research. International comparisons are used to inform a discussion of how the existing EI program can be improved to serve the needs of seasonal workers and employers and help maintain a viable labour force in the fishing industry.

CONTEXT: SEASONAL WORK AND EI

Employment Insurance is of critical importance in seasonal industries. For many years it has supported workers in the off-season and enabled employers to maintain a local workforce. This role of EI has been controversial, as some prefer it to be a program for unanticipated job loss rather than regular income supplementation. While it helps maintain a local seasonal workforce, it has also been argued that workers may stay on EI rather than accept other available jobs. In other words, it may reduce occupational pluralism. The role of EI in seasonal industries has also been a factor in policy debates about the Temporary Foreign Worker (TFW) program, with employers arguing they turn to TFWs because of a lack of local workers, sometimes blaming EI. In response to these concerns various governments have instituted EI rules that penalize frequent users, ranging from the ‘intensity rule’ (1996) to the ‘suitable work’ rules (2013). While these types of rules act like ‘sticks’ to force EI recipients to take on more (or more stable) work, other EI initiatives act as ‘carrots’ to entice additional work. For example, over the years the rules about working while on claim have changed to enable workers to take on additional jobs without losing EI benefits dollar for dollar; other changes have made it easier to work into the slower shoulder season without jeopardizing benefits amounts (for example, using ‘best weeks’ to calculate average income, rather than all weeks).

Clearly EI is a critical support to employers and workers in seasonal industries/communities, but the challenge is how it fits with available work opportunities, both locally and nationally. Most attempts to make changes to EI targeted to frequent users have been seen as punitive. For example, the ‘intensity rule’ which lowered the benefit rate for frequent users was dropped for this reason (2000), and more recently the ‘suitable work’ rules which differentiated the wage that must be accepted by EI usage were also dropped (2015). Locally, many jobs share the same seasons, so it is not always possible to engage in sequential work over the course of the year. Nationally, many workers from Atlantic Region communities have been drawn to work in western Canada, sometimes keeping their families in the local community and returning to collect EI if they are laid off. These workers are unlikely to take on local minimum wage jobs

(presuming these are available) during their layoffs. However, there may be opportunities that are not taken advantage of because of issues with the EI system, as discussed in detail below.

Over the last twenty-five years concern with labour surplus in the fisheries and other rural industries has given way to looming labour shortages. In the early 1990s TAGS and other programs focused on moving labour *out* of the fishery. Professionalization programs aimed to improve conditions for those who remained. Now the issue is recruiting workers *into* the industry. The availability of high wage jobs out west has lured many young people away from fishing communities. These same jobs have also been a source of supplementary work for people who remain in the fishery (CCPA, 2016).

Several policy areas affect whether the fishery can continue to attract and retain a labour force. Fisheries policies, including quota allocations and licensing rules, are central, as is EI. Policies for attracting foreign workers, including immigration rules and temporary foreign worker programs, are increasingly part of the mix. The fit between policies has also been shown to be important (MacDonald, Neis & Murray, 2009). For example, do rules defining a full-time fisher mesh with EI rules for taking on additional work? One EI regulation that has been argued to affect recruitment into the industry is the new-entrant re-entrant higher work requirement, which can make it difficult for new entrants to qualify for EI. This was recently dropped so all workers now face the same eligibility rules.

In terms of the changing context for seasonal workers, it is important to consider the household as a whole, not just the individual worker. The traditional image of occupational pluralism among fishermen on the east coast was an individual who fished for part of the year, worked in the woods, perhaps went away for some wage work (for example, on Great Lakes boats). There was a 'seasonal round' of complementary activities. In the last fifty years individual occupational pluralism declined. Work became more specialized – one group worked in the fish plant, another fished. As the fishery industrialized, seasons became longer (until the collapse in the early 1990s on the east coast). Marshall (1999) found a notable decrease in seasonality within traditional seasonal industries from 1976-1997. Another factor in the decline of occupational pluralism is that the seasons for many rural alternatives coincide more than in the past (woods work used to be a winter activity but now occurs in the summer also; tourism overlaps with the fishing season...). Furthermore, resource access policies have restricted the ability of individuals to engage in other work (full-time fishers in some areas, for example, must limit their non-fishing work in order to maintain their status). As a result of these changes, there has been a tendency for individuals to be more specialized in their work than in the past.

The 'Coasts under Stress' project in Newfoundland in the early 2000s found that family occupational pluralism had largely replaced individual occupational pluralism (Ommer, 2007). Wage work by some family member(s) became increasingly important to support the fishing

enterprise (as in farming). This replaced earlier unpaid forms of work that family members contributed (women made the fish, grew gardens, kept the books...). And, worryingly, families had become more dependent on a particular sector or fishery, losing their traditional flexibility (MacDonald et al, 2006). For example, some women began fishing with their husbands in the wake of the moratorium, putting all the family's eggs in one basket. Another pattern, from a family point of view, is when there is an 'anchor' job around which other work is structured. In the past the fishing operation would be the anchor around which other family work activities fit. Now the full time job of a wife in the local hospital might enable an inshore fisher to survive. The anchor job might also be 'away', and the long distance commute of that family member could seriously constrain the work options of the spouse at home (Roseman et al, 2015).

In considering the role of EI, it is thus important to see how EI works with, or against, family livelihood strategies. One obvious example is how family members working together are treated. Many women fishing with their husbands have had their EI claims challenged based on the CRA 'arm's length' rule (if the wives apply for Regular Benefits) or, for Fishing Benefits, on whether their activities meet the criteria of a 'self-employed person engaged in fishing' (i.e. 'making the catch'). This has been an ongoing source of frustration. Another example is that new entrant rules may have made it harder for children to join the family fishing enterprise, affecting traditional intergenerational strategies. On the other end of the spectrum, it may be hard for older workers to exit the industry, and EI may have a potential role to play in this regard.

It must be emphasized that EI rules are just one factor that may have contributed to making it harder for young people to enter the industry and to have generational renewal in the industry. Clearly licensing and quota policies are central, as are the high investment costs needed to take over fishing enterprises. There are generational differences in the challenges faced and the strategies adopted. Some older fishers and plant workers are 'hanging on', waiting until they are eligible for seniors' benefits. They see little alternative than to keep at it beyond the point where they are physically capable of safely doing the demanding work. Younger people have been brought up to not see a future in the fishery and traditional lines of entry have been disrupted (for example, wives fishing instead of children; licensing restrictions). Reasonable incomes are needed to attract and retain workers in the industry, in order to compete with higher paid alternatives.

Occupational pluralism may be part of a solution. But for occupational pluralism to be attractive in 21st century rural Canada the combined income from work plus benefits such as EI, plus complementary work of family members, must provide a reasonable living. Mobility may be required for work in the off-season and training may also be needed. Does EI impede either occupational (skill) or geographical mobility? While there is a lingering view that EI discourages

geographical mobility, economic studies over the years have found no evidence to support this (Day & Winer, 2011). While most studies have focused on permanent moves, current research through the 'On the Move' project is examining patterns of EI use and temporary mobility, which is more applicable to the case of occupational pluralism. As discussed below, EI can be claimed in your home location regardless of where you are employed, so in principle 'working away' as part of a livelihood strategy does not jeopardize EI eligibility. EI also supports training; however the focus has traditionally been on changing one's occupation rather than developing skills to complement one's primary occupation. Earlier 'adjustment' programs like TAGS were aimed at moving people *out* of the fishing industry through a mix of skill training and support for geographical moves. In the proposed approach, EI would help keep people *in* the fishery. In general, occupational pluralism requires a mix of income benefits and active labour market policies and EI is crucial in this regard.

EI OVERVIEW

The following sections examine in more detail how the current EI system works through this lens of occupational pluralism for fish harvesters and other seasonal workers in rural Canada. Throughout the discussion relevant international comparisons are included and areas of concern are flagged. The key source of information on programs in other countries is the Mutual Information System on Social Protection (MISSOC), which 'was established in 1990 to promote a continuous exchange of information on social protection among the EU Member States' (MISSOC website). The system now includes 32 countries - the 28 Member States of the European Union, the three countries of the European Economic Area (Iceland, Liechtenstein and Norway), and Switzerland. MISSOC prepares comparison tables on various social protection policies, including unemployment. This database was used to review programs for unemployed in the various countries. The OECD Social Expenditures database also compares unemployment programs on some dimensions, across a wider range of countries including Canada (OECD, 2017), as does the Nordic Social Insurance Portal (2017). In addition, the research literature includes several comparative studies relevant to this discussion.

Most countries have social insurance based unemployment insurance (UI) programs along the lines of EI, funded by contributions from employers, employees, and often tax revenue (as was the case in Canada until 1990). Most are mandatory, though some are voluntary (Denmark, Finland, Sweden). Most countries have national funds while others have sector-specific funds (Denmark, Finland) and the US is state-based. These UI programs are generally not means-tested, though many (as in Canada) provide higher benefits to those with dependent children. In general, benefits are based on earnings, as in Canada, though in a few cases there are flat-rate benefits (Ireland, Poland, United Kingdom). About one quarter of countries have a two-tiered approach, where an 'unemployment assistance' program (UA) provides means-tested

benefits alongside the insurance-based UI. UA or 'allowance' programs provide modest benefits for those who have exhausted their UI benefits, or who do not qualify for UI. The Nordic countries with voluntary UI programs also have UA programs.

There are two components to Canada's Employment Insurance Act. Part 1 provides unemployment benefits to workers who have lost their jobs and also delivers special benefits related to sickness and some caregiving responsibilities. Part 2 provides employment benefits and support measures (EBSM) through agreements with the provinces. This report focuses mostly on Part 1 Fishing and Regular benefits which are paid directly to workers and administered by Employment and Skills Development Canada (ESDC) and Service Canada. Employment Insurance replaced Unemployment Insurance in a major 1996 reform. Since then several modifications have been made (MacDonald, 2009), some of which are noted below. Some changes proposed in the 2016 budget have not yet taken effect. The expected impacts of these changes are included in the discussion.

Of particular importance are the implications of EI rules for both workers and employers in terms of the potential for occupational pluralism. Thus, the rules for both Regular and Fishing benefits are relevant. Evidence shows that from 30% to 40% of fish harvesters (FH) have at least one non-fishing job, with some increase over the past decade. Furthermore, about one-third of this work is outside the local area (CCPFH, 2016). As noted, while EI has been a key source of income support for fish harvesters, fish processing employees and other seasonal workers, there may be ways that it could fit better with the possible mix of work available to families trying to earn livelihoods in rural communities and in industries that are inherently seasonal.

There are several different types of income benefits under Part 1 of the Employment Insurance Act (Unemployment Benefits). EI Regular benefits are for job loss or layoff of employees (self-employed are not covered). Note that fishing crew members can be paid as employees, which means Regular EI rules would apply, and enterprise heads can incorporate and pay themselves as employees. Those who voluntarily leave a job without 'just cause' are not eligible. Eligibility is based on hours of work, with the number of hours required varying depending on the unemployment rate in the relevant EI economic region. Applicants must be looking for work, available, and willing to accept 'suitable employment'.

EI Fishing benefits are for self-employed fishers. Fishers are the only category of self-employed workers eligible for EI benefits (other than special benefits). The MISSOC database provides some examples of programs in other countries that target particular workers or situations, though this is relatively uncommon. Some, like Canada, are by occupation. For example, Austria has special benefits for miners, while Norway has benefits for fishers, as in Canada. The Faroe Islands have special provisions for land-based fishery workers as well as a program for harvesters. Some rules for EI Fishing benefits are the same as for Regular benefits, while others

differ. The main differences are that eligibility is based on earnings not hours of work, and there are fixed periods for both eligible work and receiving benefits. As with Regular EI, there is a variable entrance requirement (VER), as the earnings required to qualify depend on the unemployment rate (see Appendix A). Also, as with Regular benefits, fishers are expected to be available for work. However this is limited to fishery work, including work supporting the fishing enterprise. They can accept part-time employment, but they are not *required* to accept non-fishing work and, indeed, have to be careful not to jeopardize their 'fisher' status in terms of both licensing and EI rules.

EI Special benefits are meant to cover work interruptions for medical reasons or certain caregiving responsibilities. There are Sickness Benefits, Maternity and Parental Benefits, Compassionate Care Benefits, and Special Benefits for Parents of Critically Ill Children. The rules for these differ from other EI benefits. In particular, the claimant is not expected to be looking for work, nor does eligibility or weeks of entitlement depend on where one lives (for example, for maternity leave employees need 600 hours of work and are entitled to 17 weeks of benefits). Self-employed workers have the opportunity to participate in the EI Special Benefits program by registering and paying premiums. As noted, these are the only EI benefits available to self-employed workers, other than fishing benefits.

The overarching questions relevant to this project are:

Is EI a help or hindrance in attracting and retaining labour in the fishery?

Is EI a help or a hindrance to combining fishing and non-fishing work?

What changes to EI would support occupational pluralism for fishers and their families (and other rural seasonal workers)?

FISHING BENEFITS: RELEVANT EI RULES

This program applies to self-employed fishers (crew members working for wages are covered under Regular benefits). Self-employed fishers are the only special category of worker incorporated into the Canadian EI program. As noted, the key ways Fishing benefits differ from Regular benefits are that eligibility is determined by earnings not hours, and there are two possible claim periods (summer, winter).

Eligibility

It is important to note that you cannot start a fishing claim if you have an active Regular claim (or are eligible for a Regular claim). The Regular claim takes precedence. To be eligible for Fishing benefits you must be self-employed and engaged in making the catch (or activities related to the catch or the vessel, as long as you also help make the catch). The list of activities

that count excludes most of the traditional support work done by wives, such as keeping the books or preparing meals for the crew. A spouse is only eligible for Fishing benefits if they are directly involved in making the catch. As noted earlier, if wives make Regular claims as employees of their husbands' fishing enterprises, they are subject to scrutiny by CRA using the 'arm's length' criterion, which disallows coverage if the employment relationship is 'not at arm's length', meaning the person is not subject to the same employment conditions as a non-relative. The perception is that the claims of wives working with or for their husbands are often challenged or denied.

The qualifying period (QP) for fishing earnings is 31 weeks before the benefit period, and the earliest date for the QP to start is March 1 (summer fishing) or September 1 (winter fishing). The benefits period can start October 1 for a winter claim based on summer fishing or April 1 for a summer claim based on winter fishing. The. It is also possible to establish two claims a year, if one fishes in both seasons. According to the latest EI Employment Monitoring and Assessment Report (2014-15) the number of new claims was 27,587, down from over 35,000 a decade ago. 80% of new claims were established in Atlantic Canada (40% in NL alone).

As with Regular benefits, the amount of work needed to qualify for benefits depends on the unemployment rate (UR) in the EI Economic Region. Fishers need earnings from fishing of \$2,500 to \$4,200 depending on the unemployment rate (\$2,500 applies with an UR of more than 13% and \$4,200 applies when the UR is $\leq 6\%$). These earnings levels have not changed since 1996. The rationale for variable entrance requirements (VER) in EI is that you are more likely to lose your job, and find it harder to find one, in an area of higher unemployment. The unemployment rate may not be a good indicator of opportunities and economic conditions in the fishery. Variable entrance requirements have existed since 1977 (Bill C-27). While this is often misinterpreted as meaning differences across broad Canadian regions or provinces (i.e., Atlantic region vs others), the EI regions are in fact sub-provincial (62 regions as of April 2016). For example, NS has 3 economic regions and NL has 2 (greater St. John's and everywhere else). The regions have changed over time. For example, in a 2000 revision the number of regions in NS was reduced from 5 to 3 and the number in Alberta increased from 3 to 4 (breaking non-urban Alberta into north and south). PEI was one region until it became two in October 2014 (Greater Charlottetown and the rest of Island).¹

The VER is more controversial for Regular benefits than for Fishing benefits. For the latter program, the earnings levels set for fishing income are relatively easily met even in low unemployment regions. Furthermore, most fish harvesters work in rural areas that are more likely to have relatively high unemployment and thus require less income to qualify. Amongst fishers - in contrast to employees - the issue of qualifying for EI has not been controversial. The

¹ See Appendix A for more detail on EI regions.

general view is that the 1996 reforms made it easier for fishers to qualify, while making it harder for some other types of workers (MacDonald, 1999; MacDonald, Neis & Murray, 2009; Vosko, 2011). With the 2008-9 recession, and again in the recent downturn due to collapsed oil prices, the VER has been under attack. The arguments include that many precarious workers in low unemployment regions are unable to qualify (Vosko, 2011) and in a national downturn not all laid off workers are treated equally. One question is how fishers would fair if we went to a standard national eligibility system, as recommended by many analysts (Mowat Centre, 2011; Gray & Busby, 2016). It is worth noting that Canada is the only country where the required work time varies with the regional unemployment rate. Instead, the formula in a few countries varies by age (see also discussion of older workers, below). For example, Belgium requires between 312 working days during the previous 21 months and 624 working days over the previous 42 months, depending on age.

Another aspect of eligibility since 1979 has been that it is harder for those with limited labour force attachment to qualify for benefits, compared to established workers (Lin, 1998). The 1996 EI act included higher eligibility requirements for new entrants and re-entrants (NERE) to the labour market. As with Regular benefits, a labour force attachment period is looked at for fishers (52 weeks before the qualifying period). You must have at least \$3,000 of fishing earnings or 490 hours of other labour force attachment *related to fishing* (e.g. EI benefit weeks, training related to fishing...) in that period. If this is not met, then a flat \$5,500 of fishing earnings is needed to be eligible for benefits, regardless of EI region. It is important to note that the labour force attachment does NOT include other work activities – a continuous connection to fishing must be maintained. This might impact decisions to take on other forms of work in the off season, or to take a year off of fishing for whatever reason. It could also discourage young people from entering the fishery. However, according to the latest EI Monitoring and Assessment Report (ESDC, 2016), 95% of all fishers who qualify for benefits have >\$5500 earnings, so in practice this may not be a major barrier to eligibility.

The NERE distinction was dropped as of July 2016. Interestingly, the accounts in the press generally did not note that these higher requirements applied only to NERE applicants; rather, the change was presented as a *reduction* in general eligibility requirements, resulting in some commentary that EI was becoming too easy to get (hence discouraging people from taking available work). The end of the higher NERE requirements means more flexibility in work patterns over the life course and better ease of entry for younger people. From the point of view of occupational pluralism and renewing the fishery labour force, this is a positive change.

As noted, there are two separate qualifying and claim periods for fishing benefits. Thus, fishers are allowed to make both a summer and a winter claim ('double claims'), The winter qualifying period corresponds to the winter fishing season, for which the benefit period can start in April,

and the summer qualifying period corresponds to the summer fishing season, for which the benefit period can start in October. Thus, you could fish in the summer, claim EI in the fall, then fish again in the winter and claim EI in the spring. This is common (and possible) in some fisheries/regions more than in others. According to the 2014/2015 EI Monitoring and Assessment Report (ESDC, 2016), 40% of fishers made both summer and winter claims, 98% of which were in Atlantic Canada or Quebec. The percentage of claimants who made multiple claims was highest in NL (56%) and Quebec (68%). Almost half (47%) of fishers only have a summer claim. As discussed below, this affects the amount of EI collected. Thus, the EI eligibility rules play out differently in different types of fisheries and different regions of the country. For those who can make two claims, there may be less incentive to take on non-fishing work in the off season. On the other hand, in some regions access to double claims creates incentives for enterprise owner-operators to diversify their fishing activities and extend their seasons, and incentives for crew to seek work in more fishing operations over the course of the year. Put another way, Fishers' EI may support greater occupational pluralism *within* the fishery.

Generally, the only complaint about the fixed claim periods is that the dates may not correspond with the actual fishing season or weather conditions. In northern Newfoundland, for example, fishers complained that their winter claim ran out before it was safe to go on the water, resulting in risky behaviour, or a gap in income (MacDonald, Neis & Murray, 2009).

Benefit formula

For all EI income benefits the basic formula is 55% of your average insurable weekly earnings. As of January 1, 2016, maximum insurable earnings (MIE) are \$50,800. This means that one can receive a maximum amount of \$537 per week on EI (55% of \$50,800/52). Our EI benefit rates are considerably lower than in many other countries, including Nordic countries with similar seasonality (Grady & Kapsalis, 2002). The benefit rate is often in the order of 70-90% of earnings (90% Denmark; 80% Sweden and Switzerland). Most countries, like Canada, have maximum insurable earnings (Denmark is an exception to this). The UK and Ireland have a flat rate benefit, while a few others use a combination of a reference amount (related to average wages, or a basic benefit) with a top-up based on earnings. A study of UI generosity in 14 European countries (measured in relation to the average production worker wage and adjusted for duration) ranked the Netherlands and Denmark highest (Pfeifer, 2010). An OECD study showed Canada to have a net earnings replacement rate (taking account of taxes and other benefits which may not apply to all unemployed) for the first year of unemployment above the OECD average but below Finland, Germany, France, Spain, Belgium, Norway, Netherlands, Portugal, Switzerland and Luxembourg (OECD, 2015).

The key issue with the EI benefit formula in terms of work incentives is how '*average* insurable weekly earnings' are calculated, in terms of both the numerator (total earnings) and the

denominator (number of weeks). Average insurable earnings from fishing are calculated by dividing total fishing earnings in the 31 week qualifying period by the minimum divisor based on the unemployment rate in the EI region, regardless of the actual number of weeks spent fishing (see more on the minimum divisor in the discussion of Regular benefits below). The minimum divisor ranges from 14 (when the unemployment rate is >13%) to 22 (when it is ≤6%). *Thus, the same fishing earnings give rise to different average earnings (and thus benefits) depending on where you live (until the MIE is reached).* Note that average earnings from wage employment (using the last 26 weeks of earnings in the qualifying period) are added to the fishing earnings (the calculation of average non-fishing earnings is also subject to the minimum divisor). Thus, non-fishing employment earnings increase EI benefits for fishers. However, if you have enough wage earnings to make a Regular claim you are not eligible for Fishing benefits, so there is a fine line there.

According to the latest EI Monitoring and Assessment Report (ESDC, 2016), about three-quarters of fishers receive maximum benefits (compared to 46% of Regular claimants), and their average benefit is higher than for Regular EI claimants. This suggests self-employed fishers will not want to jeopardize their eligibility for a Fishing claim. This report also shows that about 60% of fishers are in regions in the highest unemployment rate category, and face the lowest divisor (14), which increases their benefits compared to fishers in lower unemployment regions. If benefits are maxed out with just fishing earnings, the incentive to take on additional work is reduced, especially low wage work that would pay less than EI benefits. The logic for the minimum divisor is to provide an incentive for workers to work beyond the minimum time required to qualify for EI. It is not clear that this logic has relevance to fishers, whose fishing time is constrained by fisheries regulations.

Fishers, like all other categories of EI claimants, may be eligible for higher benefits based on the family supplement (FS). There is a history of UI/EI providing additional benefits to lower income recipients with dependents. Prior to 1996 the determination of eligibility was based on *individual* earnings, while now it is based on *family* income (up to a maximum of \$25,921) and eligibility for the Canada Child Tax Benefit. The full FS is available to those with family incomes under \$20,921. The FS provides up to 80% of your average insurable earnings (as calculated above) up to the maximum EI benefit (\$537/week). Across all benefit types, only 4.5 percent of new claims in 2014/2015 included the FS (ESDC, 2016, Annex 2.19). Given the higher average benefit for fishers, the FS may not be as important as for Regular claimants. Only 2 percent of new claims by frequent claimants, which would include most fishers, included the FS. In our international comparison we found it was very common to provide higher benefits for those with dependents; however, in most countries this is not income tested but applies to everyone.

It is worth noting that about a quarter of MISSOC countries have decreasing benefit rates over time (for example, Sweden’s rate drops from 80% to 70% after 200 days). Some also differentiate benefit generosity based on years of contributions, which favours older workers (for example Denmark and Belgium).

Duration

There has traditionally been a two week waiting period before EI benefits begin, which is considered to function like a ‘deductible’ in other kinds of insurance. The March 2016 budget proposed to reduce this to one week, effective January 1, 2017. Even this is longer than most countries, many of which have no waiting period (Van Audinrode et al, 2005). The duration of Fishing benefits is up to 26 weeks within a specific 37-38 week period for each claim (starting October 1 for summer or April 1 for winter). A benefit period is established for each claim. Fishers don’t have to be looking for work *if they are doing activities related to fishing* (working on gear, training...); otherwise, they have to be available for *fishing-related* work, including with another enterprise. The average duration (2014/2015) for those with one claim was almost 25 weeks, compared to about 38 weeks for those with two claims (2014/2015). This compares with 19.6 weeks on average for Regular claims. This likely explains why most crew members prefer to be paid shares and make Fishing claims rather than be taken on as employees.

The following table shows the variation in EI parameters related to eligibility, benefit calculation, and duration across fishing communities participating in the CCPFH Fisheries Labour Market Information project.

Fishing Benefits by Case Study Region, September 2016

	EI Region	UR %	Earnings needed \$	Weeks of benefits (1 claim)	Minimum Divisor
Bonavista NL	02	17.5	2500	26	14
SW Nova, NS	05	10.3	3200	26	17
SE NB	09	15.2	2500	26	14
N shore QC	19	8.4	3600	26	19
Les Îles-de-la-Madeleine, QC	10	16.5	2500	26	14
Lake Winnipeg, MB	41	32.1	2500	26	14

N. BC (Port Hardy, Prince Rupert)	55	11.1	2900	26	16
S Coastal BC (Campbell River)	54	6.7	4200	26	21

Working while on claim

You cannot work full-time while receiving Fishing benefits, as you have to be available for fishing-related activities, including training programs, to maintain your EI claim as a fisher. Furthermore, if you work sufficient employment hours to establish a regular claim, this will preclude eligibility for Fishing benefits when making your next EI claim. However you can work part-time, including at non-fishing work. For all types of benefits there are rules about working while on claim, which have changed over the years. In general, the direction of change has been to not only *allow* working while on EI but to *encourage* it by making it profitable for claimants. In the current legislation, fishing, regular, parental, compassionate care, or parents of critically ill children claimants can earn the higher of \$50 per week or 25% of their benefit level, without losing benefits. Benefits are reduced dollar for dollar for earnings above that.

However, a series of pilot projects by ESDC since 2008 (Pilot Project 12, 17, 18, 19 and 20) have experimented with different ways of treating earnings (see full list of projects at <http://laws-lois.justice.gc.ca/eng/regulations/sor-96-332/page-21.html#h-115>). The current pilot project (No. 20, until August 2018) reduces benefits by 50% of earnings up to an earnings threshold of 90% of the weekly insurable earnings used to calculate the EI benefit amount. <http://www.servicecanada.gc.ca/eng/ei/information/wwwc.shtml>. Earnings above this threshold result in a dollar for dollar reduction in benefits. This provides more of an incentive to take on higher earning work (higher wage, or more hours), but is a lower incentive if the available work provides low earnings (relative to one's benefit level). There is also an option that ignores earnings up to the greater of \$75 or 40% of your benefit, after which dollar-for-dollar deductions are made from benefits (this was the format of an earlier pilot project). This option again makes sense if the available work provides low earnings (low hours and or low wage). The aim of the current pilot is to see which incentive structure works best, which for fishers depends on their level of benefits and the available off-season jobs. The motive for these provisions is to encourage claimants to take all available work, which in principle is supportive to a strategy of occupational pluralism. Allowing claimants to choose which option makes sense in their circumstances is a good idea. However, the program is complicated and evaluations by ESDC of an earlier version of the program indicate claimants are not always aware of their options (ESDC, 2016). Data from 2014/2015 indicates that of all weeks of EI paid to fishers, only

10% were paid to claimants who worked that week, compared to 24% for Regular claimants (ESDC, 2016).

In summary, what are the possible implications of the EI Fishing benefit rules in terms of occupational pluralism strategies of harvesters and their families?

Do the restrictions for maintaining EI status as a 'fisher' make it difficult to pursue certain available work options? (full-time work; working 'away'...)

It would seem that full-time work that would lead to enough hours to qualify for a Regular claim would lead to loss of the ability to make a Fishing claim, since if one qualifies for Regular benefits one can't claim Fishing benefits (in high unemployment regions this means 420 hours, or about 11 weeks of full-time weeks). This could preclude taking full-time non-fishing work in the off-season. One must be available for fishing-related work, including training programs, which might impact going away to work. This is something to discuss further with fishers to see if it would be preferable to have more flexibility in the regulations so that the claimants themselves could choose whether to make Fishing or Regular claims. The lower rates of working while on claim for fishers compared to regular claimants may indicate there are challenges to do so.

Does the method of adding together fishing and employment earnings in calculating EI benefits create any incentive or disincentive for taking on non-fishing work?

Given that most fishers are able to reach the maximum EI benefit with only fishing earnings, additional work has to pay well to make it worthwhile. The use of a divisor related to the UR rate in the EI region for calculating average fishing earnings would seem to mean there is a higher incentive to take additional employment in low unemployment regions. The divisor system definitely works against taking small amounts of additional wage work. Using actual weeks worked rather than the minimum divisor would provide more of an incentive.

What factors affect whether crew choose Fishing benefits or regular benefits when they have the option (for example, whether they are eligible for double fishing claims)?

It seems that most crew opt for Fishing benefits, if they can qualify. The fixed duration results in a longer benefit period than would apply with a labour claim from a short fishing season. Fishing benefits are particularly attractive where two claims are possible.

Does EI help or hinder other family members taking available work (for example, 'arms' length' considerations)?

For fishers (and others who want to hire family members) the arms' length criterion is a source of frustration and is a disincentive to some work strategies that would make sense for a family.

REGULAR BENEFITS: RELEVANT EI RULES

Coverage and Eligibility

As noted, there is no EI coverage for self-employed people, other than fishers. The self-employed are an important class of seasonal workers, and self-employment rates are significantly higher in rural than urban areas (duPlessis, 2004). They remain uncovered by Regular EI. Given the frequent need for income supplementation in the seasonal economy, the different treatment of self-employed and employed workers is often divisive. Drawing on duPlessis' findings (2004) almost 40% of rural workers (the self-employed) potentially fall outside of EI. Furthermore, others may have been discouraged from entrepreneurial activity because of the high opportunity cost in terms of EI eligibility. In the reality of people's lives the distinction between employed and self-employed may be less than clear-cut. Many individuals combine self-employment with wage work and many more households have employed as well as self-employed members (note the increase in off-farm work for women). Research in NL found examples of seasonal small business operators taking paid employment and hiring someone to do run the day to day business, in order to qualify for EI. This could also be a consideration for fishers regarding what kind of work they take on in the off-season (wage work or self-employment). The need for such strategies seems counterproductive. Self-employed are covered by UI in a significant number of MISSOC countries, usually on a voluntary basis. Countries include Denmark, Sweden, Finland, Iceland, Poland and Spain. There are thus various models available for Canada to consider for extending Regular EI benefits to seasonal workers. As noted, this may be particularly relevant to seasonal workers in rural areas, where options for occupational pluralism include various forms of self-employment.

The first consideration regarding eligibility for Regular benefits is that you have to lose your job through no fault of your own. If you leave voluntarily without 'just cause' you will not be eligible. The employee is expected to take 'every reasonable alternative' to avoid becoming unemployed. There is a list of reasons that may be considered as 'just cause'. Leaving for a better job is not necessarily one of them (decisions are made by Service Canada on a case by case basis). For example, if you left one job for a more attractive one from which you later become unemployed, the time worked at the first (worse) job will not count if it is determined you left it without 'just cause'. The second consideration is you need to be ready and able to

work and actively looking for work to be eligible. You can't hold out for a permanent job, or even your 'regular' seasonal job (Service Canada, 2016b).

Since 1996 eligibility for Regular benefits has been based on hours of work rather than weeks of work. Hours are added up across jobs during a 52 week 'qualifying period'. This change encourages multiple job holding and occupational pluralism, as there are no minimum hours per job, and every hour counts (MacDonald, 1999). Counting hours not weeks benefited many seasonal workers, as they often work long hours for a few weeks and could more easily meet an hours criterion. The latest EI Monitoring and Assessment Report (2014/15) indicates that seasonal workers had a higher eligibility rate than other non-standard workers (part-time, temporary non-seasonal), but a lower rate than permanent full-time workers.

Indeed, a comparison with other countries found Canada's eligibility criterion to be more favourable to seasonal workers than those of most countries (van Audenrode, 2005), as most countries base their eligibility on days, weeks or months of work, not hours. Though the weeks/months required are often higher, in most countries the reference period is longer than the 52 weeks used in Canada (for example, 3 years in Denmark, 2 years in Switzerland, 43 weeks in Finland). Thus, for example, in Denmark 52 weeks of employment are required within 3 years). This allows some flexibility re timing of work. Norway bases eligibility on income from work (rather than work time), which is also flexible re timing of work (for example, seasonal workers may make high earnings in a short period of time). The Netherlands combines a week's condition (wages in 26 out of 36 weeks entitles one to a 3 month benefit) and a year's condition (wages for at least 208 hours in 4 out of 5 years, for a benefit of up to 24 months). A few countries, such as Sweden, have restrictions pertaining to work that is less than FT. Sweden has two options for counting work time, one with a minimum of 80 hours per month for 6 months and the other with 480 hours work within 6 months plus 50 hours per month in each of 12 months).

The NERE rules discussed above were in place from 1996-2016. You needed 490 hours of work (or EI claim) in the 52 weeks *before* the qualifying period (called the 'labour force attachment period') or you were treated as a NERE and needed 910 hours of work to qualify (note that this did *not* depend on the unemployment rate in the region). We know that seasonal workers were very conscious that one bad season with low hours could make them subject to NERE rules, and 910 hours can be hard to get in many seasonal industries (MacDonald, Neis & Murray, 2009). The NERE rule led to some costly behaviours (communities offered make-work projects to ensure people got their 'stamps'; individuals not able to fall back on family support during one bad year would do almost anything to ensure they got their hours, including working while sick or injured; employers juggled schedules at a cost to productivity in order to enable people to get their hours). One could argue that EI usage stayed higher than it otherwise might have

been, as seasonal workers struggled to avoid becoming 'reentrants'. This has also been identified as a disincentive for young people to stay in rural communities/industries. The end of the NERE distinction is a positive change for those looking to stay in rural communities, and for employers looking to fill seasonal jobs.

As discussed above, the variable entrance requirement (VER) is a major factor in determining eligibility. The rationale that you are more likely to lose your job, and find it harder to find one, in an area of higher unemployment implicitly assumes you are working (and looking for work) in the area in which you live. The number of hours of work needed to qualify for regular EI benefits ranges from 420 in a region with an unemployment rate over 13% to 700 in a region with a rate of 6% or less (http://www.esdc.gc.ca/en/reports/ei/regular_benefits/eligibility.page Table 1). Note that fewer than half of the areas included in the CCPFH study are in EI regions with >13% unemployment. In Southwest Nova, for example, the current rate is 8.3%.

One key issue is how a worker who lives in one EI region and works in another is treated. Claims can be established wherever you live, whether or not your work is in the same geographic place; therefore you are technically allowed to work in one economic region and claim EI in another. According to the regulations "the region which must be taken into account is the one in which the claimant was ordinarily resident during the week in which the benefit period commences...The expression 'ordinarily resident' is not defined in the legislation. Taking the meaning of the word 'resident', it must refer to the place in which a claimant has settled. The modifier 'ordinarily' clearly excludes from the definition any stay in a place in which a person has no intention of establishing residence."

http://www.servicecanada.gc.ca/eng/ei/digest/1_2_0.shtml#a1_2_9. This may affect location/work decisions within and across provinces (keep living in a rural community in NL but work 'away' for part of the year). There are appeals cases that are due to disputes over where the claimant is 'ordinarily resident' (Service Canada 2016a).

As discussed earlier, there are regular calls for the EI program to be made the same across the country (Mowat Centre, 2011), as is the case elsewhere. However, seasonal employers worry the hours would be set at a level that they would not be able to offer. If the VER were to be eliminated, other aspects of the program would also have to be adjusted to ensure eligibility for the full range of employment situations, particularly for seasonal and other precarious workers.

Benefit formula

The basic formula is 55% of your average insurable weekly earnings.² As noted, maximum insurable earnings (MIE) are currently \$50,800 (maximum weekly EI benefit is \$537). As with

² As discussed above, Regular claimants may also be eligible to receive the family supplement, which can raise the benefit rate to 80%, up to the maximum benefit.

Fishing benefits, the key issue is how ‘average insurable weekly earnings’ are calculated, in terms of both the numerator (total earnings) and the denominator (number of weeks). The calculation depends on the unemployment rate in the economic region. In 1996 all weeks of work in the last 26 weeks were included in total earnings, which meant weeks of lower earnings reduced one’s benefits. Workers with fluctuations in earnings suffered, and seasonal employers found it hard to retain workers outside the peak season. For workers, there was a disincentive to incur any lower-earning weeks (either at a main job in a slow period, or at an additional job). This was recognized as a problem, and a series of changes were made (such as ignoring ‘short weeks’). In 2013 the benefit formula was changed to count the *best* weeks of work (after a pilot project showed it improved work incentives). However, the number of weeks counted varies with the unemployment rate, ranging from 14 in the highest unemployment regions to 22 in the lowest (‘variable best weeks’). This means you need from 14 to 22 *good* weeks of earnings depending on where you live. In addition, the denominator uses a minimum divisor which also ranges from 14 to 22, depending on the unemployment rate (i.e. in a high unemployment area earnings would be divided by 14, even if a seasonal worker only had 12 weeks of work, thus lowering average earnings).

http://www.esdc.gc.ca/en/reports/ei/regular_benefits/duration.page#h2.3 Table 2. The purpose of the minimum divisor is to encourage more than the minimum work needed to qualify for EI. The implications for seasonal workers need to be considered in this light. For example, if you work long shifts and get lots of hours and earnings in a shorter period than the minimum divisor, you would qualify for EI but the benefit formula would lower your average insurable earnings (if the divisor was 22 and you worked 12 weeks your earnings from 12 weeks would be divided by 22). This will be more of an issue in a low unemployment region. However, even in high unemployment regions getting 14 weeks of work may be a challenge for both employers and employees in rural areas and seasonal industries. While the ‘best weeks’ change removes the disincentive to take on small amounts of additional work (or lower-paying work), and the minimum divisor creates an incentive to work more weeks (thus potentially supporting occupational pluralism), the issue of whether complementary work is available in a seasonal economy is still a question.

Canada’s use of the ‘best weeks’ of earnings, generally considered advantageous to seasonal workers, seems to be unique. In other countries the period to count is usually specified, such as the last 12 weeks (Denmark), last 180 days (Spain) daily average in last year (Sweden), last 4 years (Italy), last year (Norway). Note, however, that other countries do not use a minimum divisor which, as noted above, can lower benefits for those who work long hours over a short season.

Duration

The number of weeks one can collect EI benefits depends on both the number of hours of work accumulated and the unemployment rate in the economic region. **Thus, the regional unemployment rate affects eligibility, weekly benefit amount, and duration of benefits.** There are 12 unemployment categories used to determine duration of benefits, more than for the variable entrance requirement (the highest category is an unemployment rate of >16%, which applies to two of the CCPFH study areas).

http://www.esdc.gc.ca/en/reports/ei/regular_benefits/duration.page#h2.3 Table 3.

The number of weeks one can collect benefits ranges from 14-45. If one has only the minimum hours (420) needed to qualify in a region of high unemployment (>13%) the duration ranges from 26-32 weeks. If one has only the minimum hours (700) needed to qualify in a region with the lowest unemployment rate ($\leq 6\%$) the claim duration would be only 14 weeks. Note that only those in regions with more than 10% unemployment could potentially get the full 45 weeks of benefits.

Is the duration of benefits adequate for seasonal workers? According to the 2014-2015 EI Assessment and Monitoring Report (ESDC, 2016), the average maximum duration of seasonal claims was about 30 weeks. “Historically, entitlement exhaustion rates have always been lower for seasonal claimants than for non-seasonal claimants. That held true for claims completed in 2014/2015, as the entitlement exhaustion was at 26.8% for seasonal claimants and 38.3% for non-seasonal claimants.” However, there are ‘seasonal gappers’, whose claims run out before their seasonal jobs starts up. These represent about 4% of new seasonal claims. Almost half of these had a gap of over 6 weeks. Seasonal gappers were overrepresented in Atlantic Canada, where the season is short in many industries and the VER enables workers to qualify with fewer hours.

The March 2016 budget (Government of Canada, 2016) introduced additional temporary measures for extending the duration of benefits “in the 12 EI economic regions that have experienced the sharpest and most severe increases in unemployment” by 5 weeks to a maximum of 50 weeks (a similar increase of 5 weeks was applied across the board in the 2008 recession). This is for a year, starting in July 2016, retroactive to claims as of Jan. 4, 2015m. The choice of regions has been controversial, but was based on *sustained increases* in unemployment rates – where “the unemployment rate increased by two percentage points or more for a sustained period between March 2015 and February 2016, compared to its lowest point between December 2014 and February 2015.” (thus, Saskatoon, with an unemployment rate of 6.4 in April 2016, qualified but Edmonton, with a rate of 6.8, did not). Three additional regions (including Edmonton) became eligible in May, but the Finance Minister announced

there would be no further additions (Presser, 2016). Note also that all of NL qualifies, while no EI region in the rest of Atlantic Canada qualifies http://www.esdc.gc.ca/en/ei/affected_areas.page.

Long tenured workers in the same regions are eligible for a further 20 weeks of benefits. The distinction between types of workers goes back to the 'suitable employment' regulations introduced in 2013 (and dropped in 2016). To be considered a long tenured worker 'you have paid at least 30% of the annual maximum EI premium in at least **seven of the past ten years** and, over the last five years, you have received **35 weeks or less** of EI regular and/or fishing benefits'. The EI Monitoring and Assessment Report (2014/15) calculated that only 10% of seasonal regular claimants would qualify as 'long-tenured'.

Our international comparison found considerable variation in the duration of benefits, with all MISSOC countries other than Belgium limiting how long they can be collected. A MISSOC report (2014) found a clear trend to shorten the benefit period, noting the periods had shortened between 2008-13 in Switzerland, the Czech Republic, Denmark, Hungary, Ireland, the Netherlands, Poland and Portugal, though many of these countries still have longer duration than Canada (for example Denmark has 2 years). In general the duration is longer in most MISSOC countries than in Canada.

Other than Canada, only Poland links duration with unemployment, limiting it to two unemployment rate ranges. Most tie duration somewhat to employment/contribution history, as does Canada. A key difference here is over what period contributions are looked at - in Canada duration is tied to hours worked in the last 52 weeks, while many countries use a longer look-back period, with considerable differentiation in entitlements. Note that it is the contribution period, not benefits drawn, that is typically used to determine duration, unlike Canadian attempts to tie duration or benefits to past EI use. There are examples where duration is subject to a maximum in a certain period, which would limit recurring UI use – for example Denmark has a maximum of 520 days benefits within 3 years (the equivalent of 2 years of benefits).

An important difference from Canada is that many countries also differentiate duration by age. For the most part the duration is shorter for younger workers and may be tied to required active labour market program participation, and longer for older workers.³ In the case of Sweden, duration (rather than benefit level) is higher for those with dependent children.

³ Countries with extended benefits for older workers include Australia, Finland (benefits if age 59+ can be extended to age 65), France (longer duration if age 50+, and can continue benefits if age 62+ and don't qualify for full retirement), Greece (age 49+ have longer duration and shorter eligibility requirement), Netherlands (special benefits until retirement if age 60+), Luxembourg (longer duration plus up to three year pre-retirement

Summary of the role of EI regions

As noted, EI regions and their unemployment rates affect eligibility, calculation of benefits, and the number of weeks of benefits. Each of these factors into whether seasonal employment (including taking on additional jobs in the off-season) is a reasonable option for workers, and hence whether employers can attract and retain workers. The following example from September 2016 illustrates the regional differences across the case study areas in the CCPFH Fisheries Labour Market Information Project.

Regular Benefits by Case Study Region, September 2016

	EI Region	UR %	Hours to qualify	Min weeks benefits	#Best weeks and Min. divisor
Bonavista, NL	02	17.5	420	32	14
SW Nova, NS	05	10.3	525	21	17
SE NB	09	15.2	420	30	14
N Shore QC	19	8.4	595	18	19
Les Îles-de-la-Madeleine, QC	10	16.5	420	32	14
Lake Winnipeg, MB	41	32.1	420	32	14
N. BC (Port Hardy, Prince Rupert)	55	11.1	490	23	16
S. Coastal BC (Campbell River)	54	6.7	665	15	21

'Suitable employment'

Regular EI beneficiaries are required to search for and accept 'suitable employment'. This term is not defined in the Employment Insurance Act, but in 2013 changes were made to the regulations that specify what is considered 'suitable employment'. These changes were reversed in July 2016, but were a big concern for seasonal employees/employers over the past 3 years. The 2013 regulations included dividing claimants into three categories, depending on patterns of EI usage. Different criteria for 'suitable employment' were spelled out for each group. Note that the categories of claimants are still in the regulations and were used to define

compensation by employer subsidized by UI, if made redundant at age 57+); some countries tie the age-related extended duration to years of contributions (for example, Poland, Portugal, Slovenia, Spain), Switzerland).

eligibility for the extended benefits introduced in the 2016 budget for the regions hard hit by the slump in resource prices. Long-tenured workers have claimed less than ≤ 35 weeks of EI benefits in the last five years and paid at least 30% of the annual maximum EI premium in at least seven of the past ten years; frequent claimants have had 3 or more claims and received over 60 weeks of benefits in the last five years. All others are considered occasional claimants.

Suitable employment was defined differently for each group in terms of the acceptable wage and whether the job was in your usual occupation. Frequent claimants had the acceptable wage drop from 80 to 70 percent of their normal wage after 6 weeks, while the acceptable wage for long tenure workers dropped from 90 to 80 percent after 18 weeks. Frequent claimants also had to accept 'any work you are qualified to perform' after 6 weeks.

Note that the relevant comparison was **hourly or weekly wages** (not earnings): "when calculated as an hourly rate, the offered earnings will be considered suitable if they are within the appropriate percentage of the claimant's **hourly** reference earnings. In other words, claimants are required to seek and accept otherwise suitable part-time or full-time employment as long as the hourly rate is 70, 80 or 90% of their reference earnings, based on their claimant category and the number of weeks that have elapsed on their claim, *regardless of the reference earnings calculated on a weekly basis.*" (Service Canada, 2016b, my italics). It should be noted that there is a long history of trying to tie EI benefits to the frequency of use of EI. For example, in the 1996 change from UI to EI, the Intensity Rule gradually lowered the benefit rate from 55% to 50% depending on the history of claims (abolished in 2000).

The second aspect of the change relevant to seasonal work was how 'suitable work' was defined in terms of commuting, with an acceptable daily commute being up to one hour, or one's commute during the qualifying period. While 'family obligations' and other personal circumstances could be taken into account, it is not clear how this played out in practice. Employers and workers expressed concern that these tougher requirements for frequent users would discourage people from staying in a region with seasonal employment and regular reliance on EI, promoting out-migration and 'working away.' The Harper government explicitly linked this change to the use of temporary foreign workers. The implication was that local workers are available for this work, and can be made to take it. This is an example of using EI rules as 'sticks' to make people take on more work. But employers worried the provisions might exacerbate local labour shortages by discouraging people from staying in the region.

Working while on claim

Regular claimants are covered by the same 'working while on claim' provisions that apply to fishing claimants, but have more flexibility in how much work they accept, as they don't have the constraints related to remaining eligible for Fishing benefits year to year, as discussed

earlier. Evaluations have shown that claimants do respond to the different incentives. For example, when the pilot program allowed earnings up to 40% of weekly benefits without a loss of EI (with dollar for dollar reduction in benefits beyond that), claimants tended to work up to that point (ESDC, 2016). This may be a frustration for employers trying to cover jobs, as workers try to maximize their earnings plus EI. The more recent option of being able to keep 50% of benefits up to a higher threshold (90% of original average insurable earnings) works better when there is potentially longer work available (though discourages workers from taking small amounts of work). Overall, about 50% of claims have at least a week of additional earnings, with the percentage being higher in the Atlantic Provinces (60%) and higher for seasonal workers (60%) and frequent claimants (60%) (ESDC, 2016). It seems the extra work is often with the original employer, rather than taking on different jobs. Employers may lay off workers during a slowdown and then bring them back as needed. The evidence does not point to occupational pluralism as a key strategy.

A related issue is what is referred to as keeping an 'open claim'. In this case you still have unused weeks on a claim (within the one year benefit period) but you don't draw benefits (for example, you are working full-time). When you next get laid off you have a choice of reactivating your existing claim, or starting a new claim based on the recent job(s), depending on which will give you the best benefit. While you finish your existing claim you can also be accumulating hours of work towards a new claim. The choice may depend on when you next expect to be employed. Keeping open claims is one reason why the number of people reported as on EI may be higher than the number actually available to work, as some may already be working. The EI claimant numbers have been (mis)used in debates about whether temporary foreign workers are needed.

Our international comparison found considerable variation in whether UI claimants can work. In the MISSOC database this is discussed under 'partial unemployment' and the ability to combine UI with earnings. In terms of particular provisions that might apply to seasonal workers, Sweden and Lichtenstein have a 'bad weather' allowance in winter for certain occupations that would be particularly affected, such as construction. In Liechtenstein this covers a 3 day minimum weather-related loss of work. Finland has an 'adjusted unemployment allowance' for those who take short term FT work (up to two weeks), those who take PT work not by choice, and those who have a small business that restricts FT paid work (a form of occupational pluralism). Surprisingly, several countries do not allow any working while on claim or they reduce benefits dollar for dollar for any earnings (creating a negative work incentive).

Those countries which do allow working and collecting UI have a formula for disregarding some dollar amount or portion of earnings (similar to Canada's approach). Finland's 'adjusted unemployment allowance' reduces UI benefits by 50% of earnings above a flat earnings

exemption, and the person cannot make more on UI and earnings than their original earnings on which the claim was based. Austria and Germany ignore a small amount of earnings, but end the entitlement if earnings go above that, creating a benefit 'cliff'. Sweden allows the person to retain benefits if the new job has fewer hours than the original job (providing benefits for the difference in hours). Switzerland and Portugal's policies are somewhat similar. This approach makes it relatively easy for a seasonal worker to work PT in the off season without losing benefits, though if the earnings are lower than the original job (as is the case for many fishers) it might not prove worthwhile. It seems that several countries are experimenting with ways of allowing work and benefits (maintaining a work incentive by not jeopardizing the claim). As discussed, this is a critical piece for facilitating occupational pluralism for seasonal workers.

In summary, what are the possible implications of EI Regular benefit rules in terms of occupational pluralism strategies of fish processing workers and other seasonal workers and employers?

Does the benefit formula encourage taking additional work in the off-season?

This has been a struggle since the 1996 EI reform. The use of 'best weeks' is an improvement, but the formula (variable best weeks, minimum divisor) remains challenging for many seasonal workers (especially those in lower unemployment regions). It is still more of a 'stick' than a 'carrot', and does not relate to the actual weeks of work available in the main job.

Have the working while on claim provisions been helpful to seasonal workers wanting to take on more work, and employers trying to fill jobs?

The pilot projects seem to have succeeded in encouraging more work time, however, the various formulae and income thresholds also create incentives that shape the employment strategies of both firms and workers. Workers may be laid off once they have their 'stamps' and then brought back on as needed, with strategic choices being made about how to spread the available work across the pool of workers. The evidence suggests the additional work is more likely to be for the initial employer, rather than taking a variety of jobs. The jobs may just not be there.

Is EI a factor in whether workers undertake self-employment?

As noted, there are opportunities for mixing work as an employee with self-employment over the year in many rural communities. However, self-employment work does not contribute to EI eligibility or benefits. There is a definite disincentive created, especially for small businesses. The lack of coverage may also encourage underreporting of income and an informal labour market.

SPECIAL BENEFITS: RELEVANT EI RULES

As noted earlier, special benefits related to caregiving or sickness differ from Regular Benefits in that they have a standard hours eligibility and set benefit duration. In addition, as noted above, as of 2011 self-employed people can register to participate in EI Special Benefits (i.e. pay premiums). Furthermore, claimants are not expected to be looking for work, so rules about job search and suitable employment do not apply. Special benefits include Sickness, Maternity, Parental, Compassionate Care and benefits for Parents of Critically Ill Children. It is important to know that Quebec operates its own Maternity/Paternity/Parental leave program, the Quebec Parental Insurance Plan, using some EI funds. The rules are different than EI and the program is generally considered to be better (higher benefits, more flexibility, father-only weeks).

http://www.rqap.gouv.qc.ca/index_en.asp.

EI Special benefits are not a prime concern for the question of occupational pluralism, so we only briefly highlight the key parameters that might impact fishers and other seasonal workers. In terms of eligibility for Special benefits, employees need 600 hours in the qualifying period (52 weeks), while fishers must earn \$3,760 or more from self-employment in fishing during the qualifying period (31 weeks), more than the amount of work needed for Regular benefits in many EI regions, and more than may be available to some seasonal workers. Self-employed can also qualify if they have registered and paid premiums for at least 12 months and have \$6,829 net income in 2015. There is not a VER for Special benefits.

In terms of benefit amounts, weekly benefits for employees are calculated the same way as for Regular benefits (average insurable earnings over the best 14-22 weeks, using a minimum divisor of 14-22 weeks, depending on the unemployment rate). The maximum is the same (\$537) and the family supplement may apply. For self-employed the weekly benefit is 55% of your average weekly earnings in the previous *calendar* year (confirmed by income tax returns) up to the maximum. If someone is self-employed only seasonally, averaging over 52 weeks would be quite detrimental to the amount of benefit. Note also that the regional unemployment rate does not enter into the formula.

Duration

The maximum lengths of benefits are: Maternity (15 weeks), Parental (35 weeks), Sickness (15 weeks), Compassionate Care (6 weeks), and Parents of Critically Ill Children (35 weeks).

Might these benefits provide a model for how EI could be extended other coverage to self-employed workers? Points of interest include the idea that you can choose to claim as an employee or self-employed, if your livelihood involves both. This may be of particular relevance to seasonal workers in rural areas who pursue occupational pluralism. Furthermore, if you apply as a self-employed person your earnings from eligible paid employment will be

taken into account in calculating average earnings and thus benefits, similar to Fishing benefits. However, the opposite does not apply – your self-employment earnings are not taken into account if you claim as an employee. A more flexible approach might encourage combining various forms of work. Furthermore, as noted, a benefit formula that averages earnings over a year is problematic for seasonal self-employed workers.

EI PART 2 PROGRAMS AND BENEFITS

Prior to 1977 UI funds were purely used for individual benefits, while training programs were funded out of general revenues. In 1977 Bill C-27 introduced the use of UI funds for “developmental purposes”. This was expanded in 1990, and with the introduction of EI in 1996 all federal money contributions for labour market training and development came from EI and labour market development devolved to the provinces. Part 2 of the Employment Insurance Act provides for the establishment of Employment Benefits and Support Measures (EBSMs); employment benefits include interventions such as skills training, wage subsidies and self-employment assistance, while support measures are employment assistance services such as job counselling. A key shift was that most EBSMs were restricted to ‘EI eligible’ clients. This increased the importance of keeping an ongoing labour market connection, making it difficult for workers who had intermittent employment and precarious jobs. In the late 1990s Labour Market Development Agreements (LMDAs) were negotiated with each province, governing how the EI Part 2 funds could be spent (\$1.95 B in 2013). The programs were largely limited to those with a recent EI claim. Active (current) claimants can receive EI Part 1 income benefits and access the EBSMs, while former claimants (within 3 years of a claim) can only access EBSM programs. Non-insured clients only have access to some the general support measures such as job counselling.

To address the lack of training supports for unemployed workers outside the EI system, beginning in 2007 Labour Market Agreements (LMAs) with the provinces provided federal money to support employment-related services for those who were not EI eligible (funded from general revenues, not EI). These expired in 2014 and were replaced by Canada-Province Job fund Agreements. The new agreements outline which existing programs will continue as well as how the provinces will deliver the new Canada Job Grant program, in which the federal government will provide employers with up to \$10,000 to train each worker through off-site programs, with employers contributing up to \$5,000. This is a shift to tying training to particular jobs, and also making employers contribute. Some Part 2 EI money is being used to support this, via LMDA funds.

Because EI-funded (and related) programs are delivered provincially, there are differences in the opportunities seasonal workers may have to access training and other supports. It is difficult to find out from secondary sources to what extent fishers and other seasonal workers

can access training. It seems most training is aimed at getting people into new primary jobs, rather than at developing skills for work that would supplement existing jobs and enable a sustainable strategy of occupational pluralism. For fishers training options may be limited to fishery-related programs. An approach is needed that is not focused on occupational or geographical mobility (changing jobs or residence), but allows for improving earnings potential through an added mix of jobs/skills that are sustainable in a seasonal economy. It might be possible as a pilot project.

One of the EBSM measures under EI Part II focuses on self-employment which, as noted earlier, is more prevalent in rural areas and amongst seasonal workers. The program supports claimants with training and income benefits while they develop their own businesses. However, at the end of the day you are no longer covered by EI regular benefits as a self-employed person. Again, could self-employment be supported as part of the mix of jobs in an occupational pluralism strategy? Interestingly, Italy has an option to take UI benefits as a lump sum as an incentive to undertake entrepreneurial activity. This could be a useful model in the context of seasonal workers who may be developing a complementary business on the side.

Internationally, there is considerable variation across countries in the emphasis put on active labour market programs in UI systems. Where programs exist, there is usually a training allowance and some consideration for associated transportation costs and sometimes housing costs and childcare costs. Poland has generous subsidies to enable unemployed workers to pursue post-secondary education and apprenticeships. Portugal has funding options to support geographical mobility, including for temporary as well as permanent work. This could facilitate certain patterns of occupational pluralism where local seasonal jobs are combined with working away. Some countries differentiate active employment measures by age, typically targeting younger workers. These models could perhaps be useful in attracting younger workers into the fishery by supporting the necessary training. The Nordic countries place much more emphasis on active measures than does Canada (Grady and Kapsalis (2002)). Measures include subsidized employment, job search support, training, higher education, counselling and support to become self-employed. While some of this is available in Canada, it is not on the same scale as in the Nordic countries. Participation in 'activation' programs is often required after a certain period of unemployment (NOSOSCO, 2015).

DISCUSSION AND FUTURE DIRECTIONS

Seasonal work has always presented dilemmas for UI/EI. It was initially excluded from UI coverage, as seasonal unemployment could be anticipated. In later years, however, UI entitlement rules were generous enough that seasonal employees became disproportionate beneficiaries of the program. However, the relationship remains uneasy, given the predictability of seasonal unemployment. Fishers, too, were initially excluded from UI, based on

being self-employed. The changes introduced with EI in 1996 for the most part were positively received by fishers in terms of their ability to qualify. However, they limited the flexibility for fishers to pursue some livelihood options outside the fishing season. For employees, the shift to hours-based eligibility with EI better suited the pattern of long hours/few weeks characteristic of many seasonal jobs, and rewarded taking on additional work. Indeed, a comparison with other countries found Canada's eligibility criterion to be more favourable to seasonal workers than those of most countries (Van Audenrode, 2005). The use of hours under EI provides more flexibility for different work patterns than most programs (though clearly the required hours have proven to be out of reach for many unemployed). However, our EI benefit *rates* and *duration* are considerably lower than in many other countries, including Nordic countries with similar seasonality (Grady & Kapsalis, 2002). Also, the inclusion of self-employed workers is the norm in many comparator countries with similar labour markets (Nordic countries, for example).

Other elements of the 1996 EI reform had less of a "fit" for seasonal workers. The divisor rule in the benefit calculation formula retained an emphasis on weeks of work as the indicator of work attachment and intensity, penalizing those with too short a season (employees and employers alike). Furthermore, various initiatives to categorize claimants based on frequency of claims threaten seasonal workers, most (though not all) of whom are regular users. Seasonal workers (including fishers) shared with other non-standard workers concerns about the higher new entrant-reentrant requirements and formula for calculating average earnings. Seasonal workers, like other non-standard workers, also face the (implicit) assumption that they can control their work time and there is work to be had.

Several initiatives have already been taken to adjust EI to better suit seasonal workers, such as dropping the 'intensity rule', moving to a 'best weeks', improving the incentive to work while on claim, and most recently, eliminating the NERE distinction for both Regular and Fishing benefits. However, based on the concerns noted above, further changes could help to improve the fit between EI and the labour market reality of fishers and other seasonal workers and employers. The goal would be to improve the flexibility individuals and households have to put together livelihoods, or create jobs, so that they are not boxed in by EI rules. The following suggestions are offered for consideration:

- The formula for calculating benefits could be adjusted to remove remaining penalties for fluctuating work and earnings. The formula should be neutral with respect to the timing of work. While the use of best weeks is good, the minimum divisor (and *variable* best weeks) still can reduce average earnings for some patterns of work. The use of a minimum divisor in Canada (based on weeks, not hours) is unique and reduces the

effective income replacement rate for seasonal workers who work long hours during a short season.

- Measures to make working while on claim profitable are a positive way to support occupational pluralism (combining sequenced or multiple jobs with income supplementation). You don't want additional work to jeopardize EI eligibility and you don't want it to make you worse off (currently, or in a future claim). The current pilot provides two options, one that is best for higher earnings, and one for lower earnings. It should be possible to design a formula that works for everyone and is transparent (perhaps with a higher dollar threshold for ignoring earnings, and a percentage scale above that). For fishers, there are additional considerations around maintaining their fishing status which need to be reviewed; for example the requirement to be available while on claim for any fishing work. Many countries are trying ways of combining UI benefits with work, consistent with the proposal that EI could be part of an enhanced occupational pluralism strategy.
- Coverage could be extended to other seasonal self-employed workers (there is no counterpart to Fishing benefits for loggers or farmers or small tourist operators). Fishing benefits and Special benefits for self-employed provide models that could be adapted for more general application (or for particular sectors). As with Special benefits, self-employed person could contribute premiums. Eligibility could be based on earnings, as is done in both these programs. An important issue is how average earnings would be calculated (weeks counted, weeks used in the denominator). As discussed earlier, the inclusion of self-employed workers is the norm in many comparator countries with similar labour markets (Nordic countries, for example), thus models are readily available for how this could be done.
- EI could better recognize combinations of paid work and self-employment that might be options in rural communities. Currently earnings from paid work can be added to Fishers earnings, increasing their insurable earnings (also for those claiming Special benefits as self-employed). This is not an option for Regular claimants, nor can Fishing claimants count non-fishing self-employed earnings. A flexible program design where eligibility and benefits are based on all work could be considered. A related consideration would be to allow the option to choose between Fishing and Regular EI where a fisher engages in both fishing and non-fishing work. Finally, given the specific employment conditions/options for seasonal workers, ways of smoothing income gaps could be considered. The longer reference period in many countries is another way to add flexibility around ensuring entitlements for various patterns of work.

- Eligibility for special benefits could be adjusted to better reflect the hours available for seasonal workers (600 hours is beyond what one would get in a full-time 3 month job).
- EI could be used to support older fishers (and other seasonal workers) ease out of the labour force. As discussed, older workers in physically demanding industries like the fishery face challenges before they reach eligibility for government income programs for seniors (OAS/GIS, CPP). There is often no alternative but to keep on the work/EI cycle, with increasing risks to health and safety. There are many examples in other countries of using UI to facilitate the transition of older workers out of the labour market by providing a bridge to pension eligibility. In general, older workers can draw UI for longer. A couple of countries include special provisions to combine benefits and work for older claimants (Australia has a part-time allowance for older workers, and Denmark has an early retirement scheme with entitlement to flexible employment, with benefits of 91-100% of highest unemployment benefits). Occupational pluralism (and, indeed, participation in the fishery either as harvesters or processing workers) could take a different form for older workers, facilitated by extended, flexible income benefits through EI until pension entitlement age is reached. This could be integrated with an early retirement program that would allow aging workers in physically demanding seasonal work to stay in their homes and communities, open the way for younger people to find work and help employers renew their workforce. Governments can partner with employers and unions in the design and funding of early retirement programs. Sonnet et al (2014) provide examples of adapting unemployment insurance for older workers and integrating it with other retirement provisions.
- EI Part 2 employment support measures could be used to support strategies of occupational pluralism for those with regular seasonal work (e.g., not to transition to 'new' lines of work, but to enhance off-season options). The goal is not to revert to a pre-EI era of 'getting by', but to enhance the attractiveness of seasonal work to benefit families, employers and communities and address the labour shortage that threatens industries like the fishery. A 'carrot' approach that enhances skills and allows flexible packaging of jobs and income support is needed, rather than a 'stick'. Grady and Kapsalis (2002), comparing seasonal work in Canada and Nordic countries, note that most Nordic countries have stronger active labour market programming than Canada, while also providing higher benefits. Countries are using positive labour market services and supports to reduce reliance on UI, far exceeding what is done in Canada. Flexibility is needed to tailor training and other supports to the package of work that might allow workers to stay in seasonal industries and communities (including temporary mobility for jobs in the off season, as is done in Portugal).

These changes could be implemented in a piecemeal fashion, or a focused program for seasonal workers could be considered, with different criteria, as is the case in the Netherlands and Italy (Van Audenrode et al. 2005). Fishers EI is the closest we have to such a targeted program in Canada. However, even with a targeted program, the variability of local conditions is still an issue. Because not all circumstances can be anticipated, flexibility is important. In fishing, for example, some areas have more predictable non-fishing periods, or more predictable non-fishing alternative work, or more self-employment options, or the possibility of full-time non-fishing work in the off-season. EI has to work with this variability, and be more of an activist program. This includes flexible program parameters and also personalized employment supports, which is a challenge given that the 'personal contact' aspect of EI has been seriously reduced.

For harvesters, issues with how EI Fishing benefit rules affect their fishing-related work are of primary importance, along with fishery policies (and their 'fit' with EI). However, the challenges they face when trying to mix fishing with other kinds of work are also important to address. For plant workers (and employers), changing EI in ways that enable local workers to have decent livelihoods is the only real alternative to a labour strategy based on TFW and/or immigration. For both harvesters and plant workers EI is potentially an important mechanism to help facilitate a generational transition in the industry and renew resource dependent communities.

Many countries take more of a life cycle approach to UI. There are special active labour market measures for young people trying to establish themselves in the labour market, followed by enhanced benefits (and in at least one case extended duration) for prime age workers with dependent children (without this being means tested), and then provisions for older workers that are integrated with public pension systems and facilitate a smooth withdrawal out of the labour market. Such a model would go some way towards addressing the challenges identified for fishery workers and the industry as a whole.

REFERENCES

CCPFH, 2016. Statistics Canada Taxfiler data, compiled for CCPFH by Dr. Michael Haan, University of Western Ontario.

Canadian Centre for Policy Alternatives. Archive for Employment Insurance.
<http://www.progressive-economics.ca/category/employment-insurance/>

Day, K. & Winer, S. (2011). *What do we know about the relationship between regionalized aspects of the unemployment insurance system and internal migration in Canada?* Mowat Centre Employment Insurance Task Force. Mowat Centre for Policy Innovation.

DeRaaf, S., Kapsalis, C. & Vincent, C. (2003). Seasonal Work and Employment Insurance Use. *Perspectives on Labour and Income* Vol. 4:9 (September).

Du Plessis, V. (2004). Self-Employment Activity in Rural Canada. *Rural and Small Town Analysis Bulletin* Vol. 5: 5 Statistics Canada: Catalogue no. 21-006-XIE.ESDC (2016).

ESDC (2016). *Employment Insurance Monitoring and Assessment Report 2014/2015*. Employment and Skills Development Canada.

<http://www.esdc.gc.ca/en/reports/ei/monitoring2015/index.page?>

Government of Canada (2016). *Budget 2016: Growing the Middle Class*. Retrieved from <http://www.budget.gc.ca/2016/docs/plan/toc-tdm-en.html>.

Grady, P. & Kapsalis, C. (2002). *The Approach to Seasonal Employment in the Nordic Countries: A Comparison with Canada*. Applied Research Branch, Strategic Policy, Human Resources Development Canada.

Gray, D. & Busby, C. (2016). Unequal Access: Making Sense of EI Eligibility Rules and How to Improve Them. *Commentary No. 450*, C.D Howe Institute.

Grubb, D. (2000). Eligibility Criteria for Unemployment Benefits. *OECD Economic Studies* No. 31.

Justice Canada (2016). *Employment Insurance Regulations (SOR/96-332)*. <http://laws-lois.justice.gc.ca/eng/regulations/SOR-96-332/index.html>

Lin, Z. (1998), Employment Insurance in Canada: Policy changes. *Perspectives on Labour and Income*. Summer. Statistics Canada <http://www.statcan.gc.ca/pub/75-001-x/1998002/3828-eng.pdf>

MacDonald, M. (1999). Restructuring, gender and social security reform in Canada, *Journal of Canadian Studies* 34(2): 57-88.

_____ (2009). Women and EI: The first decade. in A. Dobrowolsky (ed.) *Women and public policy in Canada: Neo-liberalism and after*. Oxford: Oxford University Press. pp. 65-86.

MacDonald, M., Neis, B. & Murray, G. (2009). State policy, livelihood protection and gender on Canada's East coast, *International Journal of Canadian Studies*, 38, pp. 149-180.

Marshall (1999) Seasonality in Employment, *Perspectives on Labour and Income* Vol. 11:1 (Spring): 16-22.

MISSOC (2016). Comparative Tables on Social Protection. Unemployment. EU Mutual Information System on Social Protection.

<http://ec.europa.eu/social/main.jsp?catId=815&langId=en>

MISSOC Secretariat (2014). Ad hoc report on trends and tendencies in selected fields of social protection. <http://ec.europa.eu/social/BlobServlet?docId=13268&langId=en>

Mowat Centre (2011). *Making it Work. Final Recommendations of the Mowat Centre Employment Insurance Task Force*. University of Toronto.

<http://www.mowateitaskforce.ca/sites/default/files/MakingItWork-online.pdf>

Nordic Social Insurance Portal (2017). <http://www.nordsoc.org/en/>

Nordic Social Statistical Committee (NOSOSCO) (2015). *Social Protection in the Nordic Countries 2013/2014* <http://norden.diva-portal.org/smash/get/diva2:882555/FULLTEXT01.pdf>

OECD (2017). Social Expenditures Database. <http://www.oecd.org/social/expenditure.htm>

OECD (2016). Benefits and Wages Statistics. <http://www.oecd.org/els/benefits-and-wages-statistics.htm>

OECD (2015). *Back to Work: Canada. Improving the Re-employment Prospects of Displaced Workers* <http://dx.doi.org/10.1787/9789264233454-en>

Ommer, R. (2007). *Coasts under Stress: Restructuring and Social-Ecological Health*. Montreal: McGill-Queens University Press.

Pfeifer, M. (2010). Comparing unemployment protection and social assistance in 14 European countries. Four worlds of protection for people of working age. *International Journal of Social Welfare*. DOI:10.1111/j.1468-2397.2010.0767.x.

Press, J. (2016). Extended EI benefits not being considered for more regions, Bill Morneau says. *Toronto Star*, May 30. <https://www.thestar.com/news/canada/2016/05/30/extended-ei-benefits-not-being-considered-for-more-regions-bill-morneau-says.html>

Roseman, S., Gardiner Barber, P. & Neis, B. (2015). Towards a feminist political economy framework for analyzing employment-related geographical mobility. *Studies in Political Economy* 95.

Service Canada (2016a). *Employment Insurance Jurisprudence Library* <http://www.ae-ei.gc.ca/eng/library/about.shtml> and Index of Jurisprudence <http://srv130.services.gc.ca/indexjurisprudence/eng/about.aspx>

Service Canada (2016b). *Employment Insurance - Digest of Benefit Entitlement Principles*.
http://www.servicecanada.gc.ca/eng/ei/digest/table_of_contents.shtml

Sonnet, A. Olsen, H. & Manfredi, T. (2014). Towards More Inclusive Ageing and Employment Policies: The Lessons from France, the Netherlands, Norway and Switzerland. *De Economist* (2014) 162:315–339. DOI 10.1007/s10645-014-9240-x.

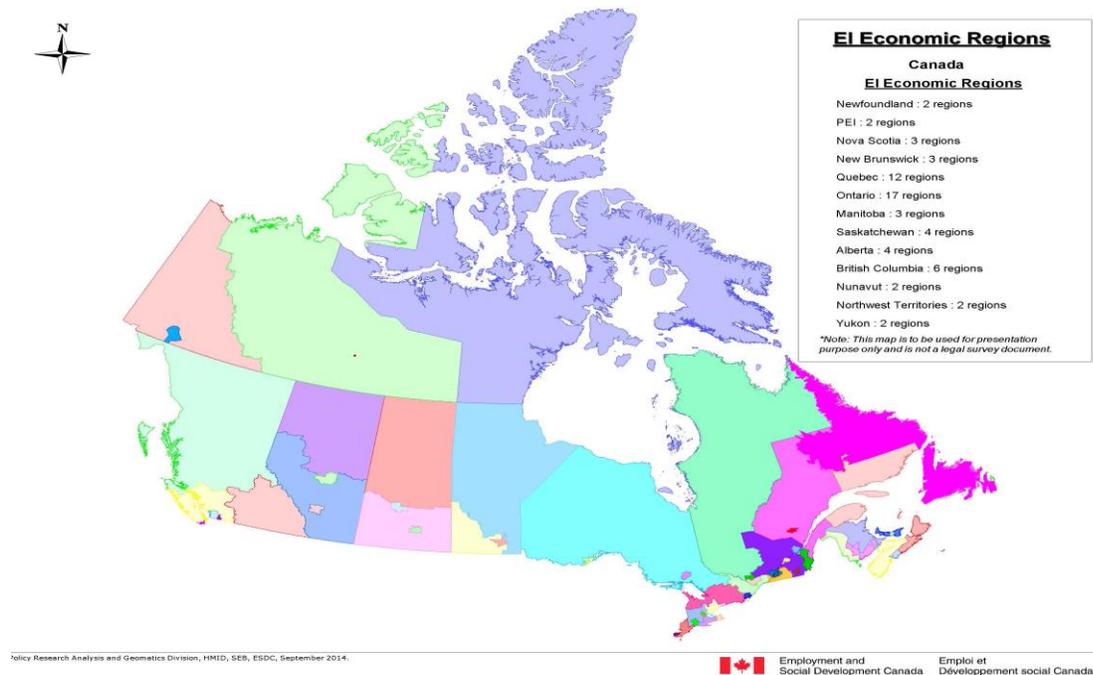
Van Audenrode, M. et al (2005). *Employment Insurance in Canada and International Comparisons*. Groupe d'analys. Prepared for HRDC.

Vosko, L. (2011). *The Challenge of Expanding EI Coverage: Charting Exclusions and Partial Exclusions on the Bases of Gender, Immigration Status, Age, and Place of Residence and Exploring Avenues for Inclusive Policy Redesign*. Mowat Centre Employment Insurance Task Force. Mowat Centre for Policy Innovation.

Appendix A EI Economic Regions

A map of current EI regions is available at

http://srv129.services.gc.ca/ei_regions/eng/canada.aspx. The overall map is copied below. The on-line map allows one to look in more detail at each region.



Historical data on unemployment rates by EI economic region is available at

http://srv129.services.gc.ca/ei_regions/eng/rates.aspx?id=2013