

December 2002

Update 2002 – 3

**TO HOLDERS OF THE *ASSESSMENT MANUAL***

This update of the *Assessment Manual* contains changes approved by the Panel of Administrators on December 17, 2002.

Changes have been made to Policy Item AP1-4-1, "Fishing". A summary of the changes has been included as part of the package.

If you have any questions regarding this update, or the *Assessment Manual*, please call the Publications and Videos Section of the Workers' Compensation Board at (604)276-3068.

MAUREEN NICHOLLS  
Chair, Panel Of Administrators

Attachments

## **SUMMARY OF AMENDMENTS – Update 2002 – 3**

Amendments to the Board's policy on fishing to allow the Board to collect assessments from persons who transmit payments to commercial fishers in respect of fish sold to out-of-province fish buyers and directly to the public.

Item AP1-4-1            This policy was amended to require persons engaged in transmitting payments to commercial fishers to register with the Board and pay assessments on the payments that they transmit. As well, factors for determining persons who transmit payments to commercial fishers were added. The amendment takes effect on January 1, 2003.

**RE: Fishing**

**ITEM: AP1-4-1**

## **BACKGROUND**

### **1. Explanatory Notes**

Coverage for commercial fishers is provided for by section 4 of the *Act* and the *Fishing Industry Regulations* made under it. The matters covered by those regulations include the right of fishers to claim compensation for injury or disease, the transportation of injured fishers, claims procedures and appeals, the situation where the injury is caused by a third party, and the payment of assessments on the proceeds of fish sales. Except for persons who transmit payments to commercial fishers in respect of fish sold out-of-province or directly to the public, assessments are normally paid by commercial fish buyers as there may be no employment relationship on fishing vessels.

### **2. The Regulations**

Section 1:

In these regulations,

“commercial fisherman” means

- (a) a master or member of a crew of a licensed commercial fishing vessel who is a possessor or required to be a possessor of a current personal commercial fishing license,
- (b) a master or member of a crew of a fish packing, fish collecting or other vessel which is licensed or required to be licensed under the *Fisheries Act* of the Province to engage in buying or collecting fish for commercial sale or use, or
- (c) any other person who, in the opinion of the board, contributes to the catching or landing of fish for commercial sale or use,

and who

- (d) in the course of his occupation as a fisherman, contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish,

- (e) has made arrangements with the board for the payment of assessments, or
- (f) is a person who, apart from these regulations, would be a “worker” under Part 1 and a fisherman

but, subject to paragraph (e) of this section, does not include

- (g) a fisherman who rarely contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish;

“commercial buyer” or “commercial recipient” means a person who is buying or receiving fish for resale or commercial use, but excludes a person who is buying for personal or family consumption;

### Section 5:

- (1) Unless the board determines otherwise,
  - (a) a fish processing establishment licensed or required to be licensed under the *Fisheries Act* of the Province which, directly or indirectly, acquires fish from a commercial fisherman shall pay assessments on the fish bought, obtained or paid for by or through such fish processing establishment, except where the fish are acquired from another such fish processing establishment;
  - (b) any other commercial buyer or other commercial recipient who acquires fish from a commercial fisherman other than for resale to such a fish processing establishment or as agent for such a fish processing establishment shall pay assessments on the fish bought, obtained or paid for by or through such commercial buyer or other commercial recipient of fish;
  - (c) a person who engages the services of a master or crew of or for a fishing vessel shall pay assessments on any fish in respect of which assessments are not paid or payable under paragraphs (a) and (b).
- (2) The provisions of Part 1 relating to employers apply to a person engaged in transmitting payments to commercial fishers as if the person is engaged in the fishing industry and that person is deemed to be the employer of any persons or organizations other than commercial buyers of commercial recipients who contributed in any manner to the catching or landing of the fish bought, obtained or paid for through or by that person and in respect of which assessments are not otherwise paid.

- (3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishermen and shall be calculated, determined and notified to the board in such manner as the board may prescribe. Where the total wages, price or other payments made or payable to or on behalf of commercial fishermen exceed the maximum wage rate for one year as fixed for the time being under section 33 of part 1, a deduction may be made where practical in respect of the excess; and where the total wages, price or other payments made or payable to or on behalf of commercial fishermen are shown to exceed the above maximum wage rate, the board may make a deduction where practical in respect of the portion in excess of that rate.

### Section 7:

All commercial buyers and other commercial recipients of fish and all other persons required to pay assessments under section 5 must register with the board and provide such information as the board may require.

## POLICY

### (a) Definition of “commercial fisherman”

Clause (g) of the definition of “commercial fisherman” in section 1 of the *Regulations* excludes individuals who “rarely contribute to the catching or landing of fish...” but allows them to purchase Personal Optional Protection. This applies to fishers who sell less than 10% of the total value of their catch in BC to commercial buyers. Coverage is not available to fishers who have totally removed themselves from the BC fishing industry such as a fisher who catches and lands in another country. No coverage is available under the regulations for sports fishing activity, even though the fisher may have a commercial fishing license.

### (b) Determining persons who should pay assessments

The Board considers the following factors in determining persons who should pay assessments under section 5(2) of the *Regulations*:

1. whether collecting assessments from the person is within the authority of the *Act*;
2. whether the person makes the economic decision to sell fish to persons or organizations other than BC commercial buyers or commercial recipients;
3. whether the person has control to act upon the economic decision on where to sell the fish;

4. whether it is practical or operationally feasible for the Board to collect the assessments; and
5. any other factor that is consistent with the *Act*, *Regulations* and Board policy.

### **(c) Calculation of assessable amount**

There are three formulas for calculating the assessable amount under section 5(3) of the *Regulations*:

- Where the commercial fisher is paid a salary, the assessable amount is based on the salary.
- Where the commercial fisher is paid by established settlement and a labour component is clearly identified, the assessable amount is based on the gross labour component. That component includes bonuses and any other payment which, according to the practice of the industry, is part of the fisher's share.
- Where the commercial fisher is not on salary and the labour component cannot be clearly identified, the assessable amount is based on 60% of the gross purchase price of the fish.

Where it is the practice of the industry to deduct costs incurred to earn fishing income from the gross purchase price of the fish, or share those costs between the boat and the crew, not more than 40% of the cost of a fishing licence, permit, or quota, if leased, may be deducted or shared.

Under section 5(3) of the *Regulations*, assessments are limited to the maximum wage rate for each fisher. Therefore, if records are retained by the assessment payer to identify payments to individuals, deduction of excess earnings will be considered, regardless of whether the commercial fishing firm is incorporated. Excess earnings are only deducted where the earnings paid by one source exceed the maximum. Payments from two sources to the same individual are not added for this purpose.

### **(d) Registration of vessel owners**

As assessments are generally paid by commercial buyers under section 5(1) of the *Regulations*, vessel owners do not normally have to register. Some exceptional situations are discussed below.

A commercial fisher who is engaged in the maintenance or minor repair of that fisher's own fishing vessel or equipment during the fishing season or in the off-season is covered under the *Regulations*, as these activities are considered incidental to the fishing operations. Similarly, any commercial fisher who is doing maintenance or minor repairs on a commercial fishing vessel owned by another person is also covered under

these regulations. However, if a commercial fisher or vessel owner hires an individual who is not a commercial fisher to perform maintenance or minor repairs, the *Regulations* do not apply and the fisher or owner must register with the Board as the employer of the non-fisher.

If a commercial fisher is involved in the construction of that fisher's own fishing vessel or is doing major repairs on the vessel (greater than 25% of replacement value), that fisher would not be covered unless Personal Optional Protection was obtained. However, if that fisher hires help to assist in the construction or major repair of the vessel, the fisher would be required to register as an employer.

Subject to Part (b) of this policy, a person engaged in transmitting payments to commercial fishers must also register with the Board and pay assessments on the payments transmitted. For the purposes of this policy, transmitting includes the activity of sending, transferring, forwarding, conveying or distributing funds to commercial fishers.

### **(e) Payroll where there are multiple classifications**

Persons paying assessments may have more than one classification in the fishing industry: relating to fish processing or other operations on the one hand and fishing or fish buying on the other hand. Payroll must be allocated to the applicable classification. Payroll allocated to fish processing includes plant crews, truck drivers, warehouse workers and office staff. Payroll allocated to fishing or fish buying includes tendermen, campmen, net workers and any other acquiring personnel.

If a firm has assessable payroll in more than one classification in the fishing industry, then the administrative payroll (including active principals) that is common to the classifications must be pro-rated.

## **PRACTICE**

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	January 1, 2003
<b>AUTHORITY:</b>	s. 4, <i>Workers Compensation Act</i> and s. 5, <i>Fishing Industry Regulations</i> .
<b>CROSS REFERENCES:</b>	See also Personal Optional Protection (AP1-2-3), Classification – Multiple (AP1-37-2) and Maximum Wage (AP1-38-6) in the <i>Assessment Manual</i> and Fishers (policy item #65.03) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Amends parts of Item AP1-4-1 in the <i>Assessment Manual</i> approved on November 16, 2002. Specifically, inserts a new Part (b) to add factors for determining persons who should pay assessments on out-of-province and direct fish sales. Also amends Part (d) to require persons engaged

**APPLICATION:**

in transmitting payments to commercial fishers to register with the Board to pay assessments.

This amendment results from the amendment to the *Fishing Industry Regulations* gazetted as B.C. Reg. 364/2000.