



WORKING TO MAKE A DIFFERENCE

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Update 2006 – 2

TO: HOLDERS OF THE ASSESSMENT MANUAL

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2006 - 1.

This package contains amendments to Item AP1-4-1, *Fishing*, consequential to amendments made to the *Fishing Industry Regulations*. The amendments come into effect on **April 1, 2006** and will apply to all decisions made on or after that date.

As the result of the amendments to Item AP1-4-1, *Workers' Compensation Reporter* Decision No. 225 has been retired. An amendment to Appendix "B" of the *Manual* has been made to reflect this.

A summary of the amendment is attached and the amended pages are included as part of the package.

If you have any questions regarding subscription information for updates to the *Assessment Manual*, please contact WorkSafeBC Customer Service at the following:

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Roberta Ellis
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Attachments

ASSESSMENT MANUAL

SUMMARY OF AMENDMENTS – Update 2006 – 2

AP1-4-1 <i>Fishing</i>	Pages 1 - 6	Changes to consolidate the various sources of policy on the fishing industry and to clarify how WorkSafeBC identifies firms that must pay assessment premiums in the fishing industry, and how assessment premiums are calculated.
Appendix B	Page 1 Pages 12 - 13	Amendments made to Appendix “B” to reflect <i>Workers’ Compensation Reporter</i> Decision No. 225 has been retired.

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* (“*Regulations*”) made under it. The matters covered by the *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.

2. The Regulations

Section 1

In these regulations,

“commercial fisher” 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 that person’s occupation as a fisher, 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 fisher

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

- (g) a fisher 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 commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisher must pay assessments on the fish bought, obtained or paid for by or through the commercial buyer or other commercial recipient of fish, except if the fish are acquired from another commercial buyer or other commercial recipient,
 - (b) a person who engages the services of a master or crew of or for a fishing vessel must pay assessments on any fish in respect of which assessments are not payable under paragraph (a),
 - (c) 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 or 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, and
 - (d) for assessment purposes, a commercial recipient does not include a person who receives fish only for transport to a commercial buyer or commercial recipient in the province. ...

- (3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishers 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 fishers 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 fishers 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 fisher”

Clause (g) of the definition of “commercial fisher” in section 1 of the *Regulations* excludes persons 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 employers that must pay assessments

Section 5(1) of the *Regulations* provides the criteria to be considered in determining those persons in the fishing industry who must pay assessment premiums.

Pursuant to section 5(1) of the *Regulations*, the first commercial buyer or commercial recipient who enters into a commercial transaction in or from which the market value of the fish can be ascertained, and consequently the assessment premiums calculated, must pay assessment premiums in respect of the fish.

A commercial buyer or commercial recipient does not include a person who only receives fish for transport to a commercial buyer or commercial recipient in the province.

Where there is no commercial buyer or commercial recipient, the assessment premiums must be paid by the person who hired the master or crew of a fishing vessel.

The following factors may assist in applying these guidelines:

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 may be based on the salary.
- Where the commercial fisher is paid by established settlement and a labour component is clearly identified, the assessable amount may be 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 fishers' salary or the labour component of a settlement is not clearly identified by the assessed employer, 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 license, 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 person are not added for this purpose.

(d) Registration of vessel owners

As assessments are generally paid by “commercial buyers” or “commercial recipients” 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 his or her own fishing vessel or equipment during the fishing season or on 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 fishing vessel owned by another person is also covered under these regulations. However, if a commercial fisher or vessel owner hires a person 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 Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	April 1, 2006
AUTHORITY:	s.4, <i>Workers Compensation Act</i> ; and the <i>Fishing Industry Regulations</i> .
CROSS REFERENCES:	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 & Claims Manual</i> , Volume II.
HISTORY:	Amended in 2005 to clarify assessed employers in the fishing industry and the manner in which assessment premiums may be calculated. Amendments made in 2003 result from the amendment to the <i>Fishing Industry Regulations</i> gazetted as B.C. Reg. 364/2000. 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 in transmitting payments to commercial fishers to register with the Board to pay assessments.
APPLICATION:	This policy applies to all decisions made on or after April 1, 2006.

APPENDIX “B”**INDEX OF RETIRED DECISIONS FROM
VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE
*WORKERS’ COMPENSATION REPORTER*****EXPLANATORY NOTE:**

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers’ Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy has been approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and “retiring” the Decisions over time.

“Retire” for this purpose means that, as of the “retirement date”, the Decision is no longer current policy under the Board of Directors Bylaw.

“Retiring” does not affect a Decision’s status as policy prior to the date it was “retired”. A “retired” Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the “retirement date”. “Retiring” also does not affect the disposition of any individual matters dealt with in a Decision.

This Index sets out the Decisions from volumes 1 - 6 that have been “retired” and the “retirement date”. It will be updated as further Decisions are “retired” in the future.¹

Please note that as of April 1, 2006, only two Decisions from Volumes 1 – 6 of the *Workers’ Compensation Reporter* remain to be retired: Nos. 99 and 231. These Decisions will be addressed in the near future.

¹ Decisions that do not appear in the Index should not necessarily be considered current policy. Decisions or parts of Decisions may have been replaced, either expressly or impliedly, by subsequent policies in the policy manuals or other policy documents. Under the Board of Directors Bylaw, where there is a conflict between policy in Decisions No. 1 - 423 and policy in a policy manual listed in the Bylaw, the policy in the manual is paramount. In the event of any other conflict between policies, the most recently approved policy is paramount.

DECISION NO.	TITLE	RETIREMENT DATE
216	The Consumer Price Index	May 1, 2000
217	Adjustments According to the Consumer Price Index	May 1, 2000
218	Commutation of Pensions	May 1, 2000
219	Medical Review Panels	February 24, 2004
220	Proportionate Entitlement and the Dual System	May 1, 2000
221	Bronchitis and Emphysema	October 21, 2003
222	Compensable Consequences of Work Injuries	October 21, 2003
223	The Fishing Industry	January 1, 2003
224	The Fishing Industry	January 1, 2003
225	The Fishing Industry	April 1, 2006
226	The Fishing Industry	January 1, 2003
227	Broken Eyeglasses	October 21, 2003
228	Multiple Sclerosis	June 17, 2003
229	Industries and Employment	January 1, 2003
230	Unauthorized Activities	October 21, 2003
232	Cancer of Gastro-Intestinal Tract	June 17, 2003
233	Security and Investigation Services	May 1, 2000
234	Occupational Hygiene and Cominco Ltd.	June 17, 2003
235	Manpower Supply Agencies	January 1, 2003
236	Interim Adjudication	June 17, 2003
237	Complaints to the Commissioners in Respect of Compensation Claims	May 1, 2000
238	Bronchitis and Emphysema	October 21, 2003
239	Ganglia	October 21, 2003

DECISION NO.	TITLE	RETIREMENT DATE
240	Training Allowances	June 17, 2003
241	Inmates on Work Release Programmes	January 1, 2003
242	Supply of Appliances	October 21, 2003
243	Industrial Diseases	June 17, 2003
244	The Consumer Price Index	May 1, 2000
245	Adjustments According to the Consumer Price Index	May 1, 2000
246	Pulmonary Disease and "Hard Metal" Grinding	June 17, 2003
247	Workers Undergoing Custodial Care	June 17, 2003
248	Class 11	May 1, 2000
249	Recurrence of Disability	May 1, 2000
250	Industrial Diseases	June 17, 2003
251	Penalties under Section 61(2)	October 21, 2003
252	Scope of Employment	October 21, 2003
253	Replacement of Eyeglasses and Wage Loss	June 17, 2003
254	Payment of Claims Pending Appeals to the Commissioners	May 1, 2000
255	Registration of Labour Contractors as Employers	January 1, 2003
256	Scope of Employment	June 17, 2003
257	The Maximum Wage Rate	May 1, 2000
258	The Reimbursement of Expenses	May 1, 2000
259	Common-Law Spouses – "Re-Marriage Allowance"	June 17, 2003
260	Enhancement Factors and Multiple Disabilities	October 21, 2003