

DISCUSSION PAPER

1. TITLE AND DATE

Regulation and Policy in the Fishing Industry

2. ISSUES

Two recent Workers' Compensation Appeal Tribunal ("WCAT") decisions have raised issues concerning the *Fishing Industry Regulations* (the "*Regulations*") and policy as requiring the attention of the Workers' Compensation Board ("WCB"). The decisions identify the need to clarify the way in which the fishing industry is to be assessed to stakeholders and staff. Also at issue is the deletion of *Workers Compensation Reporter* ("*WCR*") *Decision No. 225* ("*Decision No. 225*"). In considering any policy or regulation changes, clarification is required regarding:

- a) the proper identification of firms that must pay assessment premiums in the fishing industry, and
- b) the manner in which such firms' assessment premium amounts may be calculated.

Current policy on identifying which firms must pay assessment premiums is spread between *Decision No. 225* and the *Assessment Manual* ("*AM*"), and lacks clarity in that it allows for the possible assessment of firms who do not participate in the sale transactions of fish harvests.

Current policy on calculating assessment premium amounts was interpreted by the WCAT decisions as requiring the WCB to undertake significant administrative work to determine assessment premiums. The Assessment Department has requested that the policy be changed to reflect the assessment calculation methods used in practice.

3. BACKGROUND¹

Section 4 of the *Workers Compensation Act* ("*Act*") is the statutory basis for the *Regulations* and policy on the fishing industry. It provides that the Lieutenant Governor in Council may make regulations that apply sections of the *Act* about workers to commercial fishers, and sections about employers to commercial buyers or other commercial recipients of fish.

¹ Copies of section 4 of the *Act* and *Decision No. 225* are found in Appendix A. The *Assessment Manual* fishing policy, with proposed changes, is found in Appendix B. The *Regulations*, with proposed changes, are found in Appendix C.

3.1 Regulation and Policy on Identifying Who Must Pay Assessment Premiums

Under the authority of Section 4, the *Regulations* came into effect December 22, 1976.²

Subsections 5(1) and 5(2) of the *Regulations* outline the parties in the fishing industry that are responsible for paying assessment premiums as employers. This section also provides the WCB with the authority to modify the list of parties that are responsible for paying assessment premiums.

On December 31, 1976 the WCB exercised the authority of subsection 5(1) of the *Regulations* to change the criteria that identify parties in the fishing industry that must pay assessment premiums, by adopting a Board Minute published as *Decision No. 225* in Volume 3 of the *WCR*.

Decision No. 225 cited the recently-revised subsection 5(1) of the *Regulations*, and provided that the WCB "found that it is inappropriate and unworkable to require payment of assessments as set forth in that provision." It provided new language by which the WCB would make determinations on which parties are liable to pay assessment premiums in the fishing industry. While this change was intended to replace subsection 5(1) of the *Regulations*, the approved wording was never made into a regulation, but remained in effect as policy.³

Decision No. 225 identifies parties that must pay assessments in the fishing industry as follows:

- a) a commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisherman shall pay assessments on the fish bought, obtained or paid for by or through such commercial buyer or other commercial recipient of fish, except where 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 shall pay assessments on any fish in respect of which assessments are not payable under (a), except fish which are sold by the fisherman for personal or family consumption."

In addition to *Decision No. 225*, the WCB has an *Assessment Manual* ("AM") policy, Item AP1-4-1 (Fishing), on commercial fishers and firms that must pay fishing industry assessment premiums. In the "Background" section of that Item there is a reference to section 5(1) of the *Regulations*, but not to *Decision No. 225*, which replaced that section of the *Regulations*. The "Background" sections

² B.C. Reg. 676/76 including amendments up to B.C. Reg. 384/2003.

³ Decisions published in the *WCR* that are not retired are WCB policy, as per *The Board of Directors Bylaw re: Policies of the Board of Directors*. See BOD Resolution 2003/02/11-04.

of items in the *AM* are not policy, but references that may be useful in interpreting them.

The *AM* fishing policy provides additional guidance that Board officers may consider when making a determination on whether a fishing industry firm should pay assessment premiums. Examples of these factors include whether collecting assessments from the person is within the authority of the *Act*, whether the person makes the economic decision to sell fish to persons or organizations other than BC commercial buyers or commercial recipients; and whether the person has control to act upon the economic decision on where to sell the fish.

To add to the confusion regarding the different sources of policy direction, the prior version of the policy contained different guidelines than those contained in the current *AM*. Specifically, this policy provided as follows:

- A commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisher is responsible for paying the assessment on those fish, except where they are obtained from another commercial buyer or recipient who has or should have already paid the assessment on those fish.
- For fish not covered by the above statement, the assessment must be paid by the person who hired the master or crew of a fishing boat, unless the fish are sold to people who will use them for personal consumption.

The Assessment Department has continued to apply the principles set out in the pre-2003 policy that are no longer found in the current *AM* fishing industry policy, with one exception. Both *Decision No. 225* and the pre-2003 fishing industry policy reference an exception for fish sold by fishers to individuals for personal consumption. Current practice is that the Assessment Department registers the person who hires the master or crew of a fishing vessel where the fishers sell fish directly to the public off the dock, as such fishers do not have transactions with commercial buyers or other commercial recipients. Authority for this is derived from section 7 of the *Regulations*, which provides that "all other persons required to pay assessments under section 5 must register with the board and provide such information as the board may require".

3.2 Regulation and Policy on How Assessment Premiums are Calculated

Subsection 5(3) of the *Regulations* provides the WCB with broad authority in how assessment premiums may be calculated. The *AM* fishing industry policy sets out that there are three methods of calculating premiums in the fishing industry:

- 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.

The challenge of calculating premiums in the fishing industry is that frequently the WCB is unaware whether the fisher who sold the fish to the buyer is salaried or paid by the settlement method, or the amounts individual fishers are paid. In retired *WCR Decision No. 224*, the third rule referenced above was framed as a default method of assessment where the assessed firm did not have the information necessary to calculate premiums under the first two methods.

The Assessment Department has interpreted policy in the *AM* as allowing it to default to the method based on 60 percent of the harvest value in cases where information is not provided by the buyer that allows assessment by one of the first two methods, but there is no provision in policy to do so.

3.3 WCAT commentary on the *Regulations* and Policy

As previously noted, two recent WCAT decisions were critical of the structure of the *Regulations*, the *WCR*, and policy. In particular, WCAT Decision No. 032180-B stated that the various regulations, reporter series decisions, and policy are confusing for stakeholders and participants in the Review and Appeal systems. The Vice-Chair recommended that the WCB:

...reconcile its assessment policies and policies (in formal policy Manuals, unretired policy decisions, and practice directives) with *Fishing Industry Regulations* promulgated under section 4 of the Act. That would achieve a cohesive consistency between policy, practice, statutory and regulatory law relating to assessments in the fishing industry.

The WCAT decisions also raised issues around properly identifying those firms that must pay premiums, and the way in which assessment premiums must be calculated in the fishing industry. These issues are discussed in detail in the following sections.

4. DISCUSSION

4.1 Identifying Firms That Must Pay Premiums

In WCAT Decision No. 032180-B, the Vice Chair found that there was evidence of other commercial entities that acquired the fish in commercial transactions

prior to the fish processing plant acquiring the fish under the custom processing arrangements it had with the fishers. In the decision, the Vice Chair noted that there was evidence of trucking companies and off-loading businesses that were involved in commercial transactions with the fish prior to the appellant acquiring the fish.

Based on that finding, WCAT determined that the fish processing plant where the market value of the harvest was determined should not have to pay premiums for that harvest as it was not involved in the first commercial transaction.

Long-standing practice is that the Assessment Department assesses the fish processing plant for the work done by fishers. Such facilities are normally the first commercial recipient to handle the fish where the actual market value of the fish is determined.

The Assessment Department has interpreted *Decision No. 225* and the *AM* fishing industry policy as meaning that the first commercial buyer or recipient where the value of the harvested fish is determined must pay assessment premiums for the harvesting of the fish. This is also consistent with the approach of the pre-2003 *Assessment Policy Manual* fishing policy. However, the current *AM* fishing industry policy is not clear in identifying that such firms must pay assessment premiums, though there is authority for this interpretation under the current policy.

In the fishing industry, a firm or person may handle fish from a commercial fisher prior to its value being determined. For example, trucking and refrigeration companies may provide transportation or storage services before a catch is moved to a processing facility where it is graded and its value determined. In many cases, the fee paid to such a firm for providing its service does not correspond to the value of the fish harvest. Under the interpretation put forward in the two WCAT decisions, however, such firms could be responsible for payment of premiums for commercial fishers' work.

To confirm existing practice, the Assessment Department has requested that the policy be changed to incorporate appropriate principles for determining firms that must pay assessment premiums in the fishing industry as set out in *Decision No. 225* and the former fishing industry policy of the *Assessment Policy Manual*.

4.2 How Premiums Are Calculated

Current policy provides three methods to calculate the assessment premiums payable by a fishing industry firm. The first two methods are based on the salary of the fishers, or the labour component of the fishers' payment. In practice the Assessment Department often defaults to the third method, which is to assess the buyer based on 60 percent of the value of the harvest.

However, the two recent WCAT decisions referenced above state that there is an onus on the WCB in some cases to find out the salaries of the fishers who landed the harvests. WCAT Decision No. 032180-B states, in particular:

The Board's practice was to interpret the hierarchy of formulas in policy... as reading that if the commercial recipient did not have adequate records indicating that the fishers were paid by salary or established settlement with a clearly defined labour component, the Board could default to applying the third formula and assess on the gross purchase price of the fish. However, words to that effect were not in the policy. ...

I find that in appropriate cases, the onus would have been on the Board to make the necessary inquiries to determine whether or not formula 1, 2, or 3 applied in policy...

The information required to apply the first two methods of assessment calculation can be difficult to get, as the records of fishers are not often readily available, despite the fact that the WCB has the authority to collect such information.

Requiring the Assessment Department to obtain information directly from fishers in order to determine the premiums payable for fish buyers could halt the assessment process, due to the resulting administrative burden. Fish buyers can obtain such information at the time they purchase the fish, and in other industries the Assessment Department is not required to contact subcontracted workers in order to calculate an assessment for a prime contractor. The Assessment Department has requested that the policy be changed to allow assessment based on the third method where the information necessary to assess based on the first two methods is unavailable from the firm paying assessment premiums.

4.3 Consolidation of Policy

The WCB is seeking to retire the *WCR*, the source of one of the policies under review in this paper, by including material from the decisions in current policy manuals. The retirement of *Decision No. 225* presents an opportunity to clarify policy for stakeholders and staff as to which "commercial buyers" or "commercial recipients" must pay assessment premiums. Any useful and appropriate material found in *Decision No. 225* could be incorporated into the current AM fishing industry policy.

5. OTHER JURISDICTIONS

The PRD contacted the other four Canadian maritime workers' compensation jurisdictions to determine how each assesses the fishing industry.

In Prince Edward Island, the fishing industry is exempted from coverage by regulation, but commercial fishers may purchase optional coverage.

In New Brunswick, only employers with 25 or more workers in the fishing industry must register to pay assessments for workers. Fishing industry employers with fewer workers may apply for optional coverage. Fishing industry workers do not have coverage unless their earnings are reported in their employer's payroll records, and assessment premiums are based on their earnings.

In Nova Scotia, the legislation identifies fishing industry employers as "the owner or operator of a boat or vessel rented, chartered, or otherwise provided to a worker employed in the fishing industry". Such employers must register only if they have three or more workers. Workers are identified as "a person who becomes a member of the crew of a vessel under any profit-sharing arrangement". Assessment premiums are based on the earnings of fishing industry workers.

The Workplace Health, Safety & Compensation Commission ("WHSCC") of Newfoundland and Labrador is the only other jurisdiction that assesses the fishing industry in a manner similar to BC. In that province, the regulations provide a hierarchical structure for collecting assessment premiums in the fishing industry.

The regulations state that the WHSCC will first look to fish processing plants, then to a commercial buyer or commercial recipient for payment of assessment premiums. If there is no such entity, the WHSCC will collect assessment premiums from "a person who engages the services of a master or crew for a fishing vessel." If collection from such a person is not possible, then the WHSCC will collect premiums from "a person engaged within the province in transmitting payment to a commercial fisher from the commercial sale of fish landed outside the province."

6. OPTIONS AND IMPLICATIONS

Option 1: Status Quo

Under this option, no changes would be made to the *Regulations* or to the *AM* fishing industry policy.

Implications

- This option would result in continued inconsistency in identifying firms that may be assessed.
- Firms that have not previously been subject to fishing industry assessments could be held liable for premiums in respect of the harvests they provide storage and transportation services for.
- The manner in which assessment premiums are calculated for the fishing industry would cause a significant administrative burden for the WCB.

- The rules for assessment of fishing industry would remain spread between two policy documents that do not cross-reference each other.
- *Decision No. 225* would remain as policy, despite a stated corporate intention to retire the *WCR*.
- The reference to a regulation superseded by *Decision No. 225* would remain in the “Background” section of the *AM* fishing industry policy.

Option 2: Clarify to the *AM* fishing industry policy

Under this option, *Decision No. 225* would be retired, and the following changes would be made to the *AM* fishing industry policy:

- Policy would be changed to incorporate the principles for identifying firms that must pay assessment premiums in the fishing industry as set out in *Decision No. 225* and *Assessment Policy Manual* item 40:20:10, with the exception of the statement concerning fish sold to individuals for personal consumption. It is proposed that this statement not be added to the *AM* fishing policy, as it does not reflect current practice.
- Policy would provide that the third method of assessing firms in the fishing industry, based on 60 percent of the value of the harvest, would be used as a default method where the firm paying assessments cannot provide the information necessary to assess based on the first two methods.

Draft policy reflecting this option is found in Appendix B.

Implications

- Under the authority of subsection 5(1) of the *Regulations*, policy would supersede the *Regulations'* provisions on identifying parties who must pay assessment premiums.
- Greater consistency would be possible in identifying firms that may be assessed for premiums on fish harvests.
- There would be greater clarity as to how assessment premiums are calculated for the fishing industry.
- A *WCR* decision would be retired.
- Policy on assessing the fishing industry would be found in a single place, instead of split between *Decision No. 225* and the *AM*.

Option 3: Make changes to the *Regulations* and the *AM* fishing industry policy

Under this option, the following changes would be made to the *Regulations*, as set out in Appendix C:

- The *Regulations* would be changed to incorporate the principles for identifying firms that must pay assessment premiums in the fishing industry as set out in *Decision No. 225* and *Assessment Policy Manual* item 40:20:10, with the

exception of the statement concerning fish sold to individuals for personal consumption. It is proposed that this statement not be added to the *Regulations*, as it does not reflect current practice.

- A new exclusionary statement would be added to subsection 5(1) the *Regulations*, providing that a commercial recipient does not include a person who only receives fish for transportation to a commercial buyer or commercial recipient.
- Currently there is a general statement in subsection 5(2) of the *Regulations* providing that individuals who transmit payments to fishers are employers. In order to ensure that the new exclusionary statement referenced above also applies to the material currently found in subsection 5(2), it is proposed that the statement be moved into subsection 5(1).
- The *Regulations* would be updated to reference "commercial fishers" and not "commercial fishermen", to be consistent with section 4 of the *Act*.
- A minor change would be made to section 12 of the *Regulations* to clarify that penalties do not have to be based on percentages, in order to recognize the authority of the WCB to charge other types of penalties under section 40 of the *Act*.

In addition, the following changes would be made to policy:

- *Decision No. 225* would be retired.
- As with the *AM* policy changes suggested for Option 2 in Appendix B, except that the first two new paragraphs in section (b) of the policy would not be required. In addition, the revised *Regulations* would be referenced by policy.

Implications

- As in Option 2, except that the *Regulations* would be updated to reflect the actual assessment practices of the WCB, further reducing the issue of having policy that reflects different provisions from the *Regulations*.
- If the *Regulations* are changed after consulting on this issue, section 76 of the *Act* provides that the new regulations will come into effect 90 days after they are deposited as set out in the *Regulations Act*.

7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Attached as Appendix "B" is draft policy reflecting Option 2, under which the WCB would clarify the fishing industry policy concerning what firms must pay assessments in the fishing industry and how assessment premiums will be calculated in the fishing industry.

Stakeholder comments will be accepted until **September 30, 2005**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Cameron Angus
Policy Analyst
Policy and Research Division
Workers' Compensation Board
P.O. Box 5350, Stn Terminal
Vancouver, BC V6B 5L5

By fax: 604 279-7599

By e-mail: policy@worksafebc.com

The WCB's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

FISHING INDUSTRY LEGISLATION AND *DECISION NO. 225*

SECTION 4 OF THE ACT:

Fishing industry

4 (1) The Lieutenant Governor in Council may make regulations to

(a) define the terms used in this section, and, for this purpose, the term "fish" may be defined to include any species of animal living in water, and the term "commercial fisher" may be defined to include the master and crew of a fishing vessel, the master and crew of a fish packing vessel and any other person who contributes in any manner to the catching or landing of fish for sale or commercial use;

(b) provide that any provision of Part 1 relating to workers applies or may be applied to any commercial fishers working in or out of British Columbia ports, or on or about the waters of British Columbia, or resident in the Province, notwithstanding that they may not otherwise be workers under this Act;

(c) provide that any provision of Part 1 relating to employers applies or may be applied to any commercial buyers or other commercial recipients of fish, or to any person engaged in the Province in transmitting payments to commercial fishers, notwithstanding that they may not otherwise be employers under this Act, and, to the extent the regulations provide, each buyer, recipient or payor is deemed to be the employer of all commercial fishers who contributed in any manner to the catching or landing of the fish bought, obtained or paid for by or through that person;

(d) provide that methods of calculating and levying assessments additional to or different from the methods otherwise provided under Part 1 may be used for levying assessments for the purposes of this Part on commercial buyers and other commercial recipients of fish, and on a person engaged in the Province in transmitting payments to commercial fishers for fish whether landed in the Province or elsewhere;

(e) create obligations, different from the terms of this Act, on commercial buyers and commercial recipients of fish, and masters of fishing vessels, to report to the Board injuries and occupational diseases sustained by commercial fishers, and to provide transportation for initial medical treatment;

(f) exclude a portion of the fishing industry or a category of workers or employers in that industry to whom a provision of this Part would otherwise apply from the application of that provision, and to substitute provisions contained in regulations made under this section; and

(g) delegate to the Board to the extent the regulations provide any power conferred by this section.

APPENDIX A

FISHING INDUSTRY LEGISLATION AND *DECISION NO. 225*

(2) Where it appears to the Board that a provision of this Act or of a regulation made under another section of this Act is inappropriate or unworkable in relation to commercial fishers, the fishing industry or commercial buyers, or other commercial recipients of the fish, the Board may, by regulation, make the rules and give the decisions it considers fair and appropriate having regard to the intent that all commercial fishers must as far as possible receive the benefit of and be subject to Part 1.

(3) Where the death of a commercial fisher resident in British Columbia arises out of and in the course of his or her occupation in the Province or waters off the Province after January 1, 1975, and the death is not otherwise compensable under this Part, the Board may treat the death in the same manner as if the commercial fisher were a worker employed by the Crown in right of the Province.

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FISHING INDUSTRY LEGISLATION AND *DECISION NO. 225*

Workers Compensation Reporter Decision No. 225

Decision No. 225

Re: The Fishing Industry

31st December, 1976

Resolution of the Board considered by:

J.P. Berry, Vice-Chairman

G. Kowbel, Commissioner

The following Minute has been adopted by the Board:

“WHEREAS the Fishing Industry Regulations approved by Order-In-Council No. 3779 dated December 22nd, 1976, provide under Section 5(1):

‘Unless the Board otherwise determines

- (a) a fish processing establishment licenced or required to be licenced 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 re-sale 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 (a) and (b);’

“AND WHEREAS the Board, through its experience in 1976, found that it is inappropriate and unworkable to require payment of assessments as set forth in that provision,

“THE BOARD HEREBY DETERMINES that effective January 1st, 1977, the following regulation shall replace Regulation 5(1) of the Order-In-Council No. 3779:

- (a) a commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisherman shall pay

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FISHING INDUSTRY LEGISLATION AND *DECISION NO. 225*

- assessments on the fish bought, obtained or paid for by or through such commercial buyer or other commercial recipient of fish, except where 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 shall pay assessments on any fish in respect of which assessments are not payable under (a), except fish which are sold by the fisherman for personal or family consumption.”

APPENDIX B

PROPOSED ASSESSMENT MANUAL FISHING POLICY

(Note that proposed changes are in bold, with strikethroughs for material that is proposed for deletion)



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

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 (the "Regulations")* made under it. The matters covered by ~~these~~ **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 as there is no employment relationship on fishing vessels.

2. The Regulation

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

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WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Fishing

ITEM: AP1-4-1

- (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,

Refer to section (b) of the Policy section.

- ~~(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 brought, 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 brought, obtained or paid for by or~~

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~~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 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.
- (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.

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WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Fishing

ITEM: AP1-4-1

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 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 persons who should pay assessments**~~

(b) Determining employers that must pay assessments

Section 5(1) of the *Regulations* provides that, unless the Board determines otherwise, the criteria in that section are considered in determining those parties in the fishing industry that must pay assessment premiums.

By this policy, the Board is exercising its authority under section 5(1) to establish the following guidelines to assist in the determination of which party must pay assessments in the fishing industry.

Generally, it is 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, who must pay assessment premiums in respect of the fish.

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RE: Fishing

ITEM: AP1-4-1

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

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 is **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 is **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.

APPENDIX B

PROPOSED ASSESSMENT MANUAL FISHING POLICY

(Note that proposed changes are in bold, with strikethroughs for material that is proposed for deletion)



WORKERS' COMPENSATION BOARD OF BC

ASSESSMENT MANUAL

RE: Fishing

ITEM: AP1-4-1

- Where the commercial fishers' ~~is not on salary and~~ **or** the labour component **of a settlement cannot be** ~~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 ~~licence~~ **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

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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.

EFFECTIVE DATE:	January 1, 2003 October 1, 2005
AUTHORITY:	s.4, <i>Workers Compensation Act</i> ; and the s.5(2), <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

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result from the amendment to the *Fishing Industry Regulations* gazetted as B.C. Reg. 364/2000. Amends parts of Item AP1-4-1 in the *Assessment Manual* 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 amendment results from the amendment to the *Fishing Industry Regulations* gazetted as B.C. Reg. 364/2000.~~ **This policy applies to all decisions made on or after October 1, 2005.**

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PROPOSED FISHING INDUSTRY REGULATIONS (Note That Proposed Changes Are In Bold, With Strikethroughs For Material That Is Proposed For Deletion)

B.C. Reg. 674/76
O.C. 3779/76

Filed December 30, 1976
effective January 1, 1977

Workers Compensation Act

FISHING INDUSTRY REGULATIONS

[includes amendments up to B.C. Reg. 384/2002]

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Definitions

1 In these regulations:

"**Act**" means the *Workers Compensation Act*;

"**commercial fisher~~man~~**" 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 licence,

(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

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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~~ **that person's** 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;

"commercial sale" includes sale to a person who is buying for resale or commercial use, but excludes a sale to a person who is buying for personal or family consumption;

"fish" means any species of animal living in water;

"fisherman" means a person who contributes in any manner to the catching or landing of fish, and may include a temporary or part time fisherman;

"fishing vessel" means any vessel used in catching fish or collecting or transporting fish for landing;

"Part 1" means Part 1 of the *Workers Compensation Act*;

"reportable injury" means an injury required to be reported to the board under section 54 of Part 1, and regulations made thereunder.

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Part 1 applicable to commercial fishermen

2 (1) Subject to these regulations and to any other regulations or decisions made under Part 1, all provisions of Part 1 relating to workers shall apply to commercial fishermen.

(2) For the purposes of Part 1, a commercial fisherman's employment is ~~his~~ **that person's** occupation as a commercial fisherman.

Eligibility for benefits

3 Where a commercial fisherman is injured in the course of ~~his~~ **that person's** occupation, but the fish caught, landed or acquired on the particular voyage are not for commercial sale, ~~he~~ **that person** is, subject to the terms of Part 1 and regulations and decisions made thereunder, eligible for compensation benefits; and earnings from such voyages may be included in the calculation of earnings for compensation benefits in respect of such an injury or any other injury.

Section 8 of Act not applicable to commercial fishermen

4 Section 8 of Part 1 does not apply to commercial fishermen.

Assessments

5 (1) Unless the board otherwise determines:

~~(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).~~

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(a) a commercial buyer or other commercial recipient of fish who directly or indirectly acquires fish from a commercial fisher shall pay assessments on the fish bought, obtained or paid for by or through such commercial buyer or other commercial recipient of fish, except where 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 shall pay assessments on any fish in respect of which assessments are not payable under (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 only receives fish for transport to a commercial buyer or commercial recipient in the province.

~~(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 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.~~

(2) Repealed.

(3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishers~~men~~ 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~~men~~ exceed the maximum wage 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~~men~~ 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.

[am. B.C. Reg. 364/2000.]

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Assessments not deductible from payments due

6 No sum payable in assessments shall be deducted from any payment due to commercial fishers~~men~~.

Registration with board

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.

Sections Repealed

8 to 9.1 Repealed. [B.C. Reg. 152/2001, s. 1.]

Reporting injury, death or disease on fishing vessels

10 (1) For the purposes of sections 53, 54 and 96.2 to 96.4 of the Act, the employer in respect of a fishing vessel owned or chartered by a commercial buyer or other commercial recipient of fish is the vessel owner or charterer.

(2) For the purposes of sections 53 and 54 of Part 1, the employer in respect of a fishing vessel not owned or chartered by a commercial buyer or other commercial recipient of fish is the vessel master, or where there is no vessel master, the vessel owner.

(3) For the purposes of sections 96.2 to 96.4 of the Act, the employer in respect of a fishing vessel not owned or chartered by a commercial buyer or other commercial recipient of fish is

- (a) the vessel master,
- (b) the vessel owner,
- (c) any commercial buyer or other commercial recipient of fish,
- (d) any other person required to pay assessments under section 5, or
- (e) such other person or association of employers,

as may be designated by the board for these purposes.

(3.1) Sections 96.2 to 96.4 of the Act apply to the persons described in section 5 (1) (a) to (c) as being required to pay assessments.

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(3.2) The persons to whom sections 96.2 to 96.4 of the Act apply as a result of this section are deemed to be employers for the purposes of those sections.

(4) Where the master of any fishing vessel owned or chartered by a commercial buyer or other commercial recipient of fish receives a report under section 53 of Part 1, or becomes aware that a member of ~~his~~ **the master's** crew has sustained a reportable injury, death or industrial disease which is or is claimed to be one arising out of and in the course of ~~his~~ **that person's** occupation as a commercial fisherman, the master shall forthwith report such injury, death or industrial disease to the vessel owner or charterer or, if that is impracticable, to the board.

[am. B.C. Regs. 323/2002; 383/2002; 384/2002.]

Examination of records

11 Any officer of the board, or a person authorized by it for this purpose, has the right to examine the books, accounts and other records of any person whose records may or should show the catching or landing of fish, or payments made in respect of fish, and may make such other inquiry as the board may deem necessary.

[am. B.C. Reg. 37/92.]

Penalties on unpaid assessments

12 If any assessment levied against any person under any provision of Part 1 or any regulation made thereunder is not paid at the time it becomes payable, the defaulting person is liable to pay and shall pay ~~as a penalty for default such a percentage upon the amount unpaid~~ as may be prescribed by the regulations or may be determined by the board, and the penalty may be added to the amount of the assessment and become a part thereof, or where not added to the assessment may be enforced in the same manner as the payment of an assessment is enforceable.

Payment for transport of injured fisherman

13 For the purposes of section 21 (3) of Part 1, the expense of transporting an injured fisherman to a hospital, physician or qualified practitioner for initial treatment shall be paid by the owner of the vessel on which the fisherman is injured or where the vessel is chartered by the charterer of the vessel on which the fisherman is injured or in default of payment by the vessel owner or charterer the vessel master.

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Definitions

14 For the purposes of section 10 of Part 1:

"employer" includes any person required to pay assessments under section 5, and any person included in section 8, except commercial fishers~~men~~;

"workers" includes any commercial fishers~~man~~;

"employment" means the business or occupation of an employer or a worker in so far as it relates to fish, fishing or fishing vessels; but nothing in these regulations shall exclude the application of section 10 of Part 1 from any situation to which it would otherwise apply.

Board amendment of regulations

15 The board may add to and amend these regulations and exercise all the powers conferred by section 4 of Part 1.

Section Spent

16 Spent.

[Provisions of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, relevant to the enactment of these regulations: section 4]