

2005/11/17-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****RE: FISHING INDUSTRY****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Section 4 of the *Act* provides that the Lieutenant Governor in Council may make regulations concerning the application of the *Act* to the fishing industry in British Columbia;

AND WHEREAS:

The *Fishing Industry Regulations*, B.C. Reg. 674/76 ("*Regulations*") set out persons in the fishing industry who must pay assessment premiums;

AND WHEREAS:

As permitted under section 5(1) of the *Regulations*, *Workers' Compensation Reporter Decision No. 225* ("*Decision No. 225*") provides different criteria for determining persons in the fishing industry who must pay assessment premiums;

AND WHEREAS:

The policy of the Board of Directors concerning the fishing industry is found in *Decision No. 225* and in *Assessment Manual* Item AP1-4-1 *Fishing*;

AND WHEREAS:

The Board of Directors considers it necessary and advisable to amend the *Regulations*, retire *Decision No. 225* and make changes to *Assessment Manual* Item AP1-4-1 *Fishing* to provide clarity in how the fishing industry is to be assessed;

AND WHEREAS:

Pursuant to the Provincial Government's Regulatory Reform Policy, the Board of Directors has evaluated the proposed regulatory amendments according to the established regulatory criteria;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The regulation amending the *Fishing Industry Regulations* set out in Appendix A is approved.
2. The Regulatory Criteria Checklist Form in Appendix B is approved.
3. The amendments to *Assessment Manual* Item AP1-4-1 *Fishing* set out in Appendix C are approved.
4. The amending regulation will be deposited with the Registrar of Regulations in such form as may be required by the Registrar.
5. The amendments to the *Regulations* will come into force April 1, 2006, more than 90 days after their deposit under the *Regulations Act*, pursuant to section 76 of the *Act*.
6. The amendments to the *Assessment Manual* are effective on the date the above noted regulatory amendments come into force, and apply to all decisions made on or after April 1, 2006.
7. *Decision No. 225* is retired effective the date the above noted regulatory amendments come into force.
8. This a policy resolution of the Board of Directors.

DATED at Richmond, British Columbia, November 17, 2005.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

**APPENDIX A
AMENDING REGULATION FOR THE
FISHING INDUSTRY REGULATIONS**

- 1** *The Fishing Industry Regulations, B.C. Reg. 674/76, are amended by striking out “board” wherever it appears and substituting “Board”.*
- 2** *Section 1 is amended*
 - (a)** *in the definition of “commercial fisherman”*
 - (i)** *by striking out ‘ “commercial fisherman” means’ and substituting ‘ “commercial fisher” means’,*
 - (ii)** *in paragraph (d)) by striking out “his occupation as a fisherman” and substituting “that person’s occupation as a fisher”, and*
 - (iii)** *in paragraphs (f) and (g) by striking out “fisherman” and substituting “fisher”, and*
 - (b)** *in the definition of “fisherman” by striking out “fisherman” in both places and substituting “fisher”.*
- 3** *Section 2 is repealed and the following substituted:*

Part 1 applicable to commercial fishers

- 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 fishers.

(2) For the purposes of Part 1, a commercial fisher's employment is that person's occupation as a commercial fisher.
- 4** *Section 3 is amended*
 - (a)** *by striking out “fisherman” and substituting “fisher”,*
 - (b)** *by striking out “his” and substituting “that person’s”, and*
 - (c)** *by striking out “he” and substituting “that person”.*
- 5** *Section 4 is amended by striking out “fishermen” wherever it appears and substituting “fishers”.*

6 *Section 5 is amended*

- (a)** *by repealing subsections (1) and (2) and substituting the following:*
 - (1) Unless the Board otherwise determines,
 - (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

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AMENDING REGULATION FOR THE
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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. , *and*

(b) subsection (3) is amended by striking out “fishermen” wherever it appears and substituting “fishers”.

7 Section 6 is amended by striking out “fishermen” and substituting “fishers”.

8 Section 10 (4) is amended

(a) by striking out “his” where it first appears and substituting “the master’s”, and

(b) by striking out “his occupation as a commercial fisherman” and substituting “that person’s occupation as a commercial fisher”.

9 Section 12 is amended by striking out “as a penalty for default such a percentage upon the amount unpaid” and substituting “a penalty for default”.

10 Section 13 is amended by striking out “fisherman” wherever it appears and substituting “fisher”.

11 Section 14 is amended

(a) in the definition of “employer” by striking out “fishermen” and substituting “fishers”, and

(b) in the definition of “workers” by striking out “fisherman” and substituting “fisher”.

APPENDIX B REGULATORY CRITERIA CHECKLIST

Title of Legislation/Regulation* *Fishing Industry Regulations*

**If Regulation, Title of Authorizing Legislation: Workers Compensation Act*

Purpose of Proposal (One-Line Summary): To provide clear criteria for determining the workplace status of persons in the fishing industry.

If the answer is “No” for any of the criteria, please attach explanation.

Regulatory Criteria	Criteria Met	
1. Reverse Onus: Need for Regulation is Justified	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Regulatory Design is Results-Based	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Transparent Development of Regulatory Requirements	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Cost- Benefit Analysis	Formal Cost-Benefit Analysis Completed <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Required If <i>Not Required</i> , Impacts have been Analyzed <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
5. Competitive Analysis Completed	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
6. Regulatory Requirements Avoid or Eliminate Duplication with Other Jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
7. Timeliness of Regulatory Response	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
8. Plain Language	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
9. Sunset Review and Expiry Provisions	Sunset Review provision <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sunset Expiry provision <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10. Replacement Principle Applied	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Number of Regulatory Requirements to be added: **3**
 Number of Regulatory Requirements to be eliminated: **13**
NET CHANGE: -10

Douglas J. Enns, Chair
Board of Directors

Date

Contact: Cameron Angus, Policy Analyst
Policy & Research Division
Workers' Compensation Board

APPENDIX B REGULATORY CRITERIA CHECKLIST

A. BACKGROUND

On March 11, 2002 the provincial government introduced a new Regulatory Reform Policy (“Policy”). The Policy is intended to “support the government’s commitment to reducing the regulatory burden in British Columbia by one-third over three years.” The Policy applies to all proposed legislation and regulations.

The Policy requires the Chair of the Board of Directors (“BOD”) to ensure that proposed regulations are evaluated according to regulatory criteria set out in the Policy, and to sign and make public the “Regulatory Criteria Checklist” (“Checklist”) when regulations are enacted. The criteria are designed to ensure that all new regulations are results-based and contribute to a more competitive regulatory environment.

The Policy provides for exemptions from the Checklist if the head of the regulatory agency certifies that, in his or her opinion, the regulation satisfies one or more of the following conditions:

- Is non-regulatory in nature;
- Changes fees in respect of a financial year by an annual rate that has been approved by the Treasury Board;
- Relates only to the procedures or practices of a court or tribunal;
- Is required under a national uniform legislation or regulatory scheme, or by federal legislation that has already been assessed against criteria similar to that provided in the Checklist;
- Is fundamentally declaratory or machinery in nature, such as housekeeping changes that clarify or correct a provision without changing procedural requirements;
- Provides for the commencement of an *Act* or regulation or the commencement of a provision of an *Act* or regulation;
- Is consolidated and reviewed under the reversion powers in Part 2 of the *Regulations Act*;
- Is transitional in nature;
- The special circumstances of the case, as identified by the responsible minister or head of the regulatory authority, make it impracticable to comply with the Regulatory Criteria.

The regulatory amendments relating to the fishing industry do not meet the criteria for an exemption from the Checklist.

APPENDIX B REGULATORY CRITERIA CHECKLIST

B. REGULATORY AMENDMENTS

Section 4 of the *Workers Compensation Act* ("Act") provides that the Lieutenant Governor in Council may make regulations concerning the fishing industry. Pursuant to section 4, the current *Fishing Industry Regulations* ("Regulations") address which parties are workers and which are employers (and who must therefore pay assessments) in the fishing industry.

The *Regulations* allow WorkSafeBC — the Workers' Compensation Board ("WCB") to set different criteria for identifying employers in the fishing industry. In the past, the WCB exercised this authority, and set out different criteria in policy by which the WCB would make determinations on which parties are employers, and liable to pay assessment premiums in the fishing industry. As a result, the criteria in the policy of the WCB were not consistent with those in the *Regulations*, and while this was permissible in law, it resulted in confusion for stakeholders.

In order to make the *Act*, *Regulations*, policies and practices of the WCB consistent, the *Regulations* must be amended in conjunction with the policies of the WCB.

C. EXPLANATORY NOTES

1. Reverse Onus: Need for Regulation is Justified

The regulatory requirements are necessary to ensure equitable and clear rules by which the WCB may identify and assess employers in the fishing industry.

2. Regulatory Design is Results-Based

As the areas of the *Regulations* proposed for amendment primarily serve to identify the status of workplace parties under the *Act*, it is not possible for the *Regulations* to be formulated as results-based.

3. Transparent Development of Regulatory Requirements

There is no requirement in the *Act* or in WCB regulations or policy concerning the development of regulations made under Part 1 of the *Act*. However, the BOD has provided direction to the Policy & Research Division ("PRD") to maintain transparent regulation and policy development processes.

Pursuant to this direction, the PRD posted a discussion paper on the WCB's website from August 9 to September 30, 2005 to consult with stakeholders on the proposed changes to the *Regulations*. Key stakeholder groups were emailed copies of the paper for comment. A summary of stakeholder responses was presented to the BOD when it made its decision to adopt the changes.

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4. Cost-Benefit Analysis Completed

A formal cost-benefit analysis was not completed, as there will be no significant change to how premiums are collected in the fishing industry.

5. Competitive Analysis Completed

The PRD contacted four other Canadian maritime workers' compensation jurisdictions to determine how each assesses the fishing industry. Three of those are not comparable to BC, as those jurisdictions assess the fishing industry differently.¹

The Workplace Health, Safety & Compensation Commission of Newfoundland and Labrador is the only other jurisdiction that assesses the fishing industry in a manner similar to BC. The policies and practices of that jurisdiction were reviewed in the development of the changes to the *Regulations*.

6. Avoid or Eliminate Duplication with Other Jurisdictions

The amendments do not duplicate requirements imposed by other regulatory jurisdictions.

7. Timeliness of Regulatory Response

Changes to regulations must be deposited with the Registrar of Regulations and, pursuant to section 76 of the *Act*, may only come into force at least 90 days after their deposit under the *Regulations Act*.

8. Plain Language

The amendments are drafted in plain language.

9. Sunset Review and Expiry Provisions

Sunset review and expiry provisions are not required. The WCB has an ongoing mandate to identify workers and employers in the fishing industry.

10. Replacement Principle Applied

The amendments result in a reduction of ten regulatory requirements.

¹ Prince Edward Island, New Brunswick and Nova Scotia.

APPENDIX C
PROPOSED ASSESSMENT MANUAL POLICY CHANGES



WORKERS' COMPENSATION BOARD OF BC

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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 ~~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 ~~b~~**B**oard, 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

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- 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 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 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 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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- ~~(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.~~
- (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~~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 rate**

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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 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 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.

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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.
- 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.

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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~~ **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.

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(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 April 1, 2006
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 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 amendment results from the amendment to the <i>Fishing Industry Regulations</i> gazetted as B.C. Reg. 364/2000. This policy applies to all decisions made on or after April 1, 2006.