

2002/12/17-01

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE PANEL OF ADMINISTRATORS

Re: Fishing Industry Assessments

WHEREAS:

Pursuant to Section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*") the Panel of Administrators ("Panel") must approve and superintend the policies and direction of the Workers' Compensation Board ("Board"), including policies respecting compensation, assessment, rehabilitation and occupational safety and health, and must review and approve the operating policies of the Board;

AND WHEREAS:

Section 4 of the *Act* authorizes the Lieutenant Governor in Council to make regulations to allow the Board to collect assessments from commercial fish buyers, other commercial recipients of fish, and any person engaged in the Province in transmitting payments to commercial fishers;

AND WHEREAS:

Section 4(1)(g) of the *Act* authorizes the Lieutenant Governor in Council to delegate to the Board the authority to amend, or add to the regulations or exercise the authority contained in section 4;

AND WHEREAS:

Effective January 31, 2001, the Board amended section 5(2) of the *Fishing Industry Regulations* ("*Regulations*") to permit the collection of assessments from persons engaged in transmitting payments to commercial fishers (B.C. Reg. 364/2000);

AND WHEREAS:

Effective October 18, 2000, the Panel adopted factors to be considered when determining who should remit assessments on out-of-province and direct fish sales (resolution #2000/09/05-03);

AND WHEREAS:

The Panel considers it necessary and advisable to amend the *Assessment Manual* to reflect section 5(2) of the *Regulations* and to give the Administration guidance in determining who should remit assessments under section 5(2) of the *Regulations*;

THE PANEL OF ADMINISTRATORS RESOLVES THAT:

1. Policy Item AP1-4-1 of the *Assessment Manual* is amended as set out in Appendix A to this resolution.
2. This resolution constitutes a policy decision of the Panel of Administrators, and is effective on January 1, 2003.

DATED at Richmond, British Columbia, December 17, 2002.

By the Workers' Compensation Board

**MAUREEN NICHOLLS, CHAIR
PANEL OF ADMINISTRATORS**



RE: Fishing

AP1-4-1

BACKGROUND

1. Explanatory Notes

Coverage for commercial fishers is provided for by section 4 of the *Act* and the *Fishing Industry Regulations* made under it. The matters covered by those regulations include the right of fishers to claim compensation for injury or disease, the transportation of injured fishers, claims procedures and appeals, the situation where the injury is caused by a third party, and the payment of assessments on the proceeds of fish sales. **Except for persons who transmit payments to commercial fishers in respect of fish sold out-of-province or directly to the public**, assessments are normally paid by commercial fish buyers as there 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,

(Additions in Bold, Deletions in Strikethrough)



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and who

- (d) in the course of his occupation as a fisherman, contributes to the catching or landing of fish for arrival in British Columbia ports for sale to or use by a commercial buyer or other commercial recipient of fish,
- (e) has made arrangements with the board for the payment of assessments, or
- (f) is a person who, apart from these regulations, would be a “worker” under Part 1 and a fisherman

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

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

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

Section 5

- (1) Unless the board determines otherwise,
 - (a) a fish processing establishment licensed or required to be licensed under the *Fisheries Act* of the Province which, directly or indirectly, acquires fish from a commercial fisherman shall pay assessments on the fish 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;

(Additions in Bold, Deletions in Strikethrough)



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- (c) a person who engages the services of a master or crew of or for a fishing vessel shall pay assessments on any fish in respect of which assessments are not paid or payable under paragraphs (a) and (b).
- (2) The provisions of Part 1 relating to employers apply to a person engaged in transmitting payments to commercial fishers as if the person is engaged in the fishing industry and that person is deemed to be the employer of any persons or organizations other than commercial buyers of commercial recipients who contributed in any manner to the catching or landing of the fish bought, obtained or paid for through or by that person and in respect of which assessments are not otherwise paid.
- (3) Assessments shall be paid on the total wages, prices or other payments made or payable to or on behalf of commercial fishermen and shall be calculated, determined and notified to the board in such manner as the board may prescribe. Where the total wages, price or other payments made or payable to or on behalf of commercial fishermen exceed the maximum wage rate for one year as fixed for the time being under section 33 of part 1, a deduction may be made where practical in respect of the excess; and where the total wages, price or other payments made or payable to or on behalf of commercial fishermen are shown to exceed the above maximum wage rate, the board may make a deduction where practical in respect of the portion in excess of that rate.

Section 7:

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

POLICY

(a) Definition of “commercial fisherman”

Clause (g) of the definition of “commercial fisherman” in section 1 of the *Regulations* excludes persons who “rarely contribute to the catching or landing of fish...” but allows them to purchase Personal Optional Protection. This applies to

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fishers who sell less than 10% of the total value of their catch in BC to commercial buyers. Coverage is not available to fishers who have totally removed themselves from the BC fishing industry such as a fisher who catches and lands in another country. No coverage is available under the regulations for sports fishing activity, even though the fisher may have a commercial fishing license.

(b) Determining persons who should pay assessments

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

- 1. whether collecting assessments from the person is within the authority of the Act;**
- 2. whether the person makes the economic decision to sell fish to persons or organizations other than BC commercial buyers or commercial recipients;**
- 3. whether the person has control to act upon the economic decision on where to sell the fish;**
- 4. whether it is practical or operationally feasible for the Board to collect the assessments; and**
- 5. any other factor that is consistent with the Act, Regulations and Board policy.**

(c) Calculation of assessable amount

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

- Where the commercial fisher is paid a salary, the assessable amount is based on the salary.
- Where the commercial fisher is paid by established settlement and a labour component is clearly identified, the assessable amount is based on the gross labour component. That component includes bonuses and any other payment which, according to the practice of the industry, is part of the fisher's share.

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- Where the commercial fisher is not on salary and the labour component cannot be clearly identified, the assessable amount is based on 60% of the gross purchase price of the fish.

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

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

(d) Registration of vessel owners

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

A commercial fisher who is engaged in the maintenance or minor repair of 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
AUTHORITY:	s.4, <i>Workers Compensation Act</i> ; and 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:	Replaces Policy No. 40:20:10 of the <i>Assessment Policy Manual</i>. Amends parts of Policy 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 Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i>. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued. This amendment results from the amendment to the <i>Fishing Industry Regulations</i> gazetted as B.C. Reg. 364/2000.
