U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs
Washington, D.C. 20211

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NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS UNDER THE LONGSHOREMEN'S COMPENSATION ACT, AND OTHER INTERESTED PARTIES

Subject: Application of Longshoremen's and Harbor Workers' Compensation Act to Recreational Boat Builders and Marinas

This notice is to inform interested parties regarding the Office of Workers' Compensation Programs' position with regard to coverage of recreational boat builders and marinas under the Longshoremen's and Harbor Workers' Compensation Act, as amended.

Publication of this notice is intended to respond to numerous letters and inquiries this Office has received on the subject. The material submitted by interested persons has been reviewed in conjunction with an analysis of the statutory provisions and the legislative history of the 1972 Amendments.

Several decisions have been issued by the Benefits Review Board interpreting the landward extension of coverage, and it is our conclusion that recreational boat builders and marinas are subject to the provisions of the Act, except in certain instances which will be outlined in this notice.

Section 2(4) of the Longshore Act states the Act applies to any employer who has employees, any of whom "are employed in maritime employment, in whole or in part, upon the navigable waters of the United States". However, the 1972 Amendments extended "navigable waters" to include ". . . any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building

a vessel".

An "employee" is defined as:

> "Any person engaged in maritime employment including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, a ship builder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."

Recreational Boat Builders

It has been the opinion of some that Congress only intended to include the employers and employees engaged in the construction of large commercial vessels under the provisions of the Act. However, the legislative history contains no reference to a distinction in coverage between recreational boats and commercial vessels. Furthermore, the Supreme Court held in 1941 that an employer which "sold small boats, maritime supplies, and outboard motors" was engaged in maritime activities (Parker v. Motor Boat Sales, 314 U.S. 244). Thus, the use of the term "shipbuilder" in section 2(3) and "building a vessel" in sections 2(4) and 3(a) can lead to no other conclusion than that Congress extended the Act to cover all persons engaged in building vessels. While the Benefits Review Board has not yet ruled on this issue, it has recognized the role of employees engaged in building vessels as being engaged in maritime employment (Gilmore v. Weyerhaeuser Co., BRB No. 74-141 and Herron v. Brady Hamilton Stevedoring Company, BRB No. 74-171).

As pointed out earlier, the term "navigable waters" has been extended to include adjoining areas customarily used by employers in building or repairing vessels. In this connection the Benefits Review Board has "refused to give a narrow hypertechnical and limited construction to the definition of 'adjoining area' as set forth in section 3(a) of the Act" (Herron case). The Board has also stated that

the distance from navigable waters where work is performed does not determine coverage, but rather all circumstances of employment (Perdue v. Jacksonville Shipyards Inc., BRB No. 74-200). The Federal Courts will eventually decide the extent of an "adjoining area". However, we do not feel that Congress intended to extend coverage to facilities located "far distances from the water's edge."

Some of the correspondence received attempted to show there is a difference between "ships" and "boats", as indicated in the Federal Boat Safety Act of 1971. However, we must look to the intent of Congress and the statutory language of the Longshore Act. As we have pointed out no distinction is made. Therefore, we must look to the definition of "employee". The Parker case (1974) cited earlier clearly established that the servicing of a small pleasure craft was maritime activity, and subject to the provisions of the Act. Thus, with the landward extension of coverage, an employee engaged in repairing or building small pleasure crafts would certainly be subject to the same criterion. The Longshore Act was amended in 1972 to remove the inequities and inconsistencies that occurred because the Act did not cover employees injured on land, even though they were engaged in similar activities. Thus, an employee engaged in repairing or building a vessel, regardless of its size, (provided the employee was not engaged by a master to repair a vessel under eighteen tons net -- excluded under section 3(a)(1)) will now be entitled to benefits under the Longshore Act if his injury occurred within the expanded area of "navigable waters in the United States".

Marinas

Employees of marinas engaged in recreational marine service operation in areas adjoining navigable waters are also entitled to benefits under the Longshore Act if the injury occurred within this expanded area of "navigable waters". Prior to the 1972 Amendments marina employees were entitled to benefits under the Act, provided the injury occurred upon navigable waters. It is a natural progression that if longshoremen and shipbuilders (repairmen) are covered while injured in an adjoining area, marina employees are also covered when injured in adjoining areas.

By expanding the definition of "navigable waters" Congress expanded coverage inward from the water's edge. Therefore, anyone covered by the Act prior to the 1972 Amendments, "must indeed be permitted to come within its protection subsequent to the Amendments" (Gilmore v. Weyerhaeuser). In addition any employee engaged in maritime employment who is injured while working in an adjoining area would be covered by the amended statute.

It has been contended that the Act only applies to persons engaged in "loading, unloading, building or repairing a vessel". However section 2(3) is clear that an "employee means any person engaged in maritime employment".

There is some misunderstanding about the limitation of coverage in section 3(a)(1). This section provides that no compensation is payable for the injury or death of "any person engaged by a master to load or unload or repair any vessel under eighteen tons net." The purpose of this exception is to relieve the owner of a small vessel of the responsibility for injuries under the Act sustained by individuals who are employed directly by the master to load or unload or repair the vessel. This limitation does not apply to individuals employed by an independent contractor to perform work on a vessel. It was the intent of Congress to protect the owners of small vessels when the master might employ someone without the owner's knowledge or consent.

We have thus concluded that recreational boat builders and marinas are "employers" within the meaning of section 2(4) of the Longshoremen's and Harbor Workers' Compensation Act. We recognize that there are cases where employees of these employers may not be in fact engaged in maritime employment and would not be covered under the provisions of the Act. These cases must be resolved on a case-by-case basis thru the adjudicatory process.

Workers' compensation departments and field representives who service workers' compensation claims under the Longshore Act and employers should be advised through information channels as to our position as espoused in this notice.

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