



Consultation Feedback Report

Changes to certificates of operation and operational requirements (new Marine Order 504)

May 2018

Outline

AMSA proposed changes to Marine Order 504 and related instruments to implement the outcomes of the 2015 Operational Safety Review, as well as outcomes from the 2014-15 Streamlining Review of the National System. It was proposed that these changes commence from 1 July 2018.

The proposed changes aim to:

- place a greater focus on taking an 'outcomes-based' approach to regulation of operational safety under the National Law;
- simplify the regulatory framework by incorporating general exemptions, the National Standard for Commercial Vessels (NSCV) Part E (Operations) and the operational requirements of NSCV Part F (Special vessels) into a new **Marine Order 504 (Certificates of operation and operation requirements – national law) 2018**. The new Marine Order will replace *Marine Order 504 (Certificates of operation – national law) 2013*;
- end transitional arrangements for operational requirements, with the exception of crewing, from 1 July 2018;
- clarify crewing arrangements and replace 'core complement' with a simpler concept of 'minimum crewing';
- simplify operational requirements and clarify linkages with safety management system (SMS) requirements; and
- make minor or editorial changes to align language in the marine order with the National Law and State and Territory Work Health and Safety laws.

Marine Order 504 (Certificates of operation and operation requirements – national law) 2018 has been made and is available on the AMSA website; and will commence on **1 July 2018**.

Background to the changes

Industry has told AMSA that they think the National Law regulatory framework is too complex and multi-layered.

In 2015, AMSA commenced a review of the operational safety requirements under the National Law – namely, Marine Order 504 and NSCV Part E – in order to reassess the regulatory approach to operational requirements for domestic commercial vessels (DCV); and to implement streamlining outcomes identified in AMSA’s 2014-15 Streamlining Review of the National System.

As a result of the Operational Safety Review, a number of issues with the current Marine Order 504 and NSCV Part E were identified. AMSA has prepared a draft Marine Order 504 instrument intended to address a number of these issues, and to simplify and rationalise the operational requirements for DCV operators.

The changes include incorporating the content of NSCV Part E and the operational safety components of Part F into Marine Order 504 in order to streamline the regulatory framework for certificates of operation.

The changes include simplifying and clarifying crewing concepts and the application of operational requirements to vessel service categories. AMSA particularly sought feedback on two options for crewing (explained below).

The review of Marine Order 504 provided an opportunity to incorporate certain general exemptions into the marine order, instead of having separate exemption instruments.

The language around SMS has been aligned with the language used in the National Law and model work health and safety laws, in order to make reading and understanding the law easier.

Finally, administrative changes have been made to clarify criteria for variation and provide for a more efficient renewal process. These changes would align with similar changes made to *Marine Order 503 (Certificates of survey – national law) 2018*.

Crewing options

The changes to crewing requirements in Marine Order 504 are designed to place the focus of both industry, and AMSA as the safety regulator, on appropriate crewing. Under Marine Order 504, the owner must ensure that a vessel always operates with ‘appropriate crewing’. Appropriate crewing is determined by the owner through an evaluation that takes into account a list of factors specified in the marine order. Appropriate crewing is not a new concept – similar provisions were included in NSCV Part E.

Marine Order 504 also includes a simplified ‘minimum crewing’ concept to replace the NSCV Part E concept of ‘core complement’. Under Part E, core complement was set out in a table specifying crewing numbers and certification. However, the operation of a vessel with core complement was limited to vessels not carrying out their normal business activities, operating in smooth waters, on voyages less than 12 hours and not carrying passengers. Essentially, the intention of the NSCV Part E provisions was that the core complement numbers be used in only limited circumstances, such as moving a vessel within a port for maintenance or relocating a vessel.

During public consultation on the Marine Order 504 changes, two options were proposed for minimum crewing (Table 1). Option 1 focused on appropriate crewing and allowed minimum crewing as per the numbers in the table, provided that a documented appropriate crewing evaluation supported operation with those numbers. Option 2 largely replicated the requirements in Part E mentioned above, other than

removing the limitation on operating with minimum crew as part of the vessel's normal operations.

Option 1 was in line with AMSA's stated regulatory approach of making less prescriptive regulation and recognising that the owner is generally best placed to assess the risks of their operation and the most effective means of addressing the risks. It also reflected our understanding that, in practice, core complement was being widely interpreted simply as minimum level of crewing, particularly by owners of small fishing and tourist charter vessels.

Option 2 recognised that while many domestic commercial vessel operators have excellent SMS, not all parts of the DCV industry yet have a sufficiently mature safety culture or the skills to adequately evaluate and determine appropriate crewing.

Regardless of which option was pursued, exemptions under s143 of the National Law would be available where it could be demonstrated to the satisfaction of AMSA that the safety of the vessel and persons on board would not be jeopardised. Existing vessels could continue to comply with their 'grandfathered' crewing requirements, and all vessel owners and operators could apply for temporary crewing permits where necessary.

Table 1 – Crewing options put to consultation

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| <p>Option 1</p> <p><i>[(7) Subject to subclause (9), the number and certification (or non-certification) of the determined appropriate crewing must be at least equal to that of the minimum crewing. Note For the minimum crewing — see subclauses (12) and (13). Subclause (9) sets out the limited circumstances when a vessel may be operated with appropriate crewing that is not of at least the minimum crewing.]</i></p> <p>Option 2</p> <p><i>[(7) Subject to subclause (9), the number and certification (or non-certification) of the determined appropriate crewing must be:</i></p> <p><i>(a) for operations in smooth waters for periods of less than 12 hours and with no passengers — at least equal to that of the minimum crewing for the vessel;</i></p> <p><i>(b) for all other operations — greater than the minimum crewing.</i></p> <p><i>Note For the minimum crewing — see subclauses (12) and (13). Subclause (9) sets out the limited circumstances when a vessel may be operated with appropriate crewing that is not of at least the minimum crewing.]</i></p> <p>.....</p> <p>Both options include the following provisions:</p> <p><i>(12) For subclause (7), the minimum crewing for a vessel is the number of crew and the master that:</i></p> <p><i>(a) is mentioned in the following table for a vessel of its length; and</i></p> <p><i>(b) comprises the certificated crew and master and the uncertificated crew mentioned in the table for a vessel of its length worked out in accordance with any rule mentioned in the table that applies to a vessel of its length.</i></p> |
|--|

| Vessel length | Minimum crewing | Certificated crew and master | Uncertificated crew | Rules |
|--------------------------|-----------------|------------------------------|---------------------|---------------|
| $55 \leq x < 80\text{m}$ | 4 | 3 | 1 | Rule 1 |
| $35 \leq x < 55\text{m}$ | 3 | 2 | 1 | Rule 1 |
| $12 \leq x < 35\text{m}$ | 2 | 2 | – | Rules 1 and 2 |
| $< 12\text{m}$ | 1 | 1 | – | - |

Note Under the national law the crew of a vessel does not include the master or a pilot — see definition of *crew* in section 6 of the national law.

(13) In the table to subclause (12):
certificated means a person who:
(a) holds a certificate of competency or equivalent qualification recognised by AMSA that permits the person to perform duties or functions that are mentioned in NSCV Part D for the grade of certificate; or
(b) is exempt under subsection 143(1) of the national law from the requirement to hold a certificate of competency to perform those duties or functions because the person holds:
(i) a specified seafarer certificate; or
(ii) a certificate of recognition recognised as equivalent to a specified seafarer certificate.
Rule 1 means that, if the chief engineer holds a deck certificate permitting the holder to be the mate, the number of certificated crew may be reduced by 1 if the number of uncertificated crew is increased by 1.
Rule 2 applies to vessels with $\leq 750\text{kW}$ propulsion power only and means that, if a master holds an engineering certificate, the number of certificated crew and master for the vessel may be reduced by 1 if the number of uncertificated crew is increased by 1.
deck certificate means a certificate of competency or an equivalent qualification recognised by AMSA, a seafarer certificate or a certificate of recognition of a seafarer certificate that allows the holder to perform duties in a deck capacity.
engineering certificate means a certificate of competency or an equivalent qualification recognised by AMSA, a seafarer certificate or a certificate of recognition of a seafarer certificate that allows the holder to perform duties in an engineering capacity related to the machinery of a vessel.
Note For equivalent qualifications recognised by AMSA — see Schedule 3 of NSCV Part D.

Consultation feedback

The proposed changes, together with explanatory material outlining the proposed changes (**Appendix A**) were provided to the Domestic Commercial Industry Advisory Committee (DCVIAC), the Fishing Industry Advisory Committee (FIAC) and the Maritime Agencies Forum (MAF) on 4 April 2018. The consultation material was then published on the AMSA website for public consultation on 18 April 2018. Comments were requested by 9 May 2018; however, several late submissions were accepted.

The consultation material posed ten specific questions, as follows:

- Do you find it easy to understand the requirements for a SMS in the draft Marine Order 504? If not, what should be clarified?
- Which components of the SMS should be required to be kept on board the vessel, and which parts (if any) can be kept in a readily accessible location on shore instead?

- What are your views on the simplified minimum crewing concept? Do you favour Option 1 or Option 2? *[see explanation following]*.
- Do you think the treatment of existing vessels in the draft Marine Order 504 is appropriate? For example, is the definition clear, and are the requirements for existing vessels clear?
- There will be substantial flexibility in how compliance is achieved. While the draft sets out the components of an SMS, it is for the owner to design the content around their individual risk assessment. We therefore consider that there is no need to provide for the approval of Equivalent Means of Compliance (EMOC) in Marine Order 504. Operators wishing to vary the way that they comply with operational requirements in a different way may apply for a specific exemption. Do you agree with this approach?
- Note that EMOCs in relation to operations that are already approved by AMSA will continue to be recognised even if Marine Order 504 no longer provides for the approval of EMOCs.
- Do you have any comments on the regulatory costing?
- Do you like the presentation of the draft Marine Order 504? Is it easy to read?
- Do you have any specific suggestions to improve Marine Order 504 from a technical and/or presentation perspective?
- Is there any specific guidance you feel would be useful in relation to specific parts of the draft Marine Order 504?
- Do you have any additional comments?

Submissions received

AMSA received a total of **72** submissions, including submissions from several industry associations, two unions, one maritime safety agency and a large number of DCV operators. In the latter category, very small businesses were well represented, with several submissions also coming from larger operators.

Few submissions directly addressed all the questions posed, with the majority of submissions focusing on crewing only.

All submissions and AMSA's response to each are set out in Table 2. Any text identifying a particular submitter has been left out as indicated, but otherwise comments are presented as submitted. A synopsis of the consultation feedback is also presented below.

Crewing responses

The majority of submissions focused solely on crewing, although some also dealt with other matters. Submissions confirmed AMSA's understanding that core complement has been poorly understood by industry and also some maritime safety agencies, and the limitations on its use have been widely disregarded. Several submissions welcomed the simpler concept of minimum crewing.

Almost all submissions were strongly supportive of Option 1. Approximately half the total number of submissions were received from fishers in South Australia, reflecting the significant impact that they perceived Option 2 would have on operators using small (<12m) vessels. Similar concerns were expressed in similar fisheries in other parts of Australia and also in the tourism charter boat sector.

Two submissions did not support the minimum crewing concept, or an outcomes based approach. These submitters were likely to have been focused on larger vessels such

as ferries, tugs and offshore support vessels. It was claimed that the reason that prescriptive crewing regulation has arisen over time is that some vessel operators put greater priority on reducing costs than on minimising risks. They considered that putting the responsibility on operators and owners to determine the level of crewing and training of crew incentivises unsafe operation. They did not support either Option 1 or 2, as they felt the numbers were too low in either case. These submissions called for a halt in implementation of Marine Order 504 until minimum crewing levels were increased.

The main issues highlighted by the comments in support of Option 1 may be summarised as follows:

- Option 2 was perceived as imposing a higher crewing level (even though Part E is actually more onerous). Option 1 was perceived as ‘the status quo’.
- Requiring additional crew would be another expense to add to the already expensive National System.
- Many single-handed operations outside smooth waters would be economically unviable with an extra crew member. In their experience, these operations have been occurring for many years with no evidence to support the need for an extra crew member.
- Owners would be deterred from buying new vessels because crewing arrangements would not be grandfathered and they would need to employ extra crew for new vessels compared to their old vessels.
- Operators may be tempted to work in unsafe weather to make up for the extra cost of crew.
- Some highlighted that they had crewing in place that reflected a risk assessment or an ‘approved’ SMS. Others highlighted their experience and natural concern for their own safety.
- Core complement was a concept that was designed for moving larger vessels around ports, but smaller vessels do not need to be regulated the same way.
- Survey standards contribute to the safety of vessels in operational areas.

Need for guidance

Comments related to guidance to help users understand how to comply with the marine order can be summarised as follows:

- Several comments were received to the effect that Marine Order 504 itself, as a legal instrument, was difficult to understand at industry level, and emphasised that effective plain language guidance would be needed.
- Guidance will be required on how to conduct a risk assessment and develop a SMS.
- Examples of effective guidance were given, and one submitter noted it was developing graphic-based guidance for readers with low literacy and numeracy.
- Difficulty in understanding and keeping up to date with changing regulatory requirements contributes to mental health issues and stress within the industry.
- For vessels that were not previously required to comply with Part E, it would be useful to provide examples that demonstrate that for low risk operations the SMS will be relatively simple and documenting and reviewing it will not be a significant burden.

SMS documentation

Comments related to where SMS documentation should be required to be kept can be summarised as follows:

- Small, open vessels present a challenge to keep documentation on board in a secure, watertight and accessible way.
- Clarification was sought on whether an electronic copy on a mobile phone would be sufficient to meet the requirements.
- Some submissions considered all components should be kept both on shore and on board (i.e. two copies). These came from larger operators, a State regulator and unions.

Streamlining and alignment

Several positive comments were made in relation to the incorporation of the NSCV Part E into the Marine Order. However, two submissions considered that alignment with WHS laws was only cosmetic and token, and that Marine Order 504 was undermining the WHS laws that were perceived to be stronger.

Regulatory costing

The formal regulatory costing received little comment, except that some submitters thought it was not possible to fully understand the impacts, as items such as the cost of applications were not included and consultation time was limited. Those who commented expressed the general understanding that Marine Order 504 would result in increased costs in an already expensive National System.

Consultation process

The consultation process itself drew a number of comments. The main issues highlighted were:

- The documentation was complex and difficult to understand, and not in plain English.
- Timeframes were insufficient to properly review and understand the document.
- The documentation was 'one-size-fits-all' and greater effort should be made to target communication.
- Several submissions sought face-to-face consultation.
- Peak bodies commented on 'consultation fatigue' with several AMSA consultation processes occurring within a short timeframe.
- Several submissions noted they were only made aware of the consultation process by being told by others.

Changes made in response to consultation feedback

We amended the draft to reflect crewing Option 1. We made a change to the requirement to carry the SMS documentation on board, to relax the requirement where the size and type of vessel made this impractical.

We have taken all comments made on required guidance on board as we are working to develop and update guidance to support Marine Order 504. We have also taken all comments regarding the consultation process on board. We are always trying to improve the way we conduct our communication and consultation activities.

Other changes

During and after external consultation, AMSA continued to review the draft Marine Order 504 to identify any further improvements that could be made.

As a result, changes were made to the draft instrument to improve administrative efficiency in the arrangements for processing certificates of operation. In particular, we inserted provisions to allow for the simple renewal of a certificate of operation, where no changes were being made to the vessel(s) or their operation. Renewals are already available for certificates of competency and will be available from 1 July 2018 for certificates of survey. We also inserted transitional provisions for applications made but not decided before the commencement of the order to be taken to be applications under the new Marine Order. These changes align with similar provisions in *Marine Order 503 (Certificates of survey) 2018*.

We also reordered Clause 6 of Schedule 1 to make the Resources and Personnel section more intuitive and easy to navigate. This only involved renumbering provisions and does not alter the effect of the provisions.

We removed the requirement for a certificate of survey being in force (unless a vessel was exempt) as a criterion for issue of a certificate of operation. This was removed to reduce unnecessary duplication (as a certificate of survey is mandated elsewhere), and in some circumstances would reduce the time taken to get all certificates in place for a new vessel.

We clarified the emergency plan provisions to require that only risks that were relevant to a vessel would need to be addressed, for example a human-powered kayak would not need an emergency procedure for a fire.

We corrected some drafting errors in the Class 4 requirements related to personal watercraft and requirements for State/territory recreational licenses to be held for some operations. The final version will accurately reflect NSCV Part F2.

More information

For further information on these changes, please contact standards.secretariat@amsa.gov.au or visit the AMSA website.



Australian Government

Australian Maritime Safety Authority

Table 2 – Submissions and AMSA responses

Organisations, companies and individuals who made submissions are listed below. The comments are presented (as far as possible) with the identity of the submitter removed. Please contact standards.secretariat@amsa.gov.au if you have any concerns.

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| Maritime Industry Association Limited | Randall Crossley |
| Tasmanian Seafood Industry Council | Markus Nolle |
| Whitsunday Charter Boat Industry Association | Professional Fishermen's association |
| Quicksilver Cruises | Seafood Industry Victoria |
| Roads and Maritime Services NSW | Maritime Union of Australia |
| Marine Fishers Association | Australian Marine Officers Union |
| Queensland Seafood Industry Association | Tropical Water Solutions |
| Wildcatch Fisheries SA | Rob Pender, The Fishermen's Portal |
| Sealink | Great Adventures |
| Travis Chisholm | Donald Jacobsen |
| Eric Perez | Michael Wilkinson |
| Harry Cunnington | Bradley Wright |
| Noel Box | Projects Global |
| Passions of Paradise | Marine North Queensland Experience Co. |
| Trout Territory | Moreton Bay Seafood Industry Association |
| Matthew Nester | Susan Price |
| Bardsley Fisheries | Kent & Sons Fish |
| Richard Blakemore | Tasmanian Rock Lobster Fishermen's Association |
| Andrellos Fisheries & Archipelago Fisheries | Western Rock Lobster |
| Western Australian Fishing Industry Council Inc | Vasilios Tsoupas |
| Michael Tsoupas | Nik Tsoupas |

| | |
|--------------------|------------------------|
| Shannon M. Gill | P.J. Ritter |
| Tony Custance | Cosi Pisani |
| Bart Butson | Mark Magier |
| Ray Zimmerman | Troy Martin |
| Shane Bishop | Reece Gynell |
| Michael O'Neill | Tony J. Short |
| Russell Boord | Peter Tsolkas |
| David Starick | Kim Redman |
| Eric Stacey | Wade Wheeler |
| Corey Sellen | Brody Peter Judd |
| Andrew Thomas Judd | Jordan Daniel Judd |
| Mark Peter Judd | Paul Spurling |
| Steve Moriarty | Konstantinos Andrellos |
| Nathan Eatts | Ashley Perkins |

Anonymous submissions - 3

| Industry comment / submission | Response to submission |
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| <p>1. 1. Proposed crewing changes.</p> <p>‘Core complement’ and ‘appropriate crew’ has been misunderstood by industry since its introduction. Current crewing requirements in NSCV Part E states <i>A vessel may only operate with its core complement if it has no passengers on board and is on a voyage that is within smooth waters; and that is of less than 12 hours; and during which it does not carry out its normal business activities or functions.</i> The only legal way to operate with a core complement is to get approval from AMSA in the form of an Equivalent Means Of Compliance (EMOC), which [submitter] understands does not happen. Anecdotal evidence from a [submitter] staff member who has worked in compliance in Victoria and the DCV sector in New South Wales advised most operators were unaware of this provision and have been operating with a core complement of crew thinking they were compliant. [Submitter] supports the first proposal to change the wording from ‘core complement’ to ‘minimum crewing’. AMSA is then proposing the following 2 options for crewing:</p> <p>Option 1 – Unless grandfathered crewing applies the number of determined appropriate crew must be at least equal to the minimum crewing. The criteria for determining appropriate crew is the same as it was in NSCV Part E. [Submitter] supports this option as it is what industry has understood the requirements have always been. [Submitter] also recommends AMSA publish some guidance material to advise the criteria used to determine appropriate crew.</p> <p>Option 2 – Unless grandfathered crewing applies the number of determined appropriate crew must be:</p> <ul style="list-style-type: none"> • for operations in smooth water for less than 12 hours and with no passengers must be equal to the minimum crewing; • for all other operations – greater than the minimum crewing. <p>[Submitter] understands if AMSA wants to truly be an ‘outcomes based’ regulator this option could be perceived by industry as overly prescriptive and would be extremely difficult to regulate. It would also come at a massive cost to industry that is already struggling with a cost recovery system.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> <p>We note your comment about grandfathered crewing.</p> <p>We note your comment about temporary crewing permits. During this review it was only intended to move the current temporary crewing permits from the Marine Safety (Temporary crewing) Exemption 2013 into the Marine Order. EX09 currently allows for temporary crewing permits <u>up to</u> 3 months. However, there is discretion for the National Regulator to issue them for a shorter period.</p> |

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| | <p>[Submitter] supports grandfathered crewing arrangements however feels industry would be more than likely to choose Option 1 for crewing requirements. [Submitter] supports the temporary crewing permits but would suggest a 3-month period to be too long.</p> | |
| <p>2.</p> | <p><i>MO504 Proposal Overview</i></p> <p>[Submitter] found the AMSA produced Guiding Document provided a level of direction concerning the key changes and content of the draft MO504.</p> <p>[Submitter] understands that AMSA propose to incorporate Part E (operations) within the MO504 framework and that AMSA also propose to end transitional arrangements (grandfathering) for some operational requirements. Subsequently, MO504 will provide the minimum standard for operational requirements for SMS requirements, for all DCVs.</p> <p>[Submitter] supports this move, as it will finally provide clarity to the minimum requirements for a SMS, which is not currently provided within the legislation.</p> <p>[Submitter] has some concerns over the ability for fishers to clearly understand the minimum requirements for an SMS if they are fully reliant on the detail provided in the draft MO504. This document is written under a legal framework, and for grassroots fishers is very difficult to understand and comprehend. [Submitter] suggests that AMSA develop clear, concise info-graphic inspired documentation to explain minimum SMS requirements.</p> <p>For smaller, open vessels, it will be inconvenient and at times difficult to hold components of a SMS on board the vessel. [Submitter] would like clarity as to whether a copy of an SMS on a phone would suffice.</p> <p>With respect to minimum crewing arrangements, Tasmanian seafood operators have been operating under the Option 1 scenario, though delivery by Marine and Safety Tasmania. [Submitter] believes it is sufficient for a skipper to evaluate risk associated with operations, and determine if single operations are suitable for specific operations.</p> <p>[Submitter] is unable to evaluate the impact of incorporating Ex09 within MO504, as we are not aware of what demand for Ex09 may be into the future.</p> <p>[Submitter] supports other minor changes in terminology and language as long as it is consistent and does not contradict terminology within state based WHS legislation.</p> <p>[Submitter] found it difficult to comprehend and understand how the regulatory costing statement will impact an individual fisher given the significant time constraints for putting this response</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>AMSA does intend to develop further guidance on SMS, risk assessment and crewing. Your comments have been passed to the appropriate area within AMSA.</p> <p>We will clarify that the SMS documents are to be held on board the vessel unless it is impracticable due to size or type of vessel. The documents will need to be readily accessible to people who use the system. We think that in some cases this outcome could be met by a copy of the documents on a phone or tablet, noting the possible need for offline versions and sufficient and reliable power.</p> <p>We will be implementing crewing Option 1.</p> |

together. It is apparent, however, there will be a cost to Tasmanian seafood operators, which will combine with other additional one-off and shifted costs.

[Submitter] remains concerned about additional and shifted costs for delivery of the NSCV under the ASMA service delivery model. It is the view of [Submitter] that the combination of all costs (direct and indirect) associated with the AMSA delivery of the NSCV will result in significant increases to operational costs for seafood operators, in terms of both cash, time and delays for approvals. To date, [Submitter] has received no evidence that this will not be the case.

To date, AMSA has not provided industry with the confidence that they are ready or capable of taking ownership for delivery of the NSCV on 1 July 2018, with the Tasmanian seafood industry receiving little to no information about processes post this date.

As we continue towards the 1 July 2018 date, [Submitter] remains concerned about the increasing number of documents being opened up to public consultation processes. This is placing considerable strain on 'under resourced' organisations such as [Submitter]. [Submitter] urges AMSA do explore other consultation and communication opportunities that will lessen the burden on state peak bodies and the industry they represent as we transition towards and past the 1 July 2018 transition to an AMSA delivery model. Should time demand on peak bodies continue, AMSA must consider financial compensation.

[Submitter] Response to specific questions

Q1. Do you find it easy to understand the requirements for a Safety Management System (SMS) in the draft MO504? If not, what should be clarified?

A recently completed Tasmanian Seafood Industry Workforce Profile ([Submitter]) showed that the Tasmanian wildcatch sector has an aging workforce (average = 50). Many within this workforce have poor levels of numeracy and literacy, with many being digitally illiterate.

Most wild catch operators within the Tasmanian Wildcatch fishery will not take the interest, let alone be able to understand, the contents of the draft MO 504 as it is written in 'legal talk'.

A key component of an SMS is the requirement for a risk assessment, however, there is no guidance as to how to conduct a risk assessment. Many operators within the Tasmanian seafood industry do not understand the concept of a risk assessment.

Although [Submitter] has developed a template SMS that complies with the requirements of Part E (and now the draft MO 504), we deliver this document with guidance notes, and during small group workshops or one-on-one. We have also obtained the support for delivery of content from a RTO. In

Thank you for your feedback on the regulatory costing. While we are required to calculate and present regulatory costing according to Australian Government methodology, we are always trying to improve our communication of any cost impacts associated with regulation.

Thank you for your feedback on the transition to AMSA service delivery on and post-1 July 2018. As this is not directly related to the review of Marine Order 504, we have passed your comments to the appropriate area within AMSA for consideration as appropriate.

short, the structure and content of an SMS (under Part E) is very difficult to communicate too many within the Tasmanian seafood industry.

There are further complexities in getting industry to understand that a SMS is a living document that they must take off the shelf, review and refer to on a trip to trip, day by day basis. AMSA must develop efficient and effective communication strategies to ensure the Tasmanian seafood industry understands their liability and what they must comply with.

We have on many occasions heard comments from older fishers “it is all just too hard, I think I will just get out”. This angst is exacerbating mental health and wellbeing of our members. This is concerning given that recent research has shown that levels of physiological distress in the seafood industry is twice that of the normal population.

To further support our members, [Submitter] has sought funding through a Tasmanian funding stream to develop an SMS template suited to people with poor levels of literacy and numeracy. We are also actively pursuing developing Health and Wellbeing material relevant to our industry, in partnership with Rural Alive and Well Tasmania.

AMSA must take such issues into consideration when developing communications material for industry. Without doing so AMSA will continue to have no trust from industry.

Q2. Which components of the SMS should be required to be kept on board the vessel, and which parts (if any) can be kept in a readily accessible location on shore instead?

The Tasmanian fishing fleet is highly diverse, with small 4.5 – 5.5 metre open dinghy vessels operating alongside larger vessels. The capacity to keep documentation on board some small vessels, in a secure, watertight and accessible way could prove problematic for some operators.

Industry needs further clarification as to what constitutes a copy on board. Is an electronic copy accessible via phone sufficient?

For other larger vessels with a wheelhouse, there is no reason the entire SMS could not be kept on board the vessel in a hard copy.

Q4. Do you think the treatment of existing vessels in the draft MO504 is appropriate? For example, is the definition clear, and are the requirements for existing vessels clear?

As far as can be interpreted, MO 504 applies to all vessels – class 1, 2 or 3 – regardless of any grandfathering arrangements? Given the lack of clarity around what an SMS was for grandfathered vessels (i.e. did not need to comply with Part E but there were no clear guidelines defined anywhere), [Submitter] believes it is a positive move forward to provide one set of operational

guidelines. The delivery of MO 504 in itself, however, does not provide a clear set of directions or guidance to industry level, as the terminology and structure contained within this legal document is difficult to understand and interpret.

Q5. There will be substantial flexibility in how compliance is achieved. While the draft sets out the components of an SMS, it is for the owner to design the content around their individual risk assessment. We therefore consider that there is no need to provide for the approval of EMOC in MO504. Operators wishing to vary the way that they comply with operational requirements in a different way may apply for a specific exemption. Do you agree with this approach?

Note that EMOCs in relation to operations that are already approved by AMSA will continue to be recognised even if MO504 no longer provides for the approval of EMOCs.

It is difficult for [Submitter] to fully comprehend the impact of not incorporating approval of EMOC within MO 504 without knowing the full process and costs for applying for a specific exemption.

With respect to minimum crewing arrangements, should AMSA progress the Option 2 arrangements, then [Submitter] would call for minimum guidelines for single operations of a vessel (EMOCs for single handed operations) to be included within MO 504 as a clear and defined guidance for all vessels wanting to achieve approval for EMOC for such operations.

Q6. Do you have any comments on the regulatory costing?

It is difficult for [Submitter] to comprehend the regulatory costing impact for its members with the information provided. It appears that there will be an overall cost burden for industry, however, there is no indication of other shifted costs. i.e. the costs of applying for EMOC approval.

[Submitter] remains concerned that the AMSA service delivery costs, combined with the significant other shifted, direct and indirect costs, will place considerable financial burden on industry. To date, AMSA has provided no clear evidence there will be no significant increases in cost and time burden for industry.

Q6. Do you like the presentation of the draft MO504? Is it easy to read?

As a paid, peak body representative, I had some difficulty in reading and comprehending the draft MO504, especially under the time constraints associated with my workload. My [Submitter] Submission – MO 504 May 2018

membership base, however, will not take the time to read, let alone understand, the content of MO504.

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| | <p>A key outcome of a recent [Submitter] Sector Group Subcommittee meeting was the fact that most of our sector representatives, and the members they (and [Submitter] represent) do not understand what they must comply with under the NSCV, and what the 1 July 2018 date actually means. AMSA must develop clear and concise communication and educational tools to assist industry understand what the law is and what they must do to comply with the law. The importance of this cannot be underemphasized, especially given that the regulator (AMSA) has placed full liability on the owner/skip of a vessel, but the owner/skipper is not aware of what this liability means, and how they must comply.</p> <p>Q7. Do you have any specific suggestions to improve MO504 from a technical and/or presentation perspective?</p> <p>I am not an expert in the communications field, but there must be better ways to communicate information than simply putting out a complex document for consultation.</p> <p>Q8. Is there any specific guidance you feel would be useful in relation to specific parts of the draft MO504?</p> <p>To date, AMSA and [Submitter] have no idea of how many vessels have an SMS, whether they comply, whether they comply with Part E. [Submitter] feels that AMSA must provide better grass roots guidance for all aspects of MO504 and other components of the NSCV.</p> <p>Q9. Do you have any additional comments?</p> <p>[Submitter] has consultation fatigue. We are overburdened with requests from state marine resource regulators, gas and oil exploration companies amongst more. The largest current burden, however, is AMSA related consultation.</p> <p>[Submitter] staff are paid to represent and protect the interests of our members, however, the excessive time and effort required to 'stay on top' of AMSA changes detracts our ability to represent industry in other areas.</p> <p>AMSA cannot continue to burden industry with excessive amounts of information and consultation as we transition to the 1 July 2018 AMSA delivery date.</p> | |
| 3. | <p>Minimum crew requirements:</p> <p>I draw your attention to Options 1 and 2 for those working or operating one up in a vessel. Only Option 1 allows one person to operate a vessel when it is working commercially; Option 2 does not.</p> | <p>Thank you for your comments. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

For those operating tenders or other auxiliary vessels with one crew member, Option 2 will as a minimum double the crewing requirements. It is our submission that any attempt to disallow appropriate crew to equal core crew numbers would seriously disadvantage marine tourism operators working within the confines of the Whitsunday Islands and the Great Barrier Reef. It would be yet another financial impost associated with the proposed National System that is already perceived as becoming too expensive. Our tender and auxiliary vessels such as dive tenders and beach/helicopter transfer vessels are safety operated by core/minimum crews and have been many years. All of these auxiliary vessels are operated under the various operators Safety Management Systems and any associated risks or methods of operation are regularly reviewed. Smaller vessels must be able to operate commercially with one crew member if risk assessments permit. The [Submitter's] membership would therefore only support Option 1 and maintain the status quo. Any attempt to introduce Option 2 would be fought vigorously at all levels.

Treatment of existing vessels:

I refer you to Question 4 on pages 8-9 of the Key Changes document provided: Do you think the treatment of existing vessels in the draft MO504 is appropriate? For example, is the definition clear, and are the requirements for existing vessels clear? We submit the definition is clear, with the exception of clause 15(3)(a) & 15(3)(b) where there are no examples given as to what can trigger AMSA to revoke “existing vessel” status.

SMS and Equivalent Means of Compliance:

It is our submission that flexibility in how compliance is achieved is important due to the wide range of operational requirements of our members’ vessels. If AMSA is not going to “sign off” on the SMS, then substantial tools, training and assistance should be provided to industry. Workplace Health & Safety safe snorkeling practices are an example of great resources currently provided to assist industry.

Minimum crew qualifications (tender operators):

We note that Option 1 is different from the crewing requirements in NSCV Part E. . Currently, NSCV Part E does not allow a vessel to carry out its normal operations using core complement, and limits the operations in the same way as Option 2. If you are currently carrying out normal operations with core complement this would need to be either the result of grandfathered crewing arrangements or a specific exemption or equivalent means of compliance.

We will consider opportunities to include information on triggers that may revoke ‘existing vessel’ status in guidance material.

We are updating existing guidance and developing new guidance on risk assessment, SMS and crewing requirements.

We will refer your comments on qualifications for tender operators to the team that is reviewing the regulatory framework for certificates of competency and crew competencies.

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| | <p>While not specifically covered by the scope of this consultation, may I also draw your attention to the issue of minimum qualifications for tender operators. Under the new National System tender drivers will need Coxwains tickets where currently only a Recreational Marine Driver's Licence is required. This change would impose unrealistic crewing expectations and further financial disadvantage to our membership. The tenders our members use are primarily for dive and snorkel supervision or beach transfers in partially smooth and sheltered waters. They are never more than 500 metres from the mother ship or land, operate only in daylight hours and maintain constant contact via a watch system and VHF radio. Aside from the fact that due to the transient nature of our marine workforce in the Whitsundays we do not have an extensive pool of Coxwains to draw from, there is also a prohibitive cost factor to consider. Even Exemption 38, as an alternative measure, has a cost of \$900 per person attached. We would therefore submit the status quo should be maintained.</p> <p>Additional comments: The [Submitter's] membership believes resources, training and assistance should be provided to DCV, similar to the standard provided to the charter boat industry in Queensland by WHS. This should not be at a cost borne by industry, but be subsidised by government. AMSA is placing the onus on safety on vessel owners, but needs to play its part in assisting industry.</p> | <p>AMSA will be conducting SMS workshops in the latter part of 2018. AMSA Connect and Liaison Officers are always available to assist with further information and help in understanding how requirements apply to particular operations.</p> |
| <p>4.</p> | <p>Responses to Specific Questions for Consideration:</p> <p>Q1: Yes it is reasonably easy to understand</p> <p>Q2: Components to be kept onboard:</p> <ol style="list-style-type: none"> 1. Designated person details 2. Keep a risk register on the vessel but not risk assessments 3. Owner's Responsibility Statement (only if owner operates vessel) | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be clarifying the requirement for the SMS documents to be kept on board except where impracticable because of the size or type of vessel.</p> |

4. Master's Responsibility Statement
5. Appropriate crew evaluation
6. Procedures for onboard operations
7. Emergency Plan
8. Maintenance Records
9. Logbook
10. Passenger Manifest
11. Crew List
12. SMS Record of Revisions (but only details of the prior revision)

Components to be kept onshore:

1. Vessel and Contact Details
2. Risk assessments (as the SMS shows how the risk is addressed anyway)
3. Owners responsibility statement
4. Crew training records
5. Appropriate crew evaluation
6. Procedures for onboard operations
7. Emergency plan
8. Maintenance records for major events
9. Passenger manifest
10. Crew list
11. SMS Records of revisions (all)

Q3: Option 1 Any attempt to disallow appropriate crew to equal core crew numbers would seriously disadvantage marine tourism operators working within the confines of the Great Barrier Reef and also harbour ferry/water taxi operations further afield. The impacts of this for the operation I work in alone could mean in excess of \$900k of additional wages per annum. It would be yet another financial impost associated with the proposed National System that is already perceived as becoming an expensive exercise. Our tender and auxiliary vessels such as glass bottom boats, coral viewers, dive tenders and beach / helicopter transfer vessels are safely operated by core / minimum crews and have been many years (around 30 years). All of these auxiliary vessels are operated under the operators Safety Management Systems and any associated risks or methods of operation are regularly reviewed.

We will be implementing Option 1. NSCV Part E does not allow a vessel to carry out its normal operations using core complement, and also limits the operations in the same way as Option 2. If you are currently carrying out normal operations with core complement this would need to be either the result of grandfathered crewing arrangements or a specific exemption or equivalent means of compliance.

We note that tenders are defined in the NSCV Part B, and may not include all the vessels you have listed. Different crewing arrangements may apply for tenders than for other vessels. AMSA Connect and Liaison Officers are always available to provide further information and assist you to understand how particular requirements apply to your operation.

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| | <p>Q4: Yes</p> <p>Q5: Yes agree with this approach, given the broad diversity of the DCV Fleet it is important to retain flexibility so that SMS' can be tailored to suit each individual vessel and operation, giving the opportunity for greater effectiveness and improving safety.</p> <p>Q6: As with all discussions we have had to date with DCVIAC it is important that AMSA continues to review costings and achieve efficiencies where possible to reduce to cost imposed on operators, who are to date seeing significant increases in costs imposed to comply with the National System.</p> <p>Q7: There is a lot of information contained within the document making it a little difficult to follow, however I'm not that sure that you would be able to do much to make it any easier to read.</p> <p>Q8: Nothing from my perspective.</p> <p>Q9: No additional comments</p> | |
| 5. | <p>Q1. Do you find it easy to understand the requirements for a Safety Management System (SMS) in the draft MO504? If not, what should be clarified? Easily understood</p> <p>Q2. Which components of the SMS should be required to be kept on board the vessel, and which parts (if any) can be kept in a readily accessible location on shore instead? SMS Component On board On shore Vessel and contact details x x Risk assessment x x Designated person details x x Owners responsibility statement x x Masters responsibility statement x x Crew training records x x Appropriate crew evaluation x x Procedures for onboard operations x x Emergency plan x x</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will clarify that the SMS documents are to be held on board the vessel unless it is impracticable due to size or type of vessel. The documents will need to be readily accessible to people who use the system.</p> <p>We will be implementing crewing Option 1.</p> |

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| <p>Maintenance records x x Logbook x Passenger manifest x x Crew list x x SMS record of revisions x x We don't see any obvious benefit to separate the location where some documents of the SMS are kept. There can be two copies of the same file one on-shore and one on board.</p> <p>Q3. What are your views on the simplified minimum crewing concept? Do you favour Option 1 or Option 2? Option 1 with the owner/operator having the responsibility to do risk assessment.</p> <p>Q4. Do you think the treatment of existing vessels in the draft MO504 is appropriate? For example, is the definition clear, and are the requirements for existing vessels clear? Definition is clear. Requirements for crewing for NS vessels (existing or new) could be made clearer</p> <p>Q5. There will be substantial flexibility in how compliance is achieved. While the draft sets out the components of an SMS, it is for the owner to design the content around their individual risk assessment. We therefore consider that there is no need to provide for the approval of EMOC in MO504. Operators wishing to vary the way that they comply with operational requirements in a different way may apply for a specific exemption. Do you agree with this approach? Note that EMOCs in relation to operations that are already approved by AMSA will continue to be recognised even if MO504 no longer provides for the approval of EMOCs.</p> <p>Q6. Do you have any comments on the regulatory costing? Cost to owners can be reduced further if AMSA offers SMS templates for different classes of operations that owners can use to upgrade their SMS.</p> <p>Q6. Do you like the presentation of the draft MO504? Is it easy to read? Yes, presentation is good.</p> <p>Q7. Do you have any specific suggestions to improve MO504 from a technical and/or presentation perspective? None</p> | <p>We will take your suggestions on guidance and templates into consideration when developing guidance material and tools associated with Marine Order 504.</p> <p>We will consider options for clarifying the 'holder of the certificate', noting this expression stems from the National Law.</p> |
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| | <p>Q8. Is there any specific guidance you feel would be useful in relation to specific parts of the draft MO504? - Some of the SMS requirements seem a bit excessive for some classes with low risk operations or only crew operated: eg. is a 3C vessel of 8m length or NS vessel with 4 day passengers expected to have a nominated assembly station (Schedule 1, 8 (5))</p> <p>Q9. Do you have any additional comments? - Include a definition for “holder of the certificate” in MO 504 Division 4. Who is the holder of the certificate if the vessel operates in two different locations under different operators (eg. Sydney Harbour at summer under x operator and Gold Cost QLD in winter under owner) - Is there a time limit for the vessels to comply with the new SMS requirements?</p> | |
| 6. | <p>I require that I am able to operate my commercial operation with only 1 operator with more government changes it is not viable to operate otherwise and there is no Eason it can't be done safety as I have done for over 25 years now I submit option 1 because I'm a sole operator and can't afford to hire deckhands who would ultimately be a hindrance given the small size of my vessel</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |
| 7. | <p>R.E: Proposed Amendments to Crewing Under Marine Order 504. [Submitter] welcomes AMSA’s primary objective to promote a culture of self-assessment and review and concur with the consultation material that: <i>“That the vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew to manage the particular risks of their operation”.</i> [Submitter] agree that the current crewing requirements under NSCV Part E present a principle barrier to achieving this objective. From an MSF perspective this starts and ends with the assumption that; <i>“A vessel must operate with ‘appropriate crew’, which by implication must be greater than the “core complement”, that is more than one, because core complement is only available in the limited circumstances.</i> This interpretation and the proposed Option (2) fails to acknowledge or accommodate for a fundamental fact. That hundreds of commercial inshore fishers across Australia operate by</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

themselves under their “normal operations” i.e. outside smooth waters. The assumption that sole-operators do not exist (by omission) or should not (by directive) is in direct contradiction to AMSA’s stated opinion that business is best placed to manage their risks.

After studying the literature provided the [submitter] would like to highlight the following factors as they pertain the MSF to which we require consideration:

Imperial data - It is the view of the [submitter] that sole-operators are capable of fishing with South Australia’s regulated Restricted C waters safely, having done so for generations. The empirical data will demonstrate there has not been chronic or increasing safety incidences in our fishery over time.

Employment - Most of the MSF 309 licences are sole-operators, who may employ a crew member part-time basis (when they require one). With the 2016/17 Economic Indicators Report, describing; direct employment comprising of 259 full-time jobs and 313 part-time jobs, that is, 572 jobs in aggregate, which was estimated to be equal to 327 FTE jobs.

Economics – In our experience while some business is highly profitable (top 25%), the majority are highly marginal. Thus, the prospect of employing a deckhand (a high variable cost) as a regulated requirement is an unreasonable financial impost on small business. An imperative that would send many small family businesses to the wall with the stroke of a pen.

The 2016/17 Economic Indicators Report for the MSF, by EconSearch1, describes on average MSF Business have a:

- Gross income \$118,000
- *Gross operating surplus \$50,000*
- *Profit at full equity \$8,000*
- *Rate of return to total capital 2.9 percent*

Perverse Outcomes – Failure to account for sole-operators fishing outside smooth waters, under the proposed “Minimum Crewing” requirements will penalise those who have already invested in transitioning to the National Standard (Exemption 40 or higher). Moreover, the introduction another significant additional cost imperative would, at best, promote perverse safety outcomes (i.e. incentivise maintaining grandfathered vessels). At worst, financially cripple an industry which is already under significant regulatory cost burden. The [submitter] assume that neither of these outcomes fall within AMSA’s objectives.

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| | <p>Recommendation – It is the strong recommendation of the [submitter] that Option 1 must be pursued, that is, to allow business to undertake a risks assessment to determine minimum crewing as part of their Safety Management System (SMS).</p> | |
| 8. | <p>[Submitter] welcomes AMSA’s primary objective to promote a culture of self-assessment and review and concur with the consultation material that: <i>“That the vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew to manage the particular risks of their operation”.</i></p> <p>[Submitter] agree that the current crewing requirements under NSCV Part E present a principle barrier to achieving this objective. From a [submitter] perspective this starts and ends with the assumption that; <i>“A vessel must operate with ‘appropriate crew’, which by implication must be greater than the “core complement”, that is more than one, because core complement is only available in the limited circumstances.</i></p> <p>This interpretation and the proposed Option (2) fails to acknowledge or accommodate for a fundamental fact; hundreds of commercial inshore fishers across Australia operate by themselves under their “normal operations” outside smooth waters. The assumption that sole-operators do not exist (by omission) in the current NSCV Part E or should not (by directive) is in direct contradiction to AMSA’s primary objective (i.e. businesses are best placed to manage their risks).</p> <p>Failure to account for sole-operators fishing outside smooth waters, under the proposed “Minimum Crewing” requirements, will penalise those who have already invested in transitioning to the National Standard (Exemption 40 or higher). Moreover, the introduction of another significant additional cost imperative would, at best, promote perverse safety outcomes and at worst, financially cripple an industry which is already under significant regulatory cost burden. I assume that neither of these outcomes fall within AMSA’s objectives, nor should its rules direct such an outcome.</p> <p>It is the strong recommendation of [the submitter] that businesses be allowed to undertake a risk assessment to determine minimum crewing as part of their Safety Management System (SMS). I am happy to discuss this further if required.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

9.

Q1. Do you find it easy to understand the requirements for a Safety Management System (SMS) in the draft MO504? If not, what should be clarified?

Response - Yes

Q2. Which components of the SMS should be required to be kept on board the vessel, and which parts (if any) can be kept in a readily accessible location on shore instead?

Response - as per below. The current draft states that the procedures *are kept on board the vessel in a form readily accessible*.

Section 11 indicates that a logbook may be kept electronically, however reference to maintaining other documents does not currently have this level of explicit notation that electronic access is satisfactory

'Kept on board the vessel in a form readily accessible' can be widely interpreted, hence, it would be prudent to consider a note to clarify that this may include access by electronic means. It is accepted that in certain locations or circumstances, access may fail, hence mandating carriage of a hard copy for emergency plans (Procedures) and shore side contacts on board should be mandatory.

| SMS Component | On board | On shore |
|----------------------------|--|------------------------------|
| Vessel and contact details | Vessel - Electronic or hardcopy means Contacts - Minimum hard copy. | Electronic or hardcopy means |
| Risk assessment | Electronic or hardcopy means | Electronic or hardcopy means |

Thank you for your submission. Your comments have been noted.

We note your suggestion to clarify the means of keeping components of the SMS readily accessible. We will add a note.

We will also be providing for relaxation of the requirement to keep the SMS documents on board where the size or type of vessel make it impracticable.

We will be implementing Option 1

Marine Order 504 relies on definitions in the National Law, including master and crew. Unfortunately these were different to the NSCV definition, so some changes have had to be made to wording to ensure the intent is carried over despite the different definition.

We are developing new crewing guidance, and will take your comment into account.

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| Designated person details | Electronic or hardcopy means | Electronic or hardcopy means |
| Owners responsibility statement | Electronic or hardcopy means | Electronic or hardcopy means |
| Masters responsibility statement | Electronic or hardcopy means | Electronic or hardcopy means |
| Crew training records | Electronic or hardcopy means | Electronic or hardcopy means |
| Appropriate crew evaluation | Electronic or hardcopy means | Electronic or hardcopy means |
| Procedures for onboard operations | Electronic or hardcopy means | Electronic or hardcopy means |
| Emergency plan | Minimum hard copy. Electronic also if desired | Electronic or hardcopy means |
| Maintenance records | Electronic or hardcopy means | Electronic or hardcopy means |
| Logbook | Electronic or hardcopy means | Electronic or hardcopy means |
| Passenger manifest | Electronic or hardcopy means | Electronic or hardcopy means |
| Crew list | Electronic or hardcopy means | Electronic or hardcopy means |
| SMS record of revisions | Electronic or hardcopy means | Electronic or hardcopy means |

Q3. What are your views on the simplified minimum crewing concept? Do you favour Option 1 or Option 2?

Response – Option 1 Preferred.

Q4. Do you think the treatment of existing vessels in the draft MO504 is appropriate? For example, is the definition clear, and are the requirements for existing vessels clear?

Response – The revised definition is clear.

Q5. There will be substantial flexibility in how compliance is achieved. While the draft sets out the components of an SMS, it is for the owner to design the content around their individual risk assessment. We therefore consider that there is no need to provide for the approval of EMOC in MO504. Operators wishing to vary the way that they comply with operational requirements in a different way may apply for a specific exemption. Do you agree with this approach?

Note that EMOCs in relation to operations that are already approved by AMSA will continue to be recognised even if MO504 no longer provides for the approval of EMOCs.

Response – We agree with the proposed approach.

Q6. Do you have any comments on the regulatory costing?

Response – No

Q6. Do you like the presentation of the draft MO504? Is it easy to read?

Response – Overall, it is much clearer, except for references to ‘*Master*’ and ‘*Crew*’ – see further detail and response in question 8.

Q7. Do you have any specific suggestions to improve MO504 from a technical and/or presentation perspective?

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| | <p>Response – While NSCV Part B provides definition of ‘crew,’ it would be helpful</p> <p>Q8. Is there any specific guidance you feel would be useful in relation to specific parts of the draft MO504?</p> <p>Response – Clearer guidelines in the use of the definitions of ‘Master’ and ‘Crew’ respectively. Under the draft MO504, Schedule 1, Section 6(12), reference to crew is made under Section 6 of the National Law.</p> <p>Section 6 of the National Law defines crew as follows: ‘<i>crew of a vessel means individuals employed or engaged in any capacity on board the vessel on the business of the vessel, other than the master of the vessel or a pilot</i>’</p> <p>Reference to Crew is different in NSCV Part B where crew includes both Master and Pilot. - <i>crew, for a vessel, means individuals employed or engaged in any capacity on board the vessel on the business of the vessel, including the master and a pilot.</i> Consistency in the use of terminology will reduce the confusion of all crew, other operational staff and management.</p> <p>We suggest that to reduce any confusion and increase consistency in the application of terminology, a definition of Master and Crew is inserted into the definitions, independent of the National Law and NSCV Part B, to avoid potential confusion.</p> <p>Q9. Do you have any additional comments?</p> <p>Response - No</p> | |
| 10. | <p>Before providing some specific points of feedback on the proposed changes, I have concerns regarding this process itself as follows;</p> <ul style="list-style-type: none"> - These proposals (especially regarding minimum crewing requirements) have the potential to prevent young fishers entering the industry and make existing businesses unviable. As such, there should have been a more direct engagement with potentially impacted parties. It | <p>Thank you for your submission. Your comments have been noted.</p> <p>We appreciate your feedback on the consultation process as we are</p> |

seems this proposal has been pushed out 'under the radar' with little consideration of its impacts. I only heard about this as a SA fisherman mentioned this to a Vic fisherman who then called me and alerted me to what was going on. If this had not happened, I would have been none the wiser! This should not happen again.

- Part of the problem here is that the impacts of this should be considered and impacted parties told what is going on in plain English. Neither the explanatory materials nor the draft Marine Order make any of this very clear. Again, this should not happen again.

With specific regards to the two options to determine 'appropriate crewing', the major problems that I see are as follows;

- On one hand AMSA acknowledges that the person best positioned to identify and assess risks on a vessel is the master of the vessel. This is a structured process and culminates in the production of an SMS which would include consideration of minimum crewing requirements. To arbitrarily make an order that requires whatever those crewing requirements are to be increased "+ 1" is a nonsense, considering that all conditions under which this would be the case (ie not in smooth waters, trips longer than 12 hours etc) are all 'standard' conditions that fishing (mostly) occurs.
- This arbitrary order flies in the face of AMSA's stated objectives in not making prescriptive orders.
- This arbitrary and unnecessary requirement would render many fishing businesses unviable and would be a significant barrier to entry for potential new industry entrants.
- On smaller vessels, a "+1" crewing requirement would, ironically, be unsafe and unworkable.

As such, from a personal perspective and on behalf of the industries that I represent, I would request that any proposal along these lines be immediately dropped.

always trying to improve the way we communicate regulatory proposals.

It was not the intention to put the proposal out 'under the radar'. The consultation documents were provided directly to our industry advisory committees, and an email update with a summary of the proposals and links to the consultation documents was emailed directly to a large database of industry contacts. We have confirmed that your email and the associations you head up are included in this database, so apologies if you did not receive this communication. You may wish to check your spam filter and ensure that engagement@amsa.gov.au is on your email white list. We also posted announcements on facebook and on the news section of the AMSA website.

AMSA Connect and Liaison Officers are always available to assist you with further information and discussing how particular proposals may affect your business.

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| | | We will be implementing Option 1, which does not include the '+1' requirement. |
| 11. | <p>To whom it may concern,</p> <p style="text-align: center;"><i>Re: Proposed Amendments to Crewing Under Marine Order 504.</i></p> <p>[Submitter] has always agreed that AMSA's primary objective to promote a culture of self-assessment underpinned by the principles of "trust and verify". The [submitter] also concurs with the consultation material that:</p> <p style="padding-left: 40px;"><i>"That the vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew to manage the particular risks of their operation".</i></p> <p>The [submitter] agrees that the current crewing requirements under NSCV Part E present a principle barrier to achieving this objective. From a [submitter] perspective this starts and ends with the assumption that;</p> <p style="padding-left: 40px;"><i>"A vessel must operate with 'appropriate crew', which by implication must be greater than the 'core complement', that is more than one, because core complement is only available in the limited circumstances".</i></p> <p>This interpretation and the proposed Option (2) fails to acknowledge or accommodate for a fundamental fact; hundreds of commercial inshore fishers across Australia and especially in high numbers in NSW, that safely operate by themselves under their "normal operations" outside smooth waters. The assumption that sole-operators do not exist (by omission) in the current NSCV Part E or should not (by directive) is in direct contradiction to AMSA's primary objective (i.e. businesses are best placed to manage their risks).</p> <p>Failure to account for sole-operators fishing outside smooth waters, under the proposed "Minimum Crewing" requirements, will penalise those who have already invested in transitioning to the National Standard (Exemption 40 or higher). Moreover, the introduction of another significant</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

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| | <p>additional cost imperative would, at best, promote perverse safety outcomes and at worst, financially cripple an industry which is already under significant regulatory cost burden. I assume that neither of these outcomes fall within AMSA's objectives, nor should its rules direct such an outcome.</p> <p>It is the strong recommendation of [submitter], and supported by many other peak industry bodies, that businesses be allowed to undertake a risk assessment to determine minimum crewing as part of their Safety Management System (SMS).</p> | |
| 12. | <p>RE: Certificates of operation and operation requirements - national law 2013 (Marine order 504) [Submitter] agrees with and welcomes AMSA's stated objective presented in the consultation document when clarifying minimum crewing requirements (page 3), which aims to promote a culture of self-assessment and review: "The vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew to manage the particular risks of their operation." However, unfortunately the options (both 1 and 2) provided for comment do not meet the above objective. It is extremely important to put the 'appropriate crewing' evaluation first and foremost, before referring to any minimum crewing numbers. While appreciating that these amendments are aiming to provide certainty and clarity (something which apparently NSCV Part E does not do) to crewing requirements, it must be made 100% certain that the vessel owner will be responsible for determining 'appropriate crewing' by evaluating the risks to the vessel, the environment and all persons who will be on or near the vessel.</p> <p>Therefore, I seek your acceptance that for Option 1 the simple interpretation is: it will be lawful for a professional fisher to operate a vessel <12m solo if the owner determines, through an 'appropriate crewing' evaluation, that one person is sufficient to carry out all the onboard procedures. However, if through the 'appropriate crewing' evaluation an owner determines that they need 2 people to safely operate the vessel, and it operates with only one person onboard then it is unlawful.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>Your interpretation of Option 1 is correct.</p> <p>NSCV Part E restricted crewing with core complement to voyages "during which it does not carry out its normal business activities or functions". There was no definition; however, it is AMSA's understanding that it was intended to allow core complement only for very limited activities generally within a port situation for example moving a vessel between moorings, taking a vessel for refueling or maintenance. A fishing vessel (for example) could not employ core complement on a voyage where it undertook fishing activities. Neither Option 1 or Option</p> |

I seek your further clarification on Option 1:

- What is meant by ‘normal operations’?
- How is this to be applied across varying operations, inshore, offshore, sheltered waters, etc?
- What is proposed by ‘The numbers and rules on certification are the same’? Does this relate to minimum crewing as per current NSCV Part E, or is this the wording used to apply the proposed new arrangements, whereby the owner will need to determine ‘appropriate crewing’ by evaluating the risks to the vessel, the environment and all persons who will be on or near the vessel?

I note that AMSA’s recent level of consultation has imposed consultation fatigue on industry, and in particular the peak body representatives who must dedicate significant resources to providing industry with a clear, concise summary of AMSA’s proposals. This unfortunately has resulted in the inability to indicate support for either option 1 or 2. With tight timeframes our ability to digest, summarise and consult industry have been limited.

However through discussions with some Victorian vessel owners the implementation of either Options 1 or 2 has the potential to significantly impact industry.

Option 2 is certainly not supported by industry and questions about Option 1 (above) need answering before considering support.

The failure to allow sole-operators to go fishing in any conditions (eg: outside smooth waters) under proposed “Minimum Crewing” requirements, will significantly penalise some Victorian operators (including Southern Rock Lobster fishers). Further to this, the introduction of another significant additional cost imperative (such as having to employ and train extra crew) would financially cripple some industry operations which are already under significant regulatory cost burden. I assume that neither of these outcomes fall within AMSA’s objectives, nor should its rules direct such an outcome. Sole operators exist across many of Victoria’s regional fisheries and any amendments that restrict them continuing to operate as they current do are not supported.

2 included this concept, partly because it is difficult to define what ‘normal’ is.

Option 1 could apply regardless of area of operation or type of operations

‘The numbers and rules on certification are the same’ is intended to mean that the numbers that appear in the table and the dual certification rules that appear below the table are the same under either Option 1 or 2. The difference is that Option 2 would impose more restrictions on when these numbers could be followed.

We note your feedback regarding consultation fatigue. We do recognise that the amount of consultation can limit the time available to devote to considering individual proposals. We appreciate the efforts of peak bodies in representing their members and communicating industry concerns to us. We are trying to find a balance between delivering on promises to create a national system that is consistent, streamlined and performance-based, while ensuring

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| | <p>Therefore, [submitter] recommends that the Options be amended to ensure that businesses/operators be allowed to undertake a risk assessment to determine crewing as part of their Safety Management System (SMS) and that this then be accepted as the basis for 'minimum crewing' in the respective operating environment.</p> <p>Responses to other questions:</p> <p>Question 6 (1): It is difficult to respond on this question, noting there is still discussions going on with regards cost recovery under AMSA, so we can only believe there will be increased cost burden on industry. The presentation of costs in a separate document to the consultation document makes it difficult for industry to compare options with associated costs to respond accordingly.</p> <p>Question 6 (2): As a paid, peak body representative, I was able to read and comprehend the draft MO504. My membership base, however, will not take the time to read, let alone understand, the content of MO504.</p> <p>AMSA must develop clear and concise communication and educational tools to assist industry understand what the law is and what they must do to comply with the law. The importance of this cannot be underemphasized, especially given that the regulator (AMSA) has placed full liability on the owner/skip of a vessel, but the owner/skipper is not aware of what this liability means, and how they must comply.</p> | <p>that we do this in as transparent a way as possible.</p> <p>We will be implementing Option 1, which will allow sole operators in vessels <12m where the appropriate crewing evaluation conducted by the owner supports sole operation.</p> <p>Under either Option 1 or 2, an appropriate crewing evaluation is required, which takes into account the risk assessment done by the owner.</p> <p>Your comments on the costing are noted.</p> <p>AMSA is updating existing guidance and developing new guidance on safety management systems, risk assessment and crewing, as well as communications material on the changes. AMSA will also be conducting safety management system workshops in the second half of 2018. AMSA Connect and Liaison Officers are always available to assist with further information and clarification.</p> |
| 13. | I am writing to express [submitter's] grave concerns about the direction in which AMSA is taking maritime safety regulation, as evidenced by the recent consultation documents for a redrafted | Thank you for your submission. Your comments have been noted. |

Marine Order 504 and the most recent Annual Report (2016-17). Together, these documents appear to show a safety crisis on Domestic Commercial Vessels (DCVs), combined with a lack of evidence that this crisis is being meaningfully addressed by AMSA as the safety regulator. On the contrary, it appears that AMSA is moving further away from the proven core principles of Australian safety legislation, and importing concepts from the IMO or possibly other jurisdictions, without legislative authority to do so.

We read, with alarm, of the 13 domestic vessel related fatalities in 2016-17 alone (AMSA 2016-17 Annual Report p.54). This number is very high in comparison with other safety jurisdictions. Thirteen deaths in one year would put DCVs among the most dangerous industries in Australia with a fatality rate 13 times higher than the current national average of 1.5 deaths per 100,000 workers.¹ The DCV fatality rate of 19.7 deaths per 100,000 workers is higher than each of the seven industries identified by Safe Work Australia as 'national priorities for prevention activities' due to their high rate of fatalities and injuries.² The Annual report explains that 2016-17 is the first year in which a national count of domestic vessel fatalities has been available. We would have thought that the logical response of a safety regulator discovering this information in a newly-formed jurisdiction would be to prioritise an assessment of why this number is so large and what could be done to reduce it. The inquests into the deaths of Ryan Donoghue and Daniel Bradshaw (both on DCVs) have demonstrated the shocking safety flaws that exist in the DCV system. Yet instead, the Annual Report says that a 'decreasing number of fatalities' has been deleted as a performance criteria for 2017-18 (p.54). And while there is an explanation below the deleted performance criteria that AMSA is nonetheless seeking to investigate and reduce these fatalities, we could not find any other mentions of this in the 129-page Report or on the AMSA website.

1 Calculated as follows: 13 deaths among 66,000 domestic seafarers (AMSA annual report 2016-17 p.IV) = 19.7 DCV deaths per 100,000 workers)

2 <https://www.safeworkaustralia.gov.au/book/australian-strategy-priority-industries-and-conditions> and Safe Work Australia, Work-related traumatic injury fatalities in Australia, Table 2 - number and incidence rate of work-related fatalities by industry (2012 to 2016).

We will be implementing Option 1.

Fatalities data was provided to the Australian Parliament (Senate Estimates) and a copy was provided to the submitter.

The following response was also provided:

"I agree with your view that these statistics are too high and note your comment on the AMSA corporate plan performance targets. One outcome we hope to see from a national system is a better national data set and we already know that we have data gaps in areas such as number of workers in the industry. Until we are able to get better data we recently decided to set a target that 'fatalities in domestic vessel seafarers trend towards zero' to be published in our 2018-19 Corporate Plan.

Coronial recommendations

AMSA has and will continue to respond to any recommendations that a coroner may make in relation to

Turning to Marine Order 504 (MO 504), which is proposed to regulate 'operational safety' and Safety Management Systems for DCVs. Given the current safety crisis outlined above, it is surprising that AMSA would choose to present a proposed reform of vessel crewing and safety management systems with no evidence or analysis as to the current safety status of the industry or rationale for the chosen approach. What is even more extraordinary in this context is that AMSA is proposing to allow crewing numbers to be reduced, and rationalizes their approach with a concept for which we can find no basis in Australian safety law or even the Marine Safety (Domestic Commercial Vessel) National Law Act.

AMSA says that MO 504 uses an "outcomes-based' approach to regulation of operational safety" (p.1), while giving no indication of what the desired outcomes are or how they will be measured. The Australian WHS Act, in contrast, is process-based. It requires operators to follow processes for workforce consultation, risk assessment, and implementation of control measures. MO 504 undermines the operation of the WHS Act by following fundamentally different safety processes (while borrowing a few phrases that give an appearance of WHS Act compliance). MO 504 includes no mechanism for workforce consultation, which is fundamental to the process-based regulation of the WHS Act. We cannot find any reference to this 'outcomes-based' approach to safety in the National Law, or the NSCV Part E.

MO 504 provides for safety standards to be reduced by allowing vessel owners and operators to reduce the number of crew on vessels below the already low-numbers currently allowed under the National Law. The consultation document says 'the vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew' (p.3). The reason that prescriptive crewing regulation has arisen over time is that unfortunately some vessel operators put greater priority on reducing costs than on minimising risks. Putting the responsibility on operators and owners to determine the level of crewing and training of crew incentivises unsafe operation.

MO 504 introduces the concept of 'minimum crewing'. Stakeholders are asked to choose between whether operators are allowed to use minimum crewing at any time (Option 1), or if 'minimum crewing' numbers must be increased by at least 1 if the vessel is operating for more than 12 hours, outside smooth waters, or with passengers on board (Option 2). Minimum crew is 1 person on a

a fatality involving a DCV insofar as they relate to AMSA's functions.

Interaction between the National Law and other regulatory frameworks

WHS laws

I consider that a rigorous foundation for vessel operators to make decisions about crewing matters is provided by the clear linkages between the National Law and WHS laws in relation to safety management and risk assessment requirements; the additional and independent responsibilities imposed by WHS laws on DCV operators; and the specific obligations in the National Law regulatory framework in relation to crewing. While education about WHS obligations is a matter for the relevant WHS authorities, AMSA is providing a range of targeted educational opportunities to the DCV industry through workshops and publications in relation to the broad general safety duties imposed by the National Law, including the requirement to have a safety management system (SMS). We are also working closely with SWA, state and territory WHS authorities and our

vessel under 12m, and 2 people on a vessel 12-35m (which includes most tugs). In our view, both Options 1 and 2 offer a totally insufficient framework for the regulation of crewing on DCVs.

We remind AMSA that in the more process-based jurisdiction of the OHS(MI) Act and in the more prescriptive Navigation Act jurisdiction there have been approximately 6 fatalities in the past 24 years in the broadest possible interpretation of the coverage of these Acts (Seacare Authority Annual Reports).³ A strict interpretation of these Acts would result in even fewer fatalities. Given this (relative) success rate, we cannot see any justification for moving away from these approaches (although we support replacing the OHS(MI) Act with the modernized process-based approach of the WHS Act).

We urge AMSA to:

- Halt the implementation of MO 504 until the minimum crewing requirements are raised and it is genuinely in line with WHS Act processes and Safe Work Australia guidance on risk assessment and control measures. Standards should, at the very minimum, be no lower than the ILO Maritime Labour Convention.

³ Six fatalities since 1993 includes the 1993 fatality on the Maersk Runner, and at least two fatalities which were technically out of OHS(MI) Act jurisdiction, but which we have included because the vessels were effectively part of the same fleet (Trevor Moore and Andrew Kelly).

- Immediately release information about the 13 deaths in the DCV jurisdiction in 2016-17, as well as those for 2017-18 to date, and any earlier information on fatalities in the jurisdiction.
- Meet with [submitter] to discuss our concerns about the direction that AMSA is taking with safety regulation.
- Investigate and review the causes of fatalities in the DCV jurisdiction, and commit to regular reporting about fatalities and prosecutions in this jurisdiction.

Finally it is our firm view that the current coverage of the Navigation Act and the National Law is flawed, and the combined effect of these laws and AMSA's interpretation of them is allowing many vessels previously regulated under the Navigation Act to become effectively self-regulating under the National Law. Large commercial vessels working in towage, dredging, offshore oil and gas, bunkering, ocean-going passenger vessels, coastal trading vessels and large aquaculture vessels must continue to fall under the Navigation Act, and not be allowed to choose the lower and less

own compliance partners to ensure that these requirements are being rigorously enforced.

As you may be aware, AMSA is the National Regulator in the National System for Domestic Commercial Vessel Safety (the National System), which provides a framework for the regulation of DCVs through Schedule 1 of the Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (the National Law) and associated regulatory instruments. WHS is specifically excluded from the scope of the National Law at sections 6(2) and 7, which do not limit the application of state and territory WHS laws, but 'give way' to requirements prescribed in the WHS Act, regulations and codes of practice.

This means that all persons conducting a business or undertaking (PCBU) who are operating a DCV have obligations to manage the risks associated with their operation under both WHS laws and the National Law. For example, Part 2 of the model WHS Act and Part 3.1 of the model WHS regulations impose obligations on PCBUs to 'manage risks to health

prescriptive standards of a Domestic Commercial Vessel. We will be seeking amendments to legislation to ensure this is the case.
We have attached some more detailed responses to the questions posed in the MO504 consultation, attached.

and safety', requiring duty holders to proactively and continuously identify hazards, eliminate risks, and where that is not possible, apply the hierarchy of risk control measures and continue to review the adequacy of those measures over time. This framework established the model for the general safety duties set out in Part 3 of the National Law, including the requirement on all vessel owners to develop, implement and maintain a safety management system (SMS) that ensures that the vessel and the operations of the vessel are, so far as reasonably practicable, safe. Prior to the commencement of the National Law and the model WHS laws, safety management requirements were inconsistently developed and applied across jurisdictions. By contrast, the national application of both these regulatory frameworks provides for a more comprehensive and mature approach to safety management in the DCV industry. Further, the consultation, representation and participation obligations imposed on PCBUs under Part 5 of the model WHS Act and Part 2 of the model WHS regulations continue to apply to DCV operators under WHS laws

irrespective of the obligations under the National Law.

We have recently undertaken a round of negotiations with State and NT WHS authorities in order to include overlapping safety roles of AMSA and those agencies in our MOUs and promote further cooperation to improve safety in the industry.

Navigation Act 2012

The question of whether the National Law or the Navigation Act requirements will apply to a vessel will generally be determined by where the vessel will be operated rather than by which regime the vessel owner would prefer to operate under. Consequently, it is unlikely to be in the interests of the vessel owner to do either of these things if they anticipate that a vessel will be (or is likely to be) for use on an overseas voyage.

A vessel will be a DCV subject to the National Law if it is for use in connection with a commercial, governmental or research activity within Australia's Exclusive Economic Zone (EEZ). An Australian vessel

used in connection with a commercial, governmental or research activity will be a Regulated Australian Vessel (RAV) subject to the Navigation Act if it is proceeding on an overseas voyage or is for use on an overseas voyage, or it has certificates issued under the Navigation Act (other than tonnage or pollution certificates). On application by the vessel owner, AMSA may declare that a vessel is not a RAV (a list of vessels for which such a declaration is made is published on our website at <https://www.amsa.gov.au/vessels-operators/flag-state-administration/vessels-declared-not-be-regulated-australian-vessels>. To date there are fifteen such declarations). Alternatively, a RAV may 'become' a DCV if the owner relinquishes the vessel's Navigation Act certificates (except pollution certificates) and meets the criteria for issue of a certificate of survey and certificate of operation under the National Law, including compliance with survey, construction, design, operational and competency standards.

Proposed changes to crewing requirements in Marine Order 504

Prior to the commencement of the National System, states and territories had vastly differing requirements with respect to safety management and the application of operational safety standards [currently contained in Part E (Operations) of the National Standard for Commercial Vessels (NSCV Part E)]. A number of jurisdictions did not apply NSCV Part E at all, or did not require certain vessels to comply with it. at all. Since 2013, Marine Order 504 has provided a transitional pathway to compliance with the operational requirements in NSCV Part E, supplementing the enhanced focus on safety management under the National Law.

To this end, proposed changes to Marine Order 504 would, among other things, incorporate the operational requirements in NSCV Part E into the marine order to create a 'one stop shop' for operational safety requirements; require vessel operators to place greater focus on preparing and documenting an appropriate crewing assessment

having regard to a comprehensive range of factors; and for existing (grandfathered) vessels to comply with contemporary operational safety standards other than crewing from 1 July 2018. This incremental improvement in safety standards aligns with the 2012 Regulatory Plan agreed by AMSA and state and territory marine safety agencies (MSAs) prior to the commencement of the National Law, which set out a commitment to industry on how AMSA as the National Regulator would approach grandfathering and transitional arrangements for vessel standards. In relation to operational safety standards, the Regulatory Plan provided:

- for operational safety standards other than crewing requirements:
 - o existing vessels (other than class 1 passenger vessels): the requirements that applied to the vessel on 30 June 2013 – until 1 July 2016, when they would be required to comply with the requirements in NSCV Part E; and
 - o new vessels and class 1 passenger vessels: the requirements in NSCV Part E.

- for crewing requirements:

- o existing vessels: those that applied to the vessel on 30 June 2013; and
- o new vessels: the requirements in NSCV Part E.

The changes proposed through the changes to Marine Order 504 will fully implement the commitments contained in the 2012 Regulatory Plan by ensuring that existing vessels will comply with the transition to the contemporary operational standards mentioned in NSCV Part E, other than crewing. Further, the proposed changes to crewing (called 'Option 1' in the Marine Order 504 consultation materials) are consistent with the regulatory shift that has occurred through the National Law from a 'set and forget' approach focused on bare compliance to an "outcomes based" approach focussed on the owner's responsibility for ensuring the safety of the vessel and its operations. The proposed changes reconceptualises core complement as 'minimum crew' and would allow a vessel to be crewed at the number and qualification set out in the 'minimum crewing' where this is supported by a documented appropriate crewing

assessment which must also be accounted for in the vessel's SMS. This was a response to ongoing engagement with industry which highlighted that the requirement for appropriate crew to exceed the number specified as 'core complement' in the current NSCV Part E was arbitrary and confusing for both industry and state and territory MSAs. Furthermore it provided perverse incentives to owners of existing vessels not to make changes to their vessel or operation that would cause them to lose access to grandfathered crewing requirements, and was punitive for smaller vessels where, in some cases, the requirement to have a minimum of two crew would actually make the vessel less safe.

To my knowledge, AMSA does not have any incident or fatality data available to it that indicates that operating with the core complement is a direct risk to safety.

As stated above, AMSA is providing a range of educational opportunities to the DCV industry in relation to these broad general safety duties, including on how vessel owners and operators

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| <p>Answers to specific questions</p> <p>Q1. Do you find it easy to understand the requirements for a Safety Management System (SMS) in the draft MO504? If not, what should be clarified? The content of MO504 on Safety Management Systems and the required risk assessment they entail is inadequate. It does not include the essential aspects of the WHS Act system of safety management, in particular:</p> <ul style="list-style-type: none"> - Consultation with workers - Hierarchy of controls of risk. <p>For further guidance on these matters, MO 504 and AMSA should refer to:</p> <ul style="list-style-type: none"> - The newly updated <i>Code of Practice: Health and Safety in Shipboard Work, including Offshore Support Vessels</i> - Safe Work Australia guidance <i>How to manage work health and safety risks: Code of Practice</i> - AMSA guidance <i>Risk Management in the National System: A practical guide</i> - A brief 2-page document with diagrams titled 'Safety Management Systems' has also been produced by the Australian Industry Group's Max360 program. <p>Q2. Which components of the SMS should be required to be kept on board the vessel, and which parts (if any) can be kept in a readily accessible location on shore instead? All aspects of the SMS listed must be kept on the vessel and be accessible to the crew.</p> | <p>can develop an appropriate SMS and undertake an appropriate crewing assessment for their own operation.”</p> <p>The consultation, representation and participation obligations imposed on PCBUs under Part 5 of the model WHS Act and Part 2 of the model WHS regulations continue to apply to DCV operators under WHS laws irrespective of the obligations under the National Law.</p> <p>We do not intend to refer to guidance in MO504.</p> <p>We have recently undertaken a round of negotiations with State and NT WHS authorities in order to include overlapping safety roles of AMSA and those agencies in our MOUs and promote further cooperation to improve safety in the industry.</p> <p>Your comments are noted. We have clarified the provision to require that SMS documents are readily</p> |
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| <p>Q3. What are your views on the simplified minimum crewing concept? Do you favour Option 1 or Option 2? Both Option 1 and Option 2 refer to the minimum crewing table in s.12. The number of crew in this table are wholly inadequate, and therefore neither option is acceptable to us. This is particularly because vessels operating in high risk industries are moving from the Navigation Act to the National Law jurisdiction, and the minimum crewing in this table is not sufficient for work in these industries. We support the principle outlined in Option 1, which is that a vessel should not be able to carry reduced crew at various times of their operation. The minimum crewing for a vessel should always be the minimum crewing for a vessel. However, we cannot support Option 1 in its current form and read together with the rest of the Marine Order.</p> <p>Q6. Do you like the presentation of the draft MO504? Is it easy to read? We support the principle of the NSCV Part E being clarified and redrafted as part of a Marine Order.</p> <p>Q8. Is there any specific guidance you feel would be useful in relation to specific parts of the draft MO504? See our response to Q1</p> <p>Q9. Do you have any additional comments? We do not support the move to ‘outcomes-based’ safety and have not been able to find a basis for it in Australian safety law or the National Law. We support a genuine alignment between the National Law and the WHS Act, but view the efforts that have been made in this Marine Order to do this are largely cosmetic, and aspects of the Marine Order substantially undermine key principles of the WHS Act. We are concerned that the reference to ‘owner’ in the National Law and MO 504 is narrower than the PCBU concept under the WHS Act. The PCBU concept is deliberately broad in order</p> | <p>accessible. They are to be on board unless the size or type of vessel makes it impracticable.</p> <p>We will be implementing Option 1; however your comments are noted.</p> <p>Your comments have been noted.</p> <p>Your comments have been noted.</p> <p>We have recently undertaken a round of negotiations with State and NT WHS authorities in order to include overlapping safety roles of AMSA and those agencies in our MOUs and promote further cooperation to improve safety in the industry.</p> |
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| | <p>to account for all the different ways in which work can be organized, and we support this principle. We query why the ‘designated person’ is not listed as a ‘designate person ashore’ as this is the terminology and practice normally used in the maritime industry.</p> | <p>For many small operators in the DCV industry, the owner of the vessel is the master and the sole crew member. It is necessary in this context to allow the designated person to not be ‘ashore’.</p> |
| <p>14.</p> | <p>....the proposed changes will only encourage operators to work to reduce costs and not strive to reduce the risk to seafarer’s health and safety.</p> <p>We urge AMSA to:</p> <p>Halt the implementation of MO 504 Immediately release information about the 13 deaths in the DCV jurisdiction in 2016-17, as well as those for 2017-18 to date, and any earlier information on fatalities in the jurisdiction.</p> <ul style="list-style-type: none"> • Meet with [submitter] to discuss our concerns about the direction that AMSA is taking with safety regulation. • Investigate and review the causes of fatalities in the DCV jurisdiction, and commit to regular reporting about fatalities and prosecutions in this jurisdiction. • Revise MO 504 so that it is genuinely in line with WHS Act processes, and AMSA must refer to proper guidance on risk assessment and control measures. • Review and improve MO 504 requirements for crewing which are insufficient and unsafe • Review the boundary between the Navigation Act and the DCV jurisdiction. The National Law is allowing many vessels previously regulated under the Navigation Act to become effectively self-regulating under the National Law. Large commercial vessels working in towage, dredging, offshore oil and gas, bunkering, ocean-going passenger vessels, coastal trading vessels and large aquaculture vessels must continue to fall under the Navigation Act, and not be allowed to choose the lower and less prescriptive standards of a Domestic Commercial Vessel. | <p>Thank you for your submission. Your comments have been noted.</p> <p>Information on fatalities was provided to the Australian Parliament (Senate Estimates) in May 2018.</p> <p>AMSA conducts investigations into marine incidents and participates in investigations conducted by other bodies as necessary.</p> <p>AMSA has and will continue to respond to any recommendations that a coroner may make in relation to a fatality involving a DCV insofar as they relate to AMSA’s functions.</p> |

We are happy to expand on our position and I ask that you contact me directly...

AMSA reports the number of fatalities in the DCV jurisdiction in its Annual Report, and will include a target that 'fatalities in domestic vessel seafarers trend towards zero' in our 2018-19 Corporate Plan.

As you may be aware, AMSA is the National Regulator in the National System for Domestic Commercial Vessel Safety (the National System), which provides a framework for the regulation of DCVs through Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the National Law) and associated regulatory instruments. WHS is specifically excluded from the scope of the National Law at sections 6(2) and 7, which do not limit the application of state and territory WHS laws, but 'give way' to requirements prescribed in the WHS Act, regulations and codes of practice.

This means that all persons conducting a business or undertaking (PCBU) who are operating a DCV have obligations to manage the risks associated with their operation under both WHS laws and the National Law. For example, Part 2 of the model

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| | | <p>WHS Act and Part 3.1 of the model WHS regulations impose obligations on PCBUs to 'manage risks to health and safety', requiring duty holders to proactively and continuously identify hazards, eliminate risks, and where that is not possible, apply the hierarchy of risk control measures and continue to review the adequacy of those measures over time. This framework established the model for the general safety duties set out in Part 3 of the National Law, including the requirement on all vessel owners to develop, implement and maintain a safety management system (SMS) that ensures that the vessel and the operations of the vessel are, so far as reasonably practicable, safe. Prior to the commencement of the National Law and the model WHS laws, safety management requirements were inconsistently developed and applied across jurisdictions. By contrast, the national application of both these regulatory frameworks provides for a more comprehensive and mature approach to safety management in the DCV industry. Further, the consultation, representation and participation obligations imposed on PCBUs under Part 5 of the model</p> |
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WHS Act and Part 2 of the model WHS regulations continue to apply to DCV operators under WHS laws irrespective of the obligations under the National Law.

We have recently undertaken a round of negotiations with State and NT WHS authorities in order to include overlapping safety roles of AMSA and those agencies in our MOUs and promote further cooperation to improve safety in the industry.

The question of whether the National Law or the Navigation Act requirements will apply to a vessel will generally be determined by where the vessel will be operated rather than by which regime the vessel owner would prefer to operate under.

A vessel will be a DCV subject to the National Law if it is for use in connection with a commercial, governmental or research activity within Australia's Exclusive Economic Zone (EEZ). An Australian vessel used in connection with a commercial, governmental or research activity will be a Regulated Australian Vessel (RAV) subject to

the Navigation Act if it is proceeding on an overseas voyage or is for use on an overseas voyage, or it has certificates issued under the Navigation Act (other than tonnage or pollution certificates). On application by the vessel owner, AMSA may declare that a vessel is not a RAV (a list of vessels for which such a declaration is made is published on our website at <https://www.amsa.gov.au/vessels-operators/flag-state-administration/vessels-declared-not-be-regulated-australian-vessels>. To date there are fifteen such declarations). Alternatively, a RAV may 'become' a DCV if the owner relinquishes the vessel's Navigation Act certificates (except pollution certificates) and meets the criteria for issue of a certificate of survey and certificate of operation under the National Law, including compliance with survey, construction, design, operational and competency standards.

It is unlikely to be in the interests of the vessel owner to do either of these things if they anticipate that a vessel

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| | | will be (or is likely to be) for use on an overseas voyage. |
| 15. | <p>Robert Pender, The Fishermen’s Portal</p> <p>Recently and thankfully [AMSA liaison officer] alerted some of us to the proposed changes to crewing. We will need time to compile a detailed response to the proposals and cannot possibly meet the submission deadline.</p> <p>Firstly, it is as always very difficult to fully understand what the proposals mean. We will need to work with industry and with AMSA people who understand and who can explain the proposals clearly. Many of us here in Queensland are in the busiest part of our short season and will not even be looking at computers during this period.</p> <p>This proposed change is so significant that we would be expecting port visits from the regulator and I feel that AMSA should postpone the deadline and consult properly; Move forward on this without providing for meaning engagement may lead to compromising safety and practicality. Consulting in this manner, to and from industry, via email is not adequate for Qld small operators especially those of us in regional areas and at this time of the year.</p> <p>So for now, just to underscore the main message that AMSA needs to take home at this point:</p> <p>Requiring us to have two up where our normal operations traditionally are one will have a catastrophic and crippling effect on small operators in many situations, and we argue that this will impede safe operations in many cases. While our vessels may have the ability to carry more than one, in many cases we need to be able to make the decision to go one up depending on a huge range of factors.</p> <p>It is imperative that AMSA sets up forums such as port visits to discuss this proposal.</p> | <p>Thank you for your feedback. Your comments have been noted.</p> <p>We are always trying to improve our consultation process.</p> <p>We will be implementing Option 1. Given that we will be implementing Option 1, we will not be postponing the process or conducting port visits, as Option 1 was widely supported.</p> <p>In general, the revised Marine Order 504 implements the outcomes of the Operational Safety Review and Streamlining Review conducted with significant industry participation in 2015.</p> <p>The matters you raise about safety equipment are beyond the scope of the review of Marine Order 504, but they have been passed to the appropriate area within AMSA.</p> |

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| | <p>Further, we point to problems arising from being required to have items on our small vessels that result in our workplace becoming cluttered, heavy and that increase the potential for fishing apparatus to hook up. Working through this issue is imperative and in the interim Enforcement officers should refrain from requiring us to comply, in the interests of safety we need to work through that as well</p> | |
| <p>16.</p> | <p><i>Crewing options:</i></p> <p><i>Appropriate crew to equal core crew numbers would seriously disadvantage marine tourism operators working within the confines of the Great Barrier Reef. It would be yet another financial impost associated with the proposed National System that is already perceived as becoming too expensive. Our tender and auxiliary vessels such as glass bottom boats, coral viewers, dive tenders and beach / helicopter transfer vessels are safely operated by core / minimum crews and have been many years. All of these auxiliary vessels are operated under the various operators Safety Management Systems and the majority of these vessels are operated within 1 nautical mile of an Island or a mother ship. Any associated risks or methods of operation are regularly reviewed.</i></p> <p><i>[Submitter] therefore only support option 1 .</i></p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> <p>Currently the NSCV Part E does not allow a vessel to carry out its normal operations using core complement, and also limits the operations in the same way as Option 2. If you are currently carrying out normal operations with core complement this would need to be either the result of grandfathered crewing arrangements or a specific exemption or equivalent means of compliance.</p> <p>We note that tenders are defined in the NSCV Part B, and may not include all the vessels you list. Different crewing arrangements may apply for tenders than for other vessels. AMSA Connect and Liaison Officers are always available to provide further information and assist</p> |

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| | | you to understand how particular requirements apply to your operation. |
| 17. | I am a commercial fisherman operating a 6.5 aluminium boat in port phillip bay. My vessel is regularly operating with only one person onboard. I agree with [peak body submitter] position regarding minimum manning. If I was forced to have 2 people on board at all times there is the potential I will be put out of business. | Thank you for your submission. Your comments have been noted. We will be implementing Option 1, which will allow sole operators in vessels <12m where the appropriate crewing evaluation conducted by the owner supports sole operation. |
| 18. | Re certificates of operation and operation requirements national law 2013(marine order 504) I am writing to Inform you I fully support the draft response from [peak body submitter] regarding this matter. | Thank you for your submission. Your comments have been noted. We note your support for the position of the position taken on crewing requirements by a major peak body's submission. |
| 19. | I appreciate the opportunity to provide feedback on Marine Order 504. Consistent with national industry views regarding this marine order the [submitter] seeks an outcome that will keep small scale commercial fishers operating. Under Option 1, the [submitter] understands that it will be lawful for a commercial fisher to operate a vessel <12m solo if the owner determines, through an appropriate crewing evaluation, that one person is sufficient to carry out all the onboard procedures and manage the risks of the operation. [Submitter] supports Option 1 that will allow commercial fishing businesses to undertake a risks assessment to determine minimum crewing as part of their Safety Management System (SMS). | Thank you for your submission. Your comments have been noted. We will be implementing Option 1. |
| 20. | i am a T5 beam trawler it would not be possible for financial to have 2 people on board my boat I have been operating by my self for 14 years with no accident it is a 1 man operation if this was to change it would send me broke we are a small scale business I hope commen scene will prevale | Thank you for your submission. Your comments have been noted. |

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| | | <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is < 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length, you would need to seek an exemption to work solo.</p> |
| 21. | <p>To whom it may concern I am writing my feedback concerning the changes in the crewing section. I strongly urge you to allow Option 1 to remain, which allows one person to operate a boat when it is working commercially. I am a prawn fisherman based in the Brisbane River and Morton Bay and I own a 9m fishing vessel. My boat is set up, so that 1 person can easily drive the boat safely and do the fishing and sorting safely. Most boats in my area and boat size are operating in the same way as I do. I cannot afford financially to have a deckhand. If I wasn't allowed to go out without a deckhand, I would have substantial loss of income. On most days I couldn't afford it, neither could my deckhand afford it. On other days I couldn't work because I cannot find a deckhand to go out with me. This kind of fishing would simply not be a feasible operation.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is < 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or</p> |

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| | | greater in length you would need to seek an exemption to work solo. |
| 22. | as a 59 yr single operator [30 yrs in my fishery] it would impossible for me to employ another person in the boat. financially i could not do this and would no longer be able to work. so option one is the only choice for me. | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m greater in length you would need to seek an exemption to work solo.</p> |
| 23. | I have been a Mariner commercially since 1994. I have a coxswain, master 5 Med 3. I worked single handed on my oyster farm 10nm on a remote sand bank for 15 years. I have a 4.5 m vessel that is NS semi protected waters which I have used for 10 years hooking whiting in a closed bay. Always single handed. I have just purchased a SA Marine Scale Fishing licence and have invested \$145,000 in the licence. I have just purchased a \$30,000 5.8 M Haines Hunter to use as a fishing boat commercially. Currently using a Amsa surveyor to bring into EX 40 at a considerable cost. I have purchased a tractor as a tow vehicle and wish to purchase a Toyota tray top \$70,000 to safely tow the new boat. MY BUSINESS WILL BE OVER, before it has begun if i cannot operate my fishing vessels as i have always done so, that is single handed owner operator, which is exactly the requirements of our licence. There is scarcely enough income for myself. No way enough to pay | <p>Thank you for your submission.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo,</p> |

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| | <p>a full time crew. Please AMSA listen to us, we are poorly managed and over regulated to the point we will not exist. If that is the intention get rid of us once and for all. This death by a thousand cuts is Agonising, I am 57 years old been on the water and around boats all my life, operate in owner operator fishery, please give us some credit for 40 plus years of experience as a Mariner, I know when to stay home and when to go to sea in my small boats which by the way meet all the Amsa safety requirements. One capable man in a surveyed vessel in a suitable area for that vessel to operate in is safety enough for me, after all i want to come home each day from work as much as the next bloke. BTW I have also worked as a refrigeration mechanic for 40 years, mostly on my own. The SA MSFishery is 150 years old and has been operating as single hand owner operator. It seems to have worked.</p> | <p>provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length you would need to seek an exemption to work solo.</p> |
| 24. | <p>[Submitter] is a specialist water quality consultancy operating out of Darwin, Northern Territory. We operate three vessels, all less than 5.0m in length, to undertake water quality surveys in and around Darwin Harbour and inland waters of the NT. We do not have tenders to larger vessels and we do not carry passengers. We operate under low risk categories 2D and 2E. Our company has operated vessels in our area of operation for the past 20 years, without safety incident. My submission to AMSA regarding the proposed updates to 'MO504 (Certificates of operation and operation requirements - national law) 2013' is as follows; It is my view that the current AMSA method of communicating and applying regulatory updates to industry is clumsy, time consuming and, in too many circumstances, irrelevant to our area and type of operations. I have been reading the MO504 draft, referring to the documents it refers to and I have gained knowledge of a raft of regulatory and legislative requirements that bare no relevance to our type of operation whatever. The 'Industry wide' approach of AMSA's updates requires that every industry operator has to review updates that detail changes to all sectors of the industry and regulatory frameworks, simply to identify which changes apply to our type of operation. We are not maritime lawyers, we are mariners. We need to know the regulatory, operational changes and safety outcomes/improvements which are relevant to our specific sector of the industry - Albeit a somewhat 'Non-conventional' maritime sector, in our case. AMSA needs to simplify the advice they communicate to industry, by providing updates that target specific categories of operation (In our case; 2D and 2E). It will improve the impact and effectiveness of communications and provide industry operators with a better understanding of the regulatory requirements relevant to their specific areas and types of operation. I would welcome the opportunity to discuss this further and I thank you for taking the time to review my submission.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>Thank you for your feedback on the consultation process. We are always trying to improve the way we consult with industry, and we will take your comments into account for future consultations.</p> <p>AMSA Connect and our liaison officers are always available to provide further information and assist you to understand how particular requirements may apply to your operation.</p> <p>We note that the changes to Marine Order 504 are of broad relevance to the DCV industry. Marine Order 504 deals with SMS, which are mandatory</p> |

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| | | <p>for every vessel. Most operators are required to comply with the requirements in Marine Order 504 either as a condition of the certificate of operation, or as a condition of an exemption from a certificate of operation. The only exception is that grandfathered crewing arrangements are still permitted on existing vessels; however, this arrangement is given effect through Marine Order 504.</p> |
| 25. | <p>The small vessels in the Fisheries that operate as Sole Operators do not need be regulated like big ships. Core Crewing Compliment is designed for moving larger vessels around port or delivery to new location. SMS for Sole Operators have already been approved so they should be left alone.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length, you would need to seek an exemption to work solo.</p> |

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| <p>26.</p> | <p>as a small inshore gillnet operator working rivers , creeks and near shore waters (safe havens) option 1 is practical for my operation without burdening my business with red tape , overregulation and increased expenses .</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length, you would need to seek an exemption to work solo.</p> |
| <p>27.</p> | <p>Marine Order 504 – Crewing Arrangements</p> <p>Any attempt to disallow appropriate crew to equal core crew numbers would seriously disadvantage marine tourism operators working within the confines of the Great Barrier Reef. It would be yet another financial impost associated with the proposed National System that is already perceived as becoming too expensive. Our tender and auxiliary vessels such as glass bottom boats, coral viewers, dive tenders and beach / helicopter transfer vessels are safely operated by core / minimum crews and have been many years. All of these auxiliary vessels are operated under the various operators Safety Management Systems and any associated risks or methods of operation are regularly reviewed.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1, which will allow crew numbers equal to the minimum crewing provided that the appropriate crewing evaluation supports those numbers.</p> <p>Under Option 2, it still would have been possible to seek an exemption</p> |

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| | <p>[Submitter] would therefore only support option 1 and maintain the status quo. Any attempt to introduce option two would be fought vigorously at all levels.</p> | <p>from the crewing requirements allowing an operator to operate with crew numbers equal to the minimum crewing in certain circumstances – in smooth waters, with no passengers, for periods of less than 12 hours. You would need to satisfy the National Regulator that granting the exemption would not jeopardise the safety of the vessel or persons on board. An appropriate crewing evaluation supporting the proposed crewing arrangements (i.e. at minimum crew) would be valuable in making your case for the exemption.</p> <p>We note that Option 1 is different to what was required under NSCV Part E. NSCV Part E has never allowed a vessel to carry out its normal operations using core complement, and also limits the operations in the same way as Option 2. If you are currently carrying out normal operations with core complement this would need to be either the result of grandfathered crewing arrangements or a specific exemption or equivalent means of compliance.</p> |
| 28. | Marine Order 504 – Crewing Arrangements | Thank you for your submission. Your comments have been noted. |

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| | <p>Please note that it is imperative that Option one prevails. We currently have, and for many years safely and successfully manned our tenders, and auxillary vessels, such as glass bottom boats and this should not need to be changed to add another crew. This would be a significant financial impost. We have extensive and audited Safety Management Systems already in place and risk is reviewed regularly. Any extra crew is unwarranted and we therefore wish to support Option one only, which continues the practise of core/minimum crew as it has been for many years.</p> | <p>We will be implementing Option 1.</p> |
| <p>29.</p> | <p>Marine Order 504 – Crewing Arrangements</p> <p>Any attempt to disallow appropriate crew to equal core crew numbers would seriously disadvantage marine tourism operators working within the confines of the Great Barrier Reef. It would be, yet another financial impost associated with the proposed National System that is already perceived as becoming too expensive. Our tender and auxiliary vessels such as glass bottom boats, coral viewers, dive tenders and beach / helicopter transfer vessels are safely operated by core / minimum crews and have been many years. All these auxiliary vessels are operated under the various operators Safety Management Systems and any associated risks or methods of operation are regularly reviewed.</p> <p>One such example of the affect on operation was the new build of a Glass bottom boat for Big Cat Green Island last year. The new vessel “Superview 49” was built in the same format as all the current glass bottom boats operating on Green Island. The exception was that it would require a minimum “core” crewing of two, compared to the current one that has worked safely and effectively for 50 plus years.</p> <p>The real cost moving forward accumulated by all our current operations on today’s wages would be an additional \$955,200 per year spread across our companies.</p> <p>Would therefore only support option 1 and maintain the status quo. Any attempt to introduce option 2 would be fought vigorously at all levels.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1, which will allow minimum crewing provided that your appropriate crewing evaluation has determined that those numbers are appropriate.</p> <p>We note that NSCV Part E has never allowed a vessel to carry out its normal operations using core complement, and also limits the operations in the same way as Option 2. If you are currently carrying out normal operations with core complement this would need to be either the result of grandfathered crewing arrangements, a specific exemption or equivalent means of compliance.</p> |
| <p>30.</p> | <p>[Submitter] operate a 4.5M boat, licensed to carry a maximum of 4 persons; that means the skipper and 1, 2, or 3 maximum clients on that boat.</p> | <p>Thank you for your submission. Your comments have been noted.</p> |

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| | <p>With a 2E classification we are generally limited to smooth waters, daylight hours and not more than 2 nautical miles from the nearest shore. On the bare minimum of skipper and 1 client or maximum of 3 passengers I cannot see any practical purpose to increase the number of crew.</p> | <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1. This will allow you to continue to work your 4.5m vessel with one crew (the skipper) and your appropriate crewing evaluation supports operating with the minimum crewing.</p> |
| 31. | <p>I would like to express my views on minimal crew requirement that amsa is proposing. I will be effected like many of my fellow fishers that work their fishing operations singlehanded. Firstly what is amsa,s goal. We now live in a society that is more safety conscience which is great. however some of the ideas that amsa come up with are derived from poor understanding of all sectors of the fishing industry . this is very unprofessional and as we go down the path of cost recovery and if how i envisage what is going to happen it will put alot of operators out of business. Is this what amsa,s goal for the future is? Has this been discussed at fiac and if has,has it has been allowed to go to what this consultation paper is about. If fiac members agreed with this new proposal then the members should be ashamed in giving advise on issues that they have no experience . i have felt for along time that fiac under its present structure is a waste of time . this fiac should be made up of respected fishermen from around the country not ceo,s. Questions that need to be explained Who will this minimal crewing effect and what fisheries and why? Has amsa done a cost analysis on what this will cost operators who don't ever need crew. For alot of us employing crew will send us to the wall.</p> | <p>Thank you for your submission.</p> <p>FIAC has been kept up to date with the progress of the Marine Order, and provided feedback; but has not 'agreed' to any proposals as that is not its role as an industry advisory group. The draft Marine Order 504 was released to FIAC two weeks before being released to the wider industry, but with the same closing date (9 May). We note your comments on FIAC more generally.</p> |

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| | <p>I have two boats . one is a 14 metre prawn trawler which i operate by myself. The other one is a 7 metre beam trawler.</p> <p>I have been in the fishing industry for 54 years. Have fished in the crab and net fishery in my early days and the last 42 years i have fished in the prawn fishery from the torres straights to the nsw boarder. The fishing industry has its challenges weather ,tides and being able to get crew if you require them .</p> <p>Alot of operators that fish moreton bay and the Brisbane river in the otter trawl and beam trawl fishery do work by themselves. How will this effect them . only a few of us that trawl the east coast do work by our selves.</p> <p>Amsa needs to explain who will be affected and why . a explanation letter or email needs to be sent to all operators .</p> <p>We don't need any more unnecessary stress in our lives . life is tough enough.</p> <p>I hope my writing this email is not a waste of time and for once amsa is listening . which unfortunately going on past performances it is aint.</p> <p>I would like to talk to someone to explain what amsa is on about.</p> | <p>A regulatory costing has been calculated and presented for consultation in accordance with Australian Government requirements. We note that data is scarce, and individual costs will vary widely as existing safety management systems and crewing arrangements are extremely variable.</p> <p>We note that NSCV Part E does not allow a vessel to carry out its normal operations at or below core complement.</p> <p>If you are currently carrying out normal operations with core complement or less, this would need to be either the result of grandfathered crewing arrangements, a specific exemption or equivalent means of compliance.</p> <p>AMSA Connect and Liaison Officers are always available to provide further information and discuss how regulatory requirements affect particular operations.</p> |
| 32. | The proposal restricts/annuls single operators. The proposal to increase manning requirements for certain areas and working times would make a lot of small operators either leave the industry or if | Thank you for your submission. Your comments have been noted. |

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| | <p>forced to pay additional crew work in weather that is unsafe due to financial reasons. The proposal could in fact make things more unsafe and risk additional lives.</p> | <p>We will be implementing Option 1, which will allow solo operation in a vessel <12m provided that the appropriate crewing evaluation supports solo operation.</p> <p>We note that the NSCV Part E does not allow a vessel to carry out its normal operations at or below core complement.</p> <p>If you are currently carrying out normal operations with core complement or less, this would need to be either the result of grandfathered crewing arrangements, a specific exemption or equivalent means of compliance.</p> |
| <p>33.</p> | <p>Susan Price Minimum crewing operation preferred is Option 1 as it is financially unviable to have an extra crew member due to costs involved</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is <12m and</p> |

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| | | <p>your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length you would need to seek an exemption to work solo.</p> |
| <p>34.</p> | <p>I am strongly in support of Option 1. I am in the final stages of setting up a small family owned fishing business, whilst continuing to work as a General Purpose Hand in the marine section in an iron ore port. I believe any requirement to increase crew numbers will be detrimental to both large and small businesses and their staff. My fishing business, which I have mortgaged the house to fund, would immediately become unviable. With prior knowledge of the potential to require extra crew, I would not have made the investment in this business. This would have impacted a myriad of businesses / vendors, including boat builders, chandleries, ice machines, bait and tackle stores, transport companies, car dealerships, etc. Further, the quota which I purchased to enter the fishery would have been annexed by a large foreign owned company. My intention is to sell fish into local restaurants, further supporting the local small business network, and ensuring some quality local seafood remains available to local customers. The extent of these types of benefits would be greatly impaired if small companies were imposed with the cost of having to employed unrequired crew. Further, they will be sacrificed for very minor improvements in operational safety. Modern equipment and methods dictate that, with well considered risk mitigation, many risks can be eliminated, or reduced to as low as reasonably practicable. To gauge the need for safety improvements, compare the number of fatalities aboard vessels operating with core contingency crewing levels against the number of fatalities aboard vessels with higher manning levels. How many fatalities have occurred on vessels constructed since the introduction NSCV requirements operating with core contingency crewing levels, and of these, how many would have been avoided with increased crewing? Larger businesses will also be negatively impacted by the impost of unnecessarily boosted crew numbers. Australian business already faces challenges to remain competitive in the global market. Increased costs in one area frequently require savings to be found from elsewhere. Ironically, this is often at the expense of health and safety. Alternatively, if the cost of increased crewing is absorbed by vessel operators, wages will be cut for operations to remain viable. Again, these scenarios will be for no, or minor, increase in the safety of operations. I believe</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

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| | Option 1 maintains the greatest economic benefit, whilst still providing the latitude for safety standards which can be regarded as being as low as reasonably practicable. | |
| 35. | [Submitter's father] been operating a commercial vessel on his own for the past 50 years and now that the government has put him on a 11,000kg quota cap so he can't afford to put a crew on. This will almost certainly force him out of a job. Please don't do this. | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length, you would need to seek an exemption to work solo.</p> |
| 36. | <p>Re: certificates of operation and operation requirements/national law 2013 (Marine Order 504).</p> <p>I am writing to you about my concerns of the possible changes on crew requirements for solo operators.</p> <p>I am disappointed I found out 3rd hand something that can severely affect my business is only just been brought to my attention with very minimal time to reply.</p> <p>I haven't had the opportunity to read the Consultation document clarifying minimum crewing requirements. I've only just been notified by [peak body] of the possible changes.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1, which will allow you to continue to work solo, provided your appropriate crewing evaluation supports operating with the minimum crewing.</p> |

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| | <p>I operate a 7.5 metre vessel which is in survey with AMSA vessel ID number 22534. I operate this vessel for Wrasse fishing and in the last 12 months I have invested a considerable amount of money and effort to get this business underway.</p> <p>I am a qualified coxswain NC1 and I am well aware of the perils of the sea. My operations basically include catching live Wrasse with a rod and reel for sale in the local markets. There is a minimal profit in this industry and I have set this business up to work as a solo operator. Having to employ a crew would put substantial financial pressure on the business.</p> <p>That aside I cannot see any difference between a commercial solo fisherman fishing with a rod and reel as opposed to a recreational solo fisherman fishing with a rod and reel.</p> <p>The commercial fisher who has his boat in survey and has the appropriate qualifications seems to be discriminated against if these changes are made.</p> <p>I would be very interested to know the statistics on the mortality rates of solo operators as opposed to multiple crew.</p> <p>I feel that crewing requirements is something that should be addressed in the risk assessment of the Safety Management System and is applicable to individual operations.</p> <p>I am all for safety at sea and don't take these issues lightly but my concerns are that AMSA may bring in a blanket rule stating that all vessels must have a minimum of one crew without taking into consideration the size and operations of the vessel.</p> | <p>To clarify – the minimum crewing of one for a vessel <12m vessel includes the master and crew. Therefore a vessel that operates with minimum crewing of one has only one person working on the vessel.</p> |
| 37. | <p><u>Revised Marine Order 504</u></p> <p>AMSA has proposed to incorporate the current NSCV Part E (Relating to SMS requirements) into the Marine Order to clarify the crewing arrangements for Domestic Commercial Vessels. AMSA has put 2 crewing options forward for consultation.</p> <p>Option 1 will allow vessels to be crewed by a minimum number of crew required if the operator has done an appropriate crewing assessment to show if it is safe to do so (the current standard that Tasmanian vessels operate under).</p> <p>Option 2 will only allow vessels to be crewed by the minimum number of crew required if the voyage is within smooth waters (E class waters) less than 12 hours and with no passengers on board.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

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| | <p><u>[Submitter] Opinion</u> Rock lobster vessels have been operating in the Tasmanian waters for many years under the current manning regulations as interpreted and enforced by Marine and Safety Tasmania. [Submitter] are unaware of any reported incidents associated with undermanned vessels in the rock lobster fishery. This would indicate that the current system has proved sufficient for the safety of operators. [Submitter] believes it is sufficient for a vessel operator to evaluate risk associated with operations, and determine what manning levels are suitable for specific operations including single manning. [Submitter] supports the AMSA proposal to incorporate Part E (operations) within the M0504 framework and also the proposal to end transitional arrangements for some operational requirements. MO504 would then provide the minimum standard for operational requirements for SMS requirements for all DCVs.</p> <p><u>[Submitter] Recommendation</u> That AMSA implement option 1 to allow vessel operators to complete an appropriate assessment of minimum crewing requirements for their vessel as per the current situation in Tasmania.</p> | |
| 38. | <p>I am a commercial fisherman-Marine Scale and have worked by myself for years now, and I don't agree that I should have to have a second person on the boat. This will be a financial burden for me, I could not afford to do that in the current circumstances of my fishing business.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m</p> |

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| | | <p>and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length you would need to seek an exemption to work solo.</p> |
| 39. | <p>The small vessels in the Fisheries that operate as Sole Operators do not need be regulated like big ships. Core Crewing Compliment is designed for moving larger vessels around port or delivery to new location. SMS for Sole Operators have already been approved so they should be left alone.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>If your vessel is an existing vessel eligible for grandfathered crewing arrangements, you can continue to comply with the requirements that applied to your vessel on 30 June 2013.</p> <p>For new vessels, we will be implementing Option 1, which will allow you to continue to work solo, provided your vessel is less than 12m and your appropriate crewing evaluation supports operating with the minimum crewing. For a new vessel 12m or greater in length, you would need to seek an exemption to work solo.</p> <p>We have also noted your comments about safety equipment; however they are beyond the scope of Marine Order 504. Your comments have</p> |

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| | | been passed to the appropriate team for review. |
| 40. | <p>[Submitter] appreciates AMSA’s efforts to amend operational safety requirements for vessels to implement streamlining proposals when industry advised that the rules were too complex and multi-layered.</p> <p>[Submitter] notes it is proposed that from 1 July 2018 operators of all Class 1, 2 and 3 vessels will be required to comply with NSCV Part E, as incorporated into MO504 (except grandfathered vessel minimum crewing arrangements). [Submitter] accepts that industry has been regularly communicated with that the latest operational safety requirements in NSCV Part E (except the minimum crewing requirements) would apply to ‘grandfathered’/existing Class 2 and 3 vessels after a transitional period.</p> <p>Appropriate crewing arrangements – [submitter] supports the proposal to introduced a simpler concept of ‘appropriate crewing’ and ‘minimum crewing’ arrangements where the vessel owner will be responsible for determining ‘appropriate crewing numbers and expertise’ to manage the particular risks of their operation at any time.</p> <p>[Submitter] supports Option 1 (as laid out in the consultation documentation for minimum crewing arrangements) where minimum numbers can be applied for normal operations on a voyage as long as the appropriate crewing evaluation shows that the minimum crewing will be sufficient to manage the risks.</p> <p>Simplifying operational requirements – [Submitter] supports the proposal that all vessel class categories be required to meet the same operational safety requirements.</p> <p>[Submitter] recommends that AMSA will need to provide clear guidance material for those vessels previously not impacted by the requirements of NSCV Part E that outline that a vessel owner is primarily responsible for identifying the most appropriate way to comply with the requirements. The guidance material may benefit from examples that demonstrate that by taking into account the particular risks for the vessel and that if the risks are low and a vessel only needs a few, simple</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> <p>We have noted your comments on guidance material.</p> |

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| | <p>procedures in the SMS, then documenting and periodically reviewing that SMS will not be a substantial burden.</p> <p>Certificate of Operation – [Submitter] supports the proposal that an application for a Certificate of Operation will need to include a declaration by the vessel that an SMS is in place for the vessel that complies with the operational requirements in the MO504.</p> | |
| 41. | <p>Alex Ogg, A/G CEO Western Australian Fishing Industry Council Inc (WAFIC)</p> <p>The COAG mantra in 2012 when agreeing to a single manager for marine safety in Australia was that it must result in less red tape, least cost and maintain safety. This proposal to simplify operational requirements is directly in line with that mantra together with the AMSA preference for operators of vessels to take greater responsibility for the safety management of their vessels.</p> <p>[Submitter] congratulates AMSA on delivering these significant changes for fishing vessel owners.</p> <p>General comments – [Submitter] appreciates AMSA’s efforts to amend operational safety requirements for vessels to implement streamlining proposals when industry advised that the rules were too complex and multi-layered.</p> <p>[Submitter] notes it is proposed that from 1 July 2018 operators of all Class 1, 2 and 3 vessels will be required to comply with NSCV Part E, as incorporated into MO504 (except grandfathered vessel minimum crewing arrangements). [Submitter] accepts that industry has been regularly communicated with that the latest operational safety requirements in NSCV Part E (except the minimum crewing requirements) would apply to ‘grandfathered’/existing Class 2 and 3 vessels after a transitional period.</p> <p>We would caution AMSA that despite this regular communication there will remain those vessel owners in industry that will still not be fully aware of this transition and further communications and education will be necessary beyond July 2018.</p> <p>Appropriate crewing arrangements – [Submitter] supports the proposal to introduced a simpler concept of ‘appropriate crewing’ and ‘minimum crewing’ arrangements where the vessel owner will</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> <p>We have noted your comments on guidance material.</p> |

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| | <p>be responsible for determining ‘appropriate crewing numbers and expertise’ to manage the particular risks of their operation at any time.</p> <p>[Submitter] supports Option 1 (as laid out in the consultation documentation for minimum crewing arrangements) where minimum numbers can be applied for normal operations on a voyage as long as the appropriate crewing evaluation shows that the minimum crewing will be sufficient to manage the risks.</p> <p>Simplifying operational requirements – [Submitter] supports the proposal that all vessel class categories be required to meet the same operational safety requirements.</p> <p>[Submitter] recommends that AMSA will need to provide clear guidance material for those vessels previously not impacted by the requirements of NSCV Part E that outline that a vessel owner is primarily responsible for identifying the most appropriate way to comply with the requirements. The guidance material may benefit from examples that demonstrate that by taking into account the particular risks for the vessel and that if the risks are low and a vessel only needs a few, simple procedures in the SMS, then documenting and periodically reviewing that SMS will not be a substantial burden.</p> | |
| <p>42 to 72</p> | <p>The following form letter was signed and submitted separately by 31 individuals. We have counted them as 31 submissions.</p> <p style="text-align: center;">R.E: Proposed Amendments to Crewing Under Marine Order 504.</p> <p>The Marine Fishers Association (MFA) represents South Australia’s 309 Marine Scalefish Fishery (MSF) licence holders under co-management. The majority of which are small-scale family fishing business some third generation. The MSF fleet is characterised by “sole-operators” fishing from small grandfathered 3C – Restricted (<7.5) or Exemption 40 vessels (<12m) primarily within the regulated Restricted Waters of the State.</p> | <p>Thank you for your submission. Your comments have been noted.</p> <p>We will be implementing Option 1.</p> |

The MFA welcomes AMSA's primary objective to promote a culture of self-assessment and review and concur with the consultation material that:

"That the vessel owner will be more clearly responsible for determining crewing, recognising that the owner, rather than the National Regulator, generally is best placed to determine appropriate crew to manage the particular risks of their operation".

The MFA agree that the current crewing requirements under NSCV Part E present a principle barrier to achieving this objective. From an MSF perspective this starts and ends with the assumption that;

"A vessel must operate with 'appropriate crew', which by implication must be greater than the "core complement", that is more than one, because core complement is only available in the limited circumstances.

This interpretation and the proposed Option (2) fails to acknowledge or accommodate for a fundamental fact. Hundreds of commercial inshore fishers across Australia operate by themselves under their "normal operations" outside smooth waters. The assumption that sole-operators do not exist (by omission) in the current NSCV Part E or should not (by directive) is in direct contradiction to AMSA's primary objective (i.e. business are best placed to manage their risks).

After studying the literature provided the MFA would like to highlight the following factors as they pertain the MSF to which we require consideration:

Imperial data - It is the view of the MFA that sole-operators are capable of fishing with South Australia's Restricted C safely, having done so for generations. The empirical data will demonstrate there has not been chronic safety incidents or significant increases in our fishery over time.

Employment - The majority of the MSF 309 licences are sole-operators, who may employ a crew member part-time basis (when they require one). With the 2016/17 Economic Indicators Report, describing; direct employment comprising of 259 full-time jobs and 313 part-time jobs, that is, 572 jobs in aggregate, which was estimated to be equal to 327 FTE jobs.

Economics – In our experience while some business is highly profitable (top 25%) the majority are highly marginal. Thus, the prospect of employing a deckhand (a high variable cost) as a regulated requirement is an unreasonable financial impost on small business.

The 2016/17 Economic Indicators Report for the MSF, by EconSearch1, describes on average MSF Business have a:

- *Gross income \$118,000*
- *Gross operating surplus \$50,000*
- *Profit at full equity \$8,000*
- *Rate of return to total capital 2.9 percent*

Perverse Outcomes – Failure to account for sole-operators fishing outside smooth waters, under the proposed “Minimum Crewing” requirements will penalise those who have already invested in transitioning to the National Standard (Exemption 40 or higher). Moreover, the introduction another significant additional cost imperative would, at best, promote perverse safety outcomes (i.e. incentivise maintaining grandfathered vessels). At worst, financially cripple an industry which is already under significant regulatory cost burden. The MFA assume that neither of these outcomes fall within AMSA’s objectives.

Recommendation – It is the strong recommendation of the MFA that **Option 1** must be perused, that is, to allow business to undertake a risks assement to determine minimum crewing as part of their Safety Management System (SMS).