

NATIONAL SYSTEM
FOR COMMERCIAL VESSEL SAFETY



THE REGULATORY PLAN CONSULTATION FEEDBACK REPORT

May 2012



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1. Executive summary

In 2013, the Australian Maritime Safety Authority (AMSA) will become the national regulator (National Regulator) for all domestic commercial vessels and their crew, and a national system will be established.

The Regulatory Plan released in June 2011, and updated in September 2011, contained a proposal for the way in which vessels and their crew will be regulated under the Marine Safety (Domestic Commercial Vessel) National Law (the National Law). It set out certification requirements, survey obligations and standards that were proposed to apply to vessels and crew once the National Law is in place.

In other words, the Regulatory Plan provided the detail of the proposed national system for domestic commercial vessels that will take effect in 2013, and which would be implemented through the National Law (and in particular through the regulations that support the Marine Safety (Domestic Commercial Vessel) National Law Act).

From June to September 2011, public consultation occurred on the content of the Regulatory Plan, which, together with a number of supporting Fact Sheets, was available on the AMSA website. Face to face consultations were undertaken around Australia, including at 19 open days, 10 consultation sessions with key industry representations, and through representation at the Sydney Boat Show.

A large number of comments were received on the proposed Regulatory Plan, predominantly through the consultation sessions. In addition, 12 submissions and 35 online surveys were submitted. Key areas of concern for stakeholders were:

- The definition of commercial vessel;
- The transferability of survey certificates;
- The grandfathering and transferability of qualifications, new and existing;
- Consistency in application of the standards (the National Standard for Commercial Vessels (NSCV) in particular) and survey outcomes;
- The qualifications of surveyors;
- Fees and charges;
- The interaction between the Navigation Act and National Law – particularly in regards to offshore oil and gas vessels;
- The interaction between the National Law and occupational health and safety (OHS) law – particularly in regards to the national OHS law reform;
- The potential for operational areas to be redefined; and
- Arrangements for specific vessel types, including research vessels, superyachts, yacht race vessels and heritage vessels.

There were also a large number of comments and questions on issues associated with the national qualifications structure, including the treatment of Registered Training Organisations (RTOs), recognition of prior learning and requirements for the renewal and revalidation of certificates.

This report attempts to capture all the issues raised, analyse the issue and outline the treatment of the issue, including through amendments to the Regulatory Plan where relevant. A number of the issues raised will be addressed through separate processes (such as through the consultation on the Proposed Requirements for National Crew Certificates), in which case the referral of the issue to those processes has been identified.

2. Introduction

2.1 The Regulatory Plan

The Regulatory Plan that formed the basis of the public consultation during June – September 2011 provided the detail of the regulatory requirements proposed to be applied to various types of domestic commercial vessels and their crew when the National Law is introduced.

It was developed to support a number of nationally-agreed principles, namely:

- The General Safety Approach: proactive safety obligations will apply to all domestic commercial vessels and operations.
- Safety Equipment to Meet Contemporary Standards: safety equipment on existing vessels will be progressively updated to meet contemporary safety standards.
- Minimum Impact on the Existing Fleet: the impact on existing vessels will be minimised, where possible, through preserving existing arrangements (“grandfathering”).
- Risk-Based Survey: pro-active survey requirements will be based on risk management principles with scope to vary the frequency of survey where operators demonstrate a proactive and effective approach to safety management.
- Technical Requirements to be based on Nationally Agreed Standards: the national system will be based on compliance with national standards endorsed by Transport Ministers.
- A Single National Certificate: administrative arrangements will aim to minimise paperwork.
- Recognition of Existing Certificates: existing State and Northern Territory (NT) certificates will be recognised under the national system.

Three broad categories of regulatory treatment were proposed which defined the requirements applicable to vessels:

- Scheme S (vessels in survey);
- Scheme NS (vessels not in survey and not in Scheme O); and
- Scheme O (other vessels where both new and existing vessels would continue to be subject to requirements based on the current State/Territory system for a transitional period).

Vessels in Scheme S were proposed to include:

- New vessels required to be in survey under the National Standard for the Administration of Marine Safety (NSAMS) Section 4 Annex F; and
- Existing vessels in survey. However, where an existing vessel is in survey in accordance with State or Northern Territory requirements and that vessel would not be required to be in survey under NSAMS Section 4 Annex F, the owner of that vessel could opt to transfer the vessel into Scheme NS.

Scheme O was proposed to only include specifically identified vessel types, namely: waterski/wakeboard towing vessels, ferries in chains, syndicated boats, unpowered barges and novel vessels.

While Scheme NS covered all vessels not in Scheme S or Scheme O.

An overview of the proposed Regulatory Plan, and the requirements applicable to vessels in each of the schemes, is shown in Table 1.

Table 1: Overview of the proposed Regulatory Plan (September 2011)

Category		Certificates	Crewing requirements	Vessel and operations standards	Survey
Scheme S: vessels in survey	New	Single certificate for each vessel encompassing vessel identification and operations Certificate of survey for each vessel Crew to hold a recognised certificate of competency	Minimum crew numbers in accordance with NSCV Part E	NSCV	As per NSAMS Section 4
	Existing		Current arrangements*		NSCV Part E for operations NSCV Part C7A for safety equipment (with transitional requirements) Current arrangements for design and construction*
Scheme NS: vessels not in survey	New	Single certificate for each operation encompassing the identification of vessels within the operation and their operation Crew qualifications to be in accordance with local requirements	Minimum crew numbers in accordance with NSCV Part E	NSCV Part E for operations Minimum equipment and design and construction standard (General Safety Standard)	None
	Existing			NSCV Part E for operations Minimum equipment standard, or NSCV C7A (if appropriate) Current arrangements for design and construction*	None
Scheme O: other vessels	New and existing	As per Scheme S or Scheme NS (depending on whether or not the vessel is in survey) Crew qualifications to be in accordance with State and Territory requirements	As per Scheme S or Scheme NS (depending on whether or not the vessel is in survey)	Existing State and Territory requirements for equipment and design and construction, and NSCV Part E for operations	Existing State and Territory requirements

* Provided there is no variation in operations that increases risk

As shown in Table 1, within all three categories, provisions were proposed to allow for the appropriate grandfathering of requirements for existing vessels.

In addition, provisions were proposed to support the transition of existing vessels into the national system. When existing vessel certificates were up for renewal or revalidation, it was proposed that national certificates would be issued in lieu of the current State or Territory certificate. For

other vessels, including those that do not currently hold any certification or registration, the national certificate of operation would be required to be obtained within three years of the commencement of the national system.

Under the proposed Regulatory Plan, national certificates of competency would be issued in accordance with the NSCV Part D. [Part D is currently being reviewed by the National Marine Safety Committee (NMSC) and is subject to a separate public consultation process on the Proposed Requirements for National Crew Certificates.] National certificates would be automatically recognised in every State and Territory.

Under the Regulatory Plan, it was proposed that existing certificates of competency, including those with restrictions, would continue to be recognised within the issuing jurisdiction, subject to any applicable restrictions. In other words, mariners holding State and Territory certificates of competency at the commencement of the national system would still be able to continue to use their existing certificates within the issuing jurisdiction, on exactly the same basis as did before the commencement of the national system.

In addition, arrangements were proposed for transitioning existing certificates of competency to a national certificate of competency, through which an existing unrestricted (Uniform Shipping Laws (USL) Code or NSCV) certificate would be able to be transitioned across to a national certificate without additional requirements.

2.2 The consultation process

A collaborative consultation process was run by the Commonwealth, States and Northern Territory. The local authorities advised AMSA on the composition of the 'State stakeholder advisory groups', provided the consultation locations and advised AMSA on the most appropriate communication channels for local stakeholders and audiences.

The face-to-face consultations included:

- Two 'national stakeholder advisory group' sessions, one in the Canberra on 14 July 2011 and one in Sydney on 20 July 2011;
- Eight 'State stakeholder advisory group' sessions, in Sydney (28 June 2011 and 6 September 2011), Fremantle (5 June 2011), Darwin (7 June 2011), Hobart (25 July 2011), Glenelg (28 July 2011), Port Lincoln (29 July 2011), and Altona (21 September 2011);
- 19 'open day' sessions, including in Sydney, Fremantle, Darwin, Hobart, Glenelg, Port Lincoln, Cairns, Townsville, Airlie Beach, Mackay, Urangan, Maroochydore, Brisbane, Gold Coast, Gladstone, Lakes Entrance, Altona, Geelong; and
- A stand and representatives at the Sydney Boat Show.

These sessions ran from 22 June to 7 October 2011, in parallel to consultation with a wider audience through the website hosted by AMSA. During this time, 850 stakeholders attended the consultation sessions, including 150 key industry representatives who attended the national and State or NT stakeholder advisory group sessions. AMSA also maintained a stand at the Sydney Boat Show which attracted significant interest from a large number of stakeholders. 140 advertisements were placed advising stakeholders of the reform, and the national reform website received 6117 'hits'. There were also 12 written submissions made and 35 online surveys returned.

Finally, information sessions with State and Northern Territory maritime employees were conducted, generally before the relevant consultation or open days.

2.3 **Purpose and structure of this report**

The purpose of this report is to:

- Provide a stocktake of all the issues raised through the consultation on the Regulatory Plan;
- Analyse the issues; and
- Provide the action taken to address the issues, including where relevant, amending the Regulatory Plan.

For ease of use, this report is structured on an 'issues basis'. The issues are grouped into areas, namely:

- The National, Cooperative Approach;
- The grandfathering arrangements;
- The transitional arrangements;
- The requirements for vessels in survey;
- The requirements for scheme NS vessels;
- The requirements for 'other' vessels;
- The proposed certification arrangements; and
- Other issues raised by stakeholders.

For each issue area, a summary of the proposal is provided to put the comments in context.

The final chapter of this report (Chapter 11) contains a table which summarises the issues raised and the actions taken to address the issue.

3. Comments on the national, cooperative approach

3.1 The proposal

The National Law will introduce a national system that regulates all **commercial vessels** operating in Australia, except those vessels regulated under the *Navigation Act 1912*. Vessels proposed to be regulated under the Navigation Act (ie not under the National Law) are:

- Foreign flagged vessels engaged in voyages or activities (other than warships and vessels on freedom of navigation voyages) in Australia's Exclusive Economic Zone (EEZ) (for example a foreign flagged vessel conducting fishing activities within the EEZ);
- Australian flagged vessels which cross the outer limit of the EEZ or operate entirely outside the EEZ, or which intend to do so; and
- Australian flagged vessels which apply for or maintain Safety of Life At Sea Convention (SOLAS) Certification, regardless of where they operate.

Vessels under the National Law include those capable of being used in navigation or designed to float on water, including barges, pontoons, floating restaurants and floating craft being towed, provided the vessel is being used in connection with a commercial transaction such as:

- As a business;
- As a service (including a service provided by government);
- For profit; or
- For research.

The Regulatory Plan sets out the proposed treatment for all vessels subject to the National Law.

3.2 Further refinement of the definition of commercial vessel

Since September 2011, a number of refinements have been made to the proposed definition of commercial vessel. The definition of commercial vessel included in the final National Law Bill will capture vessels that are for use in connection with a commercial, governmental or research activity.

However, vessels owned / operated by:

- Primary or secondary schools; or
- Community groups,

are excluded from the National Law, unless they are undertaking certain specified commercial activities. The test for when a school or community group vessel is subject to the National Law is currently under development and will be subject to further public consultation as part of the consultation on the draft regulations and Marine Orders. However, it may include vessels operated by search and/or rescue organisations.

The definition of 'community group' will also be considered as part of the development of the regulations, however it will encompass the concept of a formalised association (an incorporated body, an unincorporated association or a body established by legislation) which is non-profit.

Defence force vessels are excluded from the National Law.

Recreational vessels used as volunteer research vessels do not fall within the definition of 'domestic commercial vessel' and will not be subject to the National Law. The attendance of a person in a professional capacity (to assist with the research activity) onboard a volunteer research on an ad-hoc basis would also not make the vessel a commercial vessel for the purposes of the National Law.

In addition, the definition of 'vessel' has been refined. Under the National Law, 'vessel' will include a vessel capable of being used in navigation by water, however propelled or moved, including air cushion vehicles, barges, lighters, submersibles, 'wing-in-ground effect' craft and ferries in chains. A moored structure used for tourism activities, such as those used in the Great Barrier Marine Park, will be subject to the national system, while other structures, such as pens used for aquaculture, will be specifically excluded, under the Regulations.

The Regulatory Plan has been updated to reflect the changes to the definition of commercial vessel.

3.3 **Issues raised**

3.3.1. **Support for the reform**

There was a high level of support from industry regarding the concept of a national system. A large number of attendees of the consultation sessions, as well as those who made written submissions or returned feedback forms, saw the reform as a matter of common sense.

Comments supporting the reform expressed frustration at current inconsistencies between regulations in the States and the Northern Territory and at the costs involved in moving vessels and crew between jurisdictions. Stakeholders indicated that the ability to move vessels between jurisdictions, without dealing with multiple regulatory authorities, would be a significant advantage, as would the national recognition of approvals, certificates, surveys and inspections.

Of the surveys submitted, 27 saw 'having the consistent application of standards under a single National Law, 16 saw 'having nationally recognised qualifications', and 11 saw 'being able to move my commercial vessel interstate without impediment' as the most important aspect of the reform. Comments on the surveys included: 'the reform is long overdue' and 'it is a step in the right direction'.

In addition, a few stakeholders believed that the reform would have significant safety benefits, particularly arising from the removal of gaps between State and Commonwealth legislation (eg in relation to Commonwealth government vessels) and in the establishment of consistent regulatory approaches around Australia.

Maritime Union Australia

We believe that uniformity of standards, consistency in regulatory approaches and decision making under a single regulator provides scope for users to focus resources and attention on safety and quality assurance, and to minimise process, in navigating the different approaches, standards and procedures of a multiplicity of regulators.

In addition, the scope within the plan to streamline the licensing of seafarers and to enable mutual recognition will provide the basis for lifting crew competency with consequential positive impacts on crew and vessel/cargo/passenger safety.

3.3.2. **Qualifications on support for the reform**

A number of stakeholders qualified their support for the reform as dependent upon how the reform was delivered and on the cost of operating under the national system. Both of these issues are considered below.

In addition, there remained a significant number of stakeholders who:

- Were indifferent to the reform. This category of stakeholders mainly comprised of those operators whose vessels do not move around Australia, particularly the fishing industries in South Australia and Tasmania; and

- Felt that a cooperative arrangement, with the States and NT as service providers and the Commonwealth as regulator would create administrative problems and add to costs. This issue is considered below.

3.3.3. Definition of commercial vessel

Pre-19 August 2011: capture of school and club vessels, and all vessels owned by a corporation

Before the 19 August 2011 Council of Australian Government's (COAG) meeting, the Regulatory Plan included the following definition of commercial vessel:

- A vessel used in connection with a commercial transaction (as set out in 3.1 above); and
- A vessel not owned by one or more individuals, regardless of purpose. This includes all vessels owned by corporations and other organisations,

except defence vessels.

The inclusion of the 'ownership test' in the original definition meant that a vessel would be captured by the National Law (and thus subject to the Regulatory Plan) if it was owned by a corporation or an organisation, including all vessels owned by companies, clubs, schools and other associations.

This broad definition had a number of advantages. In particular, it removed any gaps between State recreational and Commonwealth commercial vessel laws, and allowed a scaled, risk-based approach to apply to all commercial and quasi-commercial vessels. The Regulatory Plan attempted to ensure that a minimal regulatory approach applied to low-risk vessels falling within the definition, with more than 50% of the fleet not subject to survey and a large number of school and club vessels subject only to the general safety obligations and with no certification requirements.

However, through the early phase of the consultations (those held in June, July and early August) the breadth of the definition of commercial vessel was a significant issue, with stakeholders submitting that the definition would:

- Create an enormous administrative challenge. Stakeholders suggested (at the consultation sessions) that up to 8-10% of the recreational fleet could be captured under the National Law. If this was correct, it would be a significant challenge for the National Regulator to manage the transition to the national system;
- Have a significant negative impact on the desirability of buying a boat and thus the boat building sector;
- Have a significant impact on sailing club vessels. While some stakeholders suggested that it would professionalise some sectors of the sailing club community, and supported the definition, others stakeholders strongly opposed the capture of sailing club vessels and expressed concerns that it would impact on the cost and viability of their activities; and
- Impact on insurance requirements. Stakeholders maintained that the capture of vessels in the National Law would lead to additional insurance requirements and thereby inhibit the ability of school and club vessels to continue to operate.

At the 19 August COAG meeting, the definition of commercial vessel was amended, with the 'ownership test' removed.

Post-19 August 2011 definition: remaining issues

The definition agreed at the 19 August COAG meeting (outlined in section 3.1) removed the majority of issues raised by stakeholders on the definition. However, some issues remained.

- *Research vessels*

Some stakeholders submitted that vessels used for research are not commercial and should not

be captured.

Stakeholders were also concerned about the potential capture of 'volunteer research vessels' or recreational vessels that assist with research on a volunteer basis.

Department of Fisheries Western Australia

An important undertaking of the Research Division...is to research and monitor the recreational fishing industry...The assistance and cooperation of the recreational fishing community is vital for successful outcomes in this field.

...The introduction of the [National Law] is...an opportunity to make clear the recreational status of recreational vessels involved in volunteer research, and provide certainty for organisations like DoF WA in their management of volunteer programs.

...There are occasions where it is useful for staff to accompany volunteer recreational vessels e.g. to train volunteers to tag fish.... DoF WA suggest that under the new national system, the presence of a person onboard a volunteer recreational vessel performing their duties of employment should not mean the vessel must comply with commercial vessel standards.

It is noted that volunteer research recreational vessels are not included in the definition of commercial vessel and are not captured by the National Law. The attendance of a person in a professional capacity (to assist with the research activity) onboard a volunteer research recreational vessel on an ad-hoc basis would not make the vessel a commercial vessel for the purposes of the National Law.

- *Volunteer search and rescue vessels*

It was also suggested by stakeholders that these volunteer search and rescue vessels are not commercial and should not be captured by the definition.

As outlined above, a privately owned recreational vessel that is used incidentally as a volunteer search and rescue vessel is not captured by the National Law.

- *Syndicated vessels*

It was submitted that these vessels are operated in the same manner and have the same risks as recreational vessels and should not be treated as commercial vessels.

- *Powered school vessels*

It was submitted that all school vessels are already subject to risk-based management by schools and that their inclusion in the National Law would at unnecessary costs.

As outlined above, school vessels are now excluded from the National Law, except school vessels used for specified activities or purposes.

The treatment of school vessels subject to the National Law is considered at section 7.7 below.

- *Sporting vessels*

As the majority of sport-related vessels are not used in connection with a commercial transaction, they will continue to be classed as recreational boats and will not be subject to the National Law. However, as a result of the previous version of domestic commercial vessel included in the Regulatory Plan, stakeholders raised concerns with the potential capture of sporting vessels.

Australian Sports Commission

The ASC would encourage AMSA to continue discussions to ensure that the national system retains its focus on the regulation of commercial vessel safety, whilst also recognising the existing education programs and safety approaches already in place within relevant sporting organisations which contribute to this outcome.

As a result of the revised definition of 'domestic commercial vessel', the majority of sport-related vessels will not be subject to the National Law as they are:

- not for use in connection with a commercial transaction; or
- owned or operated by schools or community groups.

The treatment of vessels used in sporting events that will be captured by the National Law is considered in Chapter 7 below.

▪ *Defence vessels*

One stakeholder submitted that vessels operated by the Australian Defence Force but crewed by civilians should be captured by the National Law.

Definition of commercial vessel – amendments to the Regulatory Plan

The Regulatory Plan has been amended to make explicit:

- The exclusion of volunteer research vessels from the definition of commercial vessel and the National Law. In addition, the attendance of a person in a professional capacity (to assist with the research activity) onboard a volunteer research on an ad-hoc basis would not make the vessel a commercial vessel for the purposes of the National Law.
- The exclusion of a privately owned recreational vessel that is used incidentally as a volunteer search and rescue vessel from the National Law.

No further amendments to the Regulatory Plan are recommended. Research and search and rescue vessels are not used for private purposes and have a sufficient risk profile to be subject to the commercial vessel legislation. The appropriate treatment of these vessels is discussed in the following chapters.

Australian Defence Force (ADF) vessels are of a risk profile that the ADF is in the best position of understand, and oversight by a marine safety authority is not warranted.

The definition of commercial vessel has been subject to extensive consultation as part of the consultation on the National Law Bill.

3.3.4. Administration of the national system: national consistency in outcomes

Stakeholders around the country expressed concern regarding how national consistency in outcomes would be achieved. Stakeholders noted that even within the current State and Territory-based administrations there was considerable inconsistency in decision making and suggested that achieving consistency across the country would be a challenge for the National Regulator.

Stakeholders emphasized the need to ensure:

- Consistent interpretation and application of standards across the country, particularly in regards to the decisions made by surveyors;
- Consistent decision-making around Australia; and
- Consistent outcomes in qualifications (ie consistency in the courses offered by Registered Training Organisations) around Australia.

A number of suggestions were made by stakeholders to support national consistency, such as the regulator auditing of State and Territory authorities and the establishment of a clear appeals process whereby the National Regulator would review decisions made by the States and NT. Stakeholders suggested that an appeals process would achieve both consistency and transparency.

The ultimate concern is that, notwithstanding the clearest of guidelines, individual government entities will:

- a. develop their own cultures;
- b. interpret the provisions of the National Law in perhaps novel ways (and may perhaps develop internal guidelines that will effectively become the law as those guidelines are utilised in practice by junior officers); and
- c. develop their own enforcement priorities,

with the net effect that the National Law will not be enforced uniformly – and if that is the case the benefits of a single National Law identified in the RIS could be lost.

ALC therefore believes the proposed Maritime Safety National Law Act should be:

- administered; and
- have services delivered,

by a single agency.

At best, a ‘delegated agency’ model of administration, conferring significant responsibilities on jurisdictional regulators, should be regarded as a transitional step towards a single administration operating to advance a Seamless Australian Economy.

Administration of the national system – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended.

These issues relate to the administration of the national system. Workstreams have been initiated to support consistency in outcomes, and the submissions have been referred to these workstreams.

3.3.5. Administration of the national system: support for local jurisdictions

Stakeholders expressed concerns regarding how the national system would be resourced. Questions asked at consultations included:

- What IT infrastructure would be put in place to support the system? A national database, for example, would enable documents to be accessible in all jurisdictions;
- What support will AMSA provide to jurisdictions, particularly in the survey arena? Stakeholders noted that, in some areas, there were already delays associated with obtaining surveys. If this was exacerbated by the national system in some (eg as a result of ‘jurisdiction-shopping’ for surveys), would AMSA provide additional surveyor resources?
- Would the structural separation of regulation and service delivery under the national system prevent service-providers from responding quickly to changing circumstances?
- How would AMSA ensure that administrative decisions, such as the interpretation of standards and regulations, were made promptly?

Administration of the national system – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended.

These issues relate to the administration of the national system. Workstreams have been initiated to identify how services will be affected by the national system, and the submissions have been referred to these workstreams.

3.3.6. Local issues

The ability of the National Regulator to take account of local conditions and issues was also an area of concern, particularly for localised industry groups.

Local issues – amendments to the Regulatory Plan

To address these concerns, the Regulatory Plan has been amended to make explicit:

- The certificate of operation will provide the flexibility required to manage local issues;
- Through the certificate of operation, the risks of an individual operation (and operational area) can be taken into account to identify solutions that achieve the same safety outcome; and
- The States and the Northern Territory will continue to manage their local waterways, including classifying waters.

3.3.7. The need for a risk-based approach

Stakeholders emphasized the need for requirements under the national system to be based on risk. There was strong support for the risk-based approach that was achieved by implementing the national standards, including the national survey regime set out in NSAMS Section 4.

The need for a risk-based approach – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. It is based on NSAMS and the NSCV, both of which have been developed on a risk-basis.

3.3.8. Interaction with the Navigation Act

As outlined in Section 3.1, under the proposal, vessels that cross the outer limit of the EEZ (approximately 200 nautical miles) would be subject to the Navigation Act and not the National Law. This also applies to foreign registered vessels that come to Australia for a lengthy period and operate only within the EEZ, but retain their foreign flag. A number of stakeholders, particularly in the offshore oil and gas and fishing industries, requested that this be reviewed.

The vessels in question operate predominantly within the EEZ and are currently subject to State and Territory marine safety legislation while they remain within that jurisdiction. As a result, they employ crew with near-coastal qualifications. Examples of these vessels include:

- Offshore oil and gas and mining vessels in Western Australia and Queensland, including vessels up to 20,000 GT;
- Fishing vessels; and
- Customs vessels.

If these vessels were required to comply with the Navigation Act, they may need to employ crew with STCW qualifications, as well as maintain SOLAS certification. Both of these changes could have a considerable impact on the operations.

Maritime Union of Australia

The lack of clarity and legal specificity in the summary of the definition of vessels that are likely to be covered under the rewritten Navigation Act...is inadequate to enable final comment. For example, does the coverage of foreign flagged vessels under the Navigation Act extend to the continental shelf, which has significance for the safety requirements of foreign flagged vessels operating in the offshore oil and gas sector.

There will be massive implications for the safety and in particular the crewing of vessels in the offshore oil and gas sector if these application and definitional issues are not appropriately considered in settling the application provisions in the Navigation Act and National Law.

Interaction with the Navigation Act – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that Australian vessels which were regulated under State or NT marine safety law prior to the commencement of the national system will be able to operate under the National Law through an exemption from the Navigation Act. In order to remain exempt from the Navigation Act, the vessels must comply with the National Law.

Australian vessel entering the national system after the commencement of the national system, which intend to operate outside the EEZ but do not intend to undertake international voyages, will also be able to operate under the National Law through an exemption from the Navigation Act. In order to remain exempt from the Navigation Act, the vessels must comply with the National Law.

However, all foreign flagged vessels and vessels that undertake international voyages (ie undertake a voyage to or from an international port) must comply with the Navigation Act. Appropriate transitional arrangements will be implemented for foreign flagged vessels that currently operate under State or NT marine safety law.

3.3.9. Vessels moving between recreational and commercial use

Stakeholders requested further information on how vessels that move between commercial and recreational use would be managed.

Vessels moving between recreational and commercial use – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that, when a commercial vessel is being used recreationally, it will be exempt from the commercial vessel requirements, provided it complies with recreational vessel laws.

3.3.10. Offences under the National Law

Stakeholders asked whether State or Federal courts would hear offences under the National Law, as well as what review bodies would have jurisdiction (the Commonwealth Administrative Appeals Tribunal or the State Administrative Decisions Tribunals). Stakeholders submitted that consistency in decision-making was vital and the competent courts and tribunals should draw from the one set of precedents. This may imply that Federal courts and tribunals should be utilised, in lieu of State and Territory courts and tribunals.

Offences under the National Law – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue was referred to the National Law Bill, which was subject to consultation in early 2012. Under the National Law Bill, offences under the National Law can be heard by both State and Federal courts. However, administrative decisions can be reviewed only by the Commonwealth Administrative Appeals Tribunal.

4. Comments on the grandfathering arrangements

4.1 Proposal

One of the principles underpinning the Regulatory Plan was minimising the impact on existing vessels and operators. “Grandfathering” is a mechanism used to remove or reduce the impact on existing operators. It means that existing approvals, requirements or conditions will remain in place and will be recognised by the National Law without the need for further action by operators.

Under the proposal:

- Pre-existing design and construction, and, where relevant, crewing and survey, requirements will be grandfathered for existing vessels.
- An existing vessel with no exemptions from the Uniform Shipping Laws (USL) Code or local equivalent solutions to the NSCV would be eligible to obtain an unrestricted national certificate of survey, valid in any State or Territory in Australia.
- An existing vessel with exemptions or local equivalent solutions, and a pre-USL Code vessel, would be able to continue to operate as it did before the commencement of the national system. If the vessel seeks to change its operations, is modified, or seeks to move jurisdictions, it would need to be reassessed.
- An existing vessel in survey that would be subject to a lesser survey regime under the proposed Regulatory Plan (including under NSAMS Section 4) can gain the advantage of the new requirements provided that the vessel meets an equivalent standard to that applicable to new vessels in the same class.
- The holder of an existing State or NT certificate of competency can continue to operate on the same basis as they currently do. If the existing certificate expires, the holder will transition to a national certificate when they apply for renewal or revalidation. Holders of existing certificates of competency that are perpetual can continue to operate in the same manner and the same jurisdiction as they currently do. If their operations change or move, they will need to transition to a national certificate.

4.2 Issue for comment: definition of existing vessel

Feedback was sought on the appropriate definition of an ‘existing vessel’. Under the proposal, an existing vessel is one which was registered, held a certificate of survey, or otherwise operated commercially within Australia at any point during the 24 months prior to the commencement of the National system.

The vast majority of submissions supported the proposed definition. Only one submission argued that 12 months would be more appropriate.

Other comments on the proposed definition of ‘existing vessel’ included:

- Vessels ordered / contracted prior to the commencement of the national system should be classed as ‘existing vessels’;
- There should be flexibility around ‘type approvals’, particularly where capital intensive equipment has been purchased for assembly line production; and
- There should be flexibility and discretion around the 24 month cut-off. For example, it may be appropriate to treat a vessel that has been out-of-service for a long period due to a modification that was delayed as existing vessel.

Definition of existing vessel – amendments to the Regulatory Plan

The definition of ‘existing vessel’ in the Regulatory Plan has been amended to include a vessel where the keel has been laid, or:

- construction identifiable with the vessel has begun; and
- a portion of the vessel has been fabricated and finally assembled, having a mass of not less than 50 tonnes or 1 percent of the estimated mass of all structural material of the vessel as proposed to be completed,

prior to the commencement of the national system.

In addition, a vessel for which an application for design approval has been lodged with a State or Territory marine safety agency prior to the commencement of the national system, and the keel has been laid, or:

- construction identifiable with the vessel has begun; and
- a portion of the vessel has been fabricated and finally assembled, having a mass of not less than 50 tonnes or 1 percent of the estimated mass of all structural material of the vessel as proposed to be completed,

before the date that is 3 years after the commencement of the national system shall have the option of complying with the requirements in place prior to the commencement of the national system.

An application for design approval includes an application for vessel design, plans or construction drawings approval; an application for new vessel construction; an application for the examination of vessel plans; an application for initial survey or a vessel survey application; and in Queensland, the completion, by an accredited designer, of a certificate of compliance for design in a form acceptable to Maritime Safety Queensland.

In addition, the Regulatory Plan has been amended to clarify that the service delivery bodies (ie the State and NT marine safety agencies) will have the discretion to manage the transition for type approvals and existing vessels that have been out of service for longer than 24 months. AMSA will provide guidance on the application of this discretion to ensure national consistency.

4.3 **Issue for comment: survey**

Under the Regulatory Plan, vessels would have the option of transitioning to the NSAMS 4 survey regime (provided that the vessel meets an equivalent standard to that applicable to new vessels in the same class) but would not be required to do so where the vessel does not change its operations in a way that increases risk, does not undergo a significant upgrade and does not move interstate.

Feedback was sought on whether or not all existing vessels should be required to transition to the NSAMS Section 4 survey regime, as an alternative to the proposal. There was overwhelming support, both at consultations and in the submissions, for the proposal contained in the Regulatory Plan.

Pearl Producers Association

PPA supports an existing vessel (which makes no design changes, operational changes or geographic operational changes) having the option to stay with their existing survey certificate or change to NSAMS and take advantage of the risk assessed survey schedule.

A related comment was made by one stakeholder. The Department of Transport WA submitted that a vessel should not be required to meet an equivalent standard to that applicable to a new vessel in order to access the NSAMS 4 survey regime as “survey frequency has no impact on the technical requirements applying to the vessel”.

Transitioning to an NSAMS 4 survey regime – amendments to the Regulatory Plan

An existing vessel that is in survey in accordance with a State or Northern Territory requirement could move to an NSAMS Section 4 survey regime after an assessment of the risks of the vessel by the local State / Northern Territory marine safety agency on behalf of the National Regulator.

4.4 **Support for the proposed arrangements**

There was strong support for the proposed grandfathering arrangements at both the consultations and in the submissions.

Pearl Producers Association

Of particular importance to our industry is continuation of the regulatory arrangements for pearl shell cleaning vessels operating in our industry. As we read the Proposed Regulatory Plan these vessels can continue to operate under the existing management arrangements and crewing levels approved by the respective WA and Northern Territory Departments of Transport as long as they remain in their current geographic area of operation and continue to operate in the pearling industry.

4.5 **Is 'grandfathering' indefinite?**

A number of stakeholders commented on the proposed grandfathering arrangements. At one end of the spectrum, stakeholders were concerned that the indefinite grandfathering of requirements for existing vessels will have a long-term safety impact by encouraging vessel owners and operators to retain older vessels for longer.

Yachting Australia

In general Yachting Australia is of the view that an indefinite period for “grandfathering” of existing operations will encourage operators to defer updating their vessels or operating systems, as they will not wish to jeopardise the relief they receive through the grandfathering of operations. This will lead to a less safe system.... Yachting Australia would favour a sunset clause on operations.

At the other end of the spectrum, a number of stakeholders emphasized the importance of indefinite grandfathering arrangements.

WA Department of Fisheries

There needs to be clarity that “grandfathering” existing vessels applies to the life of the vessel unless its operations change. Unless this occurs, the impact on cost and delivery of services could be untenable to organisations managing fleets of vessels.

Grandfathering – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that:

- The grandfathering arrangements will apply to the vessels indefinitely, unless incident data dictates an alternate approach; and
- The National Regulator will continually reassess the safety of the national fleet in light of incidents, emerging risks, changing technology and/or changing expectations. This would include reassessing grandfathered vessels in the future if the need arose on a safety basis.

4.6 **Survey regime for existing vessels that wish to relocate interstate**

A large number of stakeholders sought further detail on how the assessment process would operate where an existing pre-USL Code vessel, or a vessel with exemptions to the USL Code or local equivalent solutions to the NSCV, seeks to relocate interstate.

Survey and vessels relocating interstate – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that:

- The assessment process would consider the risks of the vessel to identify any safety gaps arising from its non-compliance with the national standards. This would include consideration of the vessel's survey regime, and whether any alteration of the survey regime would be required to address risks; and
- The vessels would be assessed against the latest standard. However, the vessel would not necessarily be required to meet that standard. Rather, where there are safety gaps due to non-compliance with a standard, operational or other conditions may be applied to the vessel through the certificate of operation.

4.7 **Existing interstate recognitions**

Stakeholders emphasised the need to grandfather all existing permissions – including interstate endorsements and recognitions of existing certificates. A vessel which, prior to the commencement of the national system, undertook operations in a jurisdiction other than the one in which its certificate of survey or registration was issued, should be able to continue to do so without triggering any new requirements. Similarly, stakeholders submitted that interstate recognitions of certificates of competency should remain valid.

Existing interstate recognitions – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that all existing recognitions (including interstate endorsements on certificates of competency and survey) will be recognised under the national system.

4.8 **Perpetual certificates of competency**

A number of comments were received regarding the validity of an existing State or Territory perpetual certificates of competency if the operator elected to transition to a new national certificate.

Currently, if a perpetual certificate holder receives an endorsement to operate in another jurisdiction, the perpetual certificate remains valid in the issuing jurisdiction even if the endorsement expires.

Under the Regulatory Plan, if the holder of a perpetual certificate elected to move interstate they would need to transition to a national certificate. However, the Regulatory Plan was not clear on whether the perpetual certificate would be 'swapped' for the national certificate (and thus no longer be valid), or whether the perpetual certificate would continue to be valid where the holder operated in the issuing jurisdiction.

There was strong support at the consultations for the ongoing validity of a perpetual certificate, even after a national certificate of competency has been obtained.

Perpetual certificates – amendments to the Regulatory Plan

This issue is currently the subject of consultations being undertaken on the National Crew Certificates – Proposed Requirements (which encompasses a review of Part D of the NSCV). The submissions on this issue have been referred to that process.

4.9 **Replacement vessels**

Stakeholders asked whether a 'replacement' vessel could access the grandfathering arrangements that applied to the vessel it replaced. This was particularly for crewing level requirements – could the same crewing levels be applied to the replacement vessel?

Replacement vessels – amendments to the Regulatory Plan

The Regulatory Plan has been amended to make it clear that the grandfathering arrangements do not apply to replacement vessels. A replacement vessel is a new vessel entering the fleet, and thus will be subject to the national requirements.

However, crewing levels will be determined on a risk basis. There will be sufficient flexibility to determine an appropriate crewing level for a particular vessel depending on its operations.

4.10 **Changes in operations**

Stakeholders requested more information on what would constitute a 'change in operations' that would trigger a review of the grandfathering arrangements (ie would require the vessel to be assessed).

In particular, detail was sought on how the grandfathering arrangements apply to vessels that are sold. Do the grandfathered requirements pass to the new operator, or is a new owner a 'change in operations' that triggers the application of the national standards?

Pearl Producers Association, National Seafood Industry Association and the Commonwealth Fisheries Association

If a vessel is sold and is going to be operated in a similar area and under the same conditions then no upgrades are required. This will assist with maintaining the market for vessels especially if there is no requirement for upgrade programs on transfer of ownership.

Changes in operation – amendments to the Regulatory Plan

The Regulatory Plan to has been amended to make it clear that:

- Where an operation as a whole is sold, there is no change in operations that would trigger a review of the grandfathering arrangements; and
- Where a vessel's owner and the operation of the vessel changes, the grandfathering arrangements would be reviewed.

The Regulatory Plan has been amended to make it clear that only a change in operation that increases risk (determined in accordance with the principles outlined in the NMSC Guideline 'The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered') would trigger a review of the grandfathering arrangements.

4.11 **Modifications**

Stakeholders requested more information regarding what modifications would trigger a review of the grandfathering arrangements.

National Seafood Industry Association and the Commonwealth Fisheries Association

In relation to 'modified', NSIA and CFA calls for greater clarity on how this will be defined and industry involvement in developing a definition applicable to the industry.

Modifications – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that the principles outlined in the NMSC Guideline 'The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered' will be applied to determine when a modification will result in a review of the grandfathering arrangements.

Applying the NMSC Guideline means that modifications (or 'alterations') that are accompanied by an 'upgrade in service' (where there is a change in the service category (class) of the vessel and the change in class will, in some way, subject the vessel or persons on the vessel to an increase

in risk) will result in a review of the grandfathering arrangements. These concepts are explored in more detail in the NMSC Guideline.

4.12 **Grandfathering of crewing requirements**

One stakeholder expressed strong opposition to the grandfathering of crewing requirements.

Maritime Union of Australia

The union is strongly opposed to the proposal that would allow an existing vessel with no exemptions from the Uniform Shipping Laws (USL) Code or local equivalent solutions to the NSCV to take advantage of the grandfathering arrangements for crewing such that it would be eligible to obtain an unrestricted national certificate of survey, valid in any State or Territory in Australia, without the upgrading of crew licenses are appropriate.

...Indefinite holding of what could be out of date VET qualifications and occupational licensing is unacceptable. Crews are not attached to a vessel as are design features and so there must be different transition arrangements for crew, and even for crew that do stay with the same “operation” or area, there is no justification in our view for not setting a timetable for upgrading. We submit that the availability of streamlined Recognition of Prior Learning (RPL) and Recognition of Current Competency (RCC) processes by Registered Training Organisations (RTOs) ensures that upgrading of qualifications and licenses is inexpensive and efficient, and should be an important part of the transition to the new National System.

Furthermore, ships crews move across the artificial boundary between the National System and the Navigation Act system, and the new arrangements should be seeking to promote that workforce mobility and career pathway opportunity. Delaying the upgrading of National System crew qualifications and licensing will put a drag on that potential mobility.

Grandfathering of crewing arrangements – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue should be considered further once consultation on the proposed Certification Plan has been completed.

5. Comments on the transitional arrangements

5.1 Proposal

Transitional provisions attempt to ease the transition of existing vessels and crew into the national system.

Under the proposal:

- Vessels which hold existing State or Territory certificates of survey or registration will be issued a national certificate in lieu of their current certificate at an appropriate time in the survey or renewal schedule, by 2016.
- Existing vessels that do not currently hold any certification or registration, and which are required to have a certificate of operation under the national system, must obtain the national certificate of operation by 2016.
- Holders of certificates of competency, including those with restrictions, will continue to be recognised within the issuing jurisdiction, subject to any applicable restrictions.
- Certificates of competency issued after 1981 (under the USL Code or Part D of the NSCV or equivalent) will be transitioned to national certificates at the date that the holder renews or revalidates the existing certificate. At renewal or revalidation, a national certificate will be issued, with the same processes that apply to renewing or revalidating the certificates under Part D of the NSCV. Holders may choose to transition to a national certificate prior to the date their existing certificate expires or must be renewed or revalidated.

5.2 Support for the proposal

Stakeholders were highly supportive of the transitional arrangements as mechanisms to manage existing vessels into the national system. Stakeholders believed the proposal would allow existing vessels to continue to operate as they currently do, with no or minimum disruption.

National Seafood Industry Association

The NSIA supports the proposal for all surveys to change to a National System by 2016 on the condition that the changeover is automatic for a vessel where there has been no modification or change to operations.

5.3 Ability of existing vessels to move around Australia

A common question at the consultations was how existing vessels could obtain a national certificate that allowed the vessel to move freely around Australia.

Under the proposal, vessels with certificates of survey issued after 1981, and no exemptions or local equivalent solutions, would transition to an unrestricted national certificate. This means that the certificate would not be limited to a particular jurisdiction.

Existing pre-USL Code vessels, and existing vessels with exemptions or local equivalent solutions, would be able to continue to operate in the jurisdiction(s) in which they were permitted to operate prior to the introduction of the national system. However, the vessel would be assessed prior to being issued with an unrestricted national certificate. There was a mixed response prior to this aspect of the proposal; on balance, stakeholders believed it provided the greatest balance between achieving the free movement of vessels around Australia and safety.

Commonwealth Fisheries Association

CFA does not support that an existing vessel that currently has a certificate of registration, but not a certificate of survey, be issued with a restricted national certificate of operation that is only valid in the State or Territory where it operated prior to the commencement of the national system.

Department of Transport, WA

While enabling the preservation of existing arrangements may limit the extent to which vessels and seafarers can move seamlessly around Australia at the outset of the system, the DoT WA is confident that the benefits of the system will continue to grow over time as the existing fleet is replaced with new vessels and as more seafarers take up the option of national certificates of competency.

Stakeholders also sought information on the assessment process that would be applied to existing pre-USL Code vessels and vessels with exemptions or local equivalent solutions that sought to obtain a national certificate that allowed the vessel to move freely around Australia.

The ability of existing vessels to move around Australia – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. The proposal presents the greatest balance between risks and freedom of movement for existing vessels.

The assessment process will be developed through workstreams considering the supporting administrative arrangements.

6. Comments on the requirements for vessels in survey

6.1 Proposal

Under the proposal, the following vessels would be subject to survey under the national system:

- New vessels identified as subject to survey under the National Standard for the Administration of Marine Safety (NSAMS) Section 4 Annex F;
- Existing vessels that were required to be in survey under the applicable State / NT law immediately prior to the commencement of the national system; and
- Existing vessels that were registered in Queensland prior to the commencement of the national system and were required to obtain an initial certificate of compliance.

The proposed requirements for vessels in survey under the national system:

- Existing vessels in survey will transition to national certificates of survey and operation at an appropriate time in the survey schedule, prior to 2016.
- An existing vessel in this category that has a certificate of registration, but not a certificate of survey, will be issued with a restricted national certificate of operation that is only valid in the State or Territory in which the vessel operated prior to the commencement of the national system. Existing Queensland vessels will be required to retain their certificate of compliance in lieu of holding a national certificate of survey.
- Existing vessels may continue to comply with the vessel's existing periodic survey regime provided the vessel does not change operations, is not modified and does not move its geographic area of operation.
- All new vessels in survey must obtain vessel identification, a certificate of operation and a certificate of survey prior to operating. New vessels must comply with the NSCV and will be subject to NSAMS Section 4. The survey regime specified by NSAMS Section 4 allows for variation of frequency of periodic survey on a risk basis.
- All vessels in survey, new and existing, must comply with the NSCV Part E (except in relation to crewing requirements which will be grandfathered for existing vessels) and the NSCV C7A (safety equipment).

6.2 Achieving consistent survey outcomes

As outlined previously, a common issue at the consultations was the need to ensure that there is national consistency in the interpretation and application of standards. Industry asked what steps would be taken to achieve this, such as:

- National training, and/or national minimum qualifications; and
- Establishing a single national office for design approvals.

Achieving consistent outcomes – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue relates to the administration of the national system, rather than the Regulatory Plan. Workstreams have been initiated to support consistency in outcomes, and the submissions have been referred to these workstreams.

6.3 Accreditation of surveyors and the use of private surveyors

Stakeholders sought further information on how the process for the accreditation of marine surveyors would operate under the national system, including whether existing surveyors would be automatically recognised by AMSA.

In addition, the accreditation of private surveyors was a significant issue around the country, particularly in Queensland. A number of stakeholders raised concerns regarding the standard to which the survey is conducted when it is completed by a private surveyor.

Accreditation of surveyors and private surveyors – amendments to the Regulatory Plan

In 2013, AMSA will only delegate the authority to issue a certificate of survey to the jurisdictions. The jurisdictions will determine what documentation they will rely upon when issuing a certificate of survey, and may accredit surveyors they employ as well as private surveyors to support their certificate of survey processes. Responsibility for the completeness and accuracy of certificates of survey will rest with the jurisdiction.

As such, in 2013, those who provide technical services which support the survey process, such as naval architects, shipwright surveyors and marine electricians, will not be directly accredited by AMSA.

A workstream has been initiated on the qualifications of surveyors and the details of a national accreditation process.

6.4 Jurisdiction of national system surveyors and the role of class societies

In some jurisdictions, local surveyors are unable to perform certain surveys, for example surveys on vessels over 35 metres in length. Stakeholders sought information on whether this cut-off would apply under the national system, with vessels 35 metres or over in length being surveyed by classification societies.

Jurisdiction of surveyors – amendments to the Regulatory Plan

For new vessels, and existing vessels constructed to the NSCV, the deemed to satisfy solution under the NSCV Part C for the construction of vessels of 35 metres and over in measured length is design, construction and maintenance in accordance with the rules of a Classification Society.

However, an operator may present an equivalent solution to the regulator for assessment in accordance with the NSCV Part B. Sections 2.7.6 and 2.7.7 of Part B in particular provide information specific to Classification Society rules and the classification of vessels. Using this mechanism, some vessels may be surveyed by jurisdictions.

In addition, existing vessels 35 metres in length and over may not be classed and may (in some jurisdictions) be surveyed by the local authority. In accordance with the grandfathering arrangements outlined in the Regulatory Plan, these survey arrangements would continue.

No change to the Regulatory Plan is recommended. The flexibility provided by the NSCV is appropriate given that there may be a few vessels over 35 metres that can be accommodated under the NSCV (such as barges) and need not be in class. For more complex vessels, the NSCV does not provide any suitable technical solution and as such, the vessel will be required to meet the rules of a Classification Society.

6.5 Survey fees and jurisdiction shopping

Stakeholders were concerned about the impact of the national system on the cost of surveys, particularly in jurisdictions where surveys are currently subsidised.

A related comment was the risk of 'jurisdiction shopping' if surveys cost less in some areas. This could potentially lead to delays if there was a significant demand on surveyors in some jurisdictions. However, it was acknowledged that the costs of transferring the vessel to another jurisdiction would most likely outweigh any difference in fees, and the risks of a serious impact from jurisdiction shopping were low.

Survey fees – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that fees will be set by service providers and thus may vary around Australia.

The risks of a significant level of 'jurisdiction shopping' for survey are considered low given the costs of moving vessels.

6.6 **Imported vessels**

At a number of the consultations, stakeholders requested information on how imported vessels would be treated. There was some concern regarding the lack of current recognition of vessels built to international standards.

Imported vessels – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This is an issue for the NSCV and NSAMS standards, rather than the Regulatory Plan. The submissions have been referred to the NMSC for consideration as part of its ongoing review and maintenance of the standards.

6.7 **Opting-in to survey**

A number of stakeholders asked whether the survey process would be available to vessels that are not required by the regulations to be in survey. Such vessels could include:

- Operators that, based on a risk-assessment of their operations, determine that survey is a means through which risks can be mitigated and elect to build their vessel in survey and to undertake periodic survey; and
- Vessels that are built for export. Building the vessel 'in survey' and selling it with an initial survey certificate can add considerable value to the vessel, even though the vessel would not remain in survey once exported.

Opting in to survey – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that a vessel may opt in to survey even if not required to be in survey under the National Law.

However, it will also be noted that service providers may elect to direct resources towards vessels that are required to be in survey if resources are limited.

6.8 **Vessel parts**

Stakeholders requested further information on how vessel parts would be approved.

Vessel parts – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue relates to the administration of the national system, and in particular to the future of the National Register of Compliant Equipment. The submissions have been referred to AMSA and the NMSC for consideration as part of its review of the National Register of Compliant Equipment.

6.9 **Fixed fire fighting equipment in Queensland**

At consultations in Queensland, stakeholders commented that fixed fire fighting equipment on board vessels was treated differently as compared to other jurisdictions. Stakeholders sought information on how fixed fire fighting equipment would be treated under the national system.

More specifically, stakeholders asked whether, if an engine on a Queensland passenger vessel

was replaced with an engine with more power, would a fixed fire-fighting system need to be fitted?

Fixed fire fighting equipment – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that the grandfathering arrangements applying to an existing vessel would be reviewed where the vessel was subject to an upgrade in service to the extent that, for the upgrade, the Authority requires all or part of the vessel to be investigated and verified that it meets prescribed standards.

The principles for identifying what constitutes an 'upgrade in service' outlined in the NMSC Guideline 'The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered' will be applied.

6.10 **Survey process**

Boat builders requested further information regarding the survey processes.

It was submitted that a builder should be able to build a hull prior to obtaining design approval, as this would allow the hulls to be built 'on spec'. The design is then worked out with the buyer and approved by the authority.

Private surveyors – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue relates to the requirements of NSAMS and the NSCV. Under NSAMS, a vessel cannot be built 'on spec' without design approval. When this occurs, the hull will often not meet the requirements of the NSCV. The submissions have been referred to the NMSC for consideration as part of its ongoing review and maintenance of NSAMS.

6.11 **Safety equipment requirements**

There was concern in Victoria regarding the application of Part C7A transitional requirements to the existing fleet.

Safety equipment requirements – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue relates to the current edition of NSCV C7A, not to the Regulatory Plan. The submissions have been referred to the NMSC for consideration as part of its ongoing review and maintenance of the standards.

6.12 **Tenders**

A number of stakeholders raised the issue of tenders, the definition of a 'tender vessel', and the appropriate category for tender vessels.

A tender may be over 7.5 m in length and might operate beyond sheltered waters (ie in operation areas A, B or C). Hence, under the Regulatory Plan, the tender would be in survey.

However, this would be a change from the current arrangements in some jurisdictions where the tenders are considered part of the mothership and only subject to survey as part of the survey schedule of the mothership.

Tenders – amendments to the Regulatory Plan

The Regulatory Plan has been amended to:

- Clarify that tenders will be treated in the same manner as other subsidiary vessels operating with a parent vessel.

- Introduce the following arrangements for parent vessels operating with subsidiary vessels:
 - Where a parent vessel, that is in survey, employs subsidiary vessels that are all stored on board the parent vessel when leaving its berth, an operator has the option of having the subsidiary vessels treated as part of the equipment of the parent vessel and assessed in accordance with the NSCV. This would result in a single certificate of survey and single certificate of operation covering both the parent and the subsidiary vessels. The safety management system for the parent vessel would need to encompass the specific risks associated with the subsidiary vessels.
 - Where a parent vessel, that is in Scheme NS, employs subsidiary vessels that are all stored on board the parent vessel when leaving its berth, an operator has the option of having the subsidiary vessels treated as part of the equipment of the parent vessel and assessed in accordance with the National Standard for General Safety Requirements for Vessels. A single certificate of operation would cover both the parent and the subsidiary vessels. The emergency preparedness plan for the parent vessel will need to encompass the specific risks associated with the subsidiary vessels.

The appropriate technical standards for tender vessels, and other subsidiary vessels, is an issue for the National Standards. The appropriate treatment (in terms of construction, equipment and other requirements) of subsidiary vessels is being considered by the NMSC.

6.13 **Displaying the certificate of survey**

Stakeholders asked whether or not a Certificate of Survey would need to be carried and displayed.

Displaying the certificate of survey – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended.

These issues relate to the administration of the national system. Workstreams have been initiated to develop the documentation and the detail of what must be carried and displayed. The submissions have been referred to these workstreams for consideration.

6.14 **Definition of crew and passengers**

Stakeholders asked whether extra crew carried on board a vessel were considered to be 'crew' or 'passengers'. This impacted on the standards that applied to the vessel.

Definition of crew and passengers – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended. This issue relates to the NSCV, not to the Regulatory Plan. The submissions have been referred to the NMSC for consideration as part of its ongoing review and maintenance of the NSCV.

However, it is noted that under the NSCV, 'extra crew' are likely to be considered to be 'special personnel'.

In the NSCV, crew is defined as:

all persons carried on board the vessel to provide navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation; or to provide services for other persons on board.

Special personnel are defined as:

all persons who—

a) have knowledge of safety procedures and handling of safety equipment on board;

- b) are not passengers, or members of the crew, or children under one year of age;*
- c) are carried on board in connection with the special purpose of that vessel, or because of special work being carried out aboard that vessel; and*
- d) are able bodied.*

And passenger is defined as

any person other than—

- a) the master and other members of the crew;*
- b) a person designated as special personnel; or*
- c) a child under one year of age.*

6.15 **Certificates of operation for vessels in survey**

One stakeholder submitted that an individual certificate of operation may not be required for every vessel in survey. For example, there may be some hire and drive vessels, for example, that are in survey due to their high risk, but as all undertake the same operation they could be subject to a single certificate of operation. Another stakeholder submitted that the certificate of operation should cover all vessels operated by an operator – regardless of whether the vessels are or are not in survey.

Certificates of operation for vessels in survey – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that a certificate of operation may cover multiple vessels in survey where the vessels and their operations are identical, and provided they operate in a single jurisdiction.

7. Comments on the requirements for scheme NS vessels

7.1 Proposal

Under the proposal, the following vessels would not be subject to survey under the national system, and would be in 'Scheme NS':

- New vessels identified as not subject to survey under NSAMS Section 4 Annex F; and
- Existing vessels not currently required to be in survey or in commercial registration, provided the vessel continues to meet the previous State / NT requirements, it remains within the same State/Territory and the risk of the operation does not increase.

The proposed requirements for vessels in survey under the national system:

- Existing vessels not in survey must obtain a certificate of operation by 2016. If an operation involves a number of similar vessels undertaking similar activities, the operation as a whole can be subject to one multi-vessel certificate of operation with each of the vessels listed on the certificate.
- Existing vessels will continue to be subject to their pre-existing standards, including crewing requirements, provided the vessel does not change its operations, is not modified and does not move its geographic area of operation. Existing vessels may be required to meet the equipment requirements of the General Safety Standard by 2016, or where relevant due to the size and operations of the vessel, the NSCV Section C7A transitional requirements.
- New vessels not in survey must obtain a certificate of operation and meet the new National Standard for General Safety Requirements for Vessels prior to entering into service. A declaration of compliance with the standard (as part of the application for the national certificate) will be required.
- All vessels must comply with the NSCV Part E, except in relation to existing vessels, Part E crewing requirements. However, the qualification requirements under pre-existing State and NT law will continue to apply. This could be a requirement to hold a general boating licence or similar, depending on the jurisdiction.

7.2 Support for the proposal

There was general support for the concept of a category of low risk vessels that would not be required to be surveyed under the national system. In most jurisdictions, the proposal largely reflected existing arrangements that were considered to be well-conceived.

7.3 Certificate of operation

The Regulatory Plan proposed that a single certificate of operation could cover multiple vessels within the one operation where those vessels operated in the same geographic area of operation and undertook similar activities.

Stakeholders sought more information on when a single certificate could cover multiple vessels, and in particular on what the 'same geographic area' meant.

Certificates of operation – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that a certificate of operation may cover multiple vessels not in survey where the vessels operate in a single jurisdiction.

As outlined above, a certificate of operation may also cover multiple vessels in survey where the vessels and their operations are identical, and provided they operate in a single jurisdiction.

7.4 **Cranes**

At the consultation sessions, one stakeholder noted that cranes were high risk and that vessels with cranes should be in survey even where the vessel is less than 7.5m and operates within sheltered waters.

Cranes – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended.

This issue relates to the requirements of NSAMS 4 Annex F. Under NSAMS 4 Annex F, a vessel under 7.5m in length, in sheltered waters, is only in survey where the vessel's crane or davit exceeds 3 tonne in lifting capacity. This issue has been referred to the NMSC for consideration.

7.5 **Research vessels**

Under the Regulatory Plan, research vessels (vessels owned or operated by universities, government departments and other organisations which are primarily used for research purposes) would either be in survey or in Scheme NS depending on the vessel's operations and size.

Stakeholders submitted that this was unsatisfactory. Stakeholders were concerned that, if a research vessel was in survey, the vessel would need to be crewed by persons with commercial qualifications. Given that research vessels are predominantly crewed by persons with recreational boating licences only, this requirement would impact significantly on the sector. This would also be a departure from the current requirements in some jurisdictions, which allow research vessels to be operated by holders of recreational boating licences.

An additional concern was whether the operators would be able to self-assess the inspection of small commercial vessels in order to renew its certificate of operation.

Current treatment of research vessels in Queensland

A large proportion of research vessels operating in Australia operate in Queensland.

Currently, vessels in Queensland operated by a university or government department or instrumentality are not required to be in survey provided they are under 6m in length and are operated by a person with a recreational boating licence (Queensland, other Australian jurisdiction, or international boating licence).

Vessels over 6m are required to have an initial certificate of compliance in order to operate. This means that the vessel has been verified as meeting the applicable standards. However, a self declaration of ongoing compliance is all that is required.

Research vessels – amendments to the Regulatory Plan

No amendments to the Regulatory Plan are recommended.

Research vessels will be subject to the general requirements.

However, there is the flexibility in the system to manage lower risk operations through equivalent solutions. For example, a safety management system could pose alternative solutions to survey, the NSCV and the crew certification requirements, where it is demonstrated that the risks are otherwise managed. The grandfathering arrangements (for construction, survey and crewing) will also be available for existing research vessels.

7.6 **Vessels used in organised sporting events**

The definition of 'domestic commercial vessel' has evolved over time, as set out in Chapter 3.

Stakeholders raised concerns with the capture and treatment of sporting vessels under the earlier definitions of 'domestic commercial vessel', noting that the construction of a competitive yacht

was incompatible with commercial vessel standards.

Stakeholders also submitted that the current State and NT differences were problematic and that a nationally consistent approach to these vessels should be adopted.

Vessels in organised sporting events – amendments to the Regulatory Plan

As outlined in Chapter 3 of this report, vessels owned / operated by:

- Primary or secondary schools; or
- Community groups,

are excluded from the National Law, unless they are undertaking prescribed activities or being used for a prescribed purpose. The list of prescribed activities and purposes will be subject to further consideration and consultation as part of the development of the regulations; however it is currently envisaged that the following activities and purposes are likely to be prescribed:

- Vessels operated by volunteer search and/or rescue organisations. However, a privately owned recreational vessel that is used incidentally as a volunteer search and rescue vessel is not subject to the National Law;
- Vessels used as a hire and drive vessel by members of the public (ie by non-students where the vessel is operated by a school and non-members where the vessel is operated by a community group);
- Vessels used as commercial charter vessel to transport non-students or non-members for financial or other consideration;
- Vessels operated by a school and used in connection with any non-curricular, commercial activity;
- Vessels operated by a community group and used for any non-community group related commercial activities;
- Vessels operated by a community group that is designed to operate in competition with commercial vessels; and
- Vessels operated by dive clubs.

The definition of 'community group' is under consideration, however it will encompass the concept of a formalised association (an incorporated body, an unincorporated association or a body established by legislation) which is non-profit.

This means that most vessels used for sporting activities will not be subject to the national law, either because the vessel is not being used in connection with a commercial purpose, or because the vessel is being operated by a school or a community group.

However, sporting vessels which are captured by the National Law will be subject to the general requirements. Sail training vessels less than 24 metres and operating in inshore waters will be subject to Scheme NS. In addition, there is the flexibility in the system to manage lower risk operations through equivalent solutions. For example, a safety management system could pose alternative solutions to the applicable standards, where it is demonstrated that the risks are otherwise managed.

7.7 Powered school vessels

The definition of 'domestic commercial vessel' has evolved over time, as set out in Chapter 3.

Stakeholders raised concerns with the capture and treatment of school vessels under the earlier definitions of 'domestic commercial vessel'.

Marine Teachers Association of Queensland

On behalf of our 350 members and 120 schools and organisations who instruct over 3500 students in Powerboating each year...vessels registered in the name of the Catholic Education Office, Independent Schools and the Department of Education and Training [should be classified as recreational vessels].

Our argument is based around a simpler, safer and better system.

Simpler because it is a form communicated to the general public.

Safer because our students learn recreational skills and equipment used in their recreational licence.

Better because Ministers of Education, Director Generals, Workplace Health and Safety Education Officers, Directors of School Boards Accreditation boards and Authorities, school principals, heads of department and teachers who have NO COMMERCIAL MARITIME BACKGROUNDS can understand what is required to keep our kids safe in tinnies in possibly Australia's BEST tinny training program.

Powered school vessels – amendments to the Regulatory Plan

As outlined in Chapter 3 of this report, vessels operated by primary or secondary schools are excluded from the National Law, unless they are undertaking prescribed activities are being used for a prescribed purpose. This means that the majority of vessels operated by schools will not be subject to the National Law, and will instead be subject to State and Northern Territory recreational boating laws.

The list of prescribed activities and purposes will be subject to further consideration and consultation as part of the development of the regulations; however it is likely to capture:

- Vessels used as a hire and drive vessel by members of the public (ie by non-students);
- Vessels used as commercial charter vessel to transport non-students for financial or other consideration; or
- Vessels used in connection with any non-curricular, commercial activity.

School vessels which are captured by the National Law will be subject to the general requirements. However, there is the flexibility in the system to manage lower risk operations through equivalent solutions. For example, a safety management system could pose alternative solutions to survey requirements or the applicable standards, where it is demonstrated that the risks are otherwise managed.

7.8 Grandfathering of crewing arrangements for NS vessels

As outlined above, existing vessels in Scheme NS will continue to be subject to their pre-existing standards, including crewing requirements, provided the vessel does not change its operations, is not modified and does not move its geographic area of operation. The Regulatory Plan noted that crewing requirements would be grandfathered where 'these had been specified on the vessel's pre-existing certificates'.

Stakeholders noted that crewing requirements are often contained in regulations, rather than the vessels' certificate or registration. In addition, stakeholders noted that the existing arrangements may not be appropriate, and the national system would provide an opportunity to review these arrangements.

Grandfathering of crewing arrangements for NS vessels – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that:

- Where crewing is contained in regulations, these will also be grandfathered for existing vessels; and
- The marine safety authority issuing the national certificate of operation on behalf of AMSA will have the power to review the existing crewing and qualification requirements applying to the vessel where appropriate.

8. Comments on the requirements for 'other' vessels

8.1 Proposal

'Scheme O', the 'other vessels' category, covers specified types of new and existing vessels for which there is no nationally agreed standard or regulatory treatment. Because more work is required before a national standard or regulatory treatment can be agreed, it was proposed that, for a transitional period, these specified vessels will continue to be subject to the applicable pre-existing State or Northern Territory requirement(s). This includes the State / NT crewing and competency requirements.

The following vessel types were proposed to be included in Scheme O:

- Waterski/wakeboard towing vessels with inboard engines;
- Syndicated boats;
- Ferries in chains;
- Volunteer search and rescue vessels;
- Unpowered barges;
- Heritage vessels operated by a museum for staff or member use only;
- Submersibles and WIG craft; and
- Novel vessels where the NSCV does not include an appropriate technical solution.

Under the proposal, new vessels in this category would be required to have a certificate of operation and vessel identification. Where the vessel is required to be in survey, it must also have a certificate of survey. Vessels in survey cannot be part of a multi-vessel certificate of operation.

Existing vessels would be required to obtain new national certificates when their existing certificates were up for renewal or revalidation, by 2016.

8.2 What will happen after 2016 for Scheme O vessels?

The major issue raised by stakeholders at consultations was the future of the vessels under the national system – how the vessel would be treated after 2016.

Industry was particularly concerned about the treatment of heritage, volunteer search and rescue vessels (including vessels commandeered for search and rescue purposes), and syndicated vessels, and requested more certainty regarding the likely future regulatory treatment of these vessels and operations, including on the qualifications that will be required to operate volunteer search and rescue vessels. As the volunteer search and rescue sector relies on recreational boating volunteers, stakeholders strongly advocated maintaining the current requirement (in most if not all jurisdictions) for operators to hold recreational boating licences.

Heritage vessels – amendments to the Regulatory Plan

The Regulatory Plan has been amended to provide the following:

Existing arrangements will be recognised for existing heritage vessels. For heritage vessels entering the fleet after the commencement of the national system, the following arrangements will apply.

A heritage vessel is one where:

- The applicant has demonstrated to the National Regulator that the vessel is a vessel of historic significance; and
- The vessel is owned and operated by a reputable not-for-profit organisation which is a full

institutional member of the Australian Maritime Museums Council.

A list of vessels accepted as 'heritage vessels' will be gazetted under the regulations.

Once accepted as a heritage vessel, the vessel will be subject to the following requirements:

1. The requirement to submit a vessel management plan at the outset of the reconstruction of the vessel. The vessel management plan will detail:
 - o the history of the vessel and its significance;
 - o the standards to which the vessel was built (if any formal standards were used);
 - o the vessel's proposed use and operating profile;
 - o a detailed evaluation of the vessel's current condition and fitness for purpose for the proposed use and operating profile of the vessel, based on a report from an independent surveyor;
 - o the areas in which the vessel will not be compliant with the current applicable standard (ie the NSCV) and how these non-compliances are to be managed from a safety perspective; and
 - o the future repair and maintenance plan for the vessel.

The vessel management plan must be certified by an independent nationally accredited surveyor with appropriate heritage vessel experience, knowledge and skills. Once submitted to the National Regulator, the vessel management plan will form the basis of the future repair and maintenance of the vessel, with any subsequent changes to the vessel management plan also being submitted to the National Regulator.

2. The requirement to submit a safety management system to the National Regulator prior to the vessel entering service. The safety management system must meet the requirements of Part E of the NSCV and identify:
 - o the areas in which the vessel is not compliant with the current applicable standard (ie the NSCV) and how these non-compliances are to be managed from a safety perspective. This includes the extent to which the vessel will meet the equipment requirement of Part C Section 7 of the NSCV;
 - o the minimum crewing levels;
 - o the qualifications to be carried by the master and the crew of the vessel, including initial and ongoing training requirements for of the crew;
 - o the survey / inspection regime for the vessel; and
 - o how passengers will be informed of the standard of the vessel. This may include providing a warning to all fare-paying passengers before they embark the vessel and/or a requirement to display a notice of exemption from some requirements of the national law and standards.

A certificate of operation permitting the vessel to operate will be issued based on an acceptable safety management system.

Volunteer search and rescue vessels – amendments to the Regulatory Plan

There are two broad categories of volunteer search and rescue operations:

- Operations where the vessels are managed by the search and rescue organisation, but manned by volunteers; and
- Operations where the vessel is owned by the volunteer and is normally operated recreationally. As outlined above, these vessels are excluded from the definition of

commercial vessel and as such are not subject to the National Law. They usually respond to low risk situations (such as assisting when a vessel runs out of fuel).

The Regulatory Plan has been amended to clarify that volunteer search and rescue (VSR) vessels that are within the scope of the National Law are not subject to Scheme O and will be subject to the general certification and survey requirements. This means that new VSR vessels that are over 7.5 metres or that operate in A, B or C waters will be subject to survey and the NSCV (including the commercial crewing requirements). The current arrangements for existing VSR vessels will be grandfathered in accordance with the proposed grandfathering provisions outlined in Chapter 4.

Syndicated vessels

The Regulatory Plan has been amended to clarify that syndicated vessels are not subject to Scheme O. Syndicated vessels are similar in operation and risk profile to bareboat hire and drive vessels. As such, these vessels will be subject to the general requirements, ie:

- New vessels less than 7.5m in sheltered waters will be subject to the General Safety Requirements Standard, local crewing requirements and the NSCV Part E operating requirements; and
- New vessels greater than 7.5m or in C waters will be subject to the NSCV Part F and NSAMS. The NSCV Part F has requirements tailored to syndicated vessels. Under Part F, the vessels must be crewed by persons with recreational qualifications.

The grandfathering arrangements will be available for existing vessels. Operators of existing syndicated vessels must obtain a Certificate of Operation for the vessel(s) by 2016.

9. Comments on the proposed certification arrangements

9.1 Proposal

Under the Regulatory Plan, certificates of competency will be issued based on Part D of the NSCV after the commencement of the national system, with NSCV Part D being reviewed prior to this date.

In regards to existing certificate holders:

- Existing State and Northern Territory crew qualifications will be recognised provided the crew do not move location or the operation changes (consistent with other arrangements in this Regulatory Plan); and
- Where certificates expire, or where a certificate holder wishes to change their operations or move interstate, an equivalent national certificates will be issued using the processes for renewal and revalidation under Part D. For certificates issued prior to the USL Code, the training and qualifications of the holder would be assessed before a national certificate was issued.

9.2 Support for reform

There was substantial support for a national approach to the certification of crew. This aspect of the proposal was considered by many stakeholders to be the most important part of the reform.

Western Towage

The present system is an HR nightmare because it is hard to determine what qualifications people have: you don't want to fly them to Dampier only to find out that they aren't appropriately qualified.

Stakeholders (and in particular the fishing industry) also supported the separation of the reform of near coastal certificates from the reform of Marine Order Part 3 certificates (ie the certificates that will be required for vessels operating under the Navigation Act). These stakeholders suggested that the need to transition from near coastal to MO3 certificates was overstated; the vast majority of near coastal certificate holders remained on near coastal vessels throughout their careers.

Commonwealth Fisheries Association

CFA strongly recommends that as the separate process proposed for new NSCV Near Coastal Qualification Standard (under development by the National Marine Safety Committee) differs from the proposal (Tinny to Tanker) promoted until recently.

However, other stakeholders maintained that there was a strong need for a clear pathway from near coastal to MO3 certificates to provide certificate holders with greater opportunities for work.

These issues will be addressed through the review of Part D of the NSCV.

9.3 New qualifications structure: review of Part D of the NSCV

There was a strong interest around the country in the revision of Part D.

National Seafood Industry Alliance

The impact of the reform of Part D is particularly important for the fishing industry and we would seek a review as soon as possible. NSIA recognises that a range of vessel developments and improvements, including electronic navigational aids, increases in engine power not size and other labour saving devices, affect vessel crewing requirements (potentially fewer than more) without impairing safety outcomes.

Areas of particular interest to stakeholders included:

- The new certificate structure (for example: will Master Class 5 certificates continue to be issued?);
- Areas of operation permitted by the certificates;
- Renewal / revalidation requirements;
- The ability to move from a near coastal certificate to an STCW certificate;
- The recognition of international certificates;
- The future of fishing specific qualifications;
- The recognition of sailing / yachting specific qualifications;
- Single and combined engine power;
- Dual qualifications, to allow a skipper to carry out engine maintenance;
- Examinations for linguistically or numerically challenged seafarer;
- Sea service, and the recognition of time spent on recreational vessels and recreational training vessels;
- Sea service for revalidation, and how sea service for joint qualifications would be recognised;
- Renewal and revalidation processes, including medical certificate requirements;
- The potential for new, small and low-risk vessel certificates (similar to restricted coxswains certificates currently issued by the States and NT);
- STCW certificates of safety training – when these would be required;
- Whether the new qualifications structure will take account of the vessel's equipment- eg radar training;
- Restrictions on certificates;
- General purpose hand qualifications;
- Inland waterway qualifications;
- Recognition of prior learning;
- Reforms to the Vocational Education and Training Package system;
- Examinations, including whether these will be conducted by the regulator or by RTOs; and
- Recognition of pre-USL Code tickets, such as Certificates of Services.

Milton Miller – Charles Darwin University

At the uni we train Indigenous Sea Rangers to qualify for a state based Certificate of Competency. This training course is specifically designed for people with low literacy and numeracy levels. It is also suitable for recently arrived fisherman working on inshore fisheries. The Sea Ranger program in the NT has expanded a great deal in the last ten years and shows no sign of slowing down. There is bound to be a degree of contact between the Sea Rangers of the Northern Territory, the Kimberleys and Cape York. It would be an advantage if these certificates could be standardised.

The detailed proposal for the revision of Part D has now been released (the National Crew Certificates – Proposed Requirements). These issues have been referred to that consultation process.

9.4 **Registered Training Organisations**

Stakeholders were concerned about the oversight of Registered Training Organisations (RTOs), questioning why there was such a disparity between the length and cost of courses for the same

qualifications between different providers.

This issue has been referred to the consultation on the National Crew Certificates – Proposed Requirements. In addition, a workstream has been initiated regarding the development of national accreditation requirements for RTOs.

9.5 **Crewing requirements**

Crewing is currently determined differently in each of the jurisdictions: some maintain crewing committees; in others, the regulator determines crewing or minimum crewing levels are set out in regulation; and in another, the operator is responsible to determining the safe crewing level. However, most jurisdictions apply Part D crewing levels as the basis for the determinations or regulation.

Stakeholders asked how crewing would be determined under the national system, with stakeholders emphasizing that changes to crewing would have the greatest impact on operations.

Other comments on crewing requirements included:

- Stakeholders in Queensland were also concerned that the national system would lead to increased crewing requirements (for new vessels) to align with the rest of Australia;
- Stakeholders expressed frustration at current inconsistencies in decisions of crewing committees;
- Stakeholders asked whether the crewing level would be dependant on the number of passengers on a vessel; and
- The need for the definition of ‘crewing’ needed to account for the distinction between safe crewing and operational crewing.

Crewing requirements – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that crewing requirements would be determined in accordance with Part E of the NSCV, which is currently being amended to include the crewing level requirements. The process of determining the adequate crewing level for each vessel will occur through the issuance of the certificate of operation.

The development of the administrative arrangements to support the national system will include further consideration of how crewing is determined.

9.6 **A certificate or a licence?**

One stakeholder questioned the value of the title “National Seafarer Certificates.”

Maritime Union of Australia

In our view it misleading and inconsistent with the Australian Government accepted nomenclature of the AQF and National Occupational Licensing system to use the term Certificates of Competency or National Seafarer Certificate to describe a document recognising that the holder has met the requirements for the specified grade and permitting the holder to serve on a vessel as a crew member in the capacity of master, officer or crew member with deck and/or engineering responsibilities. Even that language is misleading and possibly incorrect.

...In our view what is being described in Table 2, currently called a Certificate of Competency, is in fact an occupational license (often described colloquially in the industry as a “ticket”).

This issue will be addressed through the consultation on the National Crew Certificates – Proposed Requirements, and the submissions have been referred to that process. It is noted that, under the National Law Bill, the title ‘Seafarer Certificate’ has been changed to ‘Certificate of Competency’.

9.7 **A national recreational boating licence**

Given that some commercial vessels would be able to be operated by holders of recreational boating licence (for example, hire and drive vessels and some vessels not in survey), stakeholders asked whether a national recreational boating licence would be established to support the national system.

Recreational boating licence – amendments to the Regulatory Plan

No amendment to the Regulatory Plan recommended.

A national recreational boating licence will not form part of the reform. Recreational boating licences fall within the scope of State and Northern Territory recreational boating laws.

9.8 **Local knowledge requirements**

Stakeholders sought information on how local knowledge requirements would be managed under the national system.

Local knowledge endorsements – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that local knowledge endorsements will continue to be required under the national system.

Local knowledge endorsements will be managed by the State and Territories under their waterway management legislation. As the States and Territories are providing services under the national system on behalf of AMSA, the current seamless arrangements will remain.

9.9 **Qualifications to train recreational boaters**

Stakeholders requested more information on the qualifications that would be required to train recreational boaters.

Qualifications to train recreational boaters – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that vessels that are used by sailing schools, registered training organisations, and the like, when training members of the public to gain recreational boating qualifications on a fee for service basis are in Scheme NS, provided the vessels are less than 24 metres in length and operate only in inshore operations. Inshore operations include operations laterally along the coast from the base or regular port of departure, and within a limit of 15 nautical miles to seaward of the coast or of designated sheltered water limits; or within such lesser limits as may be specified.

Persons on such vessels for training purposes are not considered to be passengers for the purpose of the Regulatory Plan.

Recreational boating qualifications include those associated with gaining a licence to operate a motorised recreational vessel and those recognised by a sporting body (such as the Royal Yachting Australia (RYA) qualifications overseen by Yachting Australia). These training vessels could be of any length up to 24 metres and may operate in waters beyond those designated as smooth or partially smooth, provided the vessels undertake only inshore operations.

As these vessels are in Scheme NS:

- The vessels are not subject to initial or periodic survey. Instead, declarations of initial and ongoing compliance to the applicable standards will be required; and
- One certificate of operation need only be obtained for the fleet of vessels not in survey owned or operated by a recreational training organisation.

The appropriate crewing and crew competency requirements for recreational training vessels in Scheme NS are under consideration

10. Other issues raised by stakeholders

10.1 Interaction with occupational health and safety laws

A number of stakeholders asked for more information regarding the interaction between the National Law and occupational health and safety laws, particularly given the current national reform of OHS law.

Concerns included:

- The requirement to identify occupational health and safety representatives;
- Whether transport inspectors would be occupational health and safety inspectors also, to reduce the cost to industry of inspections; and
- Whether the definition of commercial vessel under the National Law would impact on the application of occupational health and safety requirements (ie if a vessel is subject to the commercial vessel National Law, will it automatically be subject to OHS laws?)

Interaction with OHS law – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that the National Law will apply alongside State, Territory and/or Commonwealth occupational health and safety (OHS) law, just as it does now, and that the definition of commercial vessel and application of the National Law will not impact on the application of OHS law.

The administration of marine safety and OHS law currently varies between jurisdictions. In some jurisdictions, marine safety regulators conduct OHS inspections on behalf of the worksafe authority. In other jurisdictions, the inspection processes are independent. The national system will not impact on these arrangements in the near future. However, further work could be done to consider how the arrangements could be streamlined going forward.

The model OHS Act, which will apply around Australia, does not significantly alter the duties and responsibilities applicable to commercial vessels as workplaces. According to the RIS on the model OHS Act, “the implementation of the model OHS Act will not significantly change current OHS responsibilities”. However, some proposed changes, such as those relating to incident notification, record keeping, administrative procedures and the definition and management of confined spaces, could impact on the maritime industry. The impact of the model OHS law varies between jurisdictions and worksafe agencies in each State and Territory have published documents outlining the key differences between the current OHS laws and the model law.

10.2 Application of OHS duties

Stakeholders asked whether the general safety obligations were required given the duties under OHS law, and requested guidance, in due course, on what would constitute meeting occupational health and safety and the general safety obligations in a maritime context.

Maritime Union Australia

We welcome the advice that an important feature of the National Law will be the creation of General Safety Obligations (GSOs) to encourage the development, maintenance and continuous improvement of a safety culture by all parties. We also welcome the fact that the GSOs will require that the duty holders do all that is reasonably practical to ensure the safety of commercial vessels and of persons on board as well as the safe design and operation of commercial vessels.

OHS duties – amendments to the Regulatory Plan

The Regulatory Plan has been amended to note that OHS duties apply alongside the General Safety Obligations.

OHS duties are predominantly designed to protect crew on board a vessel. The General Safety Obligations are designed to protect all those engaged in the maritime industry, including the general public. In addition, the General Safety Obligations are tailored to the maritime environment, while OHS duties apply equally to all kinds of workplaces.

Notwithstanding the differences, there is clearly an overlap between the OHS duties and the General Safety Obligations. To remove confusion, the duties have been aligned as far as possible, while ensuring that the General Safety Obligations remain tailored to the maritime environment.

The general safety obligations were subject to extensive consultation through the consultation on the National Law Bill which occurred in early 2012.

10.3 **Safety management**

Stakeholders sought further information on safety management requirements under the national system.

Questions included:

- Is there an intention to require domestic commercial vessels to maintain safety management systems similar in structure to that those that deep water vessels require under the international standards (ie the ISM Code)?
- Would external audits such as ISM audits would be acceptable in lieu of a national system audit of safety management?
- Will more information be provided on how the level of risk of an operation will be checked and analysed?

Safety management – amendments to the Regulatory Plan

The Regulatory Plan has been amended to note clarify the application of Part E operational requirements.

Part E applies to all vessels and will identify what safety management document is required for different vessel operations. Part E is currently being revised and will be available for public comment in the coming months. The revised Part E will include detail on the degree of documentation required, how risks should be assessed and addressed and what oversight will be provided by the regulator.

10.4 **Vessel identification**

Information was sought by stakeholders on the content of the vessel identifier.

One stakeholder submitted that the Hull Identification Number (HIN) should be used as the basis for the future vessel identification scheme. Many commercial vessels are sold for recreational use later in life, at which point they must have a HIN. Applying the HIN to all commercial vessels would ensure that the vessel was tracked over its life.

In addition, stakeholders also questioned the need for vessel identification for all vessels – for example, canoes or ‘tubes’ for white water rafting may not require individual vessel identification.

Vessel identification – amendments to the Regulatory Plan

The HIN (or Craft Identification Number (CIN)) is a unique series of characters and numbers conforming to ISO 10087:1995(E). The HIN/CIN is an initiative of ICOMIA, the international recreational boat building industry body, and issuing the HIN/CIN is managed by the BIAA in Australia, as the local member of ICOMIA.

For recreational vessels in some jurisdictions, a HIN/CIN is required when the boat is first

registered and upon change of ownership. It is also displayed on the Australian Builder's Plate (ABP) for the vessel. The HIN/CIN provides a means of identifying stolen boats and is primarily used for this purpose, although it is also valuable for the compliance and enforcement of recreational boating or consumer protection laws (such as enforcement of the ABP Standard).

There are a number of issues associated with extending the HIN/CIN to commercial vessels. The vast majority of commercial vessels do not currently have a HIN/CIN. Adding commercial vessels to the HIN/CIN regime could make the system unworkable. However, there is significant merit in building on existing systems.

The Regulatory Plan has been amended to include further detail on the proposed vessel identification arrangements, including the following:

- State / NT identification regimes will continue to operate until 2016, and will be recognised as national vessel identification at least until the end of 2016.
- The issue of vessel identification is being considered further and will be subject to a separate consultation process in the period 2012-2015. The aim is to have a national registration scheme in place in 2016. There is considerable merit in building on any existing vessel identification systems. This means that any unique identifier that is already attached to a vessel may meet the vessel identification requirements under the National Law, including HIN/CIN where relevant. However, this will be considered in more detail as the supporting administration and operational systems are developed.
- Through this process, further consideration will also be given to any appropriate exemptions from the vessel identification requirement – in particular for small hire and drive vessels.

10.5 **Future of the Shipping Registration Act**

All commercial vessels over 24 metres in length must be registered under the Shipping Registration Act. All other vessels have the option of obtaining registration.

SRA – amendments to the Regulatory Plan

Registration under the Shipping Registration Act provides evidence of nationality (particularly important for vessels on overseas voyages). It also provides an indication of ownership which is used by vessel owners to obtain finance. A number of stakeholders noted the importance of the Shipping Registration Act and recommended that it remain in place after the national system comes into effect.

In addition, a vessel that is registered under the Shipping Registration Act receives a unique identifier (an Official Number) that stays with the vessel for the life of the vessel (or for so long as the vessel is an Australian vessel). Stakeholders suggested that the Official Number could form the vessel identification under the National Law.

As outlined above, the requirements for vessel identification are still being determined. However, as also noted above, there is considerable merit in building on existing systems. This means that an Official Number could also be the vessel identification under the National Law.

The Regulatory Plan has been amended to note that, as part of the further consideration of vessel identification, the potential to recognise a vessel's Official Number as the vessel identification under the National Law will be considered.

10.6 **Certificates of operation**

The certificate of operation is a new concept in the maritime space, and stakeholders requested further information regarding the process for application, the evidence that will be required, and the costs involved. Stakeholders also sought information on whether and how the certificate of operation would mandate minimum crew numbers.

Certificates of operation – amendments to the Regulatory Plan

The Regulatory Plan has been amended to provide the following further information regarding the certificate of operation.

At the commencement of the national system, it is envisaged that the Certificate of Operation will contain:

- issue date / expiry date
- the vessel's or vessels' ID(s) and name;
- the vessel's or vessels' operating class(es);
- the vessel's or vessels' operational area(s);
- restrictions on the vessel's geographic area of operation;
- the vessel's or vessels' length(s);
- whether or not the vessel is (or vessels are) required to hold a survey certificate; and
- (where relevant) crewing (number of crew and duties).

The process for including minimum crew on the certificate of operation will be contained in the revised Part E of the NSCV (currently being considered by the NMSC). This issue has also been referred to the consultation on the National Crew Certificates – Proposed Requirements.

The requirements for safety management documentation are currently being considered through two NMSC processes: the revision of Part E of the NSCV and the development of NSAMS Section 6. Until these are complete, existing jurisdictional requirements for safety management documentation will continue.

Where vessels change the nature of their operations or are significantly modified, it will be necessary to apply for a new certificate of operation or for an amendment to the existing certificate of operation.

The fee for the certificate of operation will be set by the issuing jurisdiction.

As outlined above (at sections 6.15 and 7.3), the Regulatory Plan has been amended to clarify that a certificate of operation may cover multiple vessels not in survey where the vessels operate in a single jurisdiction, and multiple vessels in survey where the vessels and their operations are identical, and provided they operate in a single jurisdiction.

10.7 Future of the NMSC

Stakeholders sought information on the future of the NMSC.

Future of the NMSC – amendments to the Regulatory Plan

The Regulatory Plan has been amended to include a note on the future of the NMSC.

The NMSC will continue to exist until the commencement of the national system, which means that current reviews NSCV standards (including Part D and Part E) are being and will continue to be managed by the NMSC. From commencement of the national system, AMSA will be responsible for maintaining and developing the NSCV.

In order to ensure a smooth transition to the national system in 2013, AMSA now has the function of supporting the NMSC. In other words, the functions of the Sydney-based NMSC secretariat have been transferred to AMSA.

10.8 **National database**

Stakeholders also asked for information regarding the plans for a national database, and emphasized the need for jurisdictions to be able to access data on all domestic commercial vessels operating in Australia, regardless of where they obtain their certificate of survey or operation.

However, stakeholders acknowledged the costs associated with a national database, and suggested alternatives, including:

- A requirement that vessels carry a prescribed set of documentation; and
- A national database warehouse.

National database – amendments to the Regulatory Plan

The Regulatory Plan has been amended to note that different options for a national database are currently being considered. A fully-functioning national database is unlikely to be in place until 2016.

The Regulatory Plan has been amended to note that options for a national database are currently being developed for consideration by all jurisdictions. Arrangements are under development that would allow access by the National Regulator to data holdings of jurisdictions in the initial years of the national system.

10.9 **Fees**

Stakeholders were particularly concerned about fees under the national system. Common questions included:

- Would fees be standardised around Australia?
- Would fees increase to cover AMSA's role as national regulator?
- How will fees be set and monitored?

Fees – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that the service provider will set the fees. This means that where a State / NT issues a certificate of operation or survey, they will set the fee for doing so. AMSA will not play a role in setting or monitoring the fees

10.10 **Interaction with dangerous goods legislation**

Stakeholders sought further information on how the interaction between the National Law and dangerous goods legislation would be managed.

Interaction with dangerous good legislation – amendments to the Regulatory Plan

The Regulatory Plan has been amended to note that, as with occupational health and safety law, dangerous goods legislation will continue to operate alongside the national system and will not be disturbed by the reform in the near future. Further work will be done to consider how the arrangements could be streamlined going forward.

10.11 **Classification of operational areas under the national system**

Stakeholders suggested that operational areas have not been defined consistently around Australia. There was concern from a number of stakeholders that a review of operational area classifications would impact on their ability to continue to operate. As a result, the potential for AMSA to re-define waters (operational areas) was of significant concern to industry.

Classification of operational areas – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that operational areas will continue to be classified by the States and the NT as part of their waterways management legislation.

10.12 **Interaction with NOPSA**

One stakeholder submitted that, for the purposes of clarity and ease of understanding, definitions in the National Law should be consistent with Offshore Petroleum and Greenhouse Gas Storage Amendment Bill which is currently before Parliament.

Interaction with NOPSA – amendments to the Regulatory Plan

The National Offshore Petroleum Authority (NOPSA) is responsible for the regulation of occupational health and safety, wells and well operations, and the structural integrity of facilities and environmental management within Commonwealth waters.

Given the different focus of NOPSA and the National Law, definitions that are 'fit for purpose' may be appropriate.

10.13 **Arrangements for superyachts**

Stakeholders sought further information on how superyachts would be regulated under the national system.

Arrangements for superyachts – amendments to the Regulatory Plan

Not all superyachts in Australian waters will be subject to the National Law.

- Superyachts operating for recreational purposes are subject to State and Northern Territory recreational boating safety laws. A superyacht is operating for a commercial purpose if the operator of the vessel, or the crew employed to operate the vessel, gain financially from the operation of the vessel;
- Superyachts on an international voyage passing through Australian waters will be subject to the Navigation Act; and
- Superyachts that are foreign registered will be subject to the Navigation Act.

Other commercial superyachts operating in Australian waters will be subject to the National Law and will be in Scheme S (which means they will be in survey in accordance with NSAMS 4 and will be subject to the requirements of the NSCV).

10.14 **Current Victorian marine safety law reform**

Stakeholders in Victoria were concerned that the current Victorian review of the Marine Safety Act Victoria would be in contradiction to the national reform.

Victorian marine safety law reform – amendments to the Regulatory Plan

Changes to Victorian legislation that affect the commercial vessel fleet are intended to be consistent with the National Law.

10.15 **MARPOL**

It was submitted by a number of stakeholders that inconsistencies in the application of MARPOL would remain under the current proposal. Stakeholders were particularly concerned about different sewage, holding tanks and GBR requirements with regards to oil pollution.

MARPOL – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that MARPOL implementation will not be impacted by the National Law. However, this issue will be considered further in the future to identify any potential streamlining of the current arrangements.

10.16 **Interaction with fisheries and environmental legislation**

A number of stakeholders commented on the non-marine safety legislation that also governed the way they operated and asked whether this reform would impact on other laws, such as fisheries laws and environmental legislation.

Fisheries and environmental legislation – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that the fisheries legislation and environmental laws will not be impacted by the National Law.

10.17 **Reporting requirements**

Stakeholders asked how the reporting framework would work under the national system: would incident reports be made to the local jurisdiction or to AMSA directly?

Reporting requirements – amendments to the Regulatory Plan

The Regulatory Plan has been amended to clarify that incident reports will be made directly to the local marine safety agency. This ensures that the waterway management authority is aware of the incident.

Consultation on the reporting obligations for commercial vessel operators formed part of the consultation on the National Law Bill in early 2012.

10.18 **Owners or operators?**

Stakeholders asked whether the obligations applied to the vessel owner or to its operator.

Owners or operators – amendments to the Regulatory Plan

No amendments to the Regulatory Plan recommended.

Under the National Law Bill, the obligations apply to an 'owner' who is

- a person who has a legal or beneficial interest in the vessel, other than as a mortgagee; and/or
- a person with overall general control and management of the vessel. A person is not taken to have overall general control and management of a vessel merely because he or she is the master or pilot of the vessel.

However, a number of the obligations also apply to the Master, and other parties have general safety duties (such as builders, designers, crew and passengers).

10.19 **Permanently moored vessels and other structures**

Stakeholders sought further detail on how permanently moored vessels and other structures would be regulated, particularly on whether there would be any retrospective application of new standards or requirements to existing permanently moored vessels and other structures.

Permanently moored vessels and other structures – amendments to the Regulatory Plan

The Regulatory Plan has been amended to provide that permanently moored vessels (which are captured by the National Law) are in Scheme O. This means that existing State and Northern Territory requirements will continue to apply until 2016, when a national approach will be developed and implemented.

10.20 **Restricted use flags**

Restricted use flags are used in some jurisdictions to temporarily permit a vessel to operate prior to a certificate of survey being issued. Stakeholders asked whether this system would continue.

Restricted use flags – amendments to the Regulatory Plan

No amendment to Regulatory Plan recommended.

The National Law includes mechanisms for issuing temporary authorisations, equivalent to the current restricted use flags.

11. Summary of issues

Issue		Submissions / Comments	Discussion	Recommendations
A National, Cooperative Approach				
Commercial vessel definition	Research vessels	<p>Research vessels are not commercial by nature and should not be captured in the definition.</p> <p>Applying a commercial vessel law to research vessels would limit their ability to operate.</p>	<p>Research vessels are captured by the definition of commercial vessel contained in the NSCV and in current State and Territory marine safety legislation.</p>	<p>No change to definition.</p> <p>The requirements for research vessels must be tailored to the specific risks associated with these operations (see below).</p>
Commercial vessel definition	Volunteer research vessels	<p>Recreational vessels that assist with research on a volunteer basis are not commercial and should not be captured.</p>	<p>Recreational boats undertaking research for universities, fishery departments and so on, on a volunteer basis are not captured by the National Law and will remain under State and Territory recreational boating safety laws.</p>	<p>Clarify application of the national system to volunteer research vessels.</p> <p>Clarify that the attendance of a person in a professional capacity (to assist with the research activity) onboard a volunteer research on an ad-hoc basis would not make the vessel a commercial vessel for the purposes of the National Law.</p>
Commercial vessel definition	Volunteer rescue vessels	<p>Volunteer search and rescue vessels are not commercial by nature and should not be captured in the definition</p> <p>Applying a commercial vessel law to volunteer rescue vessels would limit their ability to operate</p> <p>Applying a commercial vessel law to volunteer rescue vessels would mean that OHS laws would apply to these vessels</p>	<p>Volunteer search and rescue vessels are captured by the definition of commercial vessel contained in the NSCV and in some current State and Territory marine safety legislation.</p> <p>The application of OHS law is not impacted by the application of the National Law.</p>	<p>No change to definition.</p> <p>The requirements for volunteer search and rescue vessels must be tailored to the specific risks associated with these operations (see below).</p> <p>Clarify that a privately owned recreational vessel that is used incidentally as a volunteer search and rescue vessel is not captured.</p>
Commercial vessel definition	Syndicated vessels	<p>Syndicated vessels are operated in the same manner and have the same risks as recreational vessels</p>	<p>Syndicated vessels are clearly operated for a commercial purpose. These vessels are captured by the</p>	<p>No change to definition.</p>

Issue		Submissions / Comments	Discussion	Recommendations
		and should not be treated as commercial vessels	definition of commercial vessel contained in the NSCV and in some current State and Territory marine safety legislation	
Commercial vessel definition	Powered school vessels	It was submitted that these vessels are already subject to risk-based management by schools and that their inclusion in the National Law would at unnecessary costs	Vessels operated by schools are excluded from the National Law, unless they are operated for prescribed purposes or activities. The list of prescribed purposes and activities will be subject to further consideration and consultation as part of the development of the regulations.	The definition of commercial vessel has evolved to exclude the majority of school vessels.
Commercial vessel definition	Sporting vessels	There are a number of sport-related vessels which will be subject to the national system, namely: sailing school operations, boats for hire and some yacht race vessels. Stakeholders acknowledged that these vessels operate on a commercial basis. However, stakeholders emphasised the need to apply appropriate risk-based requirements to these vessels.	Vessels owned / operated by: <ul style="list-style-type: none"> • Primary or secondary schools; or • Community groups, are excluded from the National Law unless they are undertaking prescribed activities or being used for a prescribed purpose. The list of prescribed activities and purposes will be subject to further consultation as part of the development of the regulations.	Due to changes to the definition of commercial vessel, the vast majority of sporting vessels will not be subject to the National Law because: <ul style="list-style-type: none"> • they are not being operated in connection with a commercial purpose; or • they are owned/operated by schools or community groups. Sporting vessels which are subject to the National Law will be subject to the general requirements.
Commercial vessel definition	Defence vessels	Vessels operated by the Australian Defence Force but crewed by civilians should be captured by the National Law	The circumstances in which defence vessel operate are significantly different to other commercial vessels. The risks are better known to the ADF than to marine safety regulators.	No change to definition.
Administration of the national system	Interpretation and application of standards across the	Consistent interpretation and application of standards across the country is essential.	This issue relates to the administration of the national system. Workstreams have been initiated to support consistency in	No amendments to the Regulatory Plan are recommended.

Issue		Submissions / Comments	Discussion	Recommendations
	country		outcomes.	
Administration of the national system	Support for local jurisdictions	Jurisdictions must have adequate resources to service the national system to ensure there are no additional delays in obtaining a survey.	These issues relate to the administration of the national system. Workstreams have been initiated to identify how services will be affected by the national system	No amendments to the Regulatory Plan are recommended.
Administration of the national system	Local issues	Will the National Regulator be able to take account of local conditions and issues	The ongoing service delivery by the State and NT will ensure that local issues are taken into account. In addition, the certificate of operations provides a mechanism through which requirements can be tailored to the local circumstances.	Regulatory Plan has been amended to make explicit: <ul style="list-style-type: none"> ▪ The certificate of operation will provide the flexibility required to manage local issues. ▪ Through the certificate of operation, the risks of an individual operation (and operational area) can be taken into account to identify solutions that achieve the same safety outcomes. ▪ The States and the Northern Territory will continue to manage their local waterways, including classifying waters.
Regulatory framework	Risk-based approach	Requirements under the national system must be based on risk.	A risk-based approach is achieved by implementing the national standards, including the national survey regime set out in NSAMS Section 4.	No change to Regulatory Plan
Interaction with the Navigation Act	Vessels that cross the EEZ & foreign Flagged vessels	Vessels that only sometimes cross the EEZ (ie fishing vessels) and foreign flagged vessels that operate for lengthy period within a jurisdiction (ie offshore oil and gas industry vessels) should be subject to the National Law and not the Navigation Act	These vessels have been operating under State / NT marine safety law. The impact of the Navigation Act requirements on these vessels would be significant.	The Regulatory Plan has been amended to clarify that: <ul style="list-style-type: none"> ▪ Australian vessels which were regulated under State or NT marine safety law prior to the commencement of the national system will be able to operate under the National Law through an exemption from the Navigation Act.

Issue		Submissions / Comments	Discussion	Recommendations
				<ul style="list-style-type: none"> ▪ Australian vessels entering service after the commencement of the national system, which intend to operate outside the EEZ but do not intend to undertake international voyages, will also be able to operate under the National Law through an exemption from the Navigation Act. ▪ All foreign flagged vessels and vessels that undertake international voyages (ie undertake a voyage to or from an international port) must comply with the Navigation Act. Appropriate transitional arrangements will be implemented for foreign flagged vessels that currently operate under State or NT marine safety law.
Administration of the national system	Vessels undertaking both commercial and recreational operations	How will vessels that move between commercial and recreational use be managed?	<p>Vessels current operate as both commercial and recreational vessels and will continue to do so under the national system.</p> <p>However, there needs to be clear mechanism for managing this. This could include, for example, an endorsement on the vessels certificate of operation that the vessel also operates for recreational purposes and/or a requirement to inform the local authority when the vessel is being operated for a recreational purpose.</p>	The Regulatory Plan has been amended to clarify that commercial vessels operating recreationally will be exempt from the requirements of the National Law provided they comply with local recreational vessel laws.
National Law	Offences under the National Law	<p>Would state / NT or federal courts hear offences under the National Law?</p> <p>Would the Commonwealth</p>	Consistency in decision making is vital and the competent courts and tribunals should draw from the one set of precedents.	No amendments to the Regulatory Plan are recommended. This issue was considered as part of the consultations on the National Law Bill in early 2012.

Issue		Submissions / Comments	Discussion	Recommendations
		Administrative Appeals Tribunal or the State Administrative Decisions Tribunals have jurisdiction?		<p>Offences could be heard by both State and Commonwealth courts.</p> <p>Only the Commonwealth AAT will hear appeals from administrative decision.</p>
Grandfathering arrangements				
Grandfathering arrangements	Definition of existing vessel	<p>Stakeholders supported the proposed definition of an 'existing vessel' (ie one which was registered, held a certificate of survey, or otherwise operated commercially within Australia at any point during the 24 months prior to the commencement of the national system).</p> <p>Other comments included:</p> <ul style="list-style-type: none"> ▪ Vessels ordered / contracted prior to the commencement of the national system should be classed as 'existing vessels'; ▪ There should be flexibility around 'type approvals', particularly where capital intensive equipment has been purchased for assembly line production; and ▪ There should be flexibility and discretion around the 24 month cut-off. For example, it may be appropriate to treat a vessel that has been out-of-service for a long period due to a modification that was delayed as existing vessel. 	<p>The '24 month' definition should be adopted, with allowances for vessels in the design and construction phase, type approvals and vessels that have been subject to a long-term modification.</p>	<p>The Regulatory Plan has been amended so that the definition of 'existing vessel' includes a vessel where the keel has been laid, or:</p> <ul style="list-style-type: none"> ▪ construction identifiable with the vessel has begun; and ▪ a portion of the vessel has been fabricated and finally assembled, having a mass of not less than 50 tonnes or 1 percent of the estimated mass of all structural material of the vessel as proposed to be completed, <p>prior to the commencement of the national system.</p> <p>In addition, a vessel for which an application for design approval has been lodged with a State or Territory marine safety agency prior to the commencement of the national system the keel has been laid, or:</p> <ul style="list-style-type: none"> ▪ construction identifiable with the vessel has begun; and ▪ a portion of the vessel has been fabricated and finally assembled, having a mass of not less than 50 tonnes or 1 percent of the estimated mass of all structural material of the vessel as proposed to be completed,

Issue		Submissions / Comments	Discussion	Recommendations
				<p>before the date that is 3 years after the commencement of the national system shall have the option of complying with the requirements in place prior to the commencement of the national system.</p> <p>An application for design approval includes an application for vessel design, plans or construction drawings approval; an application for new vessel construction; an application for the examination of vessel plans; an application for initial survey or a vessel survey application; and in Queensland, the completion, by an accredited designer, of a certificate of compliance for design in a form acceptable to Maritime Safety Queensland.</p> <p>Clarify that the State and NT agencies) will have the discretion to manage the transition for type approvals and existing vessels that have been out of service for longer than 24 months. AMSA will provide guidance on the application of this discretion to ensure national consistency.</p>
Grandfathering arrangements	NSAMS 4 Survey regime	<p>Existing vessels should have the option of transitioning to the NSAMS 4 survey regime (provided that the vessel meets an equivalent standard to that applicable to new vessels in the same class) but should not be required to do so where the vessel does not change its operations in a way that increases risk, does not undergo a significant upgrade and does not move interstate.</p> <p>A vessel should not be required to</p>	<p>The proposal for allowing existing vessels to move to the NSAMS 4 survey, but not requiring it, should be adopted.</p> <p>There should be greater flexibility for vessels to move to the NSAMS 4 survey regime. Only vessels currently in survey are likely to elect to transition to an NSAMS 4 survey regime. Vessels in survey are likely to meet a standard that is acceptable for the vessel to move to the NSAMS 4 survey regime,</p>	<p>An existing vessel may move to the NSAMS 4 survey regime after an assessment of the risks of the vessel by the State / NT marine safety agency on behalf of the National Regulator.</p>

Issue		Submissions / Comments	Discussion	Recommendations
		meet an equivalent standard to that applicable to a new vessel in order to access the NSAMS 4 survey regime.	however this would need to be confirmed by the State / NT marine safety agency on behalf of the National Regulator.	
Grandfathering arrangements	Are requirements grandfathered indefinitely?	Are survey, standards and crewing requirements grandfathered indefinitely, or for a specified period only?	The majority of stakeholders sought confirmation that their existing requirements would be grandfathered indefinitely. However, some stakeholders had safety concerns with the grandfathering arrangements and suggested it should be for a specified period only.	The Regulatory Plan has been amended to clarify that: <ul style="list-style-type: none"> ▪ The grandfathering arrangements will apply to the vessels for the foreseeable future; and ▪ The National Regulator will continually reassess the safety of the national fleet in light of incidents, emerging risks, changing technology and/or changing expectations. This would include reassessing grandfathered vessels in the future if the need arose.
Grandfathering arrangements	Pre-USL Code vessels	Stakeholders sought further information on how the assessment process will operate where an existing pre-USL Code vessel, or a vessel with exemptions to the USL Code or local equivalent solutions to the NSCV, seeks to relocate interstate.	The assessment process should focus on risks, rather than strict compliance to current standards.	The Regulatory Plan has been amended to clarify that: <ul style="list-style-type: none"> ▪ The assessment process would consider the risks of the vessel to identify any safety gaps arising from its non-compliance with the national standards. This would include consideration of the vessel's survey regime, and whether any alteration of the survey regime would be required to address risks; and ▪ The vessel would be assessed against the latest standards. The vessel would not necessarily be required to meet the modern standards. Rather, where there are safety gaps due to non-compliance with a standard, operational or other conditions may be applied to the

Issue		Submissions / Comments	Discussion	Recommendations
				vessel through the certificate of operation.
Grandfathering arrangements	Recognition of current activities	Stakeholders emphasised the need to grandfather all existing permissions – including interstate endorsements and recognitions of existing certificates.	The policy behind the grandfathering arrangements is that existing operators should not be adversely impacted by the reform. What an operator was legally permitted to do under the State and NT systems will be carried forward for that operator.	The Regulatory Plan has been amended to clarify that all existing recognitions (including interstate endorsements on certificates of competency and survey) will be recognised under the national system.
Grandfathering arrangements	Validity of perpetual certificate of competency where certificate holder has transitioned to a national certificate of competency	Perpetual certificates of competency should remain valid even where the holder obtains a national certificate of competency (because they wish to move interstate or change operations)?	<p>Currently, if a perpetual certificate holder receives an endorsement to operate in another jurisdiction, the perpetual certificate remains valid in the issuing jurisdiction even if the endorsement expires.</p> <p>Under the Regulatory Plan, if the holder of a perpetual certificate elected to move interstate they would need to transition to a national certificate. However, the Regulatory Plan was not clear on whether the perpetual certificate would be ‘swapped’ for the national certificate (and thus no longer be valid), or whether the perpetual certificate would continue to be valid where the holder operated in the issuing jurisdiction.</p>	This issue has been referred to the consultations on the National Crew Certificates – Proposed Requirements.
Grandfathering arrangements	Replacement vessels	Can a ‘replacement’ vessel could access the grandfathering arrangements that applied to the vessel it replaced? In particular, could the same crewing requirements be applied?	<p>A replacement vessel is a new vessel entering the fleet, and thus will be subject to the national requirements.</p> <p>However, crewing levels will be determined on a risk basis. There will be sufficient flexibility to determine an appropriate crewing level for a particular vessel</p>	The Regulatory Plan has been amended to make it clear that the grandfathering arrangements do not apply to replacement vessels.

Issue		Submissions / Comments	Discussion	Recommendations
			depending on its operations.	
Grandfathering arrangements	Sale of a vessel or operation	<p>What would constitute a ‘change in operations’ that would trigger a review of the grandfathering arrangements (ie would require the vessel to be assessed)?</p> <p>In particular, would the grandfathered requirements pass to the new operator if a vessel is sold?</p>	<p>The policy behind the grandfathering arrangements is that only changes that increase the risk of the operation would lead to a review of the grandfathering arrangements. Where the operations remain the same, and the risks do not increase, the grandfathering arrangements continue.</p>	<p>The Regulatory Plan to has been amended to make it clear that:</p> <ul style="list-style-type: none"> ▪ where an operation as a whole is sold, there is no change in operations that would trigger a review of the grandfathering arrangements; and ▪ where a vessel and the operation of the vessel changes, the grandfathering arrangements would be reviewed. <p>The Regulatory Plan to will also be amended to make it clear that only a change in operation that increases risk (determined in accordance with the principles contained in the NMSC Guideline ‘The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered’) would trigger a review of the grandfathering arrangements.</p>
Grandfathering arrangements	Modifications to vessels	<p>More information was sought regarding what modifications would trigger a review of the grandfathering arrangements.</p>	<p>The policy behind the grandfathering arrangements is that only changes that increase the risk of the operation would lead to a review of the grandfathering arrangements.</p> <p>The principles contained in the NMSC Guideline ‘The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered’ considers what changes increase risk; the principles contained in this guidelines should be applied.</p>	<p>The Regulatory Plan has been amended to change ‘modification’ to ‘upgrade in service’. This means that the grandfathering arrangements applying to an existing vessel would be reviewed where the vessel was subject to an upgrade in service to the extent that, for the upgrade the Authority requires all or part of the vessel to be investigated and verified that it meets prescribed standards.</p> <p>The principles for determining what constitutes an ‘upgrade in service’ are outlined in the NMSC Guideline ‘The</p>

Issue		Submissions / Comments	Discussion	Recommendations
				Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered'.
Grandfathering arrangements	Crewing	Crewing should not be grandfathered	This issue should be considered further once consultation on the proposed Certification Plan has been completed.	No amendments to the Regulatory Plan are recommended.
Transitional arrangements				
Free movement of existing vessels	Ability of existing vessels to transition to a national certificate that allows the vessel to move interstate	Existing vessels should be able to move freely around Australia. How will the assessment process work for an existing vessel that does not meet the USL Code or the NSCV and wishes to move interstate or change operations?	The proposal presents the greatest balance between risks and freedom of movement for existing vessels. The assessment process will be developed through workstreams considering the supporting administrative arrangements.	No amendments to the Regulatory Plan are recommended.
Vessels in survey				
Survey process	Consistency in survey outcomes	Survey outcomes, including design approval must be consistent around Australia Consideration should be given to establishing a single national office for design approvals, rather than jurisdictions conducting the design approvals on behalf of AMSA.	This issue relates to the administration of the national system, rather than the Regulatory Plan. Workstreams have been initiated to support consistency in outcomes.	No amendments to the Regulatory Plan are recommended.
Survey process	Accreditation of surveyors	How will marine surveyors be accredited under the national system? What about private surveyors in Queensland?	In 2013, AMSA will only delegate the authority to issue a certificate of survey to the jurisdictions. The jurisdictions will determine what documentation they will rely upon when issuing a certificate of survey. Responsibility for the completeness and accuracy of certificates of survey will rest with the jurisdiction. As such, in 2013, those who provide	The Regulatory Plan has been amended to clarify that, during the initial period (at least until 2016), jurisdictions will be responsible for issuing certificates of survey. At 2013, the jurisdictions have the knowledge to determine whether or not a surveyor can demonstrate the competency and capacity adequate to be relied upon.

Issue		Submissions / Comments	Discussion	Recommendations
			<p>technical services which support the survey process, such as naval architects, shipwright surveyors and marine electricians, will not be directly accredited by AMSA.</p> <p>A workstream has been initiated on the qualifications of surveyors and how a national accreditation process would operate.</p>	
Survey process	Jurisdiction of surveyors	Will surveyors be able to survey vessels over 35 metres under the national system, or will these vessels be surveyed by classification societies?	<p>For new vessels, and existing vessels constructed to the NSCV, the deemed to satisfy solution under the NSCV Part C for the construction of vessels of 35 metres and over in measured length is design, construction and maintenance in accordance with the rules of a Classification Society.</p> <p>However, an operator may present an equivalent solution to the regulator for assessment in accordance with the NSCV Part B. Sections 2.7.6 and 2.7.7 in particular provide information specific to Classification Society rules and the classification of vessels. Using this mechanism, some vessels may be surveyed by jurisdictions.</p> <p>In addition, existing vessels 35 metres in length and over may not be classed and may (in some jurisdictions) be surveyed by the local authority. In accordance with the grandfathering arrangements outlined in the Regulatory Plan, these arrangements would continue.</p>	No change to the Regulatory Plan is recommended. The flexibility provided by the NSCV is appropriate given that there may be a few vessels over 35 metres that can be accommodated under the NSCV (such as barges) and need not be in class. For more complex vessels, the NSCV does not provide any suitable technical solution and as such, the vessel will be required to meet the rules of a Classification Society.
Survey	Fees for surveys	What will be the impact of the	The costs of transferring the vessel	The Regulatory Plan has been amended

Issue		Submissions / Comments	Discussion	Recommendations
processes		reform on the cost of surveys? In addition, if fees are not standard nationally, will this lead to 'jurisdiction shopping' and potential delays for surveys in some areas?	to another jurisdiction would most likely outweigh any difference in fees, and the risks of a serious impact from jurisdiction shopping were low.	to clarify that: <ul style="list-style-type: none"> ▪ Fees will be set by service providers and thus may vary around Australia; and ▪ The risks of a significant level of 'jurisdiction shopping' for survey are low given the costs of moving vessels.
Survey process	Imported vessels	How will imported vessels be treated?	This is an issue for the NSCV and NSAMS standards, rather than the Regulatory Plan.	No amendments to the Regulatory Plan are recommended. This issue has been referred to the NMSC.
Survey availability	Vessels that wish to 'opt in' to survey	Would the survey process would be available to vessels that are not <u>required</u> by the regulations to be in survey?	There is value in making surveys available to vessels that are not required to be in survey to operate. However, this can impact significantly on resources, given the current shortage of surveyors	The Regulatory Plan has been amended to clarify that a vessel may opt in to survey even if not required to be in survey under the National Law. However, it will also be noted that service providers may elect to direct resources towards vessels that are required to be in survey if resources are limited.
Survey process	Approval of vessel parts	How will vessel parts be approved?	This issue relates to the administration of the national system, and in particular to the future of the National Register of Compliant Equipment.	No amendments to the Regulatory Plan are recommended. This issue has been referred to AMSA and the NMSC.
National standards	Application of NSCV standards to existing vessels	In Queensland, fixed fire fighting equipment on board vessels is treated differently as compared to other jurisdictions. How will fixed fire fighting equipment be treated under the national system?	The policy behind the grandfathering arrangements is that only changes that increase the risk of the operation would lead to a review of the grandfathering arrangements. The principles contained in the NMSC Guideline 'The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered' should be applied when	The Regulatory Plan has been amended to clarify that the grandfathering arrangements applying to an existing vessel would be reviewed where the vessel was subject to an upgrade in service to the extent that, for the upgrade the Authority requires all or part of the vessel to be investigated and verified that it meets prescribed standards.

Issue		Submissions / Comments	Discussion	Recommendations
			determining what changes increase risk.	The principles for identifying what constitutes an 'upgrade in service' outlined in the NMSC Guideline 'The Application of the Combined USL/NSCV 2008 to Existing Vessels that are Upgraded or Altered' will be applied.
Survey process	Building hulls 'on spec'	A builder should be able to build a hull prior to obtaining design approval, as this would allow the hulls to be built 'on spec'.	This issue relates to the requirements of NSAMS and the NSCV. Under NSAMS, a vessel cannot be built 'on spec' without design approval. When this occurs, the hull will often not meet the requirements of the NSCV. Potential amendments to the NSCV are referred to the NMSC for resolution.	No amendments to the Regulatory Plan are recommended. This issue has been referred to the NMSC.
NSCV	Application of C7A to existing vessels	There was concern in Victoria regarding the application of Part C7A transitional requirements to the existing fleet.	This issue relates to the current edition of NSCV C7A, not to the Regulatory Plan. Potential amendments to the NSCV are referred to the NMSC for resolution.	No amendments to the Regulatory Plan are recommended. This issue has been referred to the NMSC.
Vessel treatment	Tender vessels	How will a 'tender' be defined and treated?	A tender may be over 7.5 m in length and might operate beyond sheltered waters (ie in operation areas A, B or C). Hence, under the Regulatory Plan, the tender would be in survey. However, this would be a change from the current arrangements in some jurisdictions where the tenders are considered part of the mothership and only subject to survey as part of the survey schedule of the mothership.	The appropriate standards for tender vessels has been referred to the NMSC.
Certificate of survey	Display	Will a Certificate of Survey need to be carried and displayed?	This issue relates to the administration of the national system. Workstreams have been	No amendments to the Regulatory Plan are recommended.

Issue		Submissions / Comments	Discussion	Recommendations
			initiated to develop the documentation and the detail of what must be carried and displayed.	
Vessel class	Definition of 'passengers' and 'crew'	Are extra crew carried on board a vessel considered to be 'crew' or 'passengers'? This will impact on the standards that apply to the vessel.	Under the NSCV, 'extra crew' are likely to be considered to be 'special personnel'. See the definition of crew, special crew and passenger under the NSCV. Potential amendments to the NSCV are referred to the NMSC for resolution.	No amendments to the Regulatory Plan are recommended. This issue has been referred to the NMSC.
Certificates of operation	Multiple vessels in survey on a single certificate of operations	An individual certificate of operation may not be required for every vessel in survey.	An operator may operate multiple identical vessels in survey in the same area and manner. For example, there may be some hire and drive vessels, for example, that are in survey due to their high risk, but as all undertake the same operation they could be subject to a single certificate of operation.	The Regulatory Plan has been amended to clarify that a certificate of operation may cover multiple vessels in survey where the vessels and their operations are identical.
Scheme NS				
Certificates of operation	Meaning of 'same geographic location'	When can a single certificate of operation cover multiple vessels?	The Regulatory Plan proposed that a single certificate of operation could cover multiple vessels within the one operation where those vessels operated in the same geographic area of operation and undertook similar activities.	The Regulatory Plan has been amended to clarify that a certificate of operation may cover multiple vessels not in survey where the vessels operate in a single jurisdiction. As outlined above, a certificate of operation may also cover multiple vessels in survey where the vessels and their operations are identical, and provided they operate in a single jurisdiction.
Vessel treatment	Cranes	Cranes are high risk vessels and should be in survey	Under NSAMS 4, small vessels fitted with a crane or davit with a lifting capacity less than 3 tonnes	This issue relates to the requirements of NSAMS 4 Annex F. Under NSAMS 4, a vessel under 7.5m in sheltered waters is

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			<p>are in Scheme NS.</p> <p>A crane could include a device used for hauling in nets, and placing all vessels with cranes in survey may unnecessarily place in survey small fishing vessels that remain in sheltered waters.</p>	<p>only in survey where the crane or davit exceeds 3 tonne in lifting capacity. This issue has been referred to the NMSC for consideration.</p>
Vessel treatment	Research vessels	<p>Research vessels should not be required to be crewed by persons with commercial qualifications.</p> <p>Operators should be able to self-assess the inspection of small commercial vessels in order to renew its certificate of operation.</p>	<p>Under the Regulatory Plan, research vessels (vessels owned or operated by universities, government departments and other organisations which are primarily used for research purposes) would either be in survey or in Scheme NS depending on the vessel's operations and size.</p> <p>Given that research vessels are predominantly crewed by persons with recreational boating licences only, requiring research vessels to comply with the NSCV would impact significantly on the sector.</p> <p>However, this issue should be managed through the review of Part D of the NSCV, which should ensure that the qualification requirements cater for these operations.</p> <p>Research vessels have the same risk profile as other commercial vessels and should be subject to the general requirements.</p>	<p>Research vessels will be subject to the general requirements.</p> <p>However, there is the flexibility in the system to manage lower risk operations through equivalent solutions. For example, a safety management system could pose alternative solutions to survey, the NSCV and the crew certification requirements, where it is demonstrated that the risks are otherwise managed. The grandfathering arrangements (for construction, survey and crewing) will also be available for existing research vessels.</p>
Vessel treatment	Vessels used in organised sporting events	Vessels used in organised sporting events should not be subject to onerous survey and certification requirements.	<p>Vessels owned / operated by:</p> <ul style="list-style-type: none"> ▪ Primary or secondary schools; or ▪ Community groups, <p>are excluded from the National Law,</p>	<p>Due to changes to the definition of commercial vessel, most vessels used for sporting activities will not be subject to the national law, either because the vessel is not being used in connection with a commercial purpose, or because</p>

Issue		Submissions / Comments	Discussion	Recommendations
			unless they are undertaking a prescribed activity or operating for a prescribed purpose. The list of prescribed activities and purposes will be subject to further consultation as part of the development of the regulations.	the vessel is being operated by a school or a community group.
Vessel treatment	Powered school vessels	Powered school vessels operated for sporting or educational purposes should not be in survey	Vessels owned / operated by primary or secondary schools are now excluded from the National Law, they are undertaking a prescribed activity or operating for a prescribed purpose. The list of prescribed activities and purposes will be subject to further consultation through the development of the regulations.	Due to changes to the definition of commercial vessel, most vessels owned / operated by schools will not be subject to the national law. School vessels which are prescribed into the National Law will be subject to the general requirements.
Grandfathering arrangements	Grandfathering of crewing for NS vessels	Will crewing requirements contained in regulations be grandfathered? In addition, the existing arrangements may not be appropriate, and the national system should provide an opportunity to review these arrangements.	The policy behind the grandfathering arrangements is that existing operators should not be adversely impacted by the reform. What an operator was legally permitted to do under the State and NT systems will be carried forward for that operator (provided the operations do not change)	The Regulatory Plan has been amended to clarify that: <ul style="list-style-type: none"> ▪ Where crewing is contained in regulations, these will also be grandfathered for existing vessels; and ▪ The marine safety authority issuing the national certificate of operation on behalf of AMSA will have the power to review the existing crewing and qualification requirements applying to the vessel where appropriate.
Scheme O				
Vessel treatment	Heritage vessels	How will heritage vessels be treated after 2016?	Heritage vessels are unique and cannot comply with a specified	The Regulatory Plan has been amended to provide that heritage vessels entering

Issue		Submissions / Comments	Discussion	Recommendations
			standard. In addition, the risks of each vessel varies according to its operations and operational area.	into service after the commencement of the national system will be required to submit a vessel management plan and a safety management system. The safety management system will identify what (survey or other) risk mitigation measures will apply.
Vessel treatment	Volunteer search and rescue vessels	How will volunteer search and rescue vessels be treated after 2016?	<p>There are two broad categories of volunteer search and rescue operations:</p> <ul style="list-style-type: none"> ▪ Operations where the vessels are managed by the search and rescue organisation, but manned by volunteers; and ▪ Operations where the vessel is owned by the volunteer and is normally operated recreationally. As outlined above, these vessels are excluded from the definition of commercial vessel and as such are not subject to the National Law. They usually respond to low risk situations (such as assisting when a vessel runs out of fuel). <p>The volunteer search and rescue sector relies on recreational boating volunteers. As such, requiring commercial qualifications for operators of these vessels would be impact on their viability.</p>	The Regulatory Plan has been amended to clarify that volunteer search and rescue vessels that are within the scope of the National Law will be subject to the general survey and certification requirements.
Qualifications				
Qualifications structure	Review of Part D	What will the revised qualifications standard look like?	The detailed proposal for the revision of Part D has now been released, and these issues will be	No changes to Regulatory Plan recommended. This issue has been referred to the consultation on the

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			addressed through the NMSC consultation process on Part D.	National Crew Certificates – Proposed Requirements.
Registered Training Organisations	Registered Training Organisations	What reforms of the Registered Training Organisations (RTOs) will occur?	This issue will be addressed through the revision of Part D. In particular, a workstream has been initiated regarding the development of national accreditation requirements for RTOs.	No changes to Regulatory Plan recommended. This issue has been referred to the consultation on the National Crew Certificates – Proposed Requirements.
Crewing	Crewing determinations?	How will crewing determinations be made in under the national system?	Crewing is currently determined differently in each of the jurisdictions: some maintain crewing committees; in others, the regulator determines crewing or minimum crewing levels are set out in regulation; and in another, the operator is responsible to determining the safe crewing level. However, most jurisdictions apply Part D crewing levels as the basis for the determinations or regulation.	Crewing will be determined based on Part E of the NSCV, through the Certificate of Operation.
National Seafarer Certificates	Title	The “National Seafarer Certificates” are a licence to operate on a vessel and should be called licences.	This issue will be addressed through the review of Part D. However, under the Bill the certificates are called ‘Certificates of Competency’	No changes to Regulatory Plan recommended. This issue has been referred to the consultation on the National Crew Certificates – Proposed Requirements.
Qualifications	A national recreational boating licence	Will a national recreational boating licence be established?	Recreational boating licences fall within the scope of State and Northern Territory recreational boating laws, and are not within the scope of the commercial vessel regulatory reform.	A national recreational boating licence will not form part of the reform.
National Seafarer Certifications	Local knowledge endorsements	How will local knowledge requirements be managed under the national system?	Local knowledge endorsements will be managed by the State and Territories under their waterway management legislation.	The Regulatory Plan has been amended to clarify that local knowledge endorsements will continue to be required under the national system.

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			As the States and Territories are providing services under the national system on behalf of AMSA, the current seamless arrangements will remain.	
Crewing	Qualifications for conducting recreational training	What qualifications will be required to train recreational boaters?	Training vessels of any length up to 24 metres, may operate in waters beyond those designated as smooth or partially smooth, are in Scheme NS under the Regulatory Plan provided they undertake only inshore operations.	The Regulatory Plan has been amended to clarify that vessels that are used by sailing schools, registered training organisations, and the like, when training members of the public to gain recreational boating qualifications on a fee for service basis are in Scheme NS. Persons on such vessels for training purposes are not considered to be passengers for the purpose of the Regulatory Plan provided they undertake only inshore operations.
Other issues				
Interaction with other laws	OHS Law	What will be interaction between the National Law and occupational health and safety laws, particularly given the current national reform of OHS law?	The administration of marine safety and OHS law currently varies between jurisdictions. In some jurisdictions, marine safety regulators conduct OHS inspections on behalf of the worksafe authority. In other jurisdictions, the inspection processes are independent. The national system will not impact on these arrangements in the near future. However, further work could be done to consider how the arrangements could be streamlined going forward.	The Regulatory Plan has been amended to clarify that the National Law will apply alongside State, Territory and/or Commonwealth occupational health and safety (OHS) law, just as it does now, and that the definition of commercial vessel and application of the National Law will not impact on the application of OHS law.
Interaction with other laws	OHS duties	Are the general safety obligations were required given the duties under OHS law?	OHS duties are predominantly designed protect crew on board a vessel. The general safety	The Regulatory Plan has been amended to outline the role of OHS duties, as opposed to the General Safety

Issue		Submissions / Comments	Discussion	Recommendations
		Will requested guidance be provided on what would constitute meeting occupational health and safety and the general safety obligations in a maritime context?	obligations apply more broadly to all engaged in the maritime industry including the general public.	Obligations.
Vessel identification	Content	<p>What will the Vessel Identification comprise of?</p> <p>Will the Hull Identification Number (HIN) be used?</p>	<p>The HIN (or Craft Identification Number (CIN)) is a unique series of characters and numbers conforming to ISO 10087:1995(E). The HIN/CIN is an initiative of ICOMIA, the international recreational boat building industry body, and issuing the HIN/CIN is managed by the BIAA in Australia, as the local member of ICOMIA.</p> <p>For recreational vessels in some jurisdictions, a HIN/CIN is required when the boat is first registered and upon change of ownership. It is also displayed on the Australian Builder's Plate (ABP) for the vessel. The HIN/CIN provides a means of identifying stolen boats and is primarily used for this purpose, although it is also valuable for the compliance and enforcement of recreational boating or consumer protection laws (such as enforcement of the ABP Standard).</p> <p>There are a number of issues associated with extending the HIN/CIN to commercial vessels. The vast majority of commercial vessels do not currently have a HIN/CIN. Adding commercial vessels to the HIN/CIN regime could make the system unworkable. However, there is significant merit in building on</p>	<p>The Regulatory Plan has been amended to include further detail on the proposed vessel identification arrangements, including the following:</p> <ul style="list-style-type: none"> ▪ State / NT identification regimes will continue to operate until 2016, and will be recognised as national vessel identification at least until the end of 2016. ▪ The issue of vessel identification is being considered further and will be subject to a separate consultation process in the period 2012-2015. The aim is to have a national registration scheme in place in 2016. There is considerable merit in building on any existing vessel identification systems. This means that any unique identifier that is already attached to a vessel may meet the vessel identification requirements under the National Law, including HIN/CIN where relevant. However, this will be considered in more detail as the supporting administration and operational systems are developed. ▪ Through this process, further consideration will also be given to any appropriate exemptions from the vessel identification requirement – in particular for small hire and

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			existing systems.	drive vessels.
Interaction with other laws	Future of the Shipping Registration Act	Will the Shipping Registration Act remain? It is valuable in order to obtain vessel financing	<p>Registration under the Shipping Registration Act provides evidence of nationality (particularly important for vessels on overseas voyages). It also provides an indication of ownership which is used by vessel owners to obtain finance.</p> <p>The Shipping Registration Act will not be impacted by the National Law</p>	The Regulatory Plan has been amended to note that, as part of the further consideration of vessel identification, the potential to recognise a vessel's Official Number as the vessel identification under the National Law will be considered.
Role of the certificates	Certificate of operation	<p>What will be the process for applying for a certificate of operation?</p> <p>What costs will be involved?</p> <p>How will the certificate of operation mandate minimum crew numbers?</p>	The certificate of operation is a new concept in the maritime space, however jurisdictions have agreed on the desire to move towards a certificate of operation for some time.	<p>The Regulatory Plan has been amended to provide further information regarding the certificate of operation.</p> <p>The process for including minimum crew on the certificate of operation will be contained in the revised Part E of the NSCV (currently being considered by the NMSC).</p> <p>The requirements for safety management documentation are currently being considered through two NMSC processes: the revision of Part E of the NSCV and the development of NSAMS Section 6. Until these are complete, existing jurisdictional requirements for safety management documentation will continue.</p> <p>Where vessels change the nature of their operations or are significantly modified, it will be necessary to apply for a new certificate of operation or for an amendment to the existing certificate of operation.</p> <p>The fee for the certificate of operation will be set by the issuing jurisdiction.</p> <p>A certificate of operation may cover</p>

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				multiple vessels not in survey where the vessels operate in a single jurisdiction, and multiple vessels in survey where the vessels and their operations are identical, and provided they operate in a single jurisdiction.
Administration of the national system	NMSC	What is the future of the NMSC?	<p>The NMSC will continue to exist until the commencement of the national system, which means that current reviews NSCV standards (including Part D and Part E) are being and will continue to be managed by the NMSC. From commencement of the national system, AMSA will be responsible for maintaining and developing the NSCV.</p> <p>In order to ensure a smooth transition to the national system in 2013, AMSA now has the function of supporting the NMSC. In other words, the functions of the Sydney-based NMSC secretariat have been transferred to AMSA.</p>	The Regulatory Plan has been amended to include a note on the future of the NMSC.
Administration of the national system	National database	What are the plans for a national database?	<p>A national database will be integral to the national system in the long term.</p> <p>However, there are significant costs associated with a national database</p>	The Regulatory Plan has been amended to note that different options for a national database are currently being considered. A fully-functioning national database is unlikely to be in place until 2016. However, there will be avenues for national data exchange in the interim.
Administration of the national system	Fees	Will fees change as a result of the national system?	Jurisdictions will continue to set fees for services they provide on behalf of the National Regulator.	The Regulatory Plan has been amended to clarify that the service provider will set the fees. This means that where a State / NT issues a certificate of operation or survey, they will set the fee for doing so. AMSA will not play a role in setting or

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				monitoring the fees.
Interaction with other laws	Dangerous goods	How will the interaction between the National Law and dangerous goods legislation be managed?	Dangerous Goods legislation will not be impacted by the reform. Further work will be done to consider how the arrangements could be streamlined going forward.	The Regulatory Plan has been amended to note that, as with occupational health and safety law, dangerous goods legislation will continue to operate alongside the national system and will not be disturbed by the reform in the near future.
Scope of the National Law	Operational Areas	Will operational area classifications be reviewed by AMSA?	Changes to the current operational area definitions could impact on the ability of operators to continue to operate.	The Regulatory Plan has been amended to clarify that operational areas will continue to be classified by the States and the NT as part of their waterways management legislation.
Interaction with other laws	NOPSA	Will definitions in the National Law be consistent with Offshore Petroleum and Greenhouse Gas Storage Amendment Bill which is currently before Parliament?	The National Offshore Petroleum Authority (NOPSA) is responsible for the regulation of occupational health and safety, wells and well operations, and the structural integrity of facilities and environmental management within Commonwealth waters. Given the different focus of NOPSA and the National Law, definitions that are 'fit for purpose' may be appropriate.	No amendments to the Regulatory Plan recommended
Vessel treatment	Superyachts	How will superyachts be treated under the national system?	Superyachts should be managed in accordance with the agreed NMSC policy.	The Regulatory Plan has been amended to clarify that Australian commercial superyachts will be in Scheme S (which means they will be in survey in accordance with NSAMS 4 and will be subject to the requirements of the NSCV).
Interaction with other reforms	Victorian marine safety law reform	Is the current Victorian review of the Marine Safety Act Victoria in	Changes to Victorian legislation that affect the commercial vessel fleet	The Victorian reform is consistent with the national reform.

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		contradiction to the national reform?	will be consistent with the National Law.	
Interaction with international standards	MARPOL	Will the application of MARPOL remain the same?	MARPOL is outside the scope of the initial reform. However, this issue will be considered further in the future to identify any potential streamlining of the current arrangements.	The Regulatory Plan has been amended to clarify that MARPOL implementation will not be impacted by the National Law.
Interaction with other laws	Interaction with fisheries and environmental legislation	Will this reform resolve the interface between marine safety and non-marine safety legislation, such as fisheries laws and environmental legislation?	Fisheries and environmental legislation are outside the scope of this reform.	The Regulatory Plan has been amended to clarify that the fisheries legislation and environmental laws will not be impacted by the National Law.
National Law	Reporting requirements	How will the reporting framework work under the national system: will incident reports be made to the local jurisdiction or to AMSA directly?	Reporting to the local jurisdiction will ensure that the waterway management authority is aware of the incident. Reporting obligations for commercial vessel operators were subject to consultation in early 2012 through the National Law Bill consultation process.	The Regulatory Plan has been amended to clarify that incident reports will be made directly to the local marine safety agency.
National Law	Responsibility of owners and operators under the National Law	Do the obligations apply to the vessel owner or to its operator?	This is an issue for the National Law Bill, which was the subject of public consultation in early 2012.	No amendments to the Regulatory Plan recommended. This issue was considered as part of the consultations on the National Law Bill in early 2012.
Vessel treatment	Permanently moored vessels	How will permanently moored vessels and other structures be regulated?	Permanently moored vessels are treated differently around Australia. A position of regulatory treatment for these vessels will not be able to be made until the type(s) of permanently moored vessels that are captured by the National Law are settled.	The Regulatory Plan has been amended to provide that permanently moored vessels that are within the scope of the National Law are in Scheme O. This means that existing State and Northern Territory requirements will continue to apply until 2016, when a national approach will be developed and implemented.

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Permission to operate	Restricted use flags	Will restricted use flags continue to be issued under the national system?	<p>Restricted use flags are used in some jurisdictions to temporarily permit a vessel to operate prior to a certificate of survey being issued.</p> <p>The National Law includes mechanisms for issuing temporary authorisations, equivalent to the current restricted use flags.</p>	No amendment to Regulatory Plan recommended. This issue was considered as part of the consultations on the National Law Bill in early 2012.

Appendix A List of submissions received

Sail Training Association of Queensland Inc

Maritime Union of Australia

Australian Sports Commission

Pearl Producers Association

Department of Transport, Western Australia

Marine Teachers Association of Queensland

National Seafood Industry Alliance

Commonwealth Fisheries Association

Australian Logistics Council

Yachting Australia

Department of Fisheries, Western Australia

South Australian Freight Council