

## SOS...I need an SMS

### Who needs an SMS?

If you own or operate any type of boat that is used for any kind of commercial purpose, then you will almost certainly need to have a written Safety Management System (**SMS**) in place. This includes charter fishing boats, hire and drive jet skis, jet boats with passengers, trawlers, ferries, water taxis, sunset cruise gondolas, parasailing vessels, dive tenders – the works. If a boat is used in connection with a money earning activity, then it is likely that it must have an SMS.



If you own or operate such a boat and you do not have an SMS in place right now, then you must act immediately (**SOS!**).

The owner is either the legal owner of the boat or the party whose name appears on the Certificate of Operation. The owner has the duty to 'implement and maintain' an SMS which ensures the operations of the vessel are safe.<sup>[i]</sup> The master or person operating a boat in any kind of commercial application must 'implement and comply with' the vessel's SMS.<sup>[ii]</sup> Heavy penalties can result from an owner or master's failure to comply with the necessary SMS requirements. More importantly, a failure to have a properly considered SMS in place could lead to the death or injury of a person.

In practical terms, it is more likely that the failure to have a proper SMS in place will result in the regulator issuing you a Prohibition Notice – meaning that you will be unable to use the vessel subject of the notice until an appropriate SMS is in place.

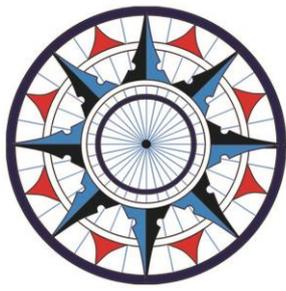
The period of downtime resulting from a Prohibition Notice could be very costly to a business operation.

### How do I prepare an SMS?

Fortunately, Part E of the National Standards for Commercial Vessels (NSCV) describes quite clearly what needs to be in an SMS. Basically, your SMS must contain:

- ⊗ Vessel details
- ⊗ Owners and designated person's contact details
- ⊗ Risk assessment
- ⊗ Statements of owner's and master's responsibility
- ⊗ An assessment and determination of appropriate crew levels
- ⊗ Procedures for all onboard operations
- ⊗ Emergency procedures





There are many components to the above items, and it is easy to end up with a very long SMS which doesn't really do its job – which is to make your commercial boating activity safer for crew and passengers.

In order to maximise the usefulness of your SMS, we have found it is best to construct the document in the following stages:

### Stage 1

Do a skeleton of all the headings required by Part E, NSCV and fill out all the basic contact information and vessel details.

### Stage 2

Go straight to a risk assessment. Consider all of the day to day operations of your boat when used in its commercial setting, and all of the things that could go wrong 'risks'. For each 'risk' identified, think about how likely it is to occur, and about how severe the consequences would be if it occurred. Finally think about all the things that can be done in order to minimise the chances of the identified risks occurring (called controls).



### Stage 3

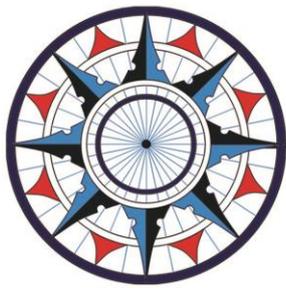
All of the controls identified at stage 2 then become the basis of your procedures, both operating and emergency. Make sure your procedures are simple, in bullet points and kept readily accessible for your crew. Ensure that drills are conducted regularly to ensure procedures are being followed.

### Stage 4

With the procedures completed, you will have a good feeling for the manning requirements of the boat, which will enable you to complete the appropriate crew assessment. Remember, a boat cannot be used for a commercial purpose if only the *minimum crew* is carried. The boat must have *appropriate crew* for commercial use, and that is what your SMS appropriate crewing assessment is for.

Ensure you have a system for recording incidents and improving the SMS in response to what caused those incidents. The SMS must also be reviewed each year. This ensures it is a 'living' document.





# Pacific Maritime

## LAWYERS & CONSULTANTS

As an owner and master, you should also ensure that all new crew are familiar with the SMS and have a section where crew can certify that they have been inducted and have carried out drills as appropriate.

There is your new SMS!

Once the document has been created, you'll need to make sure that it is handy and in a form that is easily presented to Marine Safety Inspectors (MSI) if they visit to conduct a monitoring activity. The inspectors will ensure that you, the master and crew are familiar with the contents of the SMS, and that the operation is actually conducted in accordance with the words in the document.

The completed SMS is a very important document to a maritime business. No matter the size of your commercial boat or the scope and scale of your business operation, this is a document that forms the basis of a safe and compliant operation. In the event of an incident, the first question you will be asked by an investigator may well be.... 'Show me your SMS'.

[i] *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, Section 12 (2)(b)

[ii] *Ibid* Section 16(2)



**Written by:**

Anthony Stanton  
Pacific Maritime Lawyers  
Lawyer Consultant

