



April 2022

Please find attached a Tasmanian Seafood Industry Council (TSIC) response to the questions posed as part of the Review into Australia's Domestic Commercial Vessel Safety Legislation.

Thank you for providing TSIC with an extension to this review process.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Harrington', is written over a light blue rectangular background.

Julian Harrington

Chief Executive

TSIC Overview

The Tasmanian Seafood Industry Council

The Tasmanian Seafood Industry Council (TSIC) is the peak body representing the interests of wild catch fishers, marine farming businesses and seafood processing businesses. With respect to the wild catch sector, TSIC represents the interests of active fishers in Tasmania. That is individuals who hold a Fishing Licence Personal – i.e., those people who physically go to sea and catch fish.

TSIC Policy aims to support the interests and access rights of our fishers, marine farmers and seafood processors. Central to TSIC policy is support for three key seafood outcomes – 1) employment; 2) direct economic return to Tasmania, particularly in regional communities; and 3) provision of Tasmanian seafood to Tasmanian' either directly from fishers or through retail, wholesale and food service outlets.

Safety is paramount for all Tasmanian seafood operations, and TSIC has invested significantly into maritime safety and safety initiatives.

The Tasmanian Seafood Industry

The Tasmanian seafood industry is a very complex industry, which includes both large scale business structures and small sole-trader businesses. In turn, the sector supports a diverse range of subsidiary businesses that are reliant on the seafood sector. The sector has an important footprint in regional communities.

The structure of the wild catch fishery supply chain is complex and includes investors who simply own quota; quota owners who actively fish; fishers who lease / supervisor a licence and buy in quota; processors; exporters; wholesalers; retailers and food service, amongst more. Each part of this supply chain has differing objectives, values and ideals, and in some instances, these may not align with the overarching objective of management – the long-term sustainability of the resource.

Current challenges in the industry (COVID and market access) have put significant pressure on operators. It is paramount that the Australian safety regime is relevant to Tasmanian operations and affordable.

Structure of this Submission

This submission will provide a statement of issues and concerns that TSIC hold with respect to the safe operation of class 3 vessels in Tasmania. It will not answer the questions posed as part of this review due to lack of time availability.

TSIC thanks the review committee for providing a time extension for this submission.

The TSIC Board acknowledge the Palawa Tasmanian Aboriginal people as the traditional owners of Tasmania and Tasmanian Sea Country and we pay our respects to their elders past and present.

INDEPENDENT REVIEW OF DOMESTIC COMMERCIALVESSEL SAFETY LEGISLATION

TSIC SUBMISSION

Is the AMSA legislative framework 'fit for purpose'?

It is the view of TSIC that the core function of AMSA is to support safe DC vessel operations in Australian waters, with the overarching objective being to ensure that crew, passengers, and other water users all return home safe. To achieve this, the DCV system must ensure that vessels and their equipment are suitable for the environment they operate in; and skippers and crew are suitably skilled to operate the vessel.

The current review briefing document refers to the following metrics as proxies to 'fit for purpose':

- **support safe vessel operations**
- **promote a risk-based approach**
- **minimise burden**
- **be flexible**
- **be simple and transparent**
- **support effective compliance.**

Under COAG agreed and supported principles, harmonisation of maritime safety under an AMSA single point delivery model would deliver reduced costs, reduced red tape and improved safety outcomes. There is no doubt that such outcomes would have significant benefits for the Tasmanian seafood industry.

Noting this review process will address cost at a later time, it is fair to say that a fit for purpose DCV legislative regime should at a minimum reduce red tape and improve safety outcomes.

Although AMSA have (slowly) improved many aspects of maritime safety at a national level, there is still excessive red tape, complexity of process and many decisions and outcomes that appear to completely erode safety outcomes and go against the recommendation of technical committees, broader industry consultation, and even erode the recommendations of previous coronial recommendations. These outcomes suggest that many aspects of the DCV safety framework are not fit for purpose.

Red tape

The AMSA DCV maritime safety system has attempted to transition their 'one size fits all' operational and delivery system developed and delivered to the large ship world into the DCV fleet. This has resulted in a complex, legally written regulatory framework, with no grassroots industry level communication or guidance. It must be remembered that for the approximately 500 wild catch fishers in Tasmania, 490 or so are sole trader businesses. There is certainly no safety officer or legal department to support them.

Under this delivery model, the primary communication platform with AMSA is an online portal and phone-based service delivery platform. Such communication platforms are not compatible with the Tasmanian seafood industry needs, and ultimately result in delays, and

delays ultimately mean that vessels are tied to the wharf and not out fishing / working on marine farms.

To expect a fisher to wade through the complexities of the AMSA webpage, find the appropriate forms and paperwork, and then understand what it all means is unrealistic. When AMSA staff are engaged, advice is often inconsistent. This also applies to different businesses tasked with delivering aspects of the National Law, such as surveyors. Advice from real people (via phone or email) very often consists of links to 'legal speak', complex marine orders or other documents that describe the requirements in a way that is near impossible for grass roots fishers to understand.

Add to the mix the regular review and changing of regulatory requirements. Although this process may reduce red tape and complexity, it also creates significant confusion within grass roots fisheries.

For example, the transition of Safety Management System requirements from the NSCV Part E requirements to new requirements under Marine Order 504 – which may be changed again under the current review of Marine Order 504. TSIC has attempted to support its members with a template SMS system. Despite AMSA recommending the template was compliant, several fishers commented to TSIC that AMSA staff had told them that they could not use the TSIC template as it was not compliant! This contradictory input and confusion of requirements led to TSIC removing this resource from its members. It has since been clarified that the TSIC resource, if used appropriately by end users, is compliant.

Add into the mix the complexity of grandfathering clauses and the unknown number of exemptions in place, it should be obvious that AMSA has created an exceptionally complex and burdensome system, which has lost any common sense approach to decision making. It should be obvious that a one size fits all approach to regulation cannot be applied to the diversity of vessels, operations and environments that the Australian DCV fleet operate in.

A fit for purpose framework should be user friendly and regulatory requirements well understood from the perspective of end users. It is clear that grassroots Tasmanian seafood operators have minimal knowledge or understanding of the current and proposed requirements for being compliant with the National Law, and there is no appetite or desire to engage with AMSA or the AMSA delivery model.

This has created complete disengagement by grass roots fishers and marine farmers from the ASMA system, a conclusion that was also reached by Dr Kate Brooks in her research into the barriers to the adoption of safe work practices in wild catch fisheries (<http://www.kalanalysis.com.au/assets/Uploads/2017-046-FG-Findings-Report-50321.pdf>).

TSIC wishes to reaffirm that AMSA processes and systems have improved over time, however, the rate of improvement is slow, with many inefficiencies and complexities still creating issues for seafood operators.

Improved safety outcomes

All safety initiatives must use a risk-based approach, and lead to real safety outcomes. There are many example where AMSA safety initiatives do not appear to be based on a risk-based approach, and where the outcomes will erode safety, at least in Tasmania. This is a consequence of AMSA minimising internal regulatory administration needs and appeasing

vocal sectors or states who are reluctant to change from long term practices. These situations definitely do not use a risk based approach to decision making within AMSA.

A case study – the implementation of Coxswain 3 Certificate of Competency

Marine Order 505 (Certificates of Competency) 2022 will come into effect from 1 January 2023. Included in this new MO is the inclusion of a Coxswain 3 Certificate, which will allow the holder of a recreational boating ticket with 1 day commercial sea service on a commercial vessel to be in command of a <12 m vessel with less than 6 persons and within smooth waters or close to shore (within 1 nM of the shore).

This new Certificate will allow a 16 year old, with 1 day experience on a commercial boat to be in full control of a commercial fishing vessel within 1 nM of the shoreline anywhere around Tasmania, including the wild conditions of Tasmania's west coast. This includes an abalone dive platform with potentially two divers in the water, in amongst rocks and breaking waves.

All with zero experience and zero training.

It is the view of TSIC that if adopted, this AMSA proposal will significantly degrade near coastal crew competency for commercial vessel operations in Australia! When combined with the capacity for some types of <12 m vessels to not have to undergo a third party survey (they are simply self-declaration vessels), then the proposed AMSA system, if implemented, would completely fail to uphold a measurable minimum standard for maritime safety and vessel safety. The dilution of the standard only serves to increase the risk to workers who already operate in a volatile, unpredictable work environment throughout Australia.

This dilution of safety is even more concerning for Tasmania given that of the 11 fatalities in the fishing industry since 2001, 80% were less than 2 nM from shore and 50% were in dinghies, meaning that this size and use of vessel is a high-risk operation.

Coronial findings handed down by Mr S Carey in 2008 as a result of a death to a near coastal commercial fisherman in a small vessel operating in Tasmania found the following training deficiencies, all of which are not covered through recreational licencing;

MR X COMPLETED A COXWAIN LIMITED CERTIFICATE OF COMPETENCY IN 1991 AND MR Y HIS IN 2002. THIS CERTIFICATE WAS REPLACED BY THE COXWAIN RESTRICTED CERTIFICATE OF COMPETENCY IN 2003. THIS LATER CERTIFICATE REQUIRED PERSONS TO UNDERTAKE AN EXTENSIVE COURSE IN THE ELEMENTS OF SHIPBOARD SAFETY WHICH INCLUDED:

- COMPLY WITH EMERGENCY PROCEDURES ON BOARD A VESSEL.
- OBSERVE SAFE WORKING PRACTICES AND PROCEDURES ON BOARD A VESSEL.
- FIGHT AND EXTINGUISH FIRES ON BOARD A SMALL VESSEL.
- SURVIVE AT SEA IN THE EVENT OF A VESSEL ABANDONMENT.
- MINIMISE THE RISK OF FIRE AND MAINTAIN A STATE OF READINESS TO RESPOND TO EMERGENCY SITUATIONS INVOLVING FIRE.

NO OBLIGATION IS PLACED UPON THOSE WHO HOLD THE LIMITED CERTIFICATION TO UPGRADE TO THE RESTRICTED CERTIFICATION. THIS OMISSION IS UNSATISFACTORY AND DOES NOT ENSURE THAT PERSONS ENGAGED IN THE COMMERCIAL FISHING INDUSTRY HAVE THE BEST POSSIBLE TRAINING AS TO MATTERS OF SAFETY IN THEIR WORKPLACE. I RECOMMEND THAT MARINE AND SAFETY TASMANIA ("MAST") IMMEDIATELY ADDRESS THIS TRAINING SHORTFALL AND IN CONSULTATION WITH THE INDUSTRY ESTABLISH A PROGRAM TO UPGRADE THE MINIMUM LEVEL OF CERTIFIED COMPETENCY TO COXWAIN RESTRICTED TO ENSURE THE SAFETY OF THOSE WITHIN THE COMMERCIAL ABALONE FISHING INDUSTRY.

AMSA propose to remove Survival at Sea training from the requirement / licence/ qualification, showing they have little regard or knowledge of the recommendations put forward by the Coroner and little understanding of Tasmanian WHS requirements that were in place prior to AMSA taking over delivery of the National system for maritime safety.

The Coxswain 3 proposal also defies the logic of AMSA's responsibility statement: "The National System for Domestic Commercial Vessel Safety provides a consistent approach to safety for owners, operators, and crew of commercial vessels working in Australia" as there are no consistent processes across states for obtaining a Recreational Boating Licence and there is no National Training Framework governing recreational licencing.

How can AMSA recognise, adopt, and endorse a State based licencing system they have no governance over, knowledge of, or an ability to withhold licencing if they believe an applicant is unsafe to operate a commercial vessel?

Furthermore, recreational vessel licencing regimes do not address essential areas including but not limited to; Survival at sea, Safety Management Systems, the Marine Pollution Act, Operating in Restricted visibility (Rule 19), and Incident Reporting Obligations for a commercial vessel master.

The Safety Management System approach to managing risk at sea serves as an administrative control, based on the 'maximum reasonable outcome'. Taking away baseline safety training from recognised training providers and negating any need for the master to have prior experience places themselves and those under their command at significant risk. Safety management plays a vital role in the maritime sector, however it was not designed to remove experience and competency, its role was to compliment the standard and drive a safer standardised process.

If AMSA acknowledged the true risks and apply a risk based approach to regulations, they would not even consider discussing a Coxswain 3 proposal; let alone allowing it into the legislative framework on 1 January 2023.

Grandfathering

In the early transition to the National System for Domestic Commercial Vessel Safety high level AMSA staff continually stated "if you were operating before the 1 July 2013, you will simply continue to operate how you have been operating. Nothing will change" (personal notes from meeting). This *nothing will change* has been allowed, under grandfathering provisions.

Where an existing grandfathered vessel makes certain changes to its operations, is modified or moves its geographic area of operation, the grandfathering arrangements for the vessel end and a range of new requirements must be implemented, notably fire suppressant system in engine rooms, RCD fitted, stability test and booklet.

Under a risk assessment approach to maritime safety, TSIC cannot understand why new safety requirements that are not related to the changes made to the vessel are required.

If new transitional requirements are recommended under a risk based approach, then AMSA has failed in its duty to achieve safety outcomes by not transitioning all vessels to this new minimum safety standard, and they should develop a strategy to support all vessels to

become transitional. This should include financial support as they have failed to honour their grandfather clause.

Alternatively, if the new requirements implemented under the transitional survey arrangements are not justified under a risk based approach, then AMSA have added extra cost burden on grandfathered vessels for no improved safety outcomes.