Explanatory Statement

Marine Order 504 (Certificates of operation — national law) 2024 (Order 2024/5)

Authority

1. The Marine Safety (Domestic Commercial Vessel) National Law (the national law), set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, provides for this Marine Order to be made.

2. Division 5 of Part 4 of the national law provides for matters that can be prescribed in the regulations for certificates of operation for domestic commercial vessels.

3. Subsection 159(1) of the national law provides for regulations to be made prescribing matters required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the national law.

4. Subsection 163(1) of the national law provides that the National Regulator may make a Marine Order for any matter for which provision must or may be made by regulations, other than for matters mentioned in the section.

5. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.

6. This Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

7. This Marine Order repeals and replaces *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018*.

Overview

8. This Marine Order prescribes matters relating to the application and issue of certificates of operation under the national law for domestic commercial vessels. It also prescribes the criteria for the renewal, variation, suspension and revocation of certificates of operation.

9. A certificate of operation must be held by a person who operates a domestic commercial vessel unless an exemption applies. A certificate of operation sets out the conditions under which a domestic commercial vessel must operate including how and where the vessel can operate. A condition of the certificate of operation is that the vessel must have a safety management system that complies with the requirements of this Marine Order.

10. All domestic commercial vessels are required to have a safety management system in place as part of the general safety duties prescribed in Schedule 1, Part 3 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*.

11. Schedule 1 of the Marine Order sets out the operation requirements that must be complied with, and the matters that a safety management system must address for a Class 1, Class 2, Class 3 or Class 4 vessel.

12. Schedule 2 of the Marine Order sets out the additional operation requirements that must be complied with, and the additional matters that a safety management system must address for a Class 4 vessel.

13. The Marine Order includes a definition of ‘lower complexity vessels’ in Division 1, section 4. A domestic commercial vessel that meets the criteria of this definition is not subject to a number of operation requirements as expressed in Schedule 1 and Schedule 2. The intent of this definition is to simplify the safety management system requirements for smaller, less complex vessels and operations.

The eligibility criteria included in the 'lower complexity vessel' definition was established through targeted consultation with industry and closely aligns with the existing eligibility criteria in Division 2 (General) of Exemption 03 – Marine Safety (Certificates of operation) 2020.

14. The Marine Order also includes other key definitions, application requirements for temporary crewing permits and appropriate crewing determinations for vessels ≥80 m or ≥3000 GT or ≥3000 kW.

Consultation

15. Prior to the commencement of drafting this Marine Order, extensive policy consultation was undertaken with the domestic commercial vessel industry. An Industry Reference Group was established comprising representatives from the domestic commercial vessel sector. This group was consulted throughout the drafting process.

16. A draft of the Marine Order was made available on AMSA's website and released for public consultation from 28 May to 28 July 2024, a period of eight and a half weeks.

17. The public consultation was supported by a dedicated consultation hub on the AMSA website with information and guidance on the proposed changes. This was complemented by an online webinar held on 7 June 2024 to present information on the proposed changes to external stakeholders. Over 100 industry representatives attended the webinar, and a recording of the event was published on the AMSA website for a period of three months.

18. The public consultation was further promoted through a news item on the AMSA website, direct emails and a social media campaign. The purpose of these communications was to draw attention to the proposed changes and encourage stakeholders to submit feedback.

19. A total of 109 submissions were received during the consultation period. Comments were received in relation to hours of rest requirements, fatigue management, simplified safety management system requirements and the management of drug and alcohol use. These matters were taken into account.

20. The Office of Impact Analysis (OIA) was also consulted, and a preliminary assessment form was provided for their consideration and advice. The OIA advised that a detailed impact analysis was not required under the Australian Government's Policy Impact Analysis Framework. The OIA determined that the proposed remaking of MO504 is expected to have only minor regulatory impacts for businesses. The OIA reference number is OIA24-07455.

Documents incorporated by reference

21. The following documents or parts of them are incorporated by reference in this Marine Order:

- Part A of the International Safety Management Code (ISM Code)
- *Marine Order 501 (Administration – national law) 2023* (Marine Order 501)
- *Marine Order 505 (Certificates of competency – national law) 2022* (Marine Order 505)
- Part B (General Requirements) of the National Standard for Commercial Vessels
- Part C (Design and construction) of the National Standard for Commercial Vessels

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

- Subsection 1C — Category F2 Fast Craft of Part F (Special Vessels) of the National Standard for Commercial Vessels

22. The ISM Code is defined in this Marine Order by reference to its definition in Regulation 1 of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) done at London on 1 November 1974, as amended and in force for Australia from time to time. The ISM Code is therefore incorporated as in force or existing from time to time. This is in accordance with section 164 of the national law. IMO Resolutions are available to download from the IMO website at no cost. A link to IMO resolutions is available on the AMSA website at www.amsa.gov.au. SOLAS, including any amendments, can be found in the Australian Treaties Series, accessible from the Australian Treaties Library on the AustLII website at www.austlii.edu.au.

23. Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), the manner of incorporation of Marine Orders 501 and 505 is as in force from time to time because they are adopted by reference to its title in this Marine Order. These Marine Orders are available for free download from the Federal Register of Legislation through links from AMSA's website at www.amsa.gov.au.

24. The manner of incorporation for the National Standard for Commercial Vessels is specified for each instrument as existing from time to time. These instruments are available for free download from the AMSA website at www.amsa.gov.au.

Commencement

25. This Marine Order commenced on 1 June 2025.

Contents of this instrument

Division 1 (Preliminary)

26. Section 1 sets out the name of the Marine Order.

27. Section 1A provides for the commencement of the Marine Order.

28. Section 1B provides for the repeal of *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018*.

29. Section 2 states the purpose of the Marine Order, which is to prescribe matters relating to the issue of certificates of operation under the national law including safety management system requirements.

30. Section 3 sets out the powers in the national law that provide for the Marine Order to be made.

31. Section 4 sets out definitions of terms used in the Marine Order. A determination power is also set out in this provision. The power authorises the National Regulator to determine when an operation is not suitable for simplified SMS arrangements and therefore should not benefit from the definition of *lower complexity vessel*.

32. Section 5 provides the meaning of an 'existing vessel' for the purposes of the Marine Order.

33. Section 6 sets out that Division 3 of Marine Order 501 (other than section 13) applies to the applications made to the National Regulator in relation to certificates of operation, appropriate crewing determinations and temporary crewing permits.

Division 2 (Requirements for certificate of operation)

34. Section 7 states that an application for a certificate of operation must be made in accordance with section 9 of Marine Order 501 and include a statement that a safety management system is in place for each vessel to which the application relates.

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

35. Section 8 prescribes the criteria that must be met for the issue or re-issue (renewal) of a certificate of operation, for paragraph 48(1)(c) of the national law. Owners can apply for a certificate of operation renewal if the vessel has had a certificate of operation in force within a 2-year period before the application for renewal is made. However, if a change to the certificate is sought, the change can only include removing a vessel from the certificate, lowering the operational area category of a vessel or removing a kind of operation. If any other changes are sought, owners will need to apply for a new certificate of operation. Additionally, this section sets out the requirements for a safety management system.

36. Section 9 prescribes the conditions attached to a certificate of operation, for paragraph 48(4)(a) of the national law.

37. Section 10 outlines the information that must be included in writing on the face of the certificate of operation. The inclusion of the certificate holder's name on the certificate of operation is appropriate and necessary to ensure that the person with related obligations under the national law can be identified. This information is essential for the National Regulator to undertake its compliance and enforcement activities and ensures transparency, accountability and fraud minimisation. It is important to note that a significant proportion of operators are body corporates and not individuals. In the case of a body corporate, there is no personal information recorded on the certificate. The certificate of operation is unlikely to include any other personal information.

Division 3 (Variation, suspension and revocation of certificates of operation)

38. Section 11 states that an application for variation, suspension or revocation of a certificate of operation must be made in accordance with section 9 of Marine Order 501. This section also outlines what needs to be included in the application.

39. Section 12 prescribes the criteria for variation of a certificate of operation by the National Regulator on application, for paragraph 50(1)(b) of the national law. This section also prescribes the criteria for variation of a certificate of operation on the National Regulator's initiative, for paragraph 50(2)(a) of the national law.

40. Section 13 prescribes the criteria for the suspension of a certificate of operation by the National Regulator on application, for paragraph 51(1)(b) of the national law. This section also prescribes the purposes for the suspension of a certificate of operation on the National Regulator's initiative, for subsection 51(2A) of the national law. Additionally, this section sets out the periods of suspension for subparagraph 51(3)(b) of the national law.

41. Section 14 prescribes the criteria for revocation of a certificate of operation on application, for paragraph 52(1)(b) of the national law as well as on the National Regulator's initiative, for paragraph 52(2)(a) of the national law.

Division 4 (Other matters)

42. Section 15 requires the owner of a domestic commercial vessel that is ≥80 m or ≥3000 GT or ≥3000 kW to apply to the National Regulator for a determination of appropriate crewing every five years. This section also provides the National Regulator with the power to determine the appropriate crewing for these vessels alongside the criteria that may be considered when making this determination. The decision to determine appropriate crewing is a reviewable decision for sections 16 and 17 of Marine Order 501.

43. Section 16 outlines that an owner of a domestic commercial vessel (that is not a Class 4 vessel) can apply to the National Regulator for a temporary crewing permit. This section also provides the National Regulator with the power to issue a temporary

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

crewing permit for up to 3 months and sets out the criteria that must be satisfied. A decision to refuse to issue a temporary crewing permit is a reviewable decision for sections 16 and 17 of Marine Order 501.

44. Section 17 prescribes that the holder of a certificate of operation must notify the National Regulator within 14 days after the sale, modification, sinking or scrapping of a vessel to which the certificate applies, for paragraph 57(1)(b) of the national law.

Schedule 1 (Operation requirements)

45. Schedule 1 sets out the operation requirements that must be complied with, and the matters that a safety management system must address. Schedule 1 applies to all vessels unless expressly stated otherwise.

46. Schedule 1, clause 1 states the information pertaining to vessel details and contact information that an owner must ensure is recorded and readily accessible. The intent of this clause is to ensure that the essential details of the vessel and operation are available including the details of the vessel owner and emergency contact. The vessel owner is responsible for the overall general control and management of the vessel and must meet associated safety requirements under the national law. The inclusion of the owner's name and contact information is necessary to ensure those on board and using the vessel's safety management system are aware of who the owner is and how to contact them about matters concerning the safe operation of the vessel. This information also assists the National Regulator with undertaking compliance and enforcement activities. In some cases, the owner may be a body corporate rather than an individual. Similarly, the inclusion of the emergency contact's name and contact information is necessary to ensure that the master and crew can contact this individual when there is a risk to safety. This clause applies to all vessels.

47. Schedule 1, clause 2 sets out the risk assessment requirements that domestic commercial vessel owners must comply with. These requirements relate to the preparation, recording, accessibility, and review of the risk assessment. In addition, this clause sets out what the risk assessment must identify. The intent of this clause is to ensure that a vessel has in place a robust and dynamic risk assessment that identifies and manages the risks associated with its operation. Paragraphs 2(2)(a) and (c)(iii) and 2(3)(a), (d) and (e) do not apply to a Class 4 vessel and paragraphs 2(3)(a), (b)(ii) and (c) do not apply to a lower complexity vessel.

48. Schedule 1, clause 3 states the information that must be recorded in the owner's responsibility and authority statement. This statement is a component of the vessel's safety management system and must be readily accessible. The intent of this clause is to ensure that the safety management system captures key details about the owner of the vessel and the owner's relationship and lines of communication with the master, crew and other personnel. The statement is important in identifying who the vessel owner is and who has the authority to act on behalf of the owner for the purposes of the national law. The inclusion of the owner's name and contact information is necessary and appropriate as it ensures that the master, crew and onshore staff can communicate with the owner about matters concerning the safe operation of the vessel. This clause applies to all vessels.

49. Schedule 1, clause 4 sets out the requirement for a vessel owner to designate at least one person to be responsible for several functions supporting the safe operation of the vessel. These functions are specified in the clause. The clause prescribes what details relating to the designated person(s) must be recorded to form part of the vessel's safety management system and be readily accessible. The designated person acts as a link between those working on board the vessel and the vessel's management. The inclusion of the designated person's name and contact information is appropriate and necessary to ensure that the master, crew and onshore staff can

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

contact them to escalate any safety issues. Subclause 4(4) does not apply to a lower complexity vessel if the owner is also the designated person.

50. Schedule 1, clause 5 sets out the vessel owner's obligation to ensure a master's responsibility and authority statement is recorded to form part of the vessel's safety management system and readily accessible. The clause provides the details that must be included in the statement. The intent of this clause is to clearly capture who holds the role of master and the master's responsibilities in ensuring the safe operation of the vessel. The clause does not apply to Class 4 vessels or to lower complexity vessels if the owner is also the master.

51. Schedule 1, clause 6 sets out the owner's responsibility to determine and ensure that the vessel operates with appropriate crewing. The clause prescribes the risks and factors that must be considered when determining the appropriate crewing for the vessel and each kind of operation it undertakes. The determination for each kind of operation of the vessel, together with information on the matters addressed in making the determination, must be recorded to form part of the vessel's safety management system and be readily accessible. The clause does not apply to Class 4 vessels or vessels ≥80 m or ≥3000 GT or ≥3000 kW.

52. Schedule 1, clause 7 states that owners of vessels ≥80 m or ≥3000 GT or ≥3000 kW must ensure the vessel operates in accordance with the appropriate crewing determined by the National Regulator. The application requirements for this appropriate crewing determination are set out in Division 4, section 15.

53. Schedule 1, clause 8 sets out the minimum crewing numbers for a vessel. The vessel's appropriate crewing determination must be at least the numbers set out in the table contained within the clause. The clause also specifies the types of vessels and operations to which the table does not apply. The clause does not allow a vessel's appropriate crewing number to be the same as the minimum crewing numbers set out in the table if the master and each crew member are not provided with at least 10 hours rest in each 24-hour period. The clause does not apply to Class 4 vessels.

54. Schedule 1, clause 9 sets out the training, induction and familiarisation that the master, crew and other person(s) engaged in key operations must receive as soon as possible after joining the vessel and before commencing duties. The clause specifies what the training must cover, who can provide the training and how the training must be recorded. The clause also sets out the requirements for conducting emergency drills and how these must be recorded. The name and signature of each person participating in the training or emergency drills must be recorded and this is appropriate and necessary for verification purposes. This information is important for the National Regulator when carrying out compliance and enforcement activities. If the name of the participant was not included in the record, it would be difficult for the National Regulator to determine whether appropriate training or drills were conducted. Further, requiring a participant's signature reduces the risk of falsified records. The clause does not apply to Class 4 vessels.

55. Schedule 1, clause 10 states the minimum first aid and radio communication requirements that a vessel owner must ensure are met. The clause does not apply to Class 4 vessels.

56. Schedule 1, clause 11 sets out the requirements for vessel owners to develop, record and review a procedure for key vessel operations. This procedure must address any risks identified by the vessel's risk assessment. The owner must ensure that each task in the procedure is assigned to crew with the skills and knowledge to perform the task. The clause provides a list of procedures required if applicable to the vessel and its operation. For a vessel to which NSCV Part F1C applies, the list of mandatory procedures is considered met if the vessel holds the manuals listed in the clause.

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

Subclauses 11(4) and 11(5) do not apply to a Class 4 vessel and paragraphs 11(5)(b), (c), (h) to (n) do not apply to a lower complexity vessel.

57. Schedule 1, clause 12 sets out the requirement for an owner to prepare, record and review an emergency plan for the vessel. The emergency plan is a component of the safety management system and must be readily accessible. The clause provides a list of situations which require an emergency response procedure in the emergency plan if relevant to the vessel and its operation. Additionally, the clause sets out the requirements for assembly stations to be identified in the plan, with assigned crew, as well as information and procedures to be displayed at the vessel assembly stations, cabins, common areas and prominent locations. The clause prescribes requirements for a system of confirming the presence of all persons on board during an emergency. Subclauses 12(4) to 12(6) do not apply to a Class 4 vessel and paragraphs 12(4)(a) to (c) and subclause 12(5) do not apply to a lower complexity vessel.

58. Schedule 1, clause 13 requires a vessel owner to investigate any hazardous occurrence or non-conformance and prescribes what information must be recorded. The clause applies to all vessels.

59. Schedule 1, clause 14 states requirements for the development, maintenance and implementation of a system of regular programmed inspection and maintenance appropriate to the vessel, machinery and equipment. It sets out who can conduct the inspections, what must be considered when conducting the inspections, what must be recorded and the requirements for servicing. The intent of this clause is to ensure that a vessel, its machinery and equipment is appropriately maintained and serviced for safety. The clause applies to all vessels.

60. Schedule 1, clause 15 provides that the vessel must have a logbook and sets out other record keeping requirements. The clause prescribes what information must be recorded in the vessel logbook, passenger manifest, crew list and records of vessel modifications. Schedule 1, subclauses 15(7) and 15(8) provide that for a vessel carrying passengers and undertaking a voyage that is at least 12 hours long, the vessel owner must ensure that a passenger manifest is kept on board the vessel and that it is readily accessible. The passenger manifest must include the passenger's name, contact information and details of any medical or safety requirements. This personal information is necessary and appropriate to ensure passenger safety on board the vessel. The passenger manifest allows the master and crew to effectively monitor the passengers and ensure they are accounted for in the event of an emergency. The details of any medical or safety requirements of passengers are particularly important for voyages of 12 hours or more, as the vessel may be operating in a remote location and not have immediate access to medical care. The passenger manifest may assist the National Regulator with undertaking its compliance and enforcement activities. The passenger contact information may also be used in search and rescue operations to confirm the identity of individuals and to identify next of kin.

61. Schedule 1, subclauses 15(9) and 15(10) require the owner of the vessel to ensure that a crew list is kept on board the vessel and is readily accessible. The personal information included in the crew list is necessary and appropriate to ensure that the owner, employer and each crew member of the vessel are identified and contactable. It also ensures that each crew member's next of kin is contactable in the event of an emergency. The personal information required to be included in the crew list is reasonable as working at sea can be a challenging and isolated work environment. For the safety of vessel operations and in emergencies, it is vital to be able to quickly confirm which crew members are on board the vessel, contacts for any medical episode or accident, who holds relevant responsibilities and their qualifications reflecting capabilities and experience. The crew list may assist the National Regulator in carrying out compliance and enforcement activities. The clause does not apply to

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

Class 4 vessels and subclauses 15(7) and 15(8) and paragraphs 15(10)(a) to (d), (i) and (j) do not apply to a lower complexity vessel.

62. Schedule 1, clause 16 sets out the requirements for the development and implementation of a review system. The clause prescribes that a record of revisions is made in writing and outlines what details need to be included in the record. The intent of this clause is to ensure that compliance with operation requirements is reviewed. Paragraphs 16(4)(a) and (b) do not apply to a lower complexity vessel.

Schedule 2 (Additional operation requirements for Class 4 vessels)

63. Schedule 2 sets out the additional operation requirements that apply to Class 4 vessels. The clauses in Schedule 2 only apply to Class 4 vessels.

64. Schedule 2, clause 1 sets out the additional matters that Class 4 vessels must include or identify in the vessel's risk assessment.

65. Schedule 2, clause 2 sets out the additional procedures that a Class 4 vessel must implement and ensure are readily accessible. It also prescribes that the owner of the vessel must ensure that pre-operating checks are performed before the hirer or participant takes control of the Class 4 vessel.

66. Schedule 2, clause 3 requires owners of Class 4 vessels to determine key prerequisites for hirers and participants including the maximum number of persons allowed on the vessel, levels of competency, minimum age thresholds and medical fitness requirements. Owners must also ensure that the person with the primary responsibility for the operation of the vessel is competent to operate the vessel.

67. Schedule 2, clause 4 provides that an owner of a Class 4 vessel must ensure that the emergency plan includes at least 1 assembly station on the vessel if it is practicable for an assembly station to be provided. This assembly station requirement does not apply to a lower complexity vessel. The clause also sets out the requirement for the vessel owner to ensure that a laminated written or diagrammatic emergency safety procedure is prepared and displayed on the vessel if practical.

68. Schedule 2, clause 5 states the level of competency requirements for tour leaders, guides and briefers for Class 4 vessels. The clause set outs that the vessel owner must ensure that the tour leader, guide and briefer is competent to perform their duties and meet any applicable State and Territory recreational boating operator licencing requirements. The tour leader must hold a current first aid certificate equivalent to at least HLTAID011 *Provide first aid*.

69. Schedule 2, clause 6 provides that the vessel owner must ensure that a briefing that includes matters identified by the vessel's risk assessment is given to each hirer and participant before they take control of the vessel. If each hirer and participant is not present, the vessel owner must ensure that a hirer or participant present at the briefing agrees to brief all other hirers and participants who may operate the vessel.

70. Schedule 2, clause 7 sets out that the vessel owner must ensure that the Class 4 vessel has all safety equipment on board when the hirer or representative of the hirer takes control of the vessel. The clause also requires that the vessel owner ensure that each hirer and participant is made aware of any requirements for the wearing of lifejackets that apply under State or Territory law.

71. Schedule 2, clause 8 provides that the vessel owner must ensure that written records about the operation of the vessel are maintained to allow for investigation of marine incidents required to be reported to the National Regulator.

72. Schedule 2, clause 9 sets out the additional operation requirements for personal watercraft.

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458

Statement of compatibility with human rights

73. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview of the legislative instrument

74. This Marine Order is made under the *Marine Safety (Domestic Commercial Vessel) National Law 2012* and prescribes matters relating to the application and issue of certificates of operation under the national law for domestic commercial vessels. Additionally, the Marine Order sets out the operation requirements that must be complied with, and that a safety management system must address.

75. This Marine Order repeals and replaces *Marine Order 504 (Certificates of operation and operation requirements – national law) 2018*.

Human rights implications

76. This instrument engages the human rights recognised by the International Covenant on Economic, Social and Cultural Rights. Article 6 recognises the right to work, defined as the opportunity of everyone to gain their living by freely chosen or accepted work. This instrument engages Article 6 by imposing requirements relating to the operation of domestic commercial vessels which are workplaces. The Marine Order imposes requirements that promote the safety of those workplaces, such as training and minimum and appropriate crewing of domestic commercial vessels, in accordance with the operation requirements set out in Schedule 1 of the instrument.

Conclusion

77. AMSA considers that this Marine Order is compatible with the human rights and freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Statement in relation to privacy

78. This instrument includes provisions enabling the collection, use or disclosure of personal information. These provisions are considered appropriate and necessary to ensure the safe operation of domestic commercial vessels. Any collection of personal information by the National Regulator will be subject to existing arrangements which protect the handling of personal information and ensure compliance with the *Privacy Act 1988* and the Australian Privacy Principles. Vessel owners that are collecting personal information may be subject to the *Privacy Act 1988* if the owner is a private sector organisation with an annual turnover of $3.0 million or more. However, the National Regulator considers the Marine Order to have limited practical intrusion on an individual's privacy.

Making the instrument

79. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Authority Act 1990.*

Authorised Version Replacement Explanatory Statement registered 25/03/2025 to F2024L01458