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Minimum Safe Manning Documents - Enough Hands On Deck?

Since coming into force on July 1, 2007, mariners and vessel owners have been adjusting to significant changes to vessel and crew certification requirements under the new *Canada Shipping Act 2001* and its regulations, including the *Vessel Inspection Regulations* and the *Marine Personnel Regulations*. Some of these adjustments have been less difficult than others, the requirement that many vessels have a *Minimum Safe Manning Document* being one of the more controversial changes.

What is a Minimum Safe Manning Document (“MSM Document”)?

A MSM Document is a certificate issued to a vessel by Transport Canada that sets out the minimum number of crew required to operate the vessel, as well as the minimum certification requirements for each of those crew members. Operating a vessel contrary to the MSM Document may result in the master, the employer, or the vessel’s Authorized Representative being issued a fine ranging from \$1,250 to \$25,000.

Who Must Have a MSM Document?

All non-pleasure vessels of 15 gross tonnes or more (or smaller but carry 12 or more passengers) are required to have a MSM Document.

What is the Purpose of a MSM Document?

The purpose of the MSM Document is to improve safety at sea by requiring vessels to be manned by the minimum number of competent crew that can “*safely operate the vessel while responding to an emergency*” [TC Bulletin 05/2008]. In other words, the minimum crew required depends on what types of emergency situations the vessel might encounter, and how the characteristics of the vessel influence the crew’s ability to respond to an emergency.

For some vessels, measuring the minimum number of required crew by gauging who is needed to respond to an emergency, and not simply how many crew is needed to operate the vessel under normal conditions, has meant increases in the crew-list and payroll. One requirement of every MSM Document, that each required crewmember have a Marine Emergency Duty (MED) certificate, continues to catch some mariners unprepared and short-handed. Decreasing profit margins, a shortage of certificated crew, and the availability and cost of training courses can make the requirements of a MSM Document difficult for some vessels to meet.

Why MSM Documents Now?

As a member of the International Maritime Organization (“IMO”), Canada is obliged to align the requirements of its domestic legislation with IMO conventions regarding maritime safety. Countries that give “full and complete effect” to these conventions are referred to as “White List” countries. The IMO reports that being a White List country provides some expected benefits to vessels flying the flag of that country, including that its vessels may be subject to less stringent scrutiny by the Port State Control of other countries, and its certificates may be accepted in principle as complying with the applicable IMO convention, making it easier for its vessels and crew to work around the world. Canada is a White List country.

However, changes at the international level often take many years to implement at a national level. In the case of minimum manning requirements for example, amendments to the 1978 *International Convention on the Standards of Training, Certification and Watchkeeping (“STCW”)* came into force in 1997, setting minimum competency requirements for crew. As part of a lengthy review of its own shipping legislation, and after years of consultation and redrafting, the new *Canada Shipping Act (2001)* came into effect in July of 2007, even though it was originally introduced in the House of Commons in 2001. Along with the new *CSA 2001*, came the *Vessel Inspection Regulations* and the *Marine Personnel Regulations*, being part of Canada’s effort to align its domestic laws with the IMO convention requirements. It is section 202 of the *Marine Personnel Regulations* (effective July 1, 2007) that requires many Canadian vessels to carry MSM Documents.

When Must a Vessel Have a MSM Document By, and How Long is it Good For?

The *Marine Personnel Regulations* provide that the requirements to have a MSM Document became effective on the latter of: (1) the next periodic inspection of the vessel (such as safety or machinery inspections) and (2) July 1, 2008. However, in July of 2008 Transport Canada extended this deadline to the latter of the vessel’s next periodic inspection, or January 1, 2009. Consequently, if your vessel does not now have an MSM Document, it will require one at its next periodic inspection.

MSM Documents are valid for 5 years. Prior to the expiry of the MSM Document, Transport Canada is expected to contact the owner of the vessel, and based on whether the characteristic of the vessel or its work have changed, either reissue the MSM Document in its same form, or re-assess the vessel.

How are the Crew Requirements of the MSM Document Determined?

In determining the minimum crewing requirements on a vessel’s MSM Document, Transport Canada Marine Safety Inspectors carry out an assessment of the vessel in light of its intended work and area of operation. The assessment is based on the vessel’s construction, equipment, stability, and design, while considering various characteristics of the vessels intended area of

operation, such as average wave height and wind velocity ranges, navigational hazards, distance from shore, communication coverage and other risks to the vessel. Just as an inspection certificate may impose restrictions that limit vessel's use to sheltered waters, near coastal voyages Class 1 (up to 200nm offshore) or Class 2 (up to 25nm offshore), or unlimited voyages, the assessment and resulting MSM Document may impose restrictions on the how many crew, and what competency of crew, is required to operate the vessel in those areas.

A vessel may have more than one MSM Document. For example, the work and area the vessel is engaged in may change seasonally and differ significantly over the course of a year. A vessel can be assessed by Transport Canada for the different types of work it carries out and a MSM document can be issued for each circumstance. Transport Canada refers to this as "multi-level safe manning".

What If You Disagree with the Requirements of the MSM Document?

If the assessment of what is the minimum safe manning level for a vessel is disagreed with, the Marine Technical Review Board can be asked to review the assessment and render a decision. The Marine Technical Review Board ("MTRB"), established by the *CSA 2001*, is internal to Transport Canada. If the decision of the MTRB is disagreed with, an application for review can be filed with the Transportation Appeal Tribunal of Canada, which is an independent federal body that adjudicates contested penalties and Ministerial decisions in the marine, railway and aviation sectors.

What If the MSM Document is not Complied With ?

Operating a vessel without a valid MSM Document, or operating a vessel contrary to the minimum safe crewing requirements of the MSM document, can result in the master or employer receiving an Administrative Monetary Penalty. For example, there are currently fines ranging from \$1,250 to \$25,000 for masters operating a vessel with less than sufficient and competent crew [s.82(2) and 106(2)(b) *MPR*]. In addition, Transport Canada is currently proposing to implement a penalty of \$6,000 to \$25,000 to the Authorized Representative (which is typically the owner) of a vessel for failing to ensure the requirements of the MSM Document are complied with. These penalties are reviewable by the Transportation Appeal Tribunal of Canada.

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