



## Boat-share

# Guidelines for recreational classification of boat-share schemes and vessels

### SYNOPSIS:

Guidelines for the classification of boat share vessels as recreational vessels

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## **1. Introduction**

- 1.1. The NSW coastline and rivers offer unparalleled opportunities for recreational boating of all kinds, including sailing, paddling, cruising or simply swimming and fishing. Boat ownership and vessel registration are at record highs, with over 450,000 recreational boat licence holders and 217,000 registered recreational boats in operation in the State.
- 1.2. In recent years a number of new businesses have offered schemes providing part ownership of a boat, allowing people to access larger craft at a fraction of the cost. These are broadly described by their operators as 'boat-share' schemes.
- 1.3. Boat-share schemes range from simple joint ownership of a boat between friends, to arrangements with a large number of owners and a formal contract with a management company handling administration, berthing and maintenance. In this Guideline the term 'boat-share' is used specifically to mean arrangements involving the shared ownership and use of a boat by its owners for recreational activities.

## **2. Purpose of this guideline**

- 2.1. Following a public consultation process, NSW Maritime has determined that vessels in schemes that meet NSW Maritime's definition of 'boat-share' will be considered recreational craft and not subject to the Marine Safety (Commercial Vessels) Regulation 2010. This document provides guidance on NSW Maritime's definition of "boat share."
- 2.2. Vessels or schemes not meeting this definition will generally be considered commercial, and will be required to comply with the relevant provisions of the Marine Safety Act 1998 and the Marine Safety (Commercial Vessels) Regulation 2010.
- 2.3. Owners and operators should seek their own legal advice as to whether their vessels comply with the requirements for recreational classification specified in this guideline.

## **3. Impact on previous guidelines or procedures**

- 3.1. This Guideline replaces any previous NSW Maritime guidelines, procedures or policies relevant to this issue, to the extent of any inconsistency. The provisions of the Guideline will be generally applied unless the General Manager, Maritime Operations or the Chief Executive NSW Maritime determine that circumstances exist that justify that it be departed from.
- 3.2. In addition, if NSW Maritime is obliged by law to act or omit to do something, NSW Maritime may depart from this Guideline to the extent necessary to fulfil that obligation.
- 3.3. Legislation relevant to boat-share schemes includes the Marine Safety Act 1998 and the Marine Safety (Commercial Vessels) Regulation 2010.

## 4. Definition of ‘boat-share’

- 4.1. A vessel in a ‘boat-share’ scheme is considered to be a recreational vessel, and therefore not subject to the *Marine Safety (Commercial Vessels) Regulation 2010*, if it is used exclusively by its owners for recreational purposes.
- 4.2. For a ‘boat-share’ vessel to be deemed recreational all three underlined elements above must be satisfied.
- 4.3. Examples of the types of arrangements that may be considered ‘boat-share schemes’ include (but are not limited to):
- A group of friends who get together and buy a boat to share.
  - An individual who buys a share in a boat from a builder who sets up a joint ownership scheme in relation to the boat.
  - A management company that provides boats to shareholders and then attends to the maintenance and management of the boat’s usage, provided that the shareholders have the collective authority to replace the management company or otherwise direct it (whether through an Annual General Meeting or other formal means) regarding the vessel’s use and upkeep.

### What does “exclusive” mean?

- 4.4. The term exclusive qualifies both who can use the vessel (i.e. only the owner and those they specifically invite on board) and the type of use (i.e. only recreational use).

### What does use of a boat for “recreational purposes” mean?

- 4.5. To be considered a recreational boat a ‘boat-share’ vessel must be used exclusively by its owners for recreational purposes.
- 4.6. A recreational purpose is any purpose that does not involve carrying passengers or cargo for hire or reward, providing services to vessels for reward or any other purpose that would make the vessel a commercial vessel.
- 4.7. A commercial vessel is defined in the Marine Safety Act 1998 as —
- (a) any vessel used or intended to be used for or in connection with any business or commercial activity, including (but not limited to) a vessel used or intended to be used wholly or principally for:
- (i) carrying passengers or cargo for hire or reward, whether within or outside State waters or in the course of overseas or interstate voyages, or
- (ii) providing services to vessels for reward, or
- (b) a vessel used or intended to be used by the Crown in any capacity.
- 4.8. Examples of commercial activity that would invalidate a boat’s recreational status include (but are not limited to) paid promotional activities or corporate events, paid advertising, charters or hiring to third parties.

- 4.9. It is the owner's use of the boat that is relevant in this definition. For example, if the owner of a boat hires it to a friend for a recreational activity, its owner has used it for a commercial purpose by hiring it out, regardless of the purpose the friend uses it for.

## **5. Who is the “owner” of a ‘boat-share’ vessel**

- 5.1. To be deemed a recreational boat a ‘boat-share’ vessel must only be used by its owner(s) and those they specifically invite on board.
- 5.2. The owner of a boat includes a person with formal legal title to the boat, as well as those who are genuinely acting as the owner even when legal title rests with another.
- 5.3. Furthermore to be considered ‘owners’ of a boat, each participant in a ‘boat-share’ vessel must—
- Have a direct relationship with, or interest in, the boat, evidenced either by legal title (for example, a purchase receipt in their name) or other formal arrangement such as a Joint Ownership Agreement;
  - Be one of a specified list of part-owners of the boat;
  - Be a natural person and not a corporation or other entity
  - Have the authority via the terms and conditions of the ‘boat-share’ scheme to exclude other persons who are not ‘owners’ from using that particular boat;
  - Be responsible for the maintenance, berthing and upkeep of the boat either themselves or by contracting out these responsibilities to a third party such as a management company;
  - Have the collective right to change or terminate a contract with any management company subject to any fees or penalties outlined in the original management agreement; and
  - Be able to exit the ‘boat-share’ at any time and receive an appropriate return.
- 5.4. Sometimes the ‘boat-share’ scheme promoter or associated management company also retains a part share (or ‘Golden Share’) in the boat. If this part share represents a controlling interest, the boat is not ‘owned’ by the ‘boat-share’ scheme participants but by the promoter or company. In these cases the scheme participants are not genuine ‘owners’ and the boat would generally be considered commercial.

## **6. Schemes that are not ‘boat-share’**

- 6.1. Examples of schemes where a boat provided in any type of joint ownership or joint use scheme will not generally be considered to be ‘boat-share’ include (but are not limited to):
- a) Where the boat is hired out to a third party by either its owners or a management company.
  - b) Where members of the public other than the owners of the boat (or those they have specifically invited on board) are able to use it without the permission of the scheme's participants.

- c) Where a management company has been contracted by the owners of the boat, and the terms of that contract specify that the management company or any other party also intends to use the boat for commercial purposes.
- d) Where a management company or 'boat-share' scheme promoter may unilaterally remove ownership rights from one or more participants of the scheme.
- e) Where use of the vessel(s) are available to others as any kind of formal 'reciprocal right'.
- f) Where the promoter of the 'boat-share' scheme or a management company contracted by the owners retains a 'gold share' or similar as outlined in section 3.3 of this Guideline.
- g) Where members of the scheme do not have ownership of the boat in the terms outlined in section 4.3 of this Guideline.
- h) Where use of the boat is as a result of the user(s) being a member of a Club that owns the boat.
- i) Where the boat is used in any way for a commercial purpose.

## **7. Offences**

- 7.1. If your vessel is a commercial vessel that is required to have a survey certificate and does not have a survey certificate both the master and owner of the vessel may face fines of \$1,500 each. If the matter goes to court a penalty of up to \$11,000 each may be applied.
- 7.2. If your vessel is a commercial vessel and is operated without an appropriate certificate of competency both the owner and master of the vessel may face fines of \$1,500 each. If the matter goes to court a penalty of up to \$11,000 each may be applied.
- 7.3. If your vessel is a commercial vessel and you do not have a compliant safety management system for the vessel the owner may face a fine of \$1,500. If the matter goes to court a penalty of up to \$11,000 may be applied.
- 7.4. Penalties for other offences may also apply.

## **8. Policy review**

- 8.1. While the provisions of this Guideline may be reviewed at any time if circumstances warrant, the next formal review will take place in 2012.