



Risk Management

Read the *Instructions & Guidelines* module before beginning this module.

OBJECTIVES

After reading this module, you should be able to:

- Explain the four *goals* of *risk management*.
- Explain two types of risks: *operational risks* and *legal liability risks*.
- Define *duty of care*.
- Describe four elements of *negligence* and defenses for negligence.
- Describe: *risk identification*, *risk evaluation*, *risk resolution*, *risk control*, and *risk financing*.
- Describe an *Emergency Action Plan* and give examples of what should be contained in the plan.
- Explain the ten steps of *risk management* for an instructor.

Almost all human activity involves the *risk* of injury, even teaching boating. In turn, that *risk* involves the possibility of a lawsuit by the person injured against the persons and program organization involved in or in charge of the activity. Those kinds of risks need to be managed (prevented or minimized) at all levels.

Goals of Risk Management

The primary goals of risk management are to:

1. Try to **recognize situations** that could result in harm to person or property **and properly deal with them**.
2. Try to **reduce the number of all accidents**, including the ones that cause little harm but happen frequently.
3. **Be prepared for the contingency** should harm actually occur so that the harm is kept to a minimum.
4. **Monitor and adjust** as exposures change and develop.

Defining Risks

The initial step for a program and its participants is to understand the wide variety of possible harms that could occur.

Operational risks include the possibility of loss or damage to boats, equipment, personal property, physical property, docks, and vehicles used to transport boats and participants. They also include the possibility of theft and dishonesty.

Legal liability risks

Legal liability risks include two main areas.

Regulatory Risks

These are responsibilities mandated by federal, state and local laws and regulations, such as: requiring launch/powerboat operators to obtain appropriate licenses, stipulating ways to control pollution, seeking to protect environment and wildlife (e.g., manatees), requiring boats to be registered and inspected. These regulations include exposures such as those of employers to employees, under state workers' compensation acts, the Jones Act and the Longshoremen's and Harborworkers' Act. Regulatory risks have remedies for wrongs such as fines, jail or both, and the violations may be either civil or criminal in nature.

Contracts and Tort Liability

Contractual liabilities can arise when a party to a written or verbal contract (such as a contract to provide instruction) is held to have violated a responsibility under the terms of the contract. Verbal contracts can be actual or implied, which is why written contracts are advisable for both parties, and injuries can be real or imagined.

Tort liability theories include negligence, assault, battery, defamation, invasion of privacy and the like. Most often the tort theory in boating cases is negligence.

Instructors have a "*duty of care*" for their students. This is essentially doing or not doing something a reasonable careful person would or would not do. The liabilities are different when you are working with minors.

These **four elements of negligence** must all be present for the court to determine negligence.

1. You must have a **legal duty to the injured party**.
2. You must have **failed to fulfill your duty**.
3. The **injury had to occur to the party to whom you owed the duty**.
4. Your **failure to fulfill your duty has to be the cause of the injury**.

There are four common **defenses for negligence** available to an instructor.

1. Show that **all the elements of negligence were not present**.
2. Show that the direct causes of the injury were an **act of God** (forces of nature).
3. Show that the injured party is guilty of **contributory negligence**, meaning that he or she caused the injury. **Comparative negligence** is when a proportion of the fault is distributed among several parties.
4. Prove that the risk was the **inherent risk** in the sport and that the student/person assumed the risk by engaging in boating.

Risk Management

In risk management a process is used for dealing with the risk which requires us to first identify those risks, then evaluate the identified risks for the best treatment, and then deal with the identified risks.

Risk Identification

First we want to perform a **site assessment**. This involves identifying those areas or items that may lead to an injury. This would mean checking and listing all items and areas around the facility, the docks and the boats themselves. Include even the trivial on your list. The more comprehensive the list the better prepared you will be. Something as simple as a splinter (from a dock covered in creosote) can lead to serious infection and possible gangrene if left unchecked. Site assessments are an ongoing process. The site and situations change constantly in a marine environment and it is your job to be aware of these changes.

Risk Evaluation

Once your comprehensive list is made you can then organize it into one or two categories. One is comprised of areas or items that could lead to frequent and minor injuries; the other could lead to rare and serious injuries. Your goal will be to eliminate or reduce both the seriousness and the frequency of a potential injury.

Risk Resolution

There are four risk management techniques for risk resolution.

1. **Eliminate the risk**. An example would be to correct a problem by fixing a broken dock or not engaging in a particular activity.
2. **Reduce the probability that the exposure will lead to serious injury**. An example would be to require boaters to wear shoes.
3. **Assume the risk**. Since students have to go out on the water, an example would be to accept the risk and manage the exposure.
4. **Transfer the risk to a third party**. An example would be to buy lunch from a vendor instead of making lunch for the class or to obtain insurance and have an insurance company take the risk.

Risk Control

Starting with the top priority risks, program organizers should develop a series of responses to try to prevent an occurrence and to be prepared should a contingency occur. They should have a written emergency action plan and they should have all instructors participate in actual "practice drills." If some portions of a program are deemed too hazardous, they should be properly removed. Other risks can be managed by safety instruction. For example, wearing life jackets at all times on the water may not prevent a drowning but will surely reduce significantly the possibility of one. Still others will require well thought-out emergency planning, such as responses for squalls and similar sudden weather changes.

Risk Financing

Funds must be budgeted for a wide variety of risk controls and, in addition, for the more remote possibility that additional costs may be incurred because of loss or damage to property, injury to others, including damage to their property, and regulatory fines. Any program will be wise to have a defined contingency reserve to draw against for smaller cost situations, plus prudent insurance to protect the sponsoring organization, its employees, and volunteers. *Instructors have a right to know exactly what financial protection has been arranged on their behalf by the sponsoring organizations.*

The Steps of Risk Management for an Instructor

As an instructor, there are a number of precautions that you along with those who arrange and supervise a boating program can take to try to ensure a safe program.

1. [Plan your course/program thoroughly.](#)
2. [Assess risks on a continuing basis.](#)
3. [Understand the capabilities and limitations of your students.](#)
4. [Provide and maintain a safe physical environment.](#)
5. [Provide and maintain proper equipment.](#)
6. [Teach state-of-the-art methods.](#)
7. [Supervise all activities carefully.](#)
8. [Prepare and test emergency procedures.](#)
9. [Maintain complete records of activities.](#)
10. [Provide appropriate financing for risk.](#)

Using this approach will give you a good foundation for satisfying many of your legal duties. Let's look at each of these in some detail.

1. Plan your course/program thoroughly.

Develop a curriculum/program of instruction using materials from US Sailing/US Powerboating with input from prior courses and from your own experience. Lesson plans will be important to the overall continuity of instruction as they implement the sequence of teaching specific skills from basic to advanced.

Make provisions for individual evaluation of each student. Evaluate them frequently, discuss their progress, and be prepared to modify your instruction plan to adapt to their needs. Progress reports should be **written documents** available to students, families, and your sponsoring organization.

2. Assess risk on a continuing basis.

Go back to basic risk evaluation, and review and discuss each type of possible risk with your sponsoring organization and staff **before** your program starts. **Record each risk** and the **suggested response** to it, making sure that each response is prudent, practical and affordable. Then set responsibilities for assuring that these risks are continually reassessed, and that your students and their family members are aware of the risk control standards that have been adopted.

A **Participation Agreement signed by each student** (or a parent/guardian if appropriate) should be on file before classes begin. In these documents prospective students acknowledge that they understand the *inherent dangers* involved with boating (like falls, crushed fingers, drowning, etc.) and yet are willing to assume these risks by indicating that they want to participate in an on-the-water course. Signs, orientation meetings and films are also ways to inform prospective students about the inherent dangers boating. The constant repetition of rules and cautions may be annoying, but it will, in the long run, create the appreciation of risk and prudence that will prevent accidents.

3. *Understand the capabilities and limitations of your students.*

Swimming ability is a most important capability for any student. While some programs may require a swim check, yours may accept proof of the ability to swim 50 yards from the American Red Cross or other national organizations recognized by US Sailing. Next, the program should **assure the physical fitness** of each student for the course, including a completed **medical form** from a responsible person, with any limitations or special medical conditions noted that could affect participation. If a student returns to the program after an injury or illness, your program may require a **physician's statement**. Finally, you should understand the prior boating experience of each student so that he or she may be placed in the appropriate level of instruction.

4. *Provide and maintain a safe physical environment.*

First check the land-based location from which you will be operating. Are the grounds, buildings, and docks safe for your students and their activities? Under the law you are responsible for both *actual* and *constructive* knowledge of an unsafe condition. Anything you should have discovered in a regular inspection will be deemed constructive knowledge for which you are still liable. *Actual notice* occurs when the responsible party is given notice of an unsafe condition. To perform your duty, you must provide notice, both *actual notice* and *constructive notice*.

Waivers and “Release of Liability” Forms, although not always successful at avoiding liability, they have been very effective in providing both actual and constructive notice. Because these types of forms need to be customized to conform to each state's laws and regulations, we recommend that each facility/organization's attorney should draft a release form that provides actual and constructive notice for their situations. Make sure that a parent or guardian signs these forms if you are teaching minors.

Instructors take note...

Be aware that just because a student, or a parent/guardian of a minor, signs a standard release form that actually doesn't absolve the instructor in any way from being negligent.

Facility Inspection Guidelines are an essential component of any safe boating program and will help prevent accidents. Conduct inspections each day and each week and keep a record of findings, actions taken to reduce risks and warnings given about inherent risks. Nearby electrical wires, planking with splinters, sharp edges, exposed nails and similar hazards should be noted and immediate corrections made. If there is a chance of periodic water pollution, learn how to take daily tests – don't depend on public authorities to warn you. Finally, since weather conditions can and will change quickly be alert to changing forecasts and be prepared to respond accordingly. If a squall threatens, you should take your students off the water immediately.

5. Provide and maintain proper equipment.

Equipment used by your program, yourself, and your students should be appropriate, safeguarded, and maintained during the program.

- **All boats and equipment**, whether owned by the program or by students, should be **inspected daily** and the results recorded on a Facility Inspection Form. If a boat is unsafe or lacks the proper equipment, you should not permit it to be used until the deficiencies are corrected.
- Students should be taught **responsibility for their own equipment** and respect for the property of others. You can help by providing secure storage areas for all boats, boat parts and personal property.
- Powerboats used in the program should have appropriate documentation, registration, and inspection certificate as required by U.S. Coast Guard and state.
- **Correct operation of a hoist** should be taught (if one is used) and its operation restricted to only those properly instructed in its use. A hoist should be inspected daily. Proper written and oral instruction concerning the use of any other equipment or procedures that boaters will use is important.

6. Teach state-of-the-art methods.

Your instruction program should embody state-of-the-art teaching methods, incorporating US Sailing/US Powerboating's best practices as well as the experience of you and your program. The program should provide instruction and feedback appropriate to the students' skill level.

Keep current with new boathandling and teaching advances by attending relevant symposiums and conferences, and using newly-developed learning tools that become available.

Proper instruction also presupposes careful selection of instructional staff and assurance that each staff member has been qualified. Do all instructors have first aid and CPR training? Are they certified as a US Sailing and/or US Powerboating instructor? Do they have required current U.S. Coast Guard license, automobile license (if applicable) or state boating certificate?

7. Supervise all activities carefully.

Supervision is a major responsibility, especially when younger students are involved. It begins before your students arrive at the site and continues until after the last student has left for the day. At times it will require **general supervision** and at other times it may require **specific supervision**. This supervision will apply to students and staff. A program director or head instructor has the overall responsibility even when he or she is not on the water with a particular class or near the activity in which they are engaged.

General supervision requires you to be in the area of the activity at all times to not only keep the program going but to anticipate problems. **Specific supervision** of the students will be required at times when there is a higher risk of an injury. This might involve activities such as teaching a new skill, conducting a swim test or responding to an emergency.

Supervision means maintaining a level of discipline appropriate to the activity. If a student is reprimanded or punished for inappropriate behavior, record the circumstances and discuss the situation with your sponsoring organization (and both parents if the student is a minor). Disruptive behavior can destroy both the fun and the learning process for other students, so prompt and effective action can be essential to the success of your program.

Consider the recommended instructor-to-students ratio and instructor boat-to-students' boats ratio when deciding on levels of supervision. One of the most frequent complaints in sports lawsuits involves the allegation of "failure to supervise."
The degree of supervision must be related to the degrees of potential risk.

8. Prepare and test emergency procedures.

Emergencies can and will occur. You should have **written procedures** for a wide range of possible events, and you and your staff should **TEST your ability to respond quickly** and appropriately

Are you ready to handle these events?

- Person in the water rescue
- Serious injury to a student (at the dock and on the water)
- Safety boat or powerboat breakdown
- Theft of critical equipment
- Sudden change in weather conditions

The real practice of risk management begins when you are forced to respond to an emergency, especially one in which several things go wrong at the same time.

- Do you have required first aid and CPR skills?
- Can you communicate immediately from either land or water with professional emergency teams?
- Do you know the emergency number for your area? (Not all areas have 911 systems in place.)
- Do you know the location, distance and directions to the nearest hospital emergency facilities?

The emergency plans for a variety of risk scenarios should be reviewed carefully with your staff, your sponsoring organization and your local response team. These plans should be specific to your site and updated as appropriate.

9. Maintain complete records of activities.

The importance of proper documentation cannot be over emphasized. If an injury occurs and a lawsuit results, complete documentation of your efforts will be essential. You must maintain records of all actions taken to avoid an accident and what actually happened. These records may be all you have to show a jury that you acted in a prudent and professional manner, and may very well be the difference in prevailing in a lawsuit.

Additionally, each day an instructor should complete a Log (written record) of all program activities, noting:

- Weather and water conditions periodically, as well as significant changes
- Names of absent students
- Incidents involving possible injury, physical damage or loss
- Conditions calling for repairs
- Any other events of note

The Logs should be maintained as a permanent record. Should litigation occur the Logs may be indispensable for defense.

Similarly, the emergency action plan and any accident reports given to medical, police or insurance organizations should be maintained in the program's records. The records should also include any particular agreements, waivers, release, or hold harmless agreements signed by students (or parents/guardians when applicable), student medical forms, injury reports, progress reports on students, periodic facility inspection reports, and daily/weekly lesson plans.

10. Provide appropriate financing for risk.

A program should assure that adequate funds are available to meet the possible contingencies described in the risk assessment. This may mean the use of a special reserve fund or budget to cover the smaller losses that inevitably occur in any program. This also means provision of appropriate forms of insurance to protect the organization, its employees, its members (if a club), its volunteers, and its instructional staff (if not employees). They should be protected from a variety of risks, including, but not limited to, physical damage to property, dishonesty and theft, legal liability, automobile liability, marine liability, workers' compensation, and the possibility of fines (if insurable). The details of this financing should be explained in full to the instructional staff so that they will understand their rights, duties and responsibilities, especially for insurance.

For example, if an organization carries a deductible on its liability insurance policy that covers instructors, will that organization reimburse an instructor if he or she is sued and the deductible is imposed? Has the organization provided proper workers' compensation protection, including Jones Act and comparable coverage? Has its automobile liability insurance been extended to cover non-owned vehicles, such as those used by instructors and volunteers? All of these areas of risk financing should be confirmed before starting a program. If your program supervisor does not include this information during staff training, ask.

The organization can seek assistance from US Sailing and other specialists in determining what insurance may be appropriate and what limits of protection are prudent. Special insurance coverages are also available from programs endorsed by US Sailing for events such as regattas and through US Sailing for certified instructors.

Risk Management Conclusion

Risk management in boating is essentially commonsense. Cautious boaters respect the sea, its power and vagaries, and the fragility of their equipment. This essential caution will be taught by prudent instructors to their students, using the tools of risk assessment, risk control, and risk financing, to assure a safe and secure learning environment -- one that enhances the joy of the sport.

Even with all of these precautions, an accident can still occur. It may end up in court with a judge awarding damages to the injured party, even though you performed as well as anyone could have in the same situation. The ultimate goal is for you, as an instructor, to be confident in knowing that you have done everything that could have been done in each situation to ensure a safe learning environment for all.

Self-Assessment & Review

True or False

1. One goal of risk management is to recognize harmful situations and properly deal with them.
2. Program managers, not instructors, have a *duty to care* for the students.
3. Regulatory risks are responsibilities mandated by federal, state and local laws and regulations.
4. Emergency action plans do not need to be written plans.
5. It is not necessary for staff to practice emergency drills.
6. *Duty to care* means “doing or not doing something a reasonably careful person would or would not do.”

Multiple Choice (choose correct answer)

7. Review your list of risks and divide them into items that could lead to serious injuries and ones that could lead to minor injuries.
 a. risk identification
 b. risk resolution
 c. risk evaluation
 d. risk control
 e. risk financing
8. Funds used to pay for injuries, insurance, damage to property, regulatory fines.
 a. risk identification
 b. risk resolution
 c. risk evaluation
 d. risk control
 e. risk financing
9. Assess and identify areas or items that may lead to injury.
 a. risk identification
 b. risk resolution
 c. risk evaluation
 d. risk control
 e. risk financing

10. Eliminate risk, reduce exposure, assume risk, or transfer risk to a third party.

- a. risk identification
- b. risk resolution
- c. risk evaluation
- d. risk control
- e. risk financing

11. Prevent an occurrence and be prepared if an accident should occur (written emergency action plans, practice drills).

- a. risk identification
- b. risk resolution
- c. risk evaluation
- d. risk control
- e. risk financing

Questions to Think About & Ask Yourself

12. A student is handling one of the docklines as a boat docks. The line suddenly comes under tension, causing the student's hand to get injured as the line slips by the cleat.

What could have been done to reduce the risk of this accident happening? What elements should be included in the emergency action plan to address the situation?

13. Use the following scenerio to answer the question below.

A student falls overboard from the instructor's powerboat and is injured on the second day of class. The student is wearing a life jacket and the extent of his injuries is unknown, another student is in the boat with the instructor.

What could have been done to reduce the risk of this accident happening? What elements should be included in the emergency action plan to address the situation?

Answers:

- [1. T](#)
- [2. F](#)
- [3. T](#)
- [4. F](#)
- [5. F](#)
- [6. T](#)
- [7. C](#)
- [8. E](#)
- [9. A](#)
- [10. B](#)
- [11. D](#)