



SUB-COMMITTEE ON STANDARDS OF
TRAINING AND WATCHKEEPING
39th session
Agenda item 11

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ANY OTHER BUSINESS

PSC guidelines on inspection of seafarers' working hours

Note by the Secretariat

SUMMARY

Executive summary: This document reports on the outcome of MSC 82 with regard to PSC guidelines on inspection of seafarers' working hours

Action to be taken: Paragraph 4

Related documents: FSI 14/19 and MSC 82/24

1 The Sub-Committee on Flag State Implementation (FSI) at its fourteenth session (5 to 9 June 2006) developed draft PSC guidelines on inspection of seafarers' working hours. MSC 82 having considered the views expressed that the draft guidelines might need further review, in particular on STCW-related matters, agreed to refer the matter to the FSI and STW Sub-Committees for consideration and reporting to MSC 83 (MSC 82/24, paragraphs 10.17 and 10.18).

2 STW 38 noted that due to the limited time between MSC 82 and the Sub-Committee's meeting, it was not possible to circulate the draft guidelines developed by FSI 14. Accordingly, the Sub-Committee agreed that, in order to have an in-depth discussion on this issue, it would be appropriate to circulate the guidelines developed by FSI 14 for consideration at STW 39 with a view to providing with appropriate advice to MSC 84.

3 The draft guidelines developed by FSI 14 is set out in the annex.

Action requested of the Sub-Committee

4 The Sub-Committee is invited to take the above information into account and decide as appropriate.

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ANNEX**DRAFT [MSC CIRCULAR] [IMO/ILO GUIDELINES]****GUIDELINES FOR PORT STATE CONTROL ON INSPECTION OF
SEAFARERS' WORKING HOURS**

- 1 The Maritime Safety Committee (MSC), at its [.....], noting that fatigue has been identified as a serious contributing factor to maritime casualties and to health problems of seafarers, having considered the issue of seafarers' working hours, and having agreed that practical guidance should be developed to provide appropriate information on seafarers' working hours to all parties concerned, approved Guidelines for Port State Control on Inspection of Seafarers' Working Hours, as set out in the annex.
- 2 The Committee acknowledged that, although the Guidelines can only be implemented by Member States, which have ratified ILO Convention No.180, they can also be useful to port State control officers when examining compliance with SOLAS and STCW Convention requirements.
- 3 Member Governments are invited to bring this circular to the attention of all concerned and, in particular, national authorities in charge of port State Control activities.

ANNEX

**GUIDELINES FOR PORT STATE CONTROL ON INSPECTION OF
SEAFARERS' WORKING HOURS**

PREAMBLE

1 Fatigue has been identified as a serious contributing factor to maritime casualties and to health problems of seafarers. One of its sources is excessive hours of work or insufficient rest. ILO Convention No.180 (Seafarers' Hours of Work and the Manning of Ships Convention) aims to limit the maximum hours of work or to provide minimum rest periods for seafarers.

2 States having ratified ILO Convention No.180 are entitled to examine the records for hours of work or minimum rest periods on ships flying their flags. Tables of service at sea and in port (including maximum hours of work or minimum periods of rest per day and per week) should be posted on board where all seafarers may see them.

3 Records of hours of work or rest periods have to be maintained and examined by flag States in due time. If the records or other evidence indicate infringement of provisions governing hours of work or rest, the competent authority of the flag State is to require that measures, including if necessary the revision of the manning of the ship, are taken so as to avoid future infringement.

4 ILO adopted Convention No.180 and a Protocol of 1996 to Convention No.147, which entered into force on 8 August 2002 and 8 January 2003 respectively. Article 4 of Convention No.147 provides for the port State control of living and working conditions of seafarers as provided in the Convention itself and in the list of Conventions (e.g., Convention No.73 on medical certificates) contained in its Appendix. The Protocol of 1996 to Convention No.147, among other things, extends the list of Conventions in the Appendix of Convention No.147 to include Convention No.180. Thus, States which have ratified the Protocol may exercise port State control over the provisions of Convention No.180.^{1 & 2}

5 ILO, together with IMO, have developed Guidelines for the Development of Tables of Seafarers' Shipboard Working Arrangements and Formats of Records of Seafarers' Hours of Work or Hours of Rest and standardized formats relating to shipboard working arrangements and hours of work and rest of seafarers, as referred to in articles 5 and 8 of the ILO Convention No.180 which provide guidance to flag States but may also be relevant to port State control.

6 ILO Convention No.180 defines "seafarer" as "any person defined as such by national laws or regulations or collective agreements who is employed or engaged in any capacity on board a seagoing ship to which this Convention applies". The Convention also provides that "this Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations". Thus when exercising port State control the port State control officer may examine information relevant to any persons employed on the ship.

¹ On 23 February 2006, the 94th International Labour Conference, at its 10th Maritime Session, adopted the Maritime Labour Convention 2006 (MLC 2006). This new document takes over 68 existing instruments that are for a great deal of them incorporated into the new Convention. In that respect, the MLC 2006 includes the same provisions as ILO No.180 relative to the seafarers' hours of work.

² An updated list of ratifications of ILO Conventions is available at: www.ilo.org.

7 If non-compliance with the Protocol of 1996 to ILO Convention No.147 is found, the port State may in accordance with Article 4 of Convention No.147:

- .1 prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of ILO; and
- .2 take measures necessary to rectify any conditions on board which are clearly hazardous to safety and health.

8 Clearly, excessive working hours or insufficient rest periods for watchkeeping personnel not only violate ILO requirements but also the rest period requirements of the STCW Convention. Evidence that other personnel essential to safety, such as a Master, Chief Engineer or other essential person, are exhausted – even if such persons are not specifically assigned to a watch – may also be considered by the PSCO for significant action.

9 It is recognized that the PSCO might come across a complete lack of records or falsified records. In such cases, it may be useful for the PSCO to have an understanding of fatigue and to identify it. In this regard, attention is drawn to MSC/Circ.1014 of 12 June 2001, on “Guidance on fatigue mitigation and management”.

1 INSPECTION

1.1 Table with the shipboard working arrangements

(Ref. Protocol of 1996 to C. 147. See also Ref. C. 180, Article 5, paragraph 7. Additional guidance: IMO/ILO Guidelines, paragraphs 10-15 (in particular paragraph 12). See also STCW Code, chapter VIII, section A-VIII/1, paragraph 5 and (IMO/ILO Guidelines, appendix 2, page 12)).

ILO Convention No.180 provides that the States (flag States) shall require the posting, in an easily accessible place, of a table with the shipboard working arrangements, which shall contain for every position at least:

- .1 the schedule of service at sea and service in port; and
- .2 the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force in the flag State. The table is to be established in a standardized format in the working language of the ship and in English.

It is likely that this table will be posted in common spaces, such as crew and officers’ mess and in adjacent passageways.

Is the table with the shipboard working arrangements posted?

If so, is it in a place easily accessible to the crew?

Does it contain the required information?

Is it in the working language of the ship and in English?

1.2 Records of seafarers' hours of work or rest

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 8 paragraph 1. Additional Guidance: IMO/ILO Guidelines, paragraphs 16 to 24 (in particular, paragraphs 22 and 23)).

Records of seafarers' daily hours of work or of their hours of rest should be maintained. These records should be mostly available in the Master's cabin or ship's office. The PSCO has to look for:

- .1 Are there records of seafarers' hours of work or their hours of rest?
- .2 Do the records appear to be in conformity with the Convention? For example, are the records reasonably up-to-date? Are they signed by the master or his representative and by the seafarer? Do they account for all hours in each 24-hour period? (The PSCO should ask if there is evidence that the records are endorsed by the flag State. It is for the flag State to decide the procedure for endorsement. Lack of evidence of endorsement should not be recorded as a deficiency but may be taken into account by the PSCO in deciding the extent to which the records should be checked.)

1.3 Age of seafarers

(Ref. Protocol of 1996 to C. 147. See also C. 180, Articles 6 and 12).

ILO Convention No.180 provides that no person under 16 years of age shall work on a ship. Special regulations apply to the working hours of seafarers under the age of 18. Are all seafarers at least 18 years of age?

2 MORE DETAILED INSPECTION

2.1 More detailed inspection of the table of shipboard working arrangements and related matters (e.g., missing tables, tables not accessible by crew, tables missing required information)

2.1.1 Absence of table

If there is no table with shipboard working arrangements, the PSCO should take action to require the table to be posted before departure (see Section, Follow-Up Actions).

2.1.2 Table not accessible to crew

(Ref. Protocol of 1996 to C. 147. See also C.180, Article 5 paragraph 7. Additional guidance: IMO/ILO Guidelines, paragraphs 10 to 15).

If there is a table with shipboard working arrangements, but the table has not been posted in a place easily accessible to the crew (see A.1.2), the PSCO should take action to require that the table be posted in a place easily accessible to the crew before departure (see Section, Follow-Up Actions).

2.1.3 Table is missing required information or contains information not consistent with C. 180
(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 5, paragraph 1 and Article 5, paragraph 7. Additional guidance: IMO/ILO Guidelines, paragraphs 10 to 15.)

If the table with shipboard working arrangements is missing required information (for guidance, see the IMO/ILO Guidelines, paragraph 12), the PSCO should take action to require that the table is corrected before departure (see Section, Follow-Up Actions).

In determining if the table of shipboard working arrangements includes the appropriate information, the PSCO should bear in mind that, though Article 5, paragraphs 1 and 2 of C. 180 sets out specific limits to working hours or provides for minimum rest periods, Article 5, paragraph 6 of C. 180 provides that:

“Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws and regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.”

Thus, if the table of shipboard working arrangements includes limits which exceed those in Article 5, paragraphs 1 and 2, these limits are to be provided in a collective agreement which has been registered or authorized by the flag State. A copy of the relevant provisions of the national legislation pertaining to this Convention and/or the relevant collective agreements shall be kept on board and be easily accessible to the crew. (However, there is no requirement for this national legislation or this collective agreement to be in English, and therefore the PSCO may not be able to check the contents of these texts.)

If the flag State has ratified ILO Convention No 180 and if there is evidence that the collective agreement authorizing such exceptions has been authorized by or registered with the flag State, then exceeding the limits of Article 5, paragraphs 1 and 2 would not constitute a deficiency. However, if the limits permit less rest for watchkeepers than provided in the STCW Convention (see STCW Convention regulation VIII/1, Fitness for duty and STCW Code Chapter VIII, Section A-VIII/1, Fitness for duty, paragraphs 1 to 4 (these provisions are set out in Appendix 2 of the IMO/ILO Guidelines), this would constitute a non-conformity with the STCW Convention (for example, a collective agreement might provide for less than 77 hours of rest per week for watchkeepers but should not provide for less than the 70 hours required by the STCW Convention).

If the table of shipboard working arrangements does not set out the relevant provisions of the laws, regulations or collective agreements in force in the flag State concerning maximum hours of work or minimum periods of rest, this would constitute a deficiency (see C. 180, Article 5(7)).

Evidence of safety-related hours of work

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 7 (and Article 8, paragraph 3). Additional Guidance: IMO/ILO Guidelines, paragraphs 10 to 15).

The seafarer may have performed hours of work necessary for the immediate safety of the ship, person on board or cargo or for the purpose of giving assistance to a ship or person in distress at sea. In this situation PSCO may look for evidence of emergency situation in the ship's log book, including the necessary hours of work.

As soon as practicable after the normal situation has been restored, the Master shall ensure that any seafarers that have performed work in a scheduled rest period are provided with an adequate period of rest. This should be reflected in the record of the hours of work or rest.

2.1.4 Table not in the working language of the ship and in English

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 5, paragraph 8 and Article 8, paragraph 2. Additional Guidance: IMO/ILO Guidelines, paragraphs 10 to 15.)

If the table with shipboard working arrangements is not available in the working language on the ship and in English, the PSCO should take action to require that this is rectified before departure. What is important here is that the crew is able to read and understand what are the maximum hours of work or minimum rest period requirements in force on the ship. In the above cases, the PSCO may require rectification at next port if the ship is scheduled to visit another port. However, as shown below, action should be taken to ensure follow-up at next port (see Section, Follow-Up Actions).

2.2 More detailed inspection of records of seafarers' daily hours of work or their daily hours of rest, and related issues

2.2.1 Records are not maintained in conformity with C. 180

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 8, paragraph 1. Additional Guidance: IMO/ILO Guidelines, paragraphs 16 to 23.)

In the following cases, the PSCO should require that the deficiency be rectified as provided in the Section, Follow-up Actions:

- .1 if work hours or rest hours have not been recorded (and the records have not been signed) on a periodical basis. No recording intervals are specified in ILO Convention No.180; PSCO may ask for the applicable rule of recording the hours (person responsible for keeping the logs, intervals for logging, competent authority for establishing recording procedures);
- .2 if the Master provides a watch schedule (*i.e.*, a document showing shipboard working arrangements) but does not provide records of actual hours worked;
- .3 if the format of the records is not available in the working language of the ship and in English and;
- .4 if there is no evidence that a copy of the record has been provided to each seafarer. The PSCO may wish to request to see one or two examples of the records provided to seafarers to determine if each seafarer has been provided with a copy and that the record is consistent with the record kept by the Master. (The PSCO should bear in mind that some seafarers may choose not to keep these copies or may lose them. Nevertheless, it should be possible to determine if the copies are being given to seafarers on a regular basis).

2.2.2 Records indicate infringement of limits set out in C. 180

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 5. Additional Guidance: IMO/ILO Guidelines, paragraphs 16 to 23.)

If the records indicate possible infringements of the limits set out in the ILO Convention No.180, the PSCO should require and take action as set out in Follow-up Actions section:

- .1 [if a seafarer is found to have not had a continuous rest period of at least 6 hours in any 24-hour period, this would clearly be a serious deficiency with both the ILO Convention No.180 and STCW Code Chapter VIII Section A-VIII/1, Fitness for duty (paragraph 4). This should result in strong action (*i.e.*, rectify deficiency before departure, detention) (see Section 3)];
- .2 if a seafarer has had less than 77 hours of rest in any seven-day period; this is also a serious deficiency (except where a collective agreement might allow for 70 hours) and should result in strong action as indicated above. *However*, the requirements of the STCW Code chapter VIII, Section A-VIII/1, paragraph 4 that watchkeepers shall have not less than 70 hours of rest in a seven-day period should be seen as the absolute minimum rest to be provided in a seven-day period (see Section 3);
- .3 records which indicate violations of national laws, regulations or collective agreements which provide greater protection than the limits set out in the ILO Convention No.180 and the STCW Convention should be reported to both the flag State and ILO; and
- .4 STCW Code Chapter VIII/1, section A-VIII/1 paragraph 3 and Article 5(4) and Article 7 of the ILO Convention No.180 provide for temporary exceptions to the limits provided in the Conventions. However, Article 5(4) and Article 7 of the ILO Convention No.180 require that, in the event of interruption of rest periods or work required for the safety of the ship, seafarers must be provided with compensatory rest. If the PSCO finds evidence of such interruptions or emergency work, he/she should look for evidence that compensatory rest has been provided and, if it has not been provided, take strong action.

2.2.3 No record or evidence of false records

(Ref. Protocol of 1996 to C. 147. See also C. 180, Article 8. Additional Guidance: IMO/ILO Guidelines, paragraphs 16 to 23.)

The ILO Convention No.180 provides a systematic approach to ensuring that seafarers do not work excessive hours or have at least minimal rest periods. The system relies on record-keeping in order to function correctly. Absence of records or falsification of records undermines this systematic approach and demonstrates an obvious lack of compliance with the Convention.

Both of these situations indicate a likely violation of laws and regulations of the flag State.

The PSCO should examine the official log book or bridge log book, pay records, seafarers' individual record of daily hours of work or rest and other secondary documentation.

The PSCO should be also aware that ship's staff will have other duties in respect of security. Records of security training, drills and exercise as well as the previous and present security levels of the ship could indicate that rest periods have been falsified. However PSCOs should note that they are not permitted to scrutinize the ship security plan regarding the duties of those assigned security responsibilities without the permission of the flag State.

The PSCO may ask to interview members of the crew, in private.

If the PSCO finds evidence that records have been falsified, the ship should be detained until a proper system of record keeping is put in place and the Master demonstrates that the crew is sufficiently rested to continue the voyage (see Section, Follow-up Actions).

2.3 Working hours and rest periods for seafarers under the age of 18 (Ref. Protocol of 1996 to C. 147. *See also C. 180, Article 6.*)

If the examination of the crew list indicates that there is a seafarer on board under the age of 18, the PSCO should:

- .1 examine records of daily hours of work and rest to ensure that the seafarer has not been working at night ("night" is, for the purposes of the ILO Convention No.180, a period of at least 9 consecutive hours, including the interval from midnight to five a.m.); and
- .2 if a seafarer under the age of 18 is found to have been working at night, the PSCO should determine if the seafarer is at least 16 years of age. If below 16, appropriate child labour authorities may be contacted; if 16 or above, working at night is acceptable if the seafarer is part of a training programme, with established schedules, and the prohibition against working at night would impair such a programme (see Section, Follow-Up Actions).

3 STCW MINIMUM REQUIREMENT FOR WATCHKEEPERS (Ref. SOLAS Convention chapter V/STCW 78/95 Convention and STCW Code Section A -VIII/1. *See also ILO 180 article 11.*)

The PSCO should ask for the Safe Manning Certificate and the crew-list to be presented. Then the PSCO could check if the ship is sufficiently, safely and efficiently manned. The level of manning should be accepted unless it is clearly not in accordance with the ILO Convention No.180 and the STCW Convention:

- .1 all officers keeping a watch and ratings keeping a watch should be provided with a minimum of 10 hours rest in any 24-hour period;
- .2 the hours of rest of watchkeeping personnel should be divided into two periods, and one of these periods should be at least 6 hours in length;
- .3 is the present composition of the crew in compliance to the Minimum Safe Manning Certificate (MSMC); and
- .4 is the Minimum Safe Manning Certificate (MSMC) in compliance with STCW 78/95 Convention regulation I/4 and regulation VIII/1?

If the PSCO finds evidence of non-conformity related to the above (see Section, Follow-Up Actions).

4 FOLLOW-UP ACTIONS

4.1 Possible deficiencies that can be found out during inspections

- .1 records of hours of work or rest have been maintained but are missing some of the required information;
- .2 copies of relevant laws, regulations or collective agreements concerning maximum hours of work/minimum rest not kept on board and/or not easily accessible to the crew;
- .3 seafarer on board under the age of 18 regularly working at night (but not as part of an established training programme);
- .4 shipboard working arrangements for all seafarers have not been posted;
- .5 the table of shipboard working arrangements has been posted but is missing some of the required information;
- .6 shipboard working arrangements are not easily accessible to the crew;
- .7 records of hours of work or rest have not been maintained for all seafarers;
- .8 seafarers are found to have been working excessive hours or have not received sufficient rest;
- .9 seafarer on board under the age of 16;
- .10 table of shipboard working arrangements and/or forms for recording of working hours or rest periods are not available in both the working language or languages of the ship and in English; and
- .11 seafarers have not been provided with record of hours of work or rest.

The PSCOs should use their professional judgement in deciding the appropriate follow-up action. But generally, deficiencies should be required to be rectified before departure and flag State and ILO may be informed.

4.2 Deficiencies which may be grounds for detention* :

- .1 any follow-up action listed in Part 4 has not been taken (i.e., any deficiency has not been rectified before the ship departed the last port);
- .2 crew list not in compliance with Safe Manning Certificate;
- .3 safe Manning Certificate does not comply with STCW regulation VIII/1;
- .4 inability to provide persons who are sufficiently rested and otherwise fit for duty for the first watch at the commencement of a voyage and for the subsequent relieving watches (STCW);
- .5 essential personnel as master and chief engineer showing signs of excessive fatigue. And in the judgement of PSCO regarding the next voyage the situation of excessive fatigue may occur immediate danger for the safety of the ship, the crew and/or the environment. (This deficiency should not be a stand-alone deficiency but should be supported by objective evidence); and
- .6 records of hours of work or rest have been falsified to hide excessive working hours or insufficient rest.

Note: Reference to MSC/Circ.1014 dated 12 June 2001 on Guidance on fatigue mitigation and management should be used in order to use a formal definition of fatigue. Any other circumstances including the technical general state of the ship, as well as STCW 78/95 Convention regulation must be taken into account in order to balance the PSCO's judgement and decide on the follow-up action.

* Flag State and ILO shall be informed. ILO fax number: 00 41 22 799 7050.



