



South African Maritime Safety Authority

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Marine Notice No. 10 of 2017

Guidelines to Crew Agreements Inspections with particular reference to Fishing Vessels Inspections

TO ALL PRINCIPAL OFFICERS, SURVEYORS, OWNERS, OPERATORS, MANAGERS, SKIPPERS AND CREWS OF FISHING VESSELS

Summary

This Marine Notice serves as a guideline for owners, skippers and crews for compliance with the amended sections of the Merchant Shipping Act dealing with crew agreements with specific reference to fishing vessels.

1. Background

- 1.1 The *Work in Fishing Convention 2007, Convention 188* was ratified by South Africa in 2013. The 10th ratification was deposited in November 2016 and the Convention enters into force 12 months from that date in November 2017.
- 1.2 In the *GG No. 991* published for general information on 20th October 2015 the President has assented to the following Act, *Act No. 12 of 2015: Merchant Shipping Amendment, 2015* to amend the *Merchant Shipping Act, 1951*, so as to give effect to the *Maritime Labour Convention, 2006* and the *Work in Fishing Convention, 2007*; and to provide for matters connected therewith.
- 1.3 *Proclamation 35 of 2016* on 3rd May 2016 determines that the date of publishing is date of coming into operation of the *Amendment Act, 2015*.

2. Sections of the Amendment Act 2015 dealing with crew agreements

- 2.1 ‘**South African ship**’ means a ship that is registered or licenced in the Republic.
- 2.2 Section 102 (1) of the principal Act is hereby amended; “The master of every South African ship shall enter into an agreement on behalf of the employer (in this Act called the agreement with the crew) with every seafarer whom the master engages to serve in that ship”.
- 2.3 Section 102 (3) (f) to (m) introduces content requirements for the crew agreements to give effect to the *Work in Fishing Convention, 2007*.

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| Section 102 (3) (f) | - details of basic pay, allowances and commission, |
| Section 102 (3) (i) | - leave calculation and the formula for calculation, |
| Section 102 (3) (j) | - health and social Security benefits, |
| Section 102 (3) (k) | - entitlement to repatriation, |
| Section 102 (3) (l) | - reference to any collective bargaining agreement, if applicable, |
| Section 102 (3) (m) | - the minimum notice period that may be given by the seafarer or the owner,
which shall not be less than seven calendar days. |

- 2.4 Section 111A regulates the leave component for seafarers.
- 2.5 Section 114 regulates the entitlement to repatriation for seafarers.
- 2.6 Section 121 regulates the frequency of payments to seafarers.
- 2.7 Section 130 regulates the entitlement to allotments for seafarers.

2.8 Section 102 (5) (b) regulates that if there is an agreement in place on board a fishing vessel with the employer covering wages and conditions of employment agreed to under a registered Bargaining Council or Statutory Council in terms of the *Labour Relations Act, 1995 (Act No. 66 of 1995)*, then the terms of that agreement apply to the employment of the seafarer concerned.

3. After consultations on issues of compliance with the Amendment Act 2015 with stakeholders in the fishing industry, SAMSA agreed on the following guidelines for inspection of crew agreements:

3.1 The information on the requirements for crew agreements has been added to all relevant checklists. The updated checklists are available on the SAMSA website at the following links:

<http://www.samsa.org.za/search/node/Class%20X> (Class X) or

<http://www.samsa.org.za/service/small-vessels-safety/domestic-vessels> (Small Vessels).

3.2 Surveyors will only request for historical proof of agreements at time of the surveys, when crews are not normally on board, the full proof of all crews agreements will however be requested during ad-hoc surveys.

3.3 Bargaining or Statutory Council agreements: The Fishing Industry Bargaining Council for deep-sea and inshore operations has a central agreement called “The Main Agreement” that regulates the minimum conditions of employment. This “The Main Agreement” satisfies all of the requirements of the amended sections, except in the case of the entitlement to repatriation (Section 114) and entitlement to allotments (Section 130). The parties to the Bargaining Council have an established history of repatriating seafarers. SAMSA agrees that the entitlement to repatriation could be covered by plant level agreements. Member parties have established wage advance systems in place in lieu of allotments.

3.4 SAMSA agrees that the vessels of the companies who are parties to the Bargaining Council vessels may present a copy of the “The Main Agreement” along with a document or list of crew that attaches all crew and officers to the agreement as sufficient proof of crew agreements.

3.5 The Statutory Council for the squid industry does not currently have an agreement that sufficiently covers the requirements of the amended sections, therefore it is expected that each vessel present individual crew contracts as proof during inspections.

4 Leave calculation

Section 111A. (1) (a) *Every seafarer employed or engaged on a South African ship is entitled to leave accrued at the rate of at least 2.5 days per month of employment, except in the case of a seafarer employed on board a fishing vessel. (b) A seafarer employed on board a fishing vessel is entitled to leave as stipulated in an agreement concluded with a registered bargaining or statutory Council. (2) Leave commences when the seafarer arrives at his or her proper return port. (3) In this section ‘month’ means a period of 30 days, and includes Saturdays, Sundays and public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).’*

The Main Agreement of the Bargaining Council calculates paid leave accrual of 21 days per annum. This practice of 21 days leave per annum has long been adopted by the rest of the industry and will be accepted by SAMSA as the calculation for leave accrual.

The “shore leave” procedure of the granting of paid leave for seafarers ashore calculated at 4 hours for every 24 hours at sea has been the practice of the broader industry with some fishing operations granting and paying seafarers “shore leave” of up to 50 days over a period of one year. SAMSA will accept the paid “shore leave” as an acceptable alternative to the leave stipulation in Section 111A.

After consultations with the Hand-Line Associations of South Africa and other operators, who largely operate on a seasonal basis and do not venture on fishing operations as frequently as other sectors, SAMSA has agreed to the following principle of calculating paid leave accrual:

Taking into consideration the circumstances of the operations, the following basic calculation is advised.

2.5 days per month. ($2.5 / 30 = 0.083$ days)
Or 8.5 % per day accrued.
If the daily earning of a crew member is R100,
A total of R8.50 for that day is accrued as leave due.

Similar operations may be allowed similar calculation of leave accrual. For example, in Richards Bay, fishing operators report fishing operations at 10 days per month and pay annual leave of 10 days during the festive period at the rate of the average daily earning. This calculation is also acceptable as the seafarers accrue 2.5 days leave every 3 month period, thus 10 days for the year.

5. Basic Pay, Allowances and Commissions

Seafarers being paid in a various combinations of basic pay with commission, only basic pay, only commission or as guaranteed wages calculated against a commission rate.

The Bargaining Council agreement regulates minimum wages and commission per rank and is usually the norm used by the rest of the industry sectors. SAMSA's role in inspections of crew agreement is to establish that seafarers have the protection of a signed contract and SAMSA does not determine the rates of wages.

6. Health and Social Security Benefits

In terms of amendments, Section 102 (3) (j) regulates that the crew agreements must contain reference to these benefits. The Merchant Shipping (Seafarers Insurance) Regulations has not been promulgated therefore this benefit is a recommendation only at this stage.

7. Frequency of payments

Section 121 regulates the frequency of payments to seafarers with a maximum period of 45 days between payments.

8. Interim Measures

Requirements for crew agreements as contained in the *Amendment Act 2015*, became effective on 20th October 2015. SAMSA has communicated these requirements to all sectors in various platforms and continues these engagements. SAMSA notes that the procedure of establishing a fisher's contract environment within the sectors dominated by smaller operators has certain challenges and to this end SAMSA will extend the effective date for <9m commercial fishing vessels until 31st December 2017. All SAMSA offices will continue to advise these operators on compliance until the effective date.

9. Crew contracts for smaller operators

SAMSA is aware that smaller operators never had signed agreements with crew in place and has subsequently developed a one page agreement that can be used by these operators.

For any queries or advice on crew agreements feel free to contact S Bailey on 041-582 2138 or via email sbailey@samsa.org.za.

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One page agreement

Contract of employment for seafarers and fishers working on registered and licenced commercial vessels of less than 100GT, in terms of section 102 (1) of the Merchant Shipping Act.

Vessel		Official/Licence No.	
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Name		I.D. Number	
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Next of Kin	
Contact details	

Date of Commencement		Date of Expiry	
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Capacity onboard	
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Wages	Amount	Deductions	Amount
Daily/Monthly		Income Tax	
Commission		Provident/Pension Fund	
Overtime		Union Dues	
Allowances		Allotments	
Other		Other	

Date of payment of wages	
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Repatriation details	
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Leave entitlement	
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Notice period	Owner/Skipper		Seafarer	
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Accident/death insurance cover details*	
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*Recommended until draft regulations take effect.

Is there a Collective Bargaining Agreement in place	
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Any other obligations by either party	
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Skipper/Owner Date.....

Seafarer Date.....

NB. A copy of this contract is to be handed to the seafarer after completion