



PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(Headquarters Philippine Coast Guard)
139 25th Street, Port Area
1018 Manila

HPCG/CG-8

10 April 2013

STANDING OPERATING PROCEDURE
NUMBER.....02-13

GUIDELINES FOR PORT STATE CONTROL OFFICERS
ON MARITIME LABOUR CONVENTION, 2006

I. AUTHORITY

Republic Act 9993(The Philippine Coast Guard Law of 2009)

II. REFERENCES

- A. Maritime Labour Convention (MLC, 2006);
- B. Guidelines for Port State Control Officers carrying out inspection under the MLC, 2006;
- C. Guidelines for Flag State Inspection under the MLC, 2006; and
- D. ILO Resolution 17 Practical Implementation of the issue of Certificates on entry into force

III. APPLICATION

This Standing Operating Procedure applies to ships of:

- A. 500 gross tonnage or over, engaged in international voyages; and
- B. 500 gross tonnage or over, flying the flag of a Member and operating from a port or between ports, in another country.

and, does not apply to:

- A. Ships engaged in fishing or in similar pursuits;
- B. Ships of traditional build such as dhows and junks; and
- C. Warships or naval auxiliaries.

IV. PURPOSE

This Standing Operating Procedure (SOP) is intended to provide basic guidelines for Port State Control Officers (PSCO) in the conduct of control and compliance measure, in accordance with the provisions of the Maritime Labour Convention, 2006 (MLC,2006).

V. DEFINITION OF TERMS

- A. Complaint** - means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board (Standard A.5.2.1, paragraph 1(d) and 3);
- B. Declaration of Maritime Labour Compliance (DMLC)** – means the declaration referred to in Regulation 5.1.3 of the Maritime Labour Convention, 2006;
- C. Gross tonnage** - means the gross tonnage calculated with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ship covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);
- D. Maritime Labour Certificate (MLC)** - means the certificate referred to in Regulation 5.1.3 of the Maritime Labour Convention, 2006;
- E. MLC,2006** - Maritime Labour Convention, 2006;
- F. Member** - refers to countries that have ratified the Maritime Labour Convention, 2006;
- G. On board complaint procedure** - is a procedure whereby a seafarer or seafarers can complain using the internal procedure to the ships on board management. This complaint remains an internal procedure and should not involve the PSCO. Nevertheless, the existence of a functioning procedure can be checked during a more detailed inspection (Regulation 5.1.5).
- H. On-shore complaint procedure** - is a procedure whereby a seafarer or seafarers can make a complaint to the relevant authority in the port where the ship is calling at, about working and living conditions including seafarer's rights. On-shore complaint handling procedure is detailed in paragraph 2.5.2.2. (Regulation 5.2.2)

- I. **Seafarer** - means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;
- J. **Seafarer' Employment Agreement** - includes both a contract of employment and article of agreement;
- K. **Seafarer Recruitment and Placement Service** - means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;
- L. **Ship** - means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- M. **Shipowner** – means the owner of the ship or other organization or person, such as the manager, agent or bareboat charterer, who assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with MLC, 2006, regardless of whether any other organization or person fulfil certain of the duties or responsibilities on behalf of the shipowner.

VI. GENERAL GUIDELINES

- A. Every foreign ship calling to port, in the normal course of its business or for operational reason, may be subject of inspection to determine whether the ship is in compliance with the requirements of MLC,2006.
- B. The MLC,2006, applies to all seafarers on all ships covered by the Convention.
- C. A Maritime Labour Certificate, complemented by a Declaration of Maritime Labour Compliance, shall constitute a prima facie evidence that the ship that the requirement of MLC,2006 relating to working and living conditions of the seafarers have been to the extent so certified.
- D. Ships that fly the flag of any State that has not ratified MLC, 2006 should not receive any more favourable treatment than ships that fly the flag of any State that has ratified it. Under these circumstances the PSCO may carry out a more detailed inspection to evaluate compliance with the MLC, 2006 (Art. V. paragraph. 7).
- E. Where a PSC inspection according to MLC, 2006 is carried out, an initial inspection and, if necessary, a more detailed inspection may be carried out in a similar manner to SOLAS, STCW and other Conventions. (Regulation 5.2.1)

- F. In the implementation their responsibilities under the provision of MLC,2006, PSCO shall make all possible efforts to avoid a ship being unduly detained or delayed.

VII. RESPONSIBILITIES

- A. The Commander of Coast Guard Districts and Stations shall be responsible for the implementation of this SOP and shall ensure:

1. Proper coordination and information dissemination particularly to all foreign-flagged vessel, shipping companies, shipping agents, DOLE, PPA and MARINA.
2. Positive control and supervision over PSCOs.
3. Conduct hearing and appropriate disposition of appeals submitted by shipping agencies involving detention of vessels.
4. Expeditious submission of reports.
5. Proper filing of MLC,2006 related records aboard District and Station offices

- B. The Port State Control Officer (PSCO) shall undertake the following:

1. Proper conduct of PSC inspection and submission of reports.
2. In case of detention, inform immediately CPCG (Attn:CC-8) and respective District Commanders.
3. Upon detention, notify the vessel's Flag State and or nearest embassy/consul in Asia, Director General of the ILO, the Recognized Organization and the shipping agent/company or owner.
4. Prepare reports in accordance with the format provided by the Tokyo MOU and submit same as early as possible to HPCG (Attn:CG-8) for consolidation.

- C. Deputy Chief of Coast Guard Staff for Maritime Safety Services, CG-8 shall undertake the following:

1. Monitor the implementation of the MLC,2006.
2. Forward the relevant reports to the Secretary General of the International Labour Organization and Tokyo MOU Secretariat.
3. Supervise and monitor the implementation of this SOP.

- D. The Director, Coast Guard Action Center shall monitor the status of vessels detained until released of the next voyage.

VIII. PROCEDURES

A. Inspection of Ships (Annex 1)

1. Pre-boarding preparation

In preparing for an inspection the PSCO should:

- a. Verify whether the ship is flying the Flag of State that has ratified MLC,2006
- b. Verify whether there are any ship related messages or outstanding deficiencies; and
- c. Take due note of ship particulars in relation to applicability of certain elements of the MLC,2006

2. Initial Inspection

- a. Certificates and documents

During an initial inspection, including the tour of the ship, the PSCO should check that the ship has - A valid MLC or Interim MLC, and - A DMLC, Part I and Part II) on board. A DMLC need not be issued for the period of validity of the interim certificate. (Standard A. 5.1.3 paragraph 8)

A valid MLC and DMLC (part I and II) should be accepted by PSCOs as prima facie evidence of compliance with the requirements of the convention (Regulation 5.2.1 paragraph 2).

Further documentation, such as flag State or RO acting on behalf of the flag state MLC inspection reports, crew list, safe manning document, shipboard working arrangements, may be checked by PSCOs with regard to compliance with the requirements of the MLC, 2006 during an initial inspection.

- b. Ships under 500 GT

Ships under 500 GT are not required to have a MLC but they are required to comply with the MLC, 2006. When carrying out an initial inspection the PSCO should refer to **annex 2** of this guideline.

- c. Substantial equivalence, exemption and variations

When carrying out an initial inspection, the PSCO should take into account any substantial equivalent provisions, exemptions, variations, indicated in Part I of the DMLC.

3. Clear grounds

A more detailed inspection may be carried out in case that:

- a. The required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by the MLC, 2006 or are otherwise invalid (Standard A.5.2.1, paragraph 1(a)) or

However, in accordance with the Resolution 17, during one year after this Convention enters into force, it is possible for PSCO not to carry out a more detailed inspection just on the ground of absence of MLC, DMLC or interim MLC.

- b. There are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the MLC (Standard A.5.2.1, paragraph 1(b)) or
- c. There are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the MLC(Standard A.5.2.1 paragraph 1 (C)), or
- d. There is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of the MLC,2006 (Standard A.5.2.1, paragraph 1(d)) or
- e. Following investigation of an on shore complaint, (paragraph 2.5.2) in case where this on shore complaint is considered as an issue which falls within the PSC activities, and a more detailed inspection is judged as necessary. (Standard A.5.2.2, paragraph 2) or
- f. The ship's documentation shows that previously reported deficiencies have not been rectified or completed or the ship flies the flag of a State that has not ratified the MLC, 2006. A more detailed inspection shall in any case be carried out, where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers, or
- g. Where the PSCO has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarer's rights). (Standard A.5.2.1)

4. More Detailed Inspection

When carrying out a more detailed inspection, the PSCO should take account of the provision(s) stated in the DMLC, part I, and use their professional judgement when checking for compliance with some or all the 14 areas listed in **annex 3** of this guideline. The PSCO could also consider consulting a competent labour authority ashore in case where expertise is needed, when necessary.

5. Complaints

a. On-shore complaint and complaint- handling procedures

When receiving an on shore complaint or a complaint, the authority or PSCO assesses the complaint including the on board complaints procedure which has been used and based on professional judgement, decides whether or not the ship will be inspected.

Then, a more detailed inspection is warranted to the extent of this complaint (cf. 2.3 and 2.4 above).

Records of complaints and any outcomes should be kept with the format of **annex 4** by the authority or the PSCO.

b. Specific on-shore seafarer complaint-handling procedures (**Annex 5**)

1) **Step 1** - Determining whether the complaint should be handled under PSC procedure.

a) Carrying out an initial assessment to ascertain whether the complaint relates to MLC, 2006 requirements. Those complaints which fall outside the scope of the APPENDIX A5-I (flag States inspection, approval and certification) of the MLC, 2006 should not be handled under PSC procedure under this Guidelines.

b) Depending upon the outcome of the initial assessment the PSCO should decide whether or not to carry out a more detailed inspection. (Standard A.5.2.2, paragraph 1,2)

2) **Step 2** – Inspection process

a) Ascertain whether the on board complaint procedure has been used. If the procedure has not been used without valid justification the PSCO should advise that, in the first instance, the on board complaint procedure should be used. (Standard A.5.2.2, paragraph 3)

b) Otherwise, the PSCO should seek to resolve the complaint on ship board level

c) The master, the ship owner and any other interested parties, persons or organisation with a legal interest shall be permitted to express their views.

- d) If during the inspection a deficiency relating to the complaint is recorded and depending upon its seriousness the PSCO should take the appropriate action. (Standard A.5.2.2, paragraph 4)
- e) If the complaint cannot be resolved at shipboard level, the flag state should be notified and requested within a prescribed deadline decided by PSCO to provide advice and a corrective plan of action.(Standard A.5.2.2 paragraph 5)

3) Step 3 – Dealing with an unresolved complaint

- a) If the flag state advises that it will resolve the matter and will provide a corrective plan of action within a prescribed deadline decided by PSCO, the PSCO will not have any further involvement.
- b) If the complaint is not resolved by the flag state within the prescribed deadline, then the PSCO should transmit the inspection result to the ILO with a format of **annex 6** and inform the appropriate shipowners and seafarers organizations in the port state (Standard A.5.2.2 paragraph6).
- c. In all case, records of complaints and outcomes should be kept by the port state authority.
- d. Notwithstanding the above, seafarers may have resort to alternative procedures or conventions (International Convention on the Arrest of Ships) established for the handling of incorrect or lacking payment of wages. The PSCO may provide information about relevant persons, organizations or authorities, who may assist in pursuing a maritime claim. The PSCO could also collect information and pass the case on to a competent authority ashore.
- e. Regardless of the source of complaints (as defined in 2.5.1.2. and 2.5.1.3.), appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

B. Follow-Up Actions

1. Possible deficiencies

Annex 7 contains a non-exhaustive list of example of deficiencies.

2. Deficiencies warranting detention

- a. **Annex 8** contains a non-exhaustive list of deficiencies which may warrant detention.

- b. If following an inspection, the PSCO finds that the ship does not comply with the requirements of the convention and,
 - 1) The conditions on board are clearly hazardous to the safety, health or security of seafarers, or
 - 2) The deficiency constitutes a serious or repeated breach of the requirements of the convention, including seafarers' rights,
- c. The PSCO should ensure that the ship does not proceed to sea until the deficiencies are rectified or until the PSCO has accepted a rectification action plan to rectify the deficiencies and is satisfied that the plan will be implemented in an expeditious manner (Standard A 5.2.1.paragraph 6).
- d. Every effort should be made to avoid a ship being unduly delayed or detained. (Standard A.5.2.2, paragraph 8)

3. Actions to be considered

a. Non-detainable deficiencies

Non-detainable deficiencies relating to the MLC, 2006 should be treated in the same manner as any other deficiencies and the usual action taken codes and deadline should be specified. (Standard A.5.2.1, paragraph 4)

b. Detainable deficiencies

The ship may be released when either:

- 1) The detainable deficiencies have been rectified to the satisfaction of the PSCO, or
- 2) The PSCO has accepted a rectification action plan (RAP) and is satisfied that the plan will be implemented in an expeditious manner and in an appropriate time schedule. (Standard A.5.2.2, paragraph 6)

c. Rectification Action Plan (RAP)

- 1) When deciding whether or not to accept a RAP the following elements should be considered:
 - a) The length and nature of the intended voyage or service;
 - b) The nature of the hazard to seafarers' safety, health or security;
 - c) The seriousness of the breach of the requirements of the MLC, 2006 (including seafarers' rights);
 - d) Any previous history of deficiencies or repeated deficiencies;

- e) Whether or not the appropriate work or rest periods for seafarers are being observed;
 - f) The safe manning requirements of the flag State;
 - g) The number and nature of deficiencies found during the particular inspection.
- 2) It is the joint responsibility of the shipowner and the master to propose and implement a RAP.
 - 3) The RAP should specify the actions required and agreed time frame acceptable to all parties, within which period the items will be rectified. The RAP should be submitted to the flag State or RO recognised by flag State for formal acceptance by the master on behalf of the shipowner accordingly before being proposed to the PSCO within the prescribed deadline decided by PSCOs.

taking into account Flag State responsibilities under Standard A 5.1.4. paragraph 5

- 4) When the RAP plan is being considered the PSCO may consult other parties (appropriate shipowners and seafarer's organizations in the port State in which the inspection is carried out).
- 5) The RAP should contain a commitment by the shipowner to facilitate the inspection of the ship by PSCOs in next ports in order to verify that the RAP has been properly implemented. The RAP must be attached to the report of inspection.
- 6) The PSCO should inform the master that the rectification action plan should be properly implemented and carried out in the time frame agreed, if not, the ship may be subject to detention.
- 7) The RAP is a provision and procedure mentioned in the MLC, 2006, standard A5.2.1. This means that the PSCO may become involved in actions stipulated during PSC inspections elsewhere in the world.
- 8) However, the PSCO is not bound by RAP agreed.

C. Reports

1. Notification

- a. In addition to authorities usually informed of the result of the inspection (as the master), shipowners' and seafarers' organisations, the Director General of the International Labour Office, the flag State and RO, and the competent authority of next port may be notified as follows:

	Appropriate shipowners' and seafarers' organization in the port State	Director General of the ILO	Flag State	PSC Authority	Report Forms
Significant deficiency or deficiency in connection with complaint	Must be informed	May be informed if any reply from flag State	Must be informed	May be informed according to port State procedure	Using report annex 6
On shore complaint not resolved	Must be informed	Must be informed	Must be informed	May be informed according to port State procedure	Using report annex 6
Ship detained due to MLC, 2006 deficiency	Must be informed	May be informed	Must be informed	May be informed Informed by APCIS	Using notice of detention to other authority than master

- b. Whether or not deficiencies are determined to be significant will depend upon the professional judgement of the PSCO concerned. Deficiencies which, having regard to their nature or quantity or repetition, the PSCO would not expect to find on a well-run ship would be significant (For further guidance see the Guidelines for Port State Control Officers carrying out inspections under the MLC, 2006, paragraphs 90, 91, 92, 93).

2. Reporting

- a. Any MLC, 2006 related deficiency found should be recorded as an individual deficiency in the inspection report. In accordance with the procedure of Tokyo MoU, the codes to be used while inputting the data are the ones attached in **Annex 9**

As an example, MLC, 2006-related deficiencies should be reported as follows:

Risk area – Sub area	Working and Living Conditions-Living Conditions
Defective item	Sanitary facilities
Defective item - nature of defect	Missing, Damaged, Not as required, Inoperative, Dirty, Insufficient, Not properly maintained.

Convention reference	MLC, 2006 A.3.1.11
Delay Action Taken	Rectified, At the next port, within 14 days, before departure, at agreed repair port, as in agreed class condition, as in agreed flag State condition, Master instructed to... As in the agreed rectification action plan
Appropriate Seafarers' and Shipowners' organizations in the port State informed Director General ILO informed	
Additional comments	The PSCO should explain the defect in the same way on both the inspection report and the information system In the event that a RAP is issued, this document should be attached to the inspection report and inserted as an attachment in the information system.

- b. Any new or single deficiency which is either a deficiency related to SOLAS, STCW or others conventions, should be preferably register with these conventions references. When the deficiency is only a MLC related deficiency, is a significant deficiency, when this deficiency is repeated, when it justifies a detention or when it is related to a complaint, the convention reference must be a MLC, 2006 reference.

IX. EFFECTIVITY

This SOP shall take effect upon entry into force of the MLC, 2006 on 20 August 2013.


 RODOLFO D ISORENA
 RADM PCG
 Commandant

- Annexes:** 1 - Flow Chart "PSC Inspection on MLC, 2006"
 2 - Initial inspection for ships under 500 GT
 3 - List of the 14 areas subject to a more detailed inspection
 4 - Model for Details to be recorded for on-shore complaint and complaint
 5 - Flow Chart "on-shore complaints"
 6 - Standard Form to report
 7 - List of example of deficiencies in the 14 areas
 8 - List of example of deficiencies warranting detention
 9 - MLC, 2006 Code of deficiencies

For: CPCC
 Sir,
 20 Aug 2013 is a tentative date subject to the required ratification.
 CPCC can approve this SOP anyway that can take effect upon its publication when MLC 2006 has already been ratified.

VCA



**PUNONGHIMPILAN TANODBAYBAYIN NG PILIPINAS
(HEADQUARTERS PHILIPPINE COAST GUARD)**

139 25th Street, Port Area
1018 Manila

MEMORANDUM


To : **Coast Guard Adjutant**

From : **Deputy Chief of Coast Guard Staff for Maritime Safety Services, (CG-8)**

Subj : **SOP on the Maritime Labour Convention, 2006**

Date : **10 April 2013**

1. Reference: Approved DF re above subject dated 08 April 2013
2. This refers to the approval of Standing Operating Procedure (SOP) on the Maritime Labour Convention, 2006 last 08 April 2013 by then Commandant RADM RODOLFO D ISORENA PCG.
3. In order to commence the implementation of the said SOP, request appropriate review and signature on the attached SOP prior its subsequent dissemination to all concerned PCG units.
3. For the appropriate action.


ROMMEL A SUPANGAN
CDR PCG