

Commonwealth of Dominica



Office of the Maritime Administrator

- TO:** ALL SHIPOWNERS, OPERATORS, MASTERS, AND OFFICERS OF MERCHANT SHIPS, AND RECOGNIZED ORGANIZATIONS
- SUBJECT:** Recommendations on Fair Treatment of Seafarers in the Event of a Maritime Accident
- PURPOSE:** This Policy Letter advises on steps to be taken by all those who may be involved following a maritime accident: the port State, coastal State, flag State, the seafarer's State, the shipowner and seafarers themselves.
- APPLICABILITY:** The information contained herein is applicable for all Dominica flagged vessels, their shipowners, operators, and crew.

General

These requirements shall be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident. It should be noted that these requirements have been adopted according to the Guidelines produced by the International Maritime Organization by resolution A.1056(27), as may be amended.

Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these requirements is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

These requirements do not seek to interfere with any State's domestic, criminal, or civil law processes nor the full enjoyment of the basic right of seafarers, including those provided by international human rights instruments, and the seafarer's right to humane treatment at all times.

Seafarers are entitled to protection against coercion and intimidation from any source during or after any investigation into a maritime accident.

The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner, the detaining State or an appropriate State.

These requirements do not apply to warships or naval auxiliaries.

Guidelines for the port or coastal State

Note: The Commonwealth of Dominica Maritime Administration has not formally adopted these guidelines into legislation or regulations in regards to coastal and port State activities and therefore may not operate according to these guidelines on a port or coastal State level. States that have adopted these Guidelines as contained in resolution A.1056(27), as amended, should operate in accordance with these guidelines in respect to seafarers on board Dominica flagged vessels while in such foreign port or territory.

The port or coastal State should:

1. take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
2. cooperate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarer's representative organizations in the port or coastal State with access to seafarers;
3. take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
4. ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
5. take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
6. ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
7. ensure that seafarers are, where necessary provided interpretation services, and are advised of their right to independent and legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure the independent legal advice is provided;
8. ensure the involved seafarers are informed of the basis on which the investigation is being conducted (i.e. whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20), as amended by resolution A.884(21) or as subsequently amended), or pursuant to other national legal procedures);
9. ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, are promptly fulfilled and that the State(s) of the nationality of all seafarers

- concerned are notified of the status if such seafarers as required, and also allow access to the seafarers by consular officers of the flag State;
10. ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
 - a. family members;
 - b. welfare organizations;
 - c. the shipowner;
 - d. trade unions;
 - e. the Embassy or Consulate of the flag State and of their country of residence or nationality; and
 - f. legal representatives.
 11. use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
 12. ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex I (Regulations for the prevention of pollution by oil), regulation 11;
 13. promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
 14. take steps to ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
 15. consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
 16. promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
 17. have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;
 18. insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process;

19. take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
20. take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
21. take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
22. take steps to ensure that no discriminatory or retaliatory measure are taken against seafarers because of their participation during investigations.

Required Action

Definitions

For the purposes of these Requirements:

“**seafarer**” means any person who is employed or engaged or works in any capacity on board a ship;

“**shipowner**” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has 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 of the shipowner, regardless of whether any other organization or persons fulfill certain of their duties or responsibilities on behalf of the shipowner;

“**maritime accident**” means any unforeseen occurrence or physical even connected to the navigation operations, maneuvering or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers;

“**investigation**” means an investigation into a maritime accident;

“**detention**” means any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident, including preventing them leaving the territory of a State other than the seafarer’s country of nationality or residence.

Requirements of the Flag State

The Commonwealth of Dominica will:

1. takes steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
2. cooperate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers’ representative organizations with access to seafarers;

3. where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly resolution A.849(20) as amended by resolution A.884(21) and as may be subsequently amended), in any casualty investigation;
4. assist in ensuring that shipowners honor obligations to seafarers involved in a maritime accident or any investigation;
5. ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;
6. ensure that shipowners honor obligations to cooperate in any flag, coastal, or port State investigation following a maritime accident;
7. assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
8. fund repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfill their responsibility to repatriate;
9. assist, as provided for national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
10. take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
11. take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and
12. take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

Requirements of the Seafarer State

The seafarer State shall:

1. cooperate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to the seafarers;
2. monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including and associated investigations;
3. fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident, including any associated investigations;

4. assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
5. take steps to ensure that its consular officers are permitted access to the involved seafarers;
6. take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
7. take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
8. take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

Requirements of the Shipowner

With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and shall:

1. take all available measure to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
2. cooperate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
3. take action to expedite the efforts of a port, coastal, or flag State investigation;
4. take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to cooperate with any investigation;
5. use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
6. fulfill their obligation in relation to the repatriation of, or take steps to re-embark, the seafarers; and
7. ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer including, as appropriate, wages, suitable accommodation, food and medical care.

Requirements of the Seafarer

Seafarers shall:

1. take steps to ensure, if necessary, that they have appropriate interpretation services;

2. take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in future criminal prosecution;
3. take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
4. participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

Failure of any shipowner, operator, seafarer or other entity to comply with the requirements of this Policy Letter may be imposed with a fine, revocation of credentials, or other action in accordance with the Commonwealth of Dominica Maritime Act and Regulations.

Any questions can be directed to:

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Note: For contact information for local consular offices, seafarer associations, coastal State, port State, or other interested parties, please contact the Technical Department for further assistance.

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