

# **SOUTH AFRICAN HAKE TRAWL FISHERY**

## **Certificate Holder Forced and Child Labour Policies, Practices and Measures**

### **1 Introduction**

Fisheries and at-sea Certificate Holders (CH) in the Marine Stewardship Council (MSC) program are required to provide a self-description of policies and measures, including regulatory requirements and procedures that are in effect in the Unit of Assessment, to protect fishing crew from forced labour or child labour, as well as any efforts by the private sector. The objective is to require certificate holders to communicate how government, industry, or other relevant entities protect against forced or child labour.

Each fishery and at-sea Chain of Custody client shall provide this information by completing this template. This template should be completed by the client in good faith and be based on information known and available to the client at the time of completion. The information provided should be representative of the range of measures known to the certificate holder.

The completed form will be uploaded to MSC database to be published on the MSC website at the same time as the Public Certification Report.

Guidance for filling in the template is found in the [Appendix](#) of this template. Information is required on all issues addressed in the template and should be provided in English, which is the official language of the MSC.

Please complete all unshaded fields. Please fill in N/A if an issue is not applicable, including a short justification for why it is not applicable.

## 2 Marine Stewardship Council certificate holder forced and child labour policies, practices and measures

**Table 2.1 – Certificate holder information**

1	Composition of fishery client group on behalf of who the statement is provided
	<ul style="list-style-type: none"> <li>- Characterise the composition of the fishery client group, including cost sharing entities.</li> <li>- Describe the relationship between cost sharing members of the fishery client group and the vessel owners and operators of the Unit of Certification (UoC).</li> </ul>
CH	<p>The client is the South African Deep-sea Trawling Industry Association (SADSTIA), also representing the South-East Coast Trawling Industry Association (SECIFA), which together represent about 90% of the hake TAC allocated to the Hake Deep-sea Trawl (HDST) and Hake Inshore Trawl (HIT) sectors.</p> <p>There are about 70 vessels active in the two sectors of the industry, all of which are owned by members of the cost sharing entities.</p>
2	Responsibility for labour regulation
	<ul style="list-style-type: none"> <li>- What management authorities and laws, including flag state authorities, control labour-related regulations in the unit of assessment area?</li> <li>- How are laws enforced?</li> </ul>
CH	<p>South Africa has a sophisticated and developed labour legislation framework developed in line with applicable International Labour Organization conventions.</p> <p>The primary management authority (including the responsibility for the application of the enforcement mechanisms) is the national Department of Labour and its inspection and enforcement directorates.</p> <p>Secondary management authorities are:</p> <ol style="list-style-type: none"> <li>1. The Department of Agriculture, Forestry and Fisheries, which is responsible for the management of the resource and regulates the allocation of licences to fisheries and at-sea certificate holders; and</li> <li>2. The South African Maritime Safety Agency ("SAMSA"), the government agency (established in terms of the South African Maritime Safety Authority Act, 1998 as amended) that monitors South African seafarers' welfare and conditions of service.</li> </ol> <p>The relevant labour-related legislation that regulates the protection of employees in the unit of assessment area are:</p> <ol style="list-style-type: none"> <li>1. The Labour Relations Act, 1995 as amended, which regulates collective and individual employment rights and the enforcement thereof;</li> <li>2. The Basic Conditions of Employment Act, 1997 as amended, which regulates basic conditions of employment;</li> <li>3. The Employment Equity Act, 1998 as amended, which regulates equal opportunity and fair treatment in employment;</li> <li>4. The Unemployment Insurance Act, 2001 as amended, which regulates the protection of employees who become unemployed;</li> <li>5. The Employment Services Act, 2014 as amended, which regulates the promotion of employment of unskilled job seekers, migrants and foreigner nationals;</li> <li>6. The National Minimum Wage Act, 2018 as amended, which regulates the review and adjustment of the national minimum wage and any exemption from its provisions;</li> <li>7. The Compensation for Occupational Injuries and Diseases Act, 1993 as amended, which regulates compensation in the case of death or disablement caused by occupational injuries and diseases sustained or contracted by employees in the course of their employment;</li> <li>8. The Occupational Health and Safety Act, 1993 as amended, which regulates the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery;</li> <li>9. The Merchant Shipping Act, 1951 as amended, which regulates, as monitored by SAMSA, inter alia safety on board ships, the competence of persons at sea, payment of wages and facilities at sea.</li> </ol>

	The legislation in each instance listed in 1 – 8 above provides for the monitoring and enforcement of compliance by the Department of Labour's various inspection and enforcement directorates.
3	Risk identification and mitigation
	<ul style="list-style-type: none"> <li>- Describe the processes, including government and certificate holder measures, that are in place in the UoC to identify and mitigate any risk of child and forced labour.</li> </ul>
CH	<p><u>Child Labour</u></p> <ol style="list-style-type: none"> <li>1. South Africa has ratified the International Labour Organization Minimum Age Convention, 1973 and the International Labour Organization Worst Forms of Child Labour Convention, 1999.</li> <li>2. South Africa has also ratified Maritime Labour Convention, 2006 (MLC,2006) that stipulates the minimum age to be employed or engaged or work on a ship as 16 years, subject to 18 years in respect of night work or work that is likely to jeopardize the seafarer's health or safety although the ratification does not provide for any enforcement procedure for non-compliance.</li> <li>3. The Children's Act, 2005 defines 'abuse' as including a labour practice that exploits a child.</li> <li>4. The Department of Labour has a close working relationship with the Department of Welfare, the Department of Justice and Constitutional Development and the Department of Social Development to remove children from the working environment and has engaged inspectors, welfare officials, police officials and members of Non-Governmental Organizations in enforcing the prohibition on child labour.</li> <li>5. Section 110 of the Merchant Shipping Act, 1951 as amended prohibits the employment of children under the age of 16 years in any capacity on board a ship.</li> <li>6. Section 43 of the Basic Conditions of Employment Act, 1997 as amended prohibits work by children under 15 years of age (or under the minimum school-leaving age in terms of any law).</li> <li>7. Item 10 (a) of Schedule 2: Summary of regulations on the health and safety of children at work and on hazardous work by children issued in terms of the Basic Conditions of Employment Act, 1997 as amended prohibits an employer from requiring or permitting a child to work in deep sea fishing ('child' is defined as a person under 18 years old);</li> <li>8. The Department of Labour has monitoring and inspection directorates that are tasked specifically with the enforcement of the Basic Conditions of Employment Act, 1997 as amended.</li> <li>9. At industry level, certificate holders are subject to the provisions of The Bargaining Council for the Fishing Industry Main Agreement, which binds all employers and employees in the Hake Deep-sea Bottom Trawl Sector, Hake Inshore Bottom Trawl Sector and Horse Mackerel Mid-Water Trawl Sector: <ol style="list-style-type: none"> <li>a. Clause 24 prohibits the engagement of a child on board a fishing vessel who is – <ol style="list-style-type: none"> <li>i. Under 18 years of age unless indentured as an apprentice; or</li> <li>ii. A cadet for whom 16 years of age would be the minimum age allowed.</li> </ol> </li> <li>b. Section III provides for the monitoring and enforcement of its terms via the appointment of designated agents in terms of the Labour Relations Act, 1995 as amended, the issuing of compliance orders, the determination of disputes via arbitration and the imposition of fines in respect of proven non-compliance.</li> </ol> </li> </ol> <p><u>Forced Labour</u></p> <ol style="list-style-type: none"> <li>10. South Africa is a signatory to the Slavery Convention, 1926 and has furthermore ratified the International Labour Organization Forced Labour Convention, 1930 and the International Labour Organization Abolition of Forced Labour Convention, 1957.</li> <li>11. Section 13 of the Constitution of the Republic of South Africa, 1996 as amended stipulates that no one may be subjected to slavery, servitude or forced labour.</li> <li>12. Section 48 of the Basic Conditions of Employment Act, 1997 as amended prohibits all forced labour.</li> <li>13. The Department of Labour has monitoring and inspection directorates that are tasked specifically with the enforcement of the Basic Conditions of Employment Act, 1997 as amended.</li> <li>14. At industry level, clause 26 of The Bargaining Council for the Fishing Industry Main Agreement prohibits forced labour and any contravention thereof constitutes an offence.</li> <li>15. The monitoring and enforcement provisions contained in Section III of The Bargaining Council for the Fishing Industry Main Agreement apply in respect of non-compliance with clause 26 thereof.</li> </ol>
4	Crew recruitment

	<ul style="list-style-type: none"> <li>- Describe the typical methods used to recruit crew in the UoC and describe the migrant composition of crew if any.</li> </ul>
CH	<ul style="list-style-type: none"> <li>• The MLRA requires South African fishing vessels to employ South African nationals. The certificated offices are required to hold South African SAMSA approved certification. There is thus generally no migrant labour used and all sea going staff are recruited by individual companies, with the staff free to come and go as they please subject to standard conditions of employment.</li> <li>• However, if the need should arise to appoint a foreign national, the officially required process involves writing a motivational letter to the Department of Home Affairs immigration office, detailing reasons for the appointment, how long and what plan is in place to ensure that the “scarce skills” that local people do not possess will be transferred to them, police clearance of the candidate from their country of origin, etc. Recruitment methods include: advertising on recruitment websites, referrals, walk-ins and newspaper advertisement.</li> </ul>
5	Engagement with fish worker groups
	<ul style="list-style-type: none"> <li>- Where there is known engagement with fisher, migrant, and worker rights groups, describe how this occurs and the organisations engaged with workers in the Unit of Assessment (UoA).</li> </ul>
CH	<ol style="list-style-type: none"> <li>1. The Bargaining Council for the Fishing Industry Main Agreement, binds all employers and employees in the Hake Deep-sea Bottom Trawl Sector, Hake Inshore Bottom Trawl Sector and Horse Mackerel Mid-Water Trawl Sector. Its members comprise the South African Fishing Industry Employers Organization as the representative body of all employers in the industry and the Trawler and Line Fishermen’s Union (TALFU), the Food and Allied Workers Union (FAWU) and the National Certificated Fishing and Allied Workers Union (NCFAWU) as the registered trade unions representative of the employees in the industry.</li> <li>2. The parties representing the employers and the employees respectively negotiate all substantive terms and conditions of employment applicable to the industry in the formal organized structure of the Bargaining Council for the Fishing Industry and the agreement concluded in that forum is subsequently extended to non-parties by the Minister of Labour in terms of a proclamation issued in a Government Notice.</li> <li>3. Any matter relating to child and/or forced labour that may arise is and will be addressed in that forum.</li> <li>4. The employees in the industry are well represented by the registered trade unions listed above, which includes attending to the employees’ social and other needs.</li> </ol>
6	Crew contracts
	<ul style="list-style-type: none"> <li>- Describe the nature of contracts or legal work agreements in place in the UoC and the issues addressed in such agreements.</li> </ul>
CH	<ol style="list-style-type: none"> <li>1. The Main Agreement of the Bargaining Council for the Fishing Industry binds all employers and employees in the Hake Deep-sea Bottom Trawl Sector, Hake Inshore Bottom Trawl Sector and Horse Mackerel Mid-Water Trawl Sector and its terms govern the employment of employees in the industry.</li> <li>2. The terms of the Main Agreement are negotiated periodically (dependent on the duration of the agreement as negotiated from time to time) by the South African Fishing Industry Employers’ Organization on behalf of the employers and three registered and established trade unions on behalf of the employees.</li> <li>3. Material issues addressed in the Main Agreement are remuneration, benefits, hours of work, leave entitlements, termination of employment and the limitation of rights.</li> <li>4. Individual employees are also subject to specific written particulars of employment with the particular employer to the extent that the Main Agreement does not provide for those particulars.</li> <li>5. Material issues addressed in individual contracts of employment are plant specific terms and conditions of employment, including but not limited to the particular employer’s employment policies and practices.</li> </ol>
7	Audits and labour inspections

	<ul style="list-style-type: none"> <li>- Describe any 3rd Party audits and certifications on labour, or labour inspections conducted within the UoC in the last two years.</li> </ul>
CH	<ol style="list-style-type: none"> <li>1. The Department of Labour conducts <i>ad hoc</i> inspections and audits of the certificate holders' workplaces on an ongoing basis in order to confirm compliance with the legislation detailed in 2 above.</li> <li>2. SAMSA conducts <i>ad hoc</i> safety related inspections and audits of the certificate holders' workplaces on an ongoing basis in order to confirm compliance with the safety related issues arising from the Merchant Shipping Act, 1951 as amended.</li> </ol>
8	National minimum age requirements
	<ul style="list-style-type: none"> <li>- Describe national minimum age requirements for crew members serving on vessels within the UoC.</li> <li>- Describe systems in place, both regulatory and private sector systems, to ensure that crew members meet national minimum age requirements.</li> <li>- Describe how this is checked, including enforcement within the UoC by the responsible governing authority or oversight body such as labour inspectors.</li> </ul>
CH	<ol style="list-style-type: none"> <li>1. Section 43 of the Basic Conditions of Employment Act, 1997 as amended prohibits work by children under 15 years of age (or under the minimum school-leaving age in terms of any law).</li> <li>2. Item 10 (a) of Schedule 2: Summary of regulations on the health and safety of children at work and on hazardous work by children issued in terms of the Basic Conditions of Employment Act, 1997 as amended prohibits an employer from requiring or permitting a child to work in deep sea fishing ('child' is defined as a person under 18 years old);</li> <li>3. The Department of Labour has monitoring and inspection directorates that are tasked specifically with the enforcement of the Basic Conditions of Employment Act, 1997 as amended.</li> <li>4. At industry level, certificate holders are subject to the provisions of The Bargaining Council for the Fishing Industry Main Agreement, which binds all employers and employees in the Hake Deep-sea Bottom Trawl Sector, Hake Inshore Bottom Trawl Sector and Horse Mackerel Mid-Water Trawl Sector: <ol style="list-style-type: none"> <li>a. Clause 24 prohibits the engagement of a child on board a fishing vessel who is – <ol style="list-style-type: none"> <li>i. Under 18 years of age unless indentured as an apprentice; or</li> <li>ii. A cadet for whom 16 years of age would be the minimum age allowed.</li> </ol> </li> </ol> </li> <li>5. Section III provides for the monitoring and enforcement of its terms via the appointment of designated agents in terms of the Labour Relations Act, 1995 as amended, the issuing of compliance orders, the determination of disputes via arbitration and the imposition of fines in respect of proven non-compliance.</li> </ol>
9	Repatriation
	<ul style="list-style-type: none"> <li>- Describe how repatriation issues are dealt with in the UoC with respect visits end of contract, voluntary and involuntary termination, and freedom of movement and the extent to which these are included in contracts.</li> </ul>
CH	<ol style="list-style-type: none"> <li>1. South Africa ratified the Maritime Labour Convention (Work in Fishing Convention 2007, Convention 188) in 2013 and promulgated the Merchant Shipping Amendment Act, 2015 to address the requirements imposed by the Convention: <ol style="list-style-type: none"> <li>a. Section 102 of the Merchant Shipping Amendment Act, 2015 provides that every agreement with the crew of a South African ship shall contain particulars of the seafarer's entitlement to repatriation;</li> <li>b. Section 113 of the Merchant Shipping Amendment Act, 2015 provides that a seafarer shall be entitled to the return of any certificate of competency or qualification held by the master of the vessel upon discharge.</li> <li>c. Section 114 of the Merchant Shipping Amendment Act, 2015 provides for the adequate maintenance of the seafarer and the repatriation of seafarers to a proper return port.</li> </ol> </li> <li>2. The parties to The Bargaining Council for the Fishing Industry have an established history of repatriating seafarers.</li> </ol>
10	Debt bondage
	<ul style="list-style-type: none"> <li>- Describe if there is evidence of systemic practices to impose costs on crew members for placement or brokerage fees, travel to the workplace, visa, medical, safety gear, clothing/protective gear, food at the workplace, communications access, remittance fees, repatriation, etc.</li> </ul>

	- If so, describe such practices and how debt bondage is avoided.
CH	<ol style="list-style-type: none"> <li>1. There is no evidence of systemic practices to impose costs on crew members for any placement or brokerage fees as contemplated herein.</li> <li>2. Section 34 of the Basic Conditions of Employment Act, 1997 as amended precludes any deductions from the remuneration of an employee unless agreed in writing or permitted in terms of a law, collective agreement, court order or arbitration award.</li> <li>3. The Department of Labour has monitoring and inspection directorates that are tasked specifically with the enforcement of the Basic Conditions of Employment Act, 1997 as amended.</li> </ol>
11	Grievance and remedy mechanisms
	- Please list any policies or measures (e.g. hotline) that are in place for crew voices to be heard and to report and remediate any instances of forced or child labour.
CH	<ol style="list-style-type: none"> <li>1. The employers that are party to The Bargaining Council for the Fishing Industry have established internal grievance policies regulating the resolution of internal workplace disputes.</li> <li>2. The Employment Equity Act, 1998 as amended regulates equal opportunity and fair treatment in employment and provides for the resolution of such disputes via statutory mechanisms in the event that such disputes are not resolved internally.</li> <li>3. The Bargaining Council for the Fishing Industry defines the employee as any person who is over the age of 18 years and the child as a person who is under the age of 18 as per the basic Conditions of Employment Act. Terms and Conditions of work for the sector are prescribed under the Bargaining Council Main Agreement which is also a government gazette signed off by the Minister of Labour (Employee representatives and employer representatives are bound by it). Anonymous hotlines for staff to report their concerns and complaints: The Labour Relations Act, section 187 (h) and the Protected Disclosure Act (PDA) 26 of 2000 protect employees who have made disclosures. The PDA protects the employee against unfair dismissals after s/he has made a disclosure.</li> </ol>
12	Identification documents
	- Describe policies and practice in place across the UoC to ensure that crew members have free and timely access to their identification documents, including National ID, passports, visas, etc.
CH	<ol style="list-style-type: none"> <li>1. Once the required recruitment checks are conducted, companies make copies of the certificates of the employees - this is the standard process enforced by the Department of Labour.</li> <li>2. Any Inspector from the Department of Labour can at random times request a visit to the company to check employee documentation.</li> <li>3. During the trip/voyage, crew on-board are required to have their Seaman's Book and SAMSA can request the information. No documentation is kept against the employees' free will.</li> </ol>
13	Additional comments
	- Do you have additional comments on labour practices within the UoC?
CH	The South African Hake Trawl Fishery is specifically protected against forced labour and child labour through the interaction between various legislation, subordinate regulation and statutorily enforced agreements.
14	Date this template was last updated
	- DD/MM/YYYY
CH	18/04/2019

## **3 Appendix – Guidance on filling in the Certificate Holder Forced and Child Labour Policies, Practices and Measures Template**

### **3.1 Composition of the fishery client group on behalf of who the statement is provided**

If a fishery is in full assessment and the cost-sharing participants and arrangements are not yet determined, provide as much detail as possible regarding the expected cost-sharing entities that will comprise the client group, should the fishery achieve certification, and the relationship between such client group representatives and the vessel owners and operators in the Unit of Certification (UoC).

### **3.2 Responsibility for labour regulation**

Provide information on laws and regulation and the authorities that have responsibility for labour regulations in the area in which the fishery operates, including flag state authorities where this is applicable. Describe how these are enforced.

### **3.3 Risk identification, mitigation and remediation**

The information required in this section includes information known by the certificate holder on processes and practices that are applicable in the UoC to identify, assess, prevent and mitigate forced and child labour risks. The information may include government policy or measures, or where applicable, measures being implemented by the certificate holder.

### **3.4 Crew recruitment**

The information required here includes information on the methods used to recruit crew in the UoC, any widespread use of migrant labour, the countries that crew come from and information on recruitment agencies used where this information is available and known to the certificate holder. It may also include information known of visa programs used to bring in workers to the UoC and on payment of recruitment fees.

### **3.5 Engagement with fish worker groups**

In some countries, there may be engagement with fish worker groups or other types of organisations that work to address risks of forced labour. Where this occurs provide information on such engagement. This may include information on any organizations in the port area which support crew members socially, e.g. seafarers' ministry, fishers' association, local committees.

### **3.6 Crew contracts**

Contracts are legal work agreements with labour duties and payments clearly spelled out. Describe the nature of crew contracts in the UoC, specifically features related to forced and child labour, whether the contracts are written in languages understood by crew and how provisions in the contract are enforced.

### **3.7 Audits and labour inspections**

Describe any government labour inspections or social audits and certifications of working conditions within the UoC in the past 2 years. Where the information is available provide a link to the criteria against which the audit took place.

### **3.8 National minimum age requirements**

For this section describe national minimum age requirements and provide a description of regulatory and private sector systems in place to confirm that minimum age restrictions are met. Include information on any exceptions to statutory minimum age requirements which are used by the UoC and information on policy for hiring young workers in compliance with national legislation. This should also include description of any policy or practices for monitoring including hours of work and rest for young workers. This may include information on any other programs which are monitoring labour in your UoC fishing area.

### **3.9 Repatriation**

This section requires a description of how departure of crew members across the UoC is handled. This may include information about government, and/or where known, any applicable company policy on end of crew members' contracts; involuntary termination; leave (including family visits and medical treatment); freedom of movement during the work term and departure terms within crew member contracts.

### **3.10 Debt bondage**

Deductions for costs of work from pay can cause debt bondage and put crew at risk of forced labour. Examples of such work costs include costs of getting to work, placement/broker fee, medical costs, safety gear, food at the workplace, remittance fees and repatriation costs.

Describe systems in place to avoid debt bondage. If there is evidence of systemic practices to impose costs on workers, what measures are in place to avoid debt bondage.

### **3.11 Grievance and remedy mechanisms**

Provide a description of systems known to be in place that allow crew to share information, access assistance and report labour violations and how the systems work to address such reports and provide remediation.

### **3.12 Identification documents**

Describe provisions across the UoC for crew to access their official identification (passports, visas, seafarers book). Where the law in a jurisdiction requires the vessel owner or captain to hold the crew members' official identification, describe the protocol, including government regulations in place to ensure that crew members can access their personal documents and have freedom of movement.



## 4 Template information and copyright

This document was drafted using the 'Certificate Holder Forced and Child Labour Policies, Practices and Measures Template v1.01'.

The Marine Stewardship Council's 'Certificate Holder Forced and Child Labour Policies, Practices and Measures Template' and its content is copyright of "Marine Stewardship Council" - © "Marine Stewardship Council" 2019. All rights reserved.

### Template version control

Version	Date of publication	Description of amendment
1.0	17 December 2018	Release alongside Fisheries Certification Process v2.1
1.01	28 March 2018	Minor document change for usability

A controlled document list of MSC program documents is available on the [MSC website](http://msc.org) (msc.org).

Senior Policy Manager  
Marine Stewardship Council  
Marine House  
1 Snow Hill  
London EC1A 2DH  
United Kingdom

Phone: + 44 (0) 20 7246 8900  
Fax: + 44 (0) 20 7246 8901  
Email: [standards@msc.org](mailto:standards@msc.org)