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PROCLAMATION*by the****President of the Republic of South Africa*****No. R. 64, 2004****AMENDMENT OF SCHEDULE 2 TO THE PUBLIC SERVICE ACT, 1994**

In terms of section 7 (5) (a) (ii) of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), I hereby amend, with effect from 26 October 2004, at the request of the Premier of the Northern Cape, Schedule 2 to the said Act by the substitution for the designations of the Provincial Departments and Heads of Provincial Departments of the Provincial Administration of the Northern Cape, in Columns 1 and 2 of Schedule 2, respectively, of the designations of the Provincial Departments and Heads of Provincial Departments of the said Provincial Administration as set out in Columns 1 and 2, respectively, below:

Column 1	Column 2
Northern Cape	
Department of Agriculture and Land Reform	Head: Agriculture and Land Reform
Department of Economic Affairs	Head: Economic Affairs
Department of Education	Head: Education
Department of Health	Head: Health
Department of Housing and Local Government	Head: Housing and Local Government
Department of Safety and Liaison	Head: Safety and Liaison
Department of Social Services and Population Development	Head: Social Services and Population Development
Department of Sport, Arts and Culture	Head: Sport, Arts and Culture
Department of Tourism, Environment and Conservation	Head: Tourism, Environment and Conservation
Department of Transport, Roads and Public Works	Head: Transport, Roads and Public Works
Provincial Treasury	Head: Provincial Treasury

Given under my Hand and the Seal of the Republic of South Africa at Pretoria, this Eighteenth day of December, Two Thousand and Four.

T. M. MBEKI**President**

By Order of the President-in-Cabinet:

G. J. FRASER-MOLEKETI**Minister of the Cabinet****PROKLAMASIE***van die****President van die Republiek van Suid-Afrika*****No. R. 64, 2004****WYSIGING VAN BYLAE 2 BY DIE STAATSDIENSWET, 1994**

Ingevolge artikel 7 (5) (a) (ii) van die Staatsdienswet, 1994 (gepromulgeer deur Proklamasie No. 103 van 1994), wysig ek hierby, met ingang van 26 Oktober 2004, op versoek van die Premier van die Noord-Kaap, Bylae 2 by vermelde Wet, deur die vervanging van die benamings van die Provinsiale Departemente en Hoofde van Provinsiale Departemente van die Provinsiale Administrasie van die Noord-Kaap, in Kolomme 1 en 2 van Bylae 2, onderskeidelik, met die benamings van die Provinsiale Departemente en Hoofde van Provinsiale Departemente van die vermelde Provinsiale Administrasie, soos onderskeidelik uiteengesit in Kolomme 1 en 2 hieronder:

Kolom 1	Kolom 2
Noord-Kaap	
Departement van Behuising en Plaaslike Bestuur	Hoof: Behuising en Plaaslike Bestuur
Departement van Ekonomiese Sake	Hoof: Ekonomiese Sake
Departement van Gesondheid	Hoof: Gesondheid
Departement van Landbou en Grondhervorming	Hoof: Landbou en Grondhervorming
Departement van Maatskaplike Dienste en Bevolkingsontwikkeling	Hoof: Maatskaplike Dienste en Bevolkingsontwikkeling
Departement van Onderwys	Hoof: Onderwys
Departement van Sport, Kuns en Kultuur	Head: Sport, Kuns en Kultuur
Departement van Toerisme, Omgewing en Bewaring	Hoof: Toerisme, Omgewing en Bewaring
Departement van Veiligheid en Skakeling	Hoof: Veiligheid en Skakeling
Departement van Vervoer, Paaie en Openbare Werke	Hoof: Vervoer, Paaie en Openbare Werke
Provinsiale Tesourie	Hoof: Provinsiale Tesourie

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria, op hede die Agtiende dag van Desember Tweeduisend en Vier.

T. M. MBEKI

President

Op las van die President-in-Kabinet

G. J. FRASER-MOLEKETI

Minister van die Kabinet

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 1475

31 December 2004

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICES

BARGAINING COUNCIL FOR THE FISHING INDUSTRY: MAIN COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel Government Notices Nos. R. 217 of 20 February 2004, R. 743 of 25 June 2004, R. 1041 of 10 September 2004 and R. 1335 of 19 September 2004 with effect from 10 January 2005.

M. M. S. MDLADLANA

Minister of Labour

No. R. 1475

31 Desember 2004

WET OP ARBEIDSVERHOUDINGE, 1995

INTREKKING VAN GOEWERMENSKENNISGEWINGS

BEDINGINGSRAAD VIR DIE VISNYWERHEID: HOOF KOLLEKTIEWE OOREENKOMS

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, trek hierby, kragtens artikel 32(7) van die Wet op Arbeidsverhoudinge, 1995, Goewermenskennisgewings Nos. R. 217 van 20 Februarie 2004, R. 743 van 25 Junie 2004, R. 1041 van 10 September 2004 en R. 1335 van 19 September 2004 in, met ingang van 10 Januarie 2005.

M. M. S. MDLADLANA

Minister van Arbeid

R. 1476

31 December 2004

LABOUR RELATIONS ACT, 1995

BARGAINING COUNCIL FOR THE FISHING INDUSTRY: EXTENSION TO NON-PARTIES OF MAIN COLLECTIVE AGREEMENT

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Fishing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry with effect from 10 January 2005 and for the period ending 30 June 2005.

M. M. S. MDLADLANA

Minister of Labour

R. 1476

31 Desember 2004

WET OP ARBEIDSVERHOUDINGE, 1995

BEDINGINGSRAAD VIR DIE VISNYWERHEID: UITBREIDING NA NIE-PARTYE VAN HOOF KOLLEKTIEWE OOREENKOMS

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32(2) van die Wet op Arbeidsverhoudinge, 1995, dat die kollektiewe ooreenkoms wat in die Bylae hiervan verskyn en wat in die Bedingingsraad vir die Visnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 10 Januarie 2005, en vir die tydperk wat op 30 Junie 2005 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

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SECTION I: GENERAL

PART A: INTRODUCTION

1. PARTIES TO THE AGREEMENT

In accordance with the provisions of the Labour Relations Act, 1995, this Agreement is made and entered into by and between the South African Fishing Industry Employers' Organisation (hereinafter referred to as "the employer") of the one part and the Trawler & Line Fishermen's Union (hereinafter referred to as "the employee"), of the other part, being the parties to this Main Agreement of the Bargaining Council for the Fishing Industry.

2. PURPOSE OF THE AGREEMENT

This Agreement aims to advance economic development and social justice by fulfilling the primary objects of the Act by giving effect to, and regulating the right to, fair labour practices conferred by section 23 of the Constitution of South Africa, Act No. 108 of 1996, by establishing and enforcing basic conditions of employment that fall within the scope of the council for employees who are employed on vessels at sea and are excluded from the Basic Conditions of Employment Act.

PART B: APPLICATION

3. SCOPE OF APPLICATION

- 3.1 This Agreement shall apply to all employers and/or employees who are members of any of the parties to this Agreement and who are employed in the Deep-sea Bottom Trawl and Inshore Bottom Trawl Sectors.
- 3.2 The provisions of this Agreement shall not apply to non-parties in respect of clauses 3.1, 4, 18.3 and 18.4.

4. PERIOD OF OPERATION

This Agreement shall come into operation in respect of parties to the Agreement as from 1 July 2004 and shall remain in force until 30 June 2005.

5. PRESUMPTION AS TO WHO IS AN EMPLOYEE

- 5.1 A person who works for, or provides services to, another person is presumed to be an employee if—
 - 5.1.1 his or her manner or hours of work are subject to control or direction;
 - 5.1.2 he or she forms part of the employers' organisation;
 - 5.1.3 he or she has worked for the other person for at least four (4) days per month;
 - 5.1.4 he or she is economically dependent on the other person;
 - 5.1.5 he or she is provided with his or her tools or work equipment; or
 - 5.1.6 he or she only works for, or renders service to, one person.
- 5.2 If one of these factors is present, the person shall be presumed to be an employee until the employer proves that he or she is not.

PART C: DEFINITIONS

6. INTERPRETATION

- 6.1 Headings of paragraphs shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of this Agreement.
- 6.2 Unless the context indicates otherwise any word or expression that is defined in the Act shall have the same meaning as in the Act.
- 6.3 Unless inconsistent with the context words relating to any gender shall include the other gender, and vice versa; the singular shall include the plural, and vice versa; and a natural person shall include an association of persons having corporate status by statute or common law.
- 6.4 The Council may issue guidelines to employers and employees regarding the implementation and/or interpretation of the wording of this Agreement from time to time, as it deems appropriate.

7. GENERAL DEFINITIONS

Unless otherwise indicated

"the Act" means the Labour Relations Act, No. 66 of 1995;

"basic daily rate" means the basic daily rate of pay for the rank in which the employee is signed on the vessel as per individual existing plant level agreements;

"calendar day" means any day of the week, including Saturdays and Sundays starting at midnight each day.

"commission" means the amount payable to the employee for fish landed multiplied by the unit ton, where applicable, and the commission rate for the rank in which the employee is signed on the vessel and the commission rates are as per the rates in existing individual plant level agreements;

"day" means a period of twenty-four (24) hours measured from when an employee starts work;

"fish" means any form of marine life used as food for human consumption, landed in acceptable condition and quality as laid down by the employer's standard quality control regulations;

"Fishing Industry" means the Industry in which employers and employees are associated for the purposes of legally exploiting in respect of the Marine Living Resources Act, No. 18 of 1998, any form of marine living resource by searching, catching, taking or harvesting, farming, growing, the procuring and processing of fish, for financial gain, by Deep-Sea Bottom Trawling and In-Shore Bottom Trawling.

"Deep-Sea Bottom Trawling" means the fishing operations at sea in which the employers and their employees are associated for the purpose of Deep-Sea Bottom Trawling by way of a net for fin fish species outside a five nautical mile perimeter west of twenty degrees east longitude and outside the hundred-and-ten meters isobath east of twenty degree east longitude.

"In-Shore Bottom Trawling" means the fishing operations at sea in which the employers and their employees are associated for the purpose of Bottom Trawling within the hundred-and-ten meter isobath.

"Processing of Fish" for the purposes of this definition means the activities undertaken on any vehicle or vessel at sea, where any substance or article is produced from any form of marine living resources by any method, including but not limited to the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving thereof or where any form of marine living resources are packed, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale.

"home port" means the place in which the employee was engaged;

"lay-off" means a situation where the employer cannot provide employees with work and they are temporarily placed on forced unpaid absence;

"place of work" means the vessel on which the employee has signed the articles;

"remuneration" means the sum of all moneys received by the employee from the employer and includes, but is not limited to the basic daily rate; commission; bonuses; allowances; and/or leave pay;

"SAMSA" means the South African Maritime Safety Authority;

"serve" for the purposes of this Agreement, holds the meaning as defined in the Bargaining Council's Constitution, with "service" holding a similar meaning;

"shore leave" means the number of leave days due in terms of paragraph 17.2 below;

"ton" means the metric ton of a thousand (1 000) kilograms;

"trawler" means a fishing vessel, irrespective of size or method of propulsion, which is employed in the catching of fish by way of trawling;

"trip" means the period between the times of sailing from and docking in a port;

"unit ton" means the ton of fish as per landing report converted by the factors for each size and species as defined by the employer and agreed to by the representative trade union, where applicable;

"voyage" means the number of days at sea plus the number of days' shore leave related to one or more trips with short turnarounds;

"working day" means any of or a combination of days spent working on board a fishing vessel; on shore leave accumulated as contemplated in clause 17.2 above; on standby awaiting a vessel; working ashore awaiting a vessel; or any form of sanctioned paid leave.

8. JOB DESCRIPTIONS

8.1 Able Seaman: An employee who is employed as a deckhand on a freezer or fresh fish trawler and who is in possession of an Able Seaman Certificate qualifying him proficient in survival craft and efficient at deck rating and who is knowledgeable about net mending, and splicing and is familiar with all types of rigging and running gear and who can take watch as lookout or helmsman, should the skipper so require.

8.2 Assistant factory manager: An employee who assists the Factory Manager in the performance of the employee's duties.

8.3 Assistant factory supervisor: Performs duties similar to those of an Assistant Factory Manager as defined in 8.2 above.

8.4 Assistant production manager: Performs duties similar to those of an Assistant Factory Manager as defined in 8.2 above.

8.5 Assistant marine engineer: An employee who holds a certificate of competency as required by SAMSA regulations for the vessel size the employee serves on and who, as a watch-keeping officer, is appointed to a Trawler as required by the current Manning Regulations published under *Gazette* No. 15304 of 1 December 1993.

- 8.6 **Bosun:** An employee who is in possession of a Grade 4 Certificate and who forms part of the deckhand complement on a vessel, and who is responsible to co-ordinate the deck and fish-hold activities of the spare hands and deckhands and who takes a watch when necessary.
- 8.7 **Charge hand:** An employee on board a trawler who actively works and supervises a team of factory or spare or fish-hold hands in the proper handling, gutting, cleaning, packing and stowage of the catch, and who reports to the Factory Supervisor or Assistant Factory Supervisor in charge and who also performs other duties such as the preparation of production requirements (packaging, processing area, etc.) before sailing times, the cleaning and painting of production areas as required from time to time and assisting on deck as required by the Skipper. (To be read with the definitions of Able seaman and lifeboat-man).
- 8.8 **Chief engineer:** An employee who holds a certificate of competency as required by SAMSA regulations for the vessel size the employee serves on, who is responsible for all technical aspects of the trawler.
- 8.9 **Cook:** An employee who is in possession of a Certificate of Efficient Cook or exempted by SAMSA and who is responsible for the preparing of orders for victuals and for the preparation and cooking of food for a crew complement of not more than 30 and who accounts for the galley and mess-room utensils and the supplies of victuals, and who is responsible for the cleanliness of the galley, mess-room and provision storage areas.
- 8.10 **Cook-first:** An employee who is in possession of a Certificate of Efficient Cook or exempted by SAMSA and who is responsible for the preparing of orders for victuals and for the preparation and cooking of food for a crew complement of more than 30 and who accounts for the galley and mess-room utensils and the supplies of victuals, and is responsible for the cleanliness of the galley, mess-room and provision storage areas.
- 8.11 **Cook-second:** An employee on a trawler with a complement of more than 40 people, who assists the cook in the performance of his duties and who is in possession of a Certificate for Efficient Cook or exempted by SAMSA.
- 8.12 **Deckhand:** An employee who is employed in catching fish, handling fishing gear, repairing nets and cleaning and washing decks and who assists in the processing in the factory and the stowage of the catch, and who takes a watch as lookout or helmsman should the skipper so require and who assists in keeping the ship clean and who paints up to arm's length as required. (To be read with the definitions of Able seaman and Lifeboatsman.)
- 8.13 **Driver:** An employee who holds a certificate of competency as a Marine Motorman Grade 3, equivalent or higher, and who is appointed to a trawler of not less than 350 kW and who is responsible for the running of the engine and the upkeep and maintenance of all ancillary equipment and who also assists in the handling of the catch.
- 8.14 **Factory hand:** Performs the same duties as a spare hand as defined in 8.27 below.
- 8.15 **Factory manager:** An employee who is responsible to the Skipper, or his designate, for the proper handling, stowage and quality control (HACCP) of the catch on a trawler and who is also responsible for ensuring that factory personnel carry out their duties in an efficient manner.
- 8.16 **Factory supervisor:** Performs the same duties as a factory manager as defined above in 8.15.
- 8.17 **Fish-hold hand:** Performs the same duties as a spare hand as defined in 8.27 below.
- 8.18 **Fishmeal operator:** An employee who is engaged in the production of fishmeal and who cleans and paints fishmeal plant spaces and fishmeal storage areas as required, and who fulfils other production functions as required and whose remuneration is calculated in accordance with the rate of the alternative position the employee occupies.
- 8.19 **Galley hand:** An employee who keeps the galley, alley ways, toilets and officers' cabins clean and who assists the cook in his duties and keeps all eating utensils clean, and who at the Skipper's discretion, assists in the handling of fish on deck and/or factory at times when fishing is heavy.
- 8.20 **Greaser:** An employee who takes an engine-room watch together with a certificated marine engineer and who assists in oiling and greasing machinery in the engine room and on deck and who cleans and paints engine-room spaces.
- 8.21 **Greaser-M3:** An employee who is in possession of an M3 Efficient Certificate and who takes an engine-room watch together with a certificated marine engineer and who assists in oiling and greasing machinery in the engine room and on deck and who cleans and paints engine-room spaces.
- 8.22 **Greaser-M4:** An employee who is in possession of an M4 Efficient Certificate and who takes an engine-room watch together with a certificated marine engineer and who assists in oiling and greasing machinery in the engine room and on deck and who cleans and paints engine-room spaces.
- 8.23 **Lifeboatsman:** An employee who is employed as a deckhand on a freezer or fresh fish trawler and who is in possession of a Lifeboatsman Certificate stating him to be proficient in survival craft and who is knowledgeable about net mending and splicing and is familiar with all types of rigging and running gear and who takes watch as lookout or helmsman, should the Skipper so required.
- 8.24 **Mate:** An employee who holds a certificate of competency as a Fisherman, Grade 7, or higher and who is appointed to a trawler of 100 or more gross registered tons, as a watch-keeping officer and who is responsible to the Skipper for the handling of the catch, assembly of fishing gear and supervision of deck personnel and may be the appointed safety officer or representative.
- 8.25 **Production manager:** Performs duties similar to those of a factory manager as defined above in 8.15.

- 8.26 Skipper: An employee who holds a certificate of competency as a Fisherman, Grade 4, or higher and who is also responsible for the safety, navigation, housekeeping and all operations of a trawler of 100 or more gross registered tons and the crew complement and who directs fishing operations and who is appointed safety officer in terms of the Maritime Occupational and Safety Regulations, 1994.
- 8.27 Spare hand: An employee on a trawler who actively participates in the handling and processing of fish, and who reports in the execution of his duties to the charge hand and performs any duties as he may be required to do by the management of the company or the master of the vessel and who may also be appointed to assist the cook, with his functions and who may further be instructed by the Skipper to assist in cleaning functions, i.e. cleaning the galley, alleyways and toilets. (To be read with the definitions of Able Seaman and Lifeboatsman.)

SECTION II: CORE RIGHTS

PART D: REMUNERATION

9. MINIMUM REMUNERATION

- 9.1 It is agreed by the parties that actual remuneration rates as well as the minimum remuneration rates be increased by the percentage indicated in the respective chamber agreements, as is reflected in the new minimum rates schedules attached hereto and marked "A" for the Deep-sea Bottom Trawl Sector and "B" for the Inshore Bottom Trawl Sector.
- 9.2 No employee shall be paid less than the minimum remuneration prescribed in the respective chamber agreements attached for any employee's relevant rank after incorporation of the increase referred to in 9.1 above.
- 9.3 Subject to 9.2 above, some ranks are excluded from having a prescribed minimum remuneration and are marked "Unprescribed" since the rate of remuneration for such ranks normally exceeds an annual income level of a hundred-and-fifteen-thousand-five-hundred-and-seventy-two rand (R115 572,00).
- 9.4 The prescribed minimum remuneration schedule sets out the minimum rates of pay per working day for each rank in each chamber that shall be effective from the date that this Agreement comes into force.
- 9.5 Should an employer require an employee to work for five (5) days or more in a rank which has a higher remuneration than that prescribed for the rank that the employee holds, the employer shall pay that employee at the higher remuneration for the full period the employee worked in the higher rank: Provided that such change in rank is authorised by the Skipper and logged as such.
- 9.6 A temporary employee shall be paid at the rate prescribed for the rank the employee holds as contained in the remuneration schedule for the specific sector in which the employee is employed.

10. PAYMENT OF REMUNERATION

- 10.1 An employee shall be paid, calculated over a period of a month, the greater remuneration of—
- 10.1.1 the actual amount earned, paid in terms of any other agreement; or
 - 10.1.2 the amount equal to the number of working days worked in the month in question multiplied by the minimum remuneration rate for the employee's rank, as set out for the specific sector in which the employee is employed.
- 10.2 For the purpose of calculating the number of working days referred to in 10.1.2, any day that has been declared a public holiday shall be calculated as two (2) working days when such public holiday coincides with any working day.
- 10.3 The employer shall pay the employee all the remuneration due to him in terms of 10.1 above at least once every 30 days.
- 10.4 Payment shall be made—
- 10.4.1 in cash;
 - 10.4.2 by bank transfer;
 - 10.4.3 by bank deposit; or
 - 10.4.4 by cheque.
- 10.5 Payments in cash shall be made in an envelope during a working day.
- 10.6 Payment shall be accompanied by a pay slip with the following details:
- 10.6.1 The name of the employer;
 - 10.6.2 the name, identity number, clock number and/or payroll number of the employee;
 - 10.6.3 the employee's date of engagement;
 - 10.6.4 the rank of the employee;
 - 10.6.5 the total number of working days;
 - 10.6.6 the rate(s) of remuneration;
 - 10.6.7 any other payment due to the employee in accordance with this Agreement;

- 10.6.8 any other payment due to the employee in accordance with the employee's individual contract of employment;
- 10.6.9 deductions made;
- 10.6.10 remuneration due; and
- 10.6.11 the period in respect of which payment is made.

11. DEDUCTIONS

- 11.1 The employer may not fine or impose a levy on an employee or charge the employee any fee.
- 11.2 The employer may not make any deduction from an employee's remuneration unless—
 - 11.2.1 subject to 11.3 to 11.5 below, the employee in writing agrees to the deduction in respect of a debt specified in their agreement; or
 - 11.2.2 the deduction is required in terms of a law, a collective agreement, a court order or an arbitration award.
- 11.3 A deduction in terms of 11.2.1 above may be made to reimburse the employer for loss or damage only if—
 - 11.3.1 the loss or damage occurred in the course of employment and was due to the fault of the employee;
 - 11.3.2 the employer followed a fair procedure and gave the employee a reasonable opportunity to show why the deduction should not be made; and
 - 11.3.3 the total amount of the debt does not exceed the actual amount of the loss or damage.
- 11.4 Should the employer have a representative trade union claiming organisational rights in terms of the Act, then it may enter into an agreement with the trade union in terms of which union levies may be deducted from employees' remuneration and paid over in terms of such legislation, read with the individual trade union's constitution.
- 11.5 The employer shall be authorised to make any deduction from an employee's remuneration specified by the Merchant Shipping Act: Provided that the employee be advised in writing of the relevant section of that Act and the terms of the deduction together with the payslip reflecting such deduction.

PART E: BENEFITS

12. PROTECTIVE CLOTHING

- 12.1 The employer shall either provide the employee with protective clothing free of charge or reimburse an employee for the use of his own protective clothing at a rate of not less than one rand and seventy-five cents (R1,75) per working day at sea.
- 12.2 It is the employer's prerogative to elect to operate any of the alternatives in 12.1 above: Provided that any change in his election shall be negotiated with the affected employees or the representative trade union.

13. TOWAGE ALLOWANCE

- 13.1 In the event of a vessel's being called upon to tow another vessel of the employer to port, the crew of the towing vessel shall be compensated for the loss of commission.
- 13.2 The towage allowance shall be calculated at the average daily commission per day of the previous voyage for that vessel, multiplied by the number of days' commission lost whilst towing.

14. DEATH AND DISABILITY

- 14.1 The employer shall provide all its employees with accidental death and disability insurance to a minimum value of twenty-five thousand rand (R25 000,00).
- 14.2 Should the employer have an operative existing Provident or Retirement Fund that covers its employees to the extent stipulated in 14.1 above, no additional cover is required.
- 14.3 The benefit referred to in 14.1 above shall be limited to incidents occurring whilst on duty.

15. MEDICAL AID

- 15.1 Each employee who is employed with the employer for longer than twelve (12) months continuously shall have the right to be enrolled with the Fishermen's Medical Aid Fund on the primary option whereby the employee and employer shall equally pay the contribution towards such benefit.
- 15.2 Each employee shall have the right to joint beneficiaries to his benefit in terms of 15.1 above at his own cost unless agreement is reached with the employer with regard to the sharing of this additional cost.

PART F: HOURS OF WORK

16. HOURS OF WORK

- 16.1 An employer may not require or permit an employee to work more than a maximum of fifteen (15) hours per day.
- 16.2 An employer may not require or permit an employee to work more than five (5) hours continuously without a rest interval of at least thirty (30) minutes.

17. REST PERIODS

- 17.1 An employer shall provide an employee with at least eight (8) hours of rest per day when the employee is employed in the Deep-sea Bottom Trawl Sector, as set out in Annexure A.
- 17.2 An employer shall grant at the end of every voyage, an employee four (4) hours' paid shore leave for every twenty-four (24) hours that the employee was at sea.
- 17.3 Shore leave may commence upon actual arrival after the employee is granted permission to leave the ship.
- 17.4 Shore leave may be taken at the conclusion of a trip or a voyage at the discretion of the employer: Provided that in the event of shore leave being granted away from the employee's home port then the employer shall be responsible for the transport of the employee to his home port.
- 17.5 Notwithstanding 17.4 above, the employer and employee may enter into any alternative written agreement regarding shore leave.

18. PERIODS OF LAY-OFF

- 18.1 An employer shall notify all affected employees in writing of its intention to lay-off employees for operational reasons, at least forty-eight (48) hours before such lay-off: Provided that such lay-off is expected to exceed a total of seven (7) calendar days.
- 18.2 The employer shall permit the affected employees the option to utilise their accumulated annual leave for the purposes of payment during such period of lay-off.
- 18.3 The employer shall furthermore notify the Council and recognised trade union, where applicable, at least forty-eight (48) hours, where possible, before the start of any anticipated lay-off period.
- 18.4 The employer shall provide the trade union and the Council with the total number of employees affected and the reason(s) for the lay-off.

PART G: LEAVE**19. ANNUAL LEAVE**

- 19.1 An employee shall be entitled to at least twenty-one (21) calendar days' paid annual leave in his annual leave cycle, which shall referred to the period of twelve (12) months with the same employer, calculated immediately following—
 - 19.1.1 the employee's commencement of employment; or
 - 19.1.2 the completion of that employee's prior leave cycle.
- 19.2 An employee shall be entitled to take any leave accumulated in an annual leave cycle in terms of 19.1 above, on consecutive calendar days.
- 19.3 An employer shall grant annual leave no later than four (4) months after the end of the annual leave cycle as defined in 19.1 above.
- 19.4 An employer may not require or permit an employee to take annual leave during—
 - 19.4.1 any other period of leave to which the employee is entitled in terms of this Agreement; or
 - 19.4.2 any period of notice of termination of employment.
- 19.5 Notwithstanding 19.4 above, the employer may permit an employee, at the employee's written request, to take leave during a period of unpaid absence.
- 19.6 An employer may reduce an employee's entitlement to annual leave by the number of calendar days of paid occasional leave granted to the employee as referred to in 19.5 above.
- 19.7 An employer shall grant an employee an additional calendar day of paid annual leave should a public holiday fall on a calendar day during an employee's period of annual leave.
- 19.8 An employer may not require or permit an employee to work for the employer during any period of annual leave.
- 19.9 Annual leave shall be taken—
 - 19.9.1 in accordance with an agreement between the employer and employee; or
 - 19.9.2 if there is no agreement in terms of 19.9.1, at a time determined by the employer in accordance with this clause.
- 19.10 Annual leave shall be paid in accordance with 9.2 read with 10.1 above as well as the applicable chamber minimum remuneration schedule.

20. SICK LEAVE

- 20.1 An employee shall be entitled to at least forty-two (42) calendar days' paid sick leave in his sick-leave cycle. 'Sick leave cycle' means the period of thirty-six (36) months' employment immediately following—
 - 20.1.1 the employee's commencement of employment; or
 - 20.1.2 the completion of that employee's prior leave cycle.

- 20.2 Notwithstanding 20.1 above, an employee shall be entitled to only one (1) day's sick leave for every twenty-six (26) days worked during his first twelve (12) months of employment.
- 20.3 During an employee's first sick-leave cycle, the employer may reduce the employee's entitlement to sick leave in terms of 20.1 by the number of calendar days' leave taken in terms of 20.2.
- 20.4 Sick leave shall be paid in accordance with 9.2 read with 10.1 above as well as the applicable chamber minimum remuneration schedule.
- 20.5 An employer shall not be required to pay sick leave to an employee in terms of 20.1 or 20.2 above, should the employer and employee by written agreement contribute to a fund or organisation that guarantees payment to the employee in lieu of any part of his remuneration during times of incapacity.
- 20.6 Sick leave shall be paid only on presentation of a certificate issued and signed by a medical practitioner entitled to practise in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act.
- 20.7 Any employee who utilises sick leave shall be paid only for the period specified in the medical certificate required under 20.6 above and shall not be paid for any additional period until he rejoins his vessel, unless the employee makes use of his annual leave as contemplated in 19.5 above.
- 20.8 This clause shall not apply to an inability to work caused by an accident or occupational diseases as defined in the Compensation for Occupational Injuries and Diseases Act, except in respect of any period during which no compensation is payable in terms of that Act.

21. MATERNITY LEAVE

- 21.1 An employee shall be entitled to unpaid maternity leave of at least seventeen (17) weeks.
- 21.2 An employee may commence maternity leave—
- 21.2.1 at any time from four (4) weeks before the expected date of birth, unless otherwise agreed; or
 - 21.2.2 on a date from which a medical practitioner or a midwife certifies that such leave is necessary for the employee's health or that of her unborn child.
- 21.3 No employer may require or permit a pregnant employee to perform work that is hazardous to her health or to the health of her child and the employer may therefore consult the employee regarding the commencement of her maternity leave to be taken.
- 21.4 An employee who has a miscarriage or bears a stillborn child during her third trimester of pregnancy, shall be entitled to maternity leave of six (6) weeks thereafter, irrespective of whether or not the employee had started maternity leave at the time of the miscarriage or stillbirth.
- 21.5 An employee shall notify the employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—
- 21.5.1 commence maternity leave; and
 - 21.5.2 return to work after maternity leave.
- 21.6 Notification in terms of 21.5 above shall be given at least four (4) weeks before the employee intends to commence maternity leave.
- 21.7 The payment of maternity benefits shall be determined by the Minister of Labour, subject to the provisions of the Unemployment Insurance Act.
- 21.8 During the period of maternity leave all terms and conditions of her employment contract shall be suspended.
- 21.9 At the end of the period of maternity leave the employee shall be entitled to resume work with the employer in a position at least identical or similar to, but not less favourable than, the position she held at the start of her maternity leave.
- 21.10 No employee may resume work within six (6) weeks after the birth of her child, unless a medical practitioner or midwife has certified that she is fit to do so.
- 21.11 No employer may require or permit an employee who is nursing her child to perform work that is hazardous to her health or to the health of her child and the employer may therefore consult the employee regarding the extension of her maternity leave taken—
- 21.11.1 in accordance with an agreement between the employer and employee; or
 - 21.11.2 if there is no agreement in terms of 21.11.1, at a time determined by the employer in accordance with this clause.

22. FAMILY RESPONSIBILITY LEAVE

- 22.1 This clause shall apply to an employee—
- 22.1.1 who has been in employment with an employer for longer than a hundred and twenty (120) calendar days; and
 - 22.1.2 who has had at least seventy (70) working days in that period.

- 22.2 At the employers' discretion, an employee may be granted at his request, a maximum of five (5) calendar days' paid family responsibility leave during each annual cycle, defined in 22.1 above.
- 22.3 Family responsibility leave may be utilised by the employee in the event—
- 22.3.1 of the birth of the employee's child;
 - 22.3.2 of the sickness of the employee's child; or
 - 22.3.3 of a death in the immediate family of the employee, which shall refer to the employee's parents, adoptive parent, spouse, child, adopted child and siblings.
- 22.4 Before paying an employee for family responsibility leave in terms of this clause, the employer may require reasonable proof of an event contemplated in 22.3 above, for which the leave was required.
- 22.5 Subject to 22.4 above, the employer shall pay the employee for the family responsibility leave in terms of 9.2 above, read with 10.1 above, as well as the applicable chamber minimum remuneration schedule.
- 22.6 An employee may not take family responsibility leave in respect of a part of a day.
- 22.7 Utilising family responsibility leave in terms of 22.3.1 above shall be considered only where the employee makes prior arrangements with the employer, which implies that no employer shall be obliged to ensure that the employee is present for the birth of his child.
- 22.8 Any employee who utilises family responsibility leave shall do so for the period specified in 22.2 above and shall not be paid for any additional period until he rejoins his vessel, unless the employee makes use of his annual leave as contemplated in 19.5 above.
- 22.9 An employee's unused entitlement to family responsibility leave in terms of this clause shall lapse at the end of the annual cycle.

PART H: EMPLOYMENT

23. APPOINTMENTS

- 23.1 Subject to the provisions of this clause, no employer shall engage a new employee unless a valid certificate is delivered to the employer, satisfying him that the applicant—
- 23.1.1 has completed satisfactory pre-sea training as required in terms of Standard Training and Certification or Watch-keeping Fishing;
 - 23.1.2 is in possession of the required qualification for the position to be occupied; and
 - 23.1.3 is in possession of a Seaman's Book.
- 23.2 The certificate required in terms of 23.1.1 shall be issued by an accredited training institution, as regulated.

24. PROHIBITION OF EMPLOYMENT OF CHILDREN

- 24.1 No person may engage on board a fishing vessel a child—
- 24.1.1 who is under eighteen (18) years of age unless such child is indentured as an apprentice or cadet in which case sixteen (16) years of age shall be the minimum age allowed.
- 24.2 No person may engage a child in employment—
- 24.2.1 that is inappropriate for a person of that age; or
 - 24.2.2 that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- 24.3 Subject to 24.2 above, the Minister of Transport may make regulations to—
- 24.3.1 prohibit or place conditions on the engagement on board a fishing vessel of children who are at least eighteen (18) years of age and are no longer subject to compulsory schooling in terms of any law; and
 - 24.3.2 regulate the conducting of medical examinations of children in engagement in addition to that required in terms of clause 25 below.
- 24.4 In any proceedings in terms of the Act, if the age of an employee is a relevant factor for which insufficient evidence is available, it shall be for the party who alleges that the engagement complied with the provisions of this clause to prove that it was reasonable for that party to believe, after an investigation, that the person was not below the permitted age in terms of 24.1 to 24.3 above.
- 24.5 It shall be an offence for an employer to—
- 24.5.1 employ a child in contravention of 24.1 to 24.3; or
 - 24.5.2 assist an employer to employ a child in contravention of the said clause; or
 - 24.5.3 discriminate against a person who refuses to permit a child to be employed in contravention of this clause.

25. MEDICAL EXAMINATIONS

- 25.1 Since the nature of the Fishing Industry, requires that the employees to be in good health when sent to work at sea, the employer may require an employee to undergo and pass an annual medical examination at the expense of the employer, by a medical practitioner elected by the employer from the accredited SAMSA list of medical practitioners, before being employed on a vessel.
- 25.2 An employee accepting the conditions in 25.1 above, shall give his irrevocable consent to the medical practitioner to make the results of the medical examination available to the employer.

26. PROHIBITION OF FORCED LABOUR

- 26.1 Subject to the Constitution, all forced labour shall be prohibited.
- 26.2 No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of 26.1.
- 26.3 A person who contravenes 26.1 or 26.2 shall be committing an offence.

27. CONDITIONS OF EMPLOYMENT

- 27.1 The basic conditions of employment in terms of this Agreement, shall take precedence over any other contract of employment except to the extent that—
- 27.1.1 any other law provides terms which are more favourable to the employee; and
- 27.1.2 the basic conditions of employment have been replaced, varied, or excluded in accordance with the provisions of this Agreement; or
- 27.1.3 the terms of the contract of employment are more favourable to the employee than the terms of this Agreement.
- 27.2 Every employer shall display this Agreement in the place of work where employees can read it.
- 27.3 The parties shall acknowledge and recognise that this Agreement or anything done under it take precedence over any agreement, whether entered into before or after the commencement of this Agreement, subject to 27.4 and 27.5 below.
- 27.4 The parties shall acknowledge and recognise that all previously concluded agreements, whose contents are not specifically dealt with in this Agreement, shall continue to be binding on the parties to such agreements.
- 27.5 All current conditions applicable to the various participating employers and employees shall, where they are more favourable than those concluded in this Agreement, remain in full force and effect.

28. PARTICULARS OF EMPLOYMENT

- 28.1 The employer shall supply an employee, when the employee commences employment, with the following particulars in writing:
- 28.1.1 The full name and address of the employer;
- 28.1.2 the occupation of the employee, plus a brief description of the work for which the employee is employed as defined in clause 8 above;
- 28.1.3 the date on which his employment begins;
- 28.1.4 the manner in which the employee shall be informed of the times at which the employee is to be on board or to begin work;
- 28.1.5 the basis for the rest periods as stipulated in clause 17 above;
- 28.1.6 the leave to which the employee is entitled in terms of Part G hereof;
- 28.1.7 the currency of payment of the employee's remuneration;
- 28.1.8 the employee's remuneration or the rate and method of calculating remuneration;
- 28.1.9 any other cash payments that the employees is entitled to;
- 28.1.10 any payment in kind that the employee is entitled to and the value of the payment;
- 28.1.11 how frequently remuneration is paid;
- 28.1.12 any deductions to be made from the employee's remuneration;
- 28.1.13 the period of notice to terminate engagement or if engagement is for a specified period, the date when engagement is to terminate;
- 28.1.14 a description of the Bargaining Council that covers the employer and employee; and
- 28.1.15 a list of any other documents that form part of the contract of engagement, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- 28.2 A contract of employment for any employee employed shall consist of at least the written details referred to in 28.1 above and shall be signed by the employer prior to the employee's signing it.
- 28.3 If an employee is not able to understand the written particulars, the employer shall ensure that they are explained to the employee in a language and in a manner that the employee understands.

- 28.4 If the employee is under the age of eighteen (18), his guardian's written consent shall be obtained for him to enter into employment for service at sea, since any agreement entered into without such consent shall be voidable by his guardian.
- 28.5 When an employee is first employed, the details referred to in 28.1 above shall be signed in duplicate and one copy be given to the employee whilst the employer shall keep the other copy.
- 28.6 When any matter referred to in 28.2 above changes then—
- 28.6.1 the written contract shall be revised to reflect the change; and
 - 28.6.2 the employee shall be supplied with a copy of the document reflecting the change.

29. KEEPING RECORDS

- 29.1 The employer shall keep a record containing at least the following information:
- 29.1.1 The employee's name and occupation;
 - 29.1.2 vessels sailed on, in what capacity and for what period;
 - 29.1.3 the remuneration paid to each employee;
 - 29.1.4 the date of birth of any employee under the age of eighteen (18),
 - 29.1.5 any other information required in terms of the Merchant Shipping Act; and
 - 29.1.6 the name and contact details of next of kin.
- 29.2 The employer shall keep a record in terms of 29.1 above, for a period of three (3) years from the date of the last entry in the record.
- 29.3 An employer who keeps a record in terms of this clause shall not be required to keep any records of time worked and remuneration paid as required by any other employment law.

PART I: TERMINATION OF CONTRACT OF EMPLOYMENT

30. TERMINATION

- 30.1 Subject to 30.6 and 30.7 below, employment may be terminated only at the instance of a party to the employment agreement on notice to the other party of not less than—
- 30.1.1 seven (7) days, if the employee has been in employment for twenty-eight (28) consecutive days or less;
 - 30.1.2 fourteen (14) days, if the employee has been in employment for longer than twenty-eight (28) consecutive days but shorter than a year; and
 - 30.1.3 twenty-eight (28) days, if the employee has been in employment for longer than a year.
- 30.2 Notwithstanding 30.1 above, the last day of the notice period shall coincide with a docking day.
- 30.3 Failure to comply with the minimum notice period set out in 30.1 above shall result in monetary reimbursement to the party not receiving the required notice: Provided that such reimbursement shall only be proportional to the shortfall in compliance with 30.1 above.
- 30.4 Notice of termination of a contract of employment shall be given in writing. However, the notice shall be explained orally in an official language that the employee reasonably understands, where—
- 30.4.1 the employee is illiterate and is not able to read the termination notice; and
 - 30.4.2 the employee is not able to understand the language in which the notice is given.
- 30.5 Notice of termination of a contract of employment given by the employer—
- 30.5.1 shall not be during any period of leave to which the employee is entitled in terms of Part G above; and
 - 30.5.2 not run concurrently with any period of leave to which the employee is entitled in terms of Part G, except sick leave.
- 30.6 Nothing in this clause shall affect the right—
- 30.6.1 of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act or any other law; and
 - 30.6.2 of the employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
- 30.7 Instead of giving an employee notice in terms of 30.1 above, the employer may pay the employee the remuneration the employee would have received, calculated in accordance with 9.2 above, as if the employee had worked during the notice period.
- 30.8 If an employee gives notice of termination of employment and the employer waives any part of the notice, then the employer shall pay the remuneration referred to in 30.7 above, unless the employer and employee agree otherwise.

31. PAYMENT ON TERMINATION

- 31.1 On termination of employment, the employer shall pay an employee—
- 31.1.1 for any paid time off that the employee is entitled to in terms of clause 16 above that the employee has not taken or been paid for;

- 31.1.2 remuneration calculated in accordance with clause 19 above for any period of annual leave due that the employee has not taken;
 - 31.1.3 notice as contemplated in clause 30.1 above, read with 30.7 and 30.8, calculated in accordance with 31.2 below;
 - 31.1.4 any remuneration due to the employee for work performed, calculated in accordance with 10.1 above or 31.2 below whichever is the greater; and
 - 31.1.5 severance pay, where applicable in terms of clause 32 below.
- 31.2 The value of any reimbursement in terms of clause 30.3 for non-compliance with the required notice periods shall be based on the average remuneration received by the employee for the completed trips in the three (3) month period preceding the date of termination.
- 31.3 On termination of employment an employee shall be entitled to a certificate of service stating—
- 31.3.1 the employee's full name;
 - 31.3.2 the name and address of the employer;
 - 31.3.3 the description of the Bargaining Council;
 - 31.3.4 the title of the job as defined in clause 8 above;
 - 31.3.5 the date of termination of his employment; and
 - 31.3.6 if the employee so requests, the reason for termination of employment.

32. SEVERANCE PAY

- 32.1 On termination of employment for reasons based on the employer's operational requirements, as contemplated in section 189 and 189A of the Labour Relations Act, the employer shall pay an employee severance pay equal to at least seven (7) days' remuneration for each completed year of continuous service with the employer, calculated in accordance with clause 31.2 above.
- 32.2 An employee who unreasonably refuses to accept the employer's offer of alternative employment with the employer or any other employment shall not be entitled to severance pay in terms of 32.1 above.
- 32.3 The payment of severance pay in accordance with this clause shall not affect an employee's right to any other amount payable in accordance with clause 31.1 above or any other law.
- 32.4 Where any dispute arises regarding the entitlement to severance pay in terms of 32.1 and 32.2 above, the employee may refer the dispute in the prescribed written format to the Council for conciliation and if the dispute remains unresolved, the employee may refer it to arbitration.
- 32.5 The employee who refers the dispute to the Council in terms of 32.4 above, shall satisfy it that a copy of the referral(s) has (have) been served on all the other parties to the dispute.
- 32.6 Where the Labour Court adjudicates a dispute about a dismissal based on the employer's operational requirements the Labour Court may inquire into and determine the amount of any severance pay to which the dismissed employee may be entitled and the Labour Court may make an order directing the employer to pay such amount.

PART J: GENERAL

33. LIMITATION ON THE RIGHT TO STRIKE

- 33.1 No employee shall participate in or support any strike in respect of any dispute about the interpretation or application, including enforcement, of this Agreement while this Agreement is in force.
- 33.2 Participation in or support of a strike referred to in 33.1 above, shall be in breach of this Agreement and shall be considered to be unprotected industrial action in terms of the Act.
- 33.3 No employee shall participate in or support any form of strike which may endanger the passage of the vessel or the lives of the crew on board that vessel.
- 33.4 Employees who do not comply with 33.3 above may be subjected to disciplinary action by the employer and may be dismissed, irrespective of whether the strike was protected in terms of the Act or not.

34. RIGHTS OF EMPLOYEES

- 34.1 All employees shall be protected against discrimination as contemplated in sections 78 and 79 of the Basic Conditions of Employment Act, 1997, read with the necessary changes within the context of the scope of the Council and this Agreement.
- 34.2 If there is a dispute about the interpretation or application of clause 34, any party to the dispute may refer the dispute in writing to the Council.
- 34.3 The party referring the dispute in terms of 34.2 above shall satisfy the Council that a copy of the referral has been served on all the other parties to the dispute.

34.4 The Council shall attempt to resolve the dispute through conciliation, but if it remains unresolved, any party to the dispute may refer it to the Labour Court in terms of the provisions of Part C of Chapter VII of the Act, read with the necessary changes required by the context of the Council and this Agreement.

34.5 In any dispute in terms of clause 34—

34.5.1 the party who alleges that a right or protection conferred by this clause has been infringed, shall prove the fact of the conduct said to constitute such infringement; and

34.5.2 the party who alleges engagement in the conduct in question shall then prove that the conduct did not infringe any provision of this clause.

35. CODES OF GOOD PRACTICE

35.1 Any party to the Council may submit a code of good practice issued by the Minister of Labour in terms of the Basic Conditions of Employment Act, 1997, to the Secretary for consideration by the Executive Committee of the Council.

SECTION III: SECTOR CHAMBER PARTICULARS

ANNEXURE A: DEEP-SEA BOTTOM TRAWL SECTOR

A 1. MINIMUM DEEP-SEA REMUNERATION

A 1.1 It is agreed by the parties that the actual remuneration rates and the minimum remuneration rates be increased by seven per cent (7%), as reflected in the new minimum rates schedule, A 1.2 below.

A 1.2 The following minimum remuneration schedule sets out the minimum rates of pay per working day for each rank that shall be effective from the date that this Agreement comes into force:

EMPLOYEE RANK	DEEP-SEA BOTTOM TRAWL
Able Seaman	R96,65
Assistant Factory Manager	R105,85
Assistant Marine Engineer	R99,15
Bosun	R106,80
Charge Hand	R89,70
Chief Engineer	Unprescribed
Cook	R128,40
Cook—1st	R151,30
Cook—2nd	R106,80
Deck Hand	R89,70
Factory Manager	R141,15
Fishmeal Operator	R116,85
Galley Hand	R72,50
Greaser	R103,00
Greaser—M3	R109,30
Greaser—M4	R106,00
Lifeboatsman	R89,70
Mate	Unprescribed
Skipper	Unprescribed
Spare Hand	R81,40

A. 2. MINIMUM DEEP-SEA REST PERIODS

An employer shall provide an employee with at least eight (8) hours of rest per day of which at least six (6) hours of the eight (8) hours shall be continuous uninterrupted rest when the employee is employed in the Deep-sea Bottom Trawl Sector.

ANNEXURE B: INSHORE BOTTOM TRAWL SECTOR

B 1. MINIMUM INSHORE REMUNERATION

B 1.1 It is agreed by the parties that the actual remuneration rates and the minimum remuneration rates be increased by six and a half per cent (6,5%), as reflected in the new minimum rates schedule, B 1.2 below.

B 1.2 The following minimum remuneration schedule sets out the minimum rates of pay per working day for each rank that shall be effective from the date that this Agreement comes into force:

EMPLOYEE RANK	INSHORE BOTTOM TRAWL
Able Seaman	R89,30
Assistant Marine Engineer.....	R98,70
Bosun.....	R87,05
Chief Engineer	R150,90
Cook	R75,45
Deck Hand	R87,05
Driver	R87,05
Mate	Unprescribed
Skipper.....	Unprescribed
Spare Hand.....	R69,65

SECTION IV: REGULATION OF AGREEMENT

PART K: MONITORING AND ENFORCEMENT

36. ADMINISTRATION

- 36.1 Each employer shall deduct an amount of seven rand and twenty cents (R7,20) per month from the remuneration of each employee as agreed by the Council in terms of its constitution.
- 36.2 Each employer shall pay to the Council an amount equivalent to that deducted from all its employees and make payment of these amounts to the Council before the 7th day of the next month, together with a schedule of the names of the employees from whom moneys have been deducted.
- 36.3 The Secretary shall keep a register of all employers employed in the fishing industry.
- 36.4 Should any amount that is payable to the Council in terms of this Agreement not be paid by the stipulated date, interest at a rate of twenty per cent (20%) per month or any part thereof, shall accrue on that amount from the stipulated date of payment.
- 36.5 The Council shall refer non-compliance in terms of 36.4 above to arbitration in terms of clause 41.4 and 41.5 below.
- 36.6 The employer shall become liable for any legal costs incurred by the Council for recovery of the amount due.

37. EXEMPTIONS

- 37.1 Any application for exemption from the provisions of this Agreement shall be filed with the Secretary of the Council.
- 37.2 The Council's Exemption Committee shall consider the application and may grant an exemption on any conditions it considers appropriate in terms of section 14 of the Council's Constitution.
- 37.3 The Council's Exemption Committee may grant an exemption to the employer or employee should—
- 37.3.1 it be fair to the employer, its employees and other employers and employees in the sector;
 - 37.3.2 it not undermine this Agreement;
 - 37.3.3 it make a material difference to the viability of a business;
 - 37.3.4 it assist with unexpected economic hardship occurring during the currency of this Agreement and save unnecessary job loss; and
 - 37.3.5 it has a limited duration of no more than twelve (12) months.
- 37.4 The Council's Exemption Committee shall conduct its proceedings in a manner that it considers appropriate in order to determine the application fairly and quickly, but shall deal with the substantive merits of the application with the minimum of legal formalities.
- 37.5 Subject to the discretion of the Council's Exemption Committee regarding the appropriate form of proceedings, the applicant and any representative of the parties may give evidence, call witnesses and question witnesses of any party and address arguments to the Council.
- 37.6 Within fourteen (14) days of the conclusion of the proceedings, the Council's Exemption Committee shall issue a decision, with written reasons, which shall have the same status and effect as an arbitration award.
- 37.7 Although the decision of the Council's Exemption Committee shall be final and binding, it shall nonetheless still be subject to review by the Labour Court in terms of section 145 of the Act.
- 37.8 In accordance with a decision made in terms of 37.2 or 37.6, the Secretary shall issue a certificate of exemption setting out—
- 37.8.1 the applicant's name;
 - 37.8.2 the paragraph from which the exemption has been granted;
 - 37.8.3 any conditions relating to the exemption; and
 - 37.8.4 the period of the exemption.

38. NON-COMPLIANCE

- 38.1 The Secretary may at any time require a designated agent to monitor compliance with the provisions of this Agreement.
- 38.2 A dispute about the interpretation, application or enforcement of this Agreement may be filed with or referred to the Secretary by any person covered by the scope of this Agreement, for resolution in terms of this Agreement.
- 38.3 The Secretary may require a designated agent to investigate the dispute and the designated agent shall investigate the facts surrounding the dispute and, should the agent have reason to believe that the terms of this Collective Agreement have been reached, the agent may endeavour to secure compliance with the Agreement through consent of the employer involved.
- 38.4 The designated agent shall submit within seven (7) days after consensus has been reached, a written report to the Secretary on the investigation, the steps taken to secure compliance and the agreed outcome of the investigation.
- 38.5 On receipt of the report from the designated agent, the Secretary may—
- 38.5.1 require the designated agent to make further investigations;
 - 38.5.2 should conciliation be indicated by the designated agent, appoint a conciliator from the Council's panel of conciliators;
 - 38.5.3 refer the dispute for conciliation and appoint a conciliator from the Council's panel of conciliators;
 - 38.5.4 issue a compliance order; or
 - 38.5.5 refer the dispute to arbitration in terms of this Agreement.
- 38.6 Should the Secretary appoint a conciliator or refer the dispute as contemplated in 38.5.2 and 38.5.3 above, the Secretary shall decide the date, time and venue of the conciliation meeting and shall serve notices of these particulars on the parties to the dispute.
- 38.7 Should the Secretary issue a compliance order as contemplated in 38.5.4 above, that order shall be served on the party allegedly in breach of this Agreement as set out in clause 40 below.
- 38.8 The Secretary may apply for the compliance order to be made an award by referring it to arbitration: Provided that the employer has not complied with the compliance order and has not filed—
- 38.8.1 an objection in terms of clause 40.8 below; or
 - 38.8.2 an appeal against the compliance order in terms of 40.13 below; or
 - 38.8.3 a review against the compliance order in terms of 40.15 below.
- 38.9 The provisions of these enforcement procedures shall be supplementary to any other legal remedy through which the Council may enforce a collective agreement in terms of section 33A of the Act.

39. DESIGNATED AGENT(S)

- 39.1 The Council shall be responsible for the administration and enforcement of this Agreement and shall request the Minister of Labour to appoint a designated agent to fulfil the functions in section 33 (1) of the Act.
- 39.2 Notwithstanding section 33A (3) of the Act, a designated agent appointed in terms of 39.1 above may promote, monitor and enforce compliance with this Agreement under the auspices of the Secretary of the Council as prescribed in this Agreement.
- 39.3 A designated agent shall fulfil his functions by—
- 39.3.1 advising employees and employers of their rights and obligations in terms of this Agreement;
 - 39.3.2 conducting inspections on instruction of the Secretary of the Council in terms of clause 38.1 above;
 - 39.3.3 conducting investigations on instruction of the Secretary of the Council in terms of 38.3 above;
 - 39.3.4 endeavouring to secure compliance with this Agreement by securing undertakings in terms of 38.3 above;
 - 39.3.5 requesting the Secretary to issue a compliance order in terms of 38.7 above; and
 - 39.3.6 performing any other prescribed function.
- 39.4 A designated agent may not perform any function in terms of this Agreement in respect of an undertaking in respect of which the designated agent has, or may reasonably be perceived to have, any personal, financial or similar interest.
- 39.5 In order to monitor and enforce compliance with this Agreement a designated agent shall be bestowed with those powers prescribed in Schedule 10 of the Act: Provided that item (12) be amended to refer to this Agreement, since section 3(3) of the Basic Conditions of Employment Act, 1997, excludes the employees within the scope of the Council.
- 39.6 In any proceedings concerning a contravention of this Agreement shall be for the employer—
- 39.6.1 to prove that a record maintained by or for that Employer is valid and accurate; and
 - 39.6.2 who has failed to keep any record required by this Agreement that it is relevant to those proceedings, to prove compliance with any term of this Agreement.

40. COMPLIANCE ORDER

- 40.1 Once the Secretary has been satisfied by the designated agent that an employer has not complied with the terms of this Agreement, a compliance order, may be issued.
- 40.2 The compliance order shall set out—
- 40.2.1 the name of the employer and each workplace to which it applies;
 - 40.2.2 the clause number in this Agreement that the employer has not complied with;
 - 40.2.3 the details of the conduct constituting non-compliance;
 - 40.2.4 the amount that the employer is required to pay to an employee, if applicable;
 - 40.2.5 the reference to the written undertaking given by the employer to a designated agent of the Council and the failure by the employer to comply therewith;
 - 40.2.6 the steps that the employer is required to take including, if necessary, the stopping of the contravention in question;
 - 40.2.7 the period within which the steps stipulated in 40.2.6 above shall be taken; and
 - 40.2.8 the maximum fine that may be imposed upon the employer in accordance with clause 42 below for a failure to comply with a provision of this Agreement.
- 40.3 A designated agent shall serve a copy of the compliance order of the employer named in it, and each employee affected by it, unless this is impractical, as well as on a trade union representative of the employee(s).
- 40.4 The failure to serve a copy of a compliance order on any employee or representative trade union of the employee(s) in terms of 40.3 above shall not invalidate the order.
- 40.5 The employer shall display a copy of the compliance order prominently within the workplace named in the order that is accessible to the affected employee(s).
- 40.6 An employer shall comply with the compliance order within the time-period stated in the order unless the employer objects thereto in terms of 40.8 below.
- 40.7 The Secretary may not issue a compliance order in respect of any amount payable to an employee as a result of a failure to comply with the terms of this Agreement if—
- 40.7.1 the employee is employed in a category of employees referred to in clause 9.3 above;
 - 40.7.2 any proceedings have been instituted for the recovery of the amount in question;
 - 40.7.3 any proceedings have been instituted for the recovery of the amount in question and those proceedings have been withdrawn;
 - 40.7.4 the amount in question has been payable by the employer to the employee for longer than twelve (12) months before the date on which a complaint was made to the Council by or on behalf of the employee; or
 - 40.7.5 the amount in question has been payable by the employer to the employee for longer than twelve (12) months before the date on which a designated agent first endeavoured to secure a written undertaking by the employer in terms of clause 39.3.4 above.
- 40.8 An employer may object to a compliance order by making representations in writing to the Exemption Committee of the Council within twenty-one (21) calendar days of receipt of the compliance order. However, if an employer shows good cause at any time, the Exemption Committee of the Council may permit the employer to object after the twenty-one (21) day period has expired.
- 40.9 After considering any representations by the employer and any other relevant information, the Exemption Committee of the Council—
- 40.9.1 may confirm, modify or cancel an order or any part of an order; and
 - 40.9.2 shall specify the period within which the employer must comply with any part of an order that is confirmed or modified.
- 40.10 The information that the Exemption Committee of the Council shall consider includes—
- 40.10.1 any evidence concerning the employer's compliance record;
 - 40.10.2 the likelihood that the employer was aware of the relevant term of this Agreement; and
 - 40.10.3 the steps taken by the employer to ensure compliance with the relevant term of this Agreement.
- 40.11 The Exemption Committee of the Council shall instruct the Secretary that a copy of the order be served on the employer named in it, and each employee affected by it, unless this is impractical as well as on a trade union representative of the employee(s).
- 40.12 If the Exemption Committee of the Council confirms or modifies the compliance order or any part of the compliance order, the employer shall comply with that order within the time period specified in that compliance order.

- 40.13 An employer may appeal to the Secretary against a compliance order issued by the Exemption Committee of the Council within twenty-one (21) days of receipt of the compliance order, and the secretary shall refer the matter to arbitration in terms of clause 41 below. However, if an employer shows good cause at any time, the arbitrator may permit an employer to appeal after the period of twenty-one (21) days has expired.
- 40.14 The arbitrator shall be bound by the process prescribed in 40.9 to 40.12 above, read with the necessary changes within the context of arbitration.
- 40.15 An employer may apply to the Labour Court for review of the arbitration award in terms of section 145 of the Act within twenty-one (21) days of receipt of the arbitration award. However, if an employer shows good cause at any time, the Labour Court may permit an employer to apply for review after the period of twenty-one (21) days has expired.
- 40.16 In addition to the regulations published in respect of review applications, the Labour Court shall be bound by the process prescribed in sections 77 and 77A of the Basic Conditions of Employment Act, 1997, read with the necessary changes, within the context of review of an arbitration award regarding a compliance order.
- 40.17 Any compliance order shall be suspended pending—
- 40.17.1 the confirmation or modification by the Exemption Committee of the Council of the objection in terms of 40.8 above;
 - 40.17.2 the determination by the arbitrator of the appeal in terms of 40.13 above; and/or
 - 40.17.3 the final review by the Labour Court of the arbitration award in terms of 40.15 above.

PART L: LEGAL PROCEEDINGS

41. ARBITRATION

- 41.1 In addition to the regulations published in respect of the monitoring and enforcement of this Agreement, the Council shall be bound by the process prescribed in section 33A (4) to (11) of the Act, read with the necessary changes, within the context of review of an arbitration award regarding a compliance order.
- 41.2 The Council may decide to consolidate arbitration proceedings where—
- 41.2.1 a dispute concerning the contravention of this Agreement may be instituted as contemplated in clause 38 above, jointly with proceedings instituted by an employee in terms of clause 34 above;
 - 41.2.2 a dispute concerning the contravention of this Agreement may be instituted as contemplated in clause 38, above, jointly with proceedings instituted by an employee over the entitlement to severance pay in terms of clause 32 above;
 - 41.2.3 a dispute concerning the contravention of section 191 of the Act may be instituted jointly with proceedings instituted by an employee for an amount owing to the employee in terms of this Agreement: Provided that the amount has not been owing by the employer to the employee for longer than twelve (12) months prior to the dismissal or unfair labour practice and no compliance order has been made and no legal proceedings have been instituted to recover the amount.
- 41.3 Since the accreditation of the Council in terms of section 127 of the Act, the Council has adopted the same rules as those of the Commission for Conciliation, Mediation and Arbitration.
- 41.4 In terms of section 128 of the Act, the Council shall charge a fee for performing the function of arbitration where the parties fail to submit a written pre-arbitration conference for disputes referred to the Council for arbitration.
- 41.5 In terms of section 128 of the Act the Council may charge a fee for performing the function of arbitration where the parties submit a written pre-arbitration conference that is not to the satisfaction of the Secretary for disputes referred to the Council for arbitration.

42. FINES

- 42.1 The Minister of Labour promulgated a notice in terms of section 33A (13) of the Act and an arbitrator conducting an arbitration in terms of section 33A of the Act, may impose a fine in terms of that notice or this clause, subject to the maximum fines set out in 42.2 and 42.3 below.
- 42.2 The maximum permissible fine for non-compliance with this Agreement that does not involve an underpayment shall be—
- 42.2.1 a hundred rand (R100,00) per employee in respect of whom the failure to comply occurs where the employer has never previously failed to comply;
 - 42.2.2 two hundred rand (R200,00) per employee in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this Agreement;
 - 42.2.3 three hundred rand (R300,00) per employee in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this Agreement within the previous twelve (12) months;

- 42.2.4 three hundred rand (R300,00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on two (2) occasions to comply with the same term of this Agreement within the previous thirty-six (36) months;
- 42.2.5 four hundred rand (R400,00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on three (3) occasions to comply with the same term of this Agreement within the previous thirty-six (36) months; and
- 42.2.6 five hundred rand (R500,00) per employee in respect of whom the failure to comply occurs where the employer has previously failed on four (4) or more occasions to comply with the same term of this Agreement within the previous thirty-six (36) months.
- 42.3 The maximum permissible fine for non-compliance with this Agreement that does involve an underpayment shall be—
- 42.3.1 twenty-five per cent (25%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure to comply occurs where the employer has never previously failed to comply;
- 42.3.2 fifty per cent per cent (50%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure to comply occurs where the employer has previously failed to comply with the same term of this Agreement within the previous thirty-six (36) months;
- 42.3.3 seventy-five per cent (75%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure to comply occurs where the employer has never previously failed to comply within the previous twelve (12) months;
- 42.3.4 seventy-five per cent (75%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure on two (2) occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months;
- 42.3.5 one hundred per cent (100%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure on three (3) occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months; and
- 42.3.6 two hundred per cent (200%) of the amount due, including any interest owing on the amount at the date of the order per employee in respect of whom the failure on four (4) or more occasions to comply occurs where the employer has never previously failed to comply within the previous thirty-six (36) months.
- 42.4 An employer shall pay interest on any amount due and payable in terms of this Agreement at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975, to any person to whom a payment should have been made.
- 42.5 Any obligation to pay a fine shall be suspended pending the outcome of the application where an employer upon whom a fine has been imposed in terms of clause 42, files either an objection or an appeal or a review application in terms of clause 40.8 or 40.13 or 40.15 above.

SECTION V: CONSENSUS

Through application of signature hereof the parties to the respective chambers of the Bargaining Council for the Fishing Industry (in alphabetical order), confirm their acceptance of the terms and conditions contained herein:

43. DEEP-SEA TRAWL CHAMBER:

Signed and agreed to in Cape Town on this 1st day of November 2004.

P. ADONIS

Duly authorised thereto for and on behalf of the Trawler & Line Fishermen's Union.

Signed and agreed to in Cape Town on this day of 2004.

H. A. DE BEER

Duly authorised thereto for and on behalf of the South African Fishing Industry Employers' Organisation.

44. INSHORE BOTTOM TRAWL CHAMBER:

Signed and agreed to in Cape Town on this 1st day of November 2004.

P. ADONIS

Duly authorised thereto for and on behalf of the Trawler & Line Fishermen's Union.

Signed and agreed to in Cape Town on this day of 2004.

H. A. DE BEER

Duly authorised thereto for and on behalf of the South African Fishing Industry Employers' Organisation.

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