

DEPARTMENT OF TRANSPORT

SCHEDULE

MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)

DRAFT MERCHANT SHIPPING (FISHER LABOUR WELFARE) REGULATIONS, 2025

SCHEDULE

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CHAPTER 1 – GENERAL

Purpose of Regulations

1. (1) This Part of the Regulations gives effect to –
 - (a) Chapter 4 of the Act; and
 - (b) Work in Fishing Convention, 2007.

Definitions

2. In these Regulations, the expression “the Act” means the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023), and unless the context otherwise indicates, any word or expression used in these Regulations, to which a meaning has been assigned in the Act, bears the meaning so assigned, and –

“**bargaining council**” has the meaning assigned to it in the Basic Conditions of Employment Act;

“**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“**commercial fishing**” means fishing for any of the species which have been determined by the Minister responsible for Forestry, Fishing and Environment, in terms of section 14 of the Marine Living Resources Act to be subject to the allowable commercial catch or total applied effort, or parts of both, as defined in section 1 of the Marine Living Resources Act;

“**COIDA**” means the Compensation for Occupational Injury and Diseases Act, 130 of 1993 (Act No. 130 of 1993) as amended from time to time;

“**collective agreement**” means has the meaning assigned to it in section 1 of the Basic Conditions of Employment read with section 213 of the LRA;

“**Convention**” means the Work in Fishing Convention, 2007 as defined in the Act, and ‘C188’ has a corresponding meaning;

“**day**” means a calendar day and shall include any part thereof between midnight and midnight the following day.

“**disablement**” means permanent partial disablement, permanent total disablement, temporary partial disablement, temporary total disablement, or disfigurement, as the case may be, in line with COIDA;

‘Electronic Communications and Transactions Act’ means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“employer” means any person, including the owner, labour broker or master of a vessel, who employs any person or provides work for the person on a vessel and who remunerates that person or expressly or tacitly undertakes to remunerate him or her, except as provided otherwise by regulation;

‘engaged’ in respect of a fisher, means the conclusion of the fisher’s work agreement, or articles of agreement or contract of employment between the employer and fisher, whichever agreement is concluded first or comes into effect first in time, and **‘employed’** shall be construed accordingly;

‘fisher’ has same meaning as ‘employee’, and means any person engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch and any independent contractor engaged in or employed as fishers on the ship, but excluding incidental persons;

‘fisher records’ include fisher qualifications, records of employment, personal data relevant to employment and medical data relevant to employment;

‘fishing vessel’ means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing; and includes any vessel engaged in commercial fishing in terms of a fishing permit under the Marine Living Resources Act, 1998 (Act No. 18 of 1998) in South African waters;

“fisher’s work agreement” means a contract of employment, articles of agreement, or any other contract governing a fisher’s living and working conditions on board a vessel;

‘ILO’ means the International Labour Organization;

“incidental persons” means any person other than the skipper and fishers, and stevedores and shore contractors on board a vessel in the course and scope of their duty and includes:

- (a) pilots;
- (b) naval personnel;
- (c) government officials;
- (d) shore based persons carrying out work aboard a fishing vessel; and
- (e) technicians or specialists temporarily on board the vessel

‘long term disablement’, in relation to a fisher, means the inability of the fisher to perform any work of the kind at which the seafarer was employed or engaged at the time of the accident, personal injury, sickness or disfigurement for a long term, resulting from an occupational injury, illness or hazard;

‘LRA’ means Labour Relations Act, 1995 (Act No. 66 of 1995);

“Marine Living Resources Act” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

‘medical expenses’ means the charges levied for by a medical practitioner or a professional mental health practitioner, and includes the cost of –

- (a) medical or surgical treatment, services or supplies and hospital, nursing, counselling and ambulance services;
- (b) providing for the medical and health care and treatment;
- (c) medical and health assessments of any personal injury, disease, illness, disfigurement;
- (d) essential dental care;
- (e) mental health attention or care and support, including expertise for cases of violence and harassment;
- (f) facilities for diagnosis and treatment; and
- (g) medical support or information;

"minimum wages" means the "national minimum wage" as defined in the Minimum Wages Act;

‘Minimum Wages Act’ means the National Minimum Wages Act, 2018 (Act No. 9 of 2018);

‘owner’ means any person to whom a fishing vessel or a share in a fishing vessel belongs, and includes any charterer of the fishing vessel, any person interested in or in possession of the fishing vessel, any manager or operator or any other organisation, agent, company, authorized representative of the owner or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;

‘personal injury’ means any disease or impairment, resulting from an accident, of a seafarer’s physical or mental condition arising out of or in connection with employment of the seafarer;

“proper return port”, for purposes of this regulation, in relation to a skipper or seafarer, means—

- (a) the port at which the skipper or seafarer was engaged;
- (b) a port in a country in which the skipper or seafarer is domiciled; or
- (c) a port agreed to as such by the employer and the fisher in the fisher’s work agreement.

‘recruitment and placement service’ means any person, company, institution, agency or other organisation, in the public or the private sector, engaged in recruiting fishers on behalf of owners or placing fishers with owners and “SRPS” shall have a corresponding meaning, and any reference to a recruitment and placement service includes a temporary employment service;

‘remuneration’ has the meaning assigned to it in the Basic Conditions of Employment Act,

‘serious injury’ an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered;

‘skipper’ means the fisher having command of a fishing vessel;

“statutory council” has the meaning assigned to it in the Basic Conditions of Employment Act;

“temporary employment service” has the meaning assigned to it in section 1 of the Basic Conditions of Employment Act and section 198 of the Labour Relations Act, 1995 (Act No. 66 of 1995) and is generally referred to as a “labour broker”;

‘the Act’ means the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023); and

“voyage” means a journey undertaken by a ship from sailing day to docking day, from one location to another and may be a single leg from one port to another port, or where the ship departs from one port and returns to the same port.

Application of Regulations

3. (1) These Regulations apply to –
- (a) subject to sub-regulation (2), a South African commercial fishing vessel regulated in these Regulations;
 - (b) a commercial fishing vessel that is registered or licensed in the Republic wherever the vessel may be;
 - (c) any holder of a fishing permit for commercial fishing issued in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) in South African waters, including a holder of a small-scale fishing permit;
 - (d) any other commercial fishing vessel, whilst in the Republic or its territorial waters,
 - (e) every South African commercial fishing vessel wherever the vessel may be, the owner, who, for the purposes of sub-paragraphs (a), (b), (d), (e) and (f) of these Regulations is deemed an employer of fishers employed on such fishing vessel or, in the case of paragraph (c) where there is an employer employee relationship between the owner and the fisher; and
 - (f) any recruitment and placement service, including a temporary employment service, operating in the Republic, that recruits or places fishers on a fishing vessel.
- (2) Notwithstanding sub-regulation (1), these Regulations do not apply to—
- (a) a ship used solely for sport or recreation;
 - (b) vessels regulated by National Small Vessel Regulations, excluding commercial fishing vessels; and
 - (c) vessels operated or owned by any person who holds a valid small-scale fishing permit issued under the Marine Living Resources Act, 1998 (Act No. 18 of 1998), when used for fishing operations covered by the permit;

Collective Agreements

3A. Collective Agreement of a Bargaining Council or Statutory Council may not provide lesser requirements than what is prescribed herein in these Regulations.

CHAPTER 2 –

RECRUITMENT AND PLACEMENT

4. (1) For the purposes of these Regulations, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that fisher's employer.

(2) Despite subsection (1), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.

(3) The temporary employment service and the owner are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that owner, does not comply with this Act or a sectoral determination.

(4) The temporary employment services must comply with all the requirements applicable to a recruitment and placement service in these Regulations.

(5) A fisher whose services is procured by a temporary employment service that acts as a recruitment and placement service by employing the fishers, shall have those rights and obligations as set out in these Regulations.

Recruitment and placement

4. (1) It is prohibited for any person to operate a recruitment and placement service for the placement of fishers unless that person holds a valid certificate of accreditation issued by the Authority.

(2) The owner shall ensure that any fisher recruited or placed for work on a ship by a seafarer recruitment and placement service, is recruited or placed by a recruitment and placement service which holds a valid certificate of accreditation issued by the Authority.

(3) It is an offence –

- (a) to operate a recruitment and placement service without accreditation; or
- (b) for an owner to use a recruitment and placement service that is not accredited by the Authority.

Accreditation of recruitment and placement services

5. (1) An application to be accredited as a Recruitment and Placement Service, shall be in the form and manner determined by the Authority.

(2) To be accredited, an applicant shall –

- (i) have a system of documented processes and procedures, as determined by the Authority.
 - (ii) provide evidence of fisher employment records in respect of seafarers recruited and placed on ships, where the applicant was previously accredited; or
 - (iii) demonstrate capacity to retain fisher employment records for a minimum period of three years, including record preservation and backup systems electronically, in accordance with the Electronic Communications and Transactions Act;
 - (iv) establish a system of protection, by way of insurance or an equivalent system acceptable to the Authority, to compensate fisher recruited and placed by the Recruitment and Placement Service for any monetary losses that the seafarer may incur as a result of the failure of the Recruitment and Placement Service or owner under the fisher's employment agreement to meet its obligations to the fisher, as required by regulations 7(1)(o) and 17;
 - (v) have in its practice, a person responsible for the supervision of recruitment in the Recruitment and Placement Service's employment who holds qualifications and experience determined by the Authority; and
 - (vi) be registered in terms of and compliance with the Employment Services Act, 2014 (Act No. 4 of 2014).
- (3) The system of protection in subregulation (2)(a)(iv) shall –
 - (a) provide cover for fisher's conditions of employment, as prescribed under regulation 17; and
 - (b) be in the form of insurance or an equivalent system that complies with minimum requirements of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998) or the equivalent.
- (4)
 - (a) The Authority shall, if satisfied that the recruitment and placement service applicant complies with subregulations (2) and (3) and the processes determined by the Authority, issue the accreditation certificate which is valid for a period not exceeding three years, subject to subregulations (8), (9) and (10):
 - (b) The Authority may, subject to terms and conditions the Authority deems appropriate, issue a provisional certificate to a recruitment and placement service applicant: provided the applicant has complied with the requirements of subregulation (2) except for subparagraph (2)(a)(iv).
 - (c) The provisional certificate in paragraph (b) shall be valid for a period not exceeding six months.

- (d) The holder of the provisional certificate issued in terms of paragraph (b) shall not operate as a recruitment and placement service without holding the accreditation certificate issued in terms of paragraph (a).
- (e) The provisional certificate issued in terms of paragraph (b) shall be exchanged for the accreditation certificate issued in terms of paragraph (a) on compliance with subparagraph (2)(a)(iv).

(5) The accredited recruitment and placement service shall, in the form and manner determined by the Authority, request approval from the Authority, in writing, not later than 15 days before the proposed implementation date, with regard to any changes regarding the requirements in subregulations (2) and (3).

(6) Every accredited recruitment and placement service shall, within two days of request by the Authority-

- (a) make available to the Authority all fisher's work agreement entered into between the recruitment and placement service and a owner or any other party;
- (b) any other documents or records; and
- (c) make available to the Authority any fisher's work agreement entered into with fishers.

(7) Every accredited recruitment and placement service shall-

- (a) for audit purposes, preserve the documents referred to in subregulation (6) for a minimum period of three years; and
- (b) allow the Authority to –
 - (i) visit the recruitment and placement service at any reasonable time for the purposes of auditing the operations of the service; and
 - (ii) make a copy of any document found at the premises of the recruitment and placement service.

(8) The Authority may by written notice vary, suspend or cancel an accreditation issued under subregulation (4) if –

- (a) the recruitment and placement service fails to comply with these Regulations or any of the conditions of accreditation; or
- (b) the accreditation was issued based on incorrect information.

(9) The Authority may by written notice revoke an accreditation issued under sub-regulation (4) if the application for recruitment and placement service accreditation was issued based on fraudulent information or misrepresentation.

(10) The Authority shall, before suspending, varying, revoking or cancelling the accreditation of a recruitment and placement service —

- (a) notify the recruitment and placement service in writing of the intention to suspend, vary, revoke or cancel the accreditation and of the reasons for so doing;
- (b) give the recruitment and placement service 30 days, calculated from the date the notice is given in terms of paragraph (a), an opportunity to make representations on why the recruitment and placement service's accreditation should not be suspended, varied, revoked or cancelled: provided in the case of a suspension, the Authority may give a period less than 30 days for submission of representations;
- (c) consider any representations received; and
- (d) notify the recruitment and placement service of the decision.

(11) Where accreditation of a recruitment and placement service has been suspended, varied or cancelled —

- (a) the recruitment and placement service shall transfer all its legal obligations and interests arising from or based on the accreditation during the validity period of the accreditation, to a holder of a valid recruitment and placement service, subject to approval by the Authority; or
- (b) the Authority may place the holder of the revoked, suspended, varied or cancelled recruitment and placement service under administration of any holder of a valid recruitment and placement service accreditation.

(12) The Authority shall publish details of —

- (a) accredited recruitment and placement services; and
- (b) suspended, revoked or cancelled recruitment and placement services.

(13) The accredited Recruitment and Placement Service shall display its certificate of accreditation in a conspicuous place at the premises from where it operates and on its website.

Fees and other charges

- 6.(1) (a) It is prohibited to impose, directly or indirectly, any fees or other charges on a seafarer for, recruiting, placing, providing employment to the fisher or for any training required for a particular post.
- (b) The cost of the fishers' visa shall be at the owner's expense.

(2) The administrator appointed by the Authority in terms of regulation 5(11)(b) and regulation 7(4) is entitled to the fees or monies that would have accrued to the revoked, suspended, varied or cancelled recruitment and placement service.

Duties of recruitment and placement services

7.(1) A recruitment and placement service shall-

- (a) retain fisher employment records for a minimum period of three years, including record preservation and backup systems electronically, in accordance with the Electronic Communications and Transactions Act;
- (b) transfer fisher employment records to the Authority on the anniversary of the accreditation and on the date of cessation of the service;
- (c)
 - (i) maintain an up-to-date register of every fisher recruited or placed by the service, which register shall be available for inspection by the Authority;
 - (ii) submit the register in subparagraph (i) annually, on accreditation anniversary of the recruitment and placement service, to the Authority;
- (d) ensure that fishers are informed of their rights and duties under their employment agreements prior to engagement;
- (e) ensure that proper arrangements are made for fishers to examine their employment agreements before and after they are signed;
- (f) ensure that the fishers receive copies of their agreements;
- (g) verify that fishers recruited or placed by the service are properly qualified and hold the appropriate qualifications for the position;
- (h) ensure that the owner has the means to protect fishers from being stranded in a foreign port;
- (i)
 - (i) examine, respond to and resolve any complaint about the placement and recruitment of seafarers by the service within seven days of the complaint;
 - (ii) report any unresolved complaint referred to in subparagraph (i) to the Authority within seven days of expiry of the period in subparagraph (i); and
 - (iii) retain a record of all complaints referred to in subparagraph (i), including resolved complaints, readily available for inspection by the Authority;
- (j) forward in writing, to the Authority any complaint received about on-board working or living conditions, within two days of receipt of the complaint;
- (k) establish a system of protection, by way of insurance or an equivalent system acceptable to the Authority, to compensate fishers recruited and placed by the service for any monetary losses that the seafarer may incur as a result of the failure of the service or owner under the fisher's employment agreement to meet its obligations to the fisher;

- (l) advise the fisher accordingly if the ship on which the seafarer is to be placed, is registered in a country that has not ratified the Convention, and of any possible problems;
- (m) advise the fisher of any particular conditions applicable to the job, and the owner's policies relating to employment;
- (n)
 - (i) ensure that there is a procedure for processing requests for information or advice directed by the families of fishers who are at sea; and
 - (ii) process and resolve requests for information or advice directed by the families of fishers who are at sea promptly, sympathetically and at no cost;
- (o) ensure that the owner has in place financial protection to cover the minimum requirements in regulation 17;
- (p) ensure the confidentiality of documents submitted by a fisher; and
- (q) ensure that the services are provided at the address provided to the Authority with the accreditation application.

(2) A recruitment and placement service may not use any means, mechanism or list intended to prevent or deter any person from gaining employment for which the person is qualified.

(3) Where accreditation of a recruitment and placement service has been varied, suspended, or cancelled, the recruitment and placement service shall continue to discharge all its legal obligations arising from or based on the accreditation during the period the accreditation was valid.

- (4) (a) An accredited holder of a valid recruitment and placement service shall accept an appointment by the Authority as administrator over another recruitment and placement service that has been revoked, suspended, varied or cancelled.
- (b) The appointment by the Authority in paragraph (a) shall terminate on conclusion of repatriation of all fishers.

(5) Failure to discharge the duties of a recruitment and placement service in terms of sub-regulation (1) is an offence.

CHAPTER 3 – CONDITIONS OF EMPLOYMENT

Fisher's work agreements

8.(1) If a fisher is placed on a fishing vessel, section 94 of the Act applies.

- (2) (a) If a fisher is placed on a fishing vessel to which section 94 applies or on a ship that is not registered in the Republic but operates with a

valid fishing permit in terms of the Marine Living Resources Act, 1998, the master/owner shall ensure that a fisher's work agreement is entered into.

- (b) A fisher shall be deemed to be permanently employed where the employer has no fisher's work agreement, or the fisher's work agreement does not clearly set out the reason for the temporary employment.
- (c) The fisher's work agreement in paragraph (a) –
 - (i) in the case of a South African fishing vessel, shall be in the form, contain the information, and comply with the requirements determined by the Authority, in accordance with the C188 Convention;
 - (ii) in the case of a ship that is not registered in the Republic but operates with a valid fishing permit in terms of the Marine Living Resources Act, shall be in the form, contain the information, and comply with the requirements determined by the C188 Convention; and.
- (d) The owner or skipper of a fishing vessel shall, before a fisher signs a fisher's work agreement and prior to engagement on a fishing vessel, ensure that the fisher has–
 - (i) been given an opportunity to examine and seek advice on the agreement; and
 - (ii) been informed of the fisher's rights and duties under the employment agreement, prior to engagement.

(3) A copy of the fisher's work agreement signed by the fisher and the owner shall be given to the fisher as soon as practicable after the conclusion thereof but no later than the date of joining a fishing vessel.

(4) Where a collective agreement forms part of the fisher's agreement, the collective agreement shall be made available on board the fishing vessel, no later than the date of joining the fishing vessel and shall be made accessible to all fishers on board the fishing vessel that are party thereto during the period of engagement.

Visas

9. The owner is liable and shall provide for the cost of any Visa required by a fisher when joining or leaving the fishing vessel, and when the fishing vessel calls at a port where a Visa is required.

Remuneration

- 10.(1)(a) A fisher employed on board a fishing vessel shall be paid–
- (i) the remuneration stipulated in the fisher's work agreement;

- (ii) in the currency agreed to in the fisher's work agreement which shall not be less than the minimum wage;
 - (iii) at periodic intervals no longer than one month and in accordance with the fisher's work agreement at least once a calendar month;
 - (b) A fisher employed on a fishing vessel shall be provided with information about remuneration that includes a full and true account of the fisher's remuneration-
 - (i) in accordance with the Basic Conditions of Employment Act which shall contain a full and true account of the Fisher's remuneration that shall reflect every form of earning in an easily understandable manner as well as the deductions made from such earnings; and
 - (ii) in the form approved by the Authority-
 - (c) The information about remuneration in paragraph (b) shall be provided-
 - (i) on a monthly basis; or
 - (ii) on the day of arrival in port after month-end where the total period between delivery of accounts and the preceding account shall not exceed 45 days;
 - (d) The amount of deductions from wages, shall be in compliance with the Basic Conditions of Employment Act, during a payment period, excluding—
 - (i) the recovery of allotments paid over to the fisher in terms of these regulations; and
 - (e) The skipper of the fishing vessel shall keep a record of deductions and reductions in the form determined by the Authority.
- (2) It is prohibited to impose, directly or indirectly, any fees or other charges on a fisher for—
 - (a) recruiting, placing, providing employment to the fisher; or
 - (b) for any training required for a particular post, except statutory deductions required or permitted in terms of any law.
- (3) A fisher of a fishing vessel shall not be entitled to remuneration—
 - (a) for any period during which the fisher is absent without leave from the fishing vessel or from the fisher's duty;
 - (b) for any period during which the fisher unlawfully refuses or neglects to work when lawfully required;
 - (c) unless the competent court hearing the case otherwise directs, for any period during which the fisher is lawfully imprisoned;
 - (d) for any period during which the fisher is by reason of the fisher's being under the influence of unpermitted intoxicating substance, incapable of performing the fisher's duty; or

- (e) if it is proved that a fisher of a fishing vessel whose ship has been wrecked or actually or constructively lost has not made every reasonable effort to save the fishing vessel, cargo and stores, the fisher shall not be entitled to claim any wages that would otherwise be due to the fisher:

- (4) The employer may take the action in terms of sub-regulation (3) only if —
 - (a) the conduct in paragraphs (3)(a) to (e) was due to the fault of the employee; and
 - (b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the fisher is not entitled to remuneration.
- (5)
 - (a) A fisher shall be entitled to claim remuneration for any period during which the fisher has not performed the fisher's duty if it is proven that the fisher was incapable of doing so by reason of illness or personal injury, unless the owner proves that—
 - (i) the fisher's illness or personal injury was caused by the fisher's own willful act or own gross negligence; or
 - (ii) the fisher has refused to undergo medical or health treatment for any health condition.
 - (b) Where the employment of the fisher of a South African fishing vessel is terminated before the date contemplated in the fisher's work agreement the seafarer is entitled to receive remuneration at the rate provided in the fisher's work agreement for the period calculated from the date the seafarer's services are terminated until the fisher is returned to and arrives at a proper return port where the termination —
 - (i) is due to injury or sickness, subject to paragraph (a); or
 - (ii) is due to mutual termination of the fisher's work agreement.
 - (c) The owner shall be liable for the fisher's expenses for medical care and board-and-lodging, from the date of the injury or the commencement of the sickness, until the fisher is declared medically fit for employment.

(6) This regulation shall be construed as though section 81 of the Act applies to this regulation; and in such construction any reference in the said subsections to the payment of remuneration in terms of section 81 of the Act shall be deemed to be a reference to the payment of remuneration in terms of the Basic Conditions of Employment Act.

Hours of Work and Hours of Rest

11. (1) For the purpose of this regulation —

- (a) “hours of work” means time during which fishers are required to do work on account of the fishing vessel; and
- (b) “hours of rest” means time outside hours of work; and does not include short breaks.

(2) All fishers who are assigned watchkeeping duties and fishers whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than—

- (a) a minimum of 10 hours of rest in any 24-hour period; or
- (b) 77 hours in any 7-day period.

(3) For all sea going vessels remaining at sea for more than 16 hours, the minimum hours of rest for all fishers not referred to in sub-regulation (2) shall be—

- (a) 10 hours in any 24-hour period; or
- (b) 77 hours in any seven-day period.

(4) The hours of rest in sub-regulation (2) and (3) may be divided into no more than two periods in a 24-hour period, one of which shall be at least a six-hour consecutive period, and the intervals between consecutive periods of rest shall not exceed 14 hours.

(5) The owner shall post, in an easily accessible place, a table with the shipboard working arrangements, which shall contain for every position at least—

- (a) the schedule of service at sea and service in port; and
- (b) the maximum hours of work or the minimum hours of rest required by these regulations or applicable collective agreements.

(6) The table referred to in sub-regulation (5) shall be established in the working language or languages of the fishing vessel, and in English.

- (7) (a) The owner shall maintain records of fisher’s daily hours of work or of the daily hours of rest.
- (b) The owner shall provide each fisher with a copy of the records in paragraph (a), pertaining to that fisher, which shall be endorsed by the skipper, or a person authorised by the skipper, and by the fisher.

(8) A collective agreement shall not contain provisions less favourable to the provisions of these regulations and may not regulate matters relating to work of young persons.

Meal intervals

12. (1) (a) A fisher on board shall be provided three meal intervals in a 24-hour period.

- (b) one of the meal intervals in paragraph (a) shall be a meal interval of at least one continuous hour.

(2) During a meal interval the fisher may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another seafarer.

(3) An agreement in writing may reduce the meal interval in sub-regulation (1)(b) to not less than 30 minutes.

(4) The meal interval in sub-regulations (1) to (3) shall be calculated as time worked. .

Work of young persons

13. (1) Subject to the Basic Conditions of Employment Act, the owner or skipper of a South African fishing vessel shall not permit a young person as defined in the Act, to perform any work on a fishing vessel

Leave entitlement

14. (1) For the purposes of this section, “month” means a period of 30 days, and includes Saturdays, Sundays and public holiday, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 86 of 1994).

(2) Every fisher employed on a South African fishing vessel is entitled, at a minimum, to leave accrued at the rate prescribed in the Basic Conditions of Employment Act, except as agreed in terms of a collective bargaining agreement or in a statutory council: Provided the collective bargaining agreement or in a statutory council does not provide for lesser leave than this sub-regulation.

(3) The leave in sub-regulation (2) commences when the fisher arrives at the fisher’s proper return port.

(4) Any form of leave in terms of these Regulations, except sick leave, shall commence, —

- (a) upon —
 - (i) the docking of the vessel at the proper return port; and
 - (ii) the fisher being granted permission to take leave by the owner or skipper on board the fishing vessel.
- (b) if the fishing vessel did not dock in terms of paragraph (a), upon the fisher’s arrival at the proper return port.

Repatriation

15. (1) The system of reporting, monitoring and assistance of seafarers by the owner in relation to repatriation, shall include but not limited to the following —

- (a) seafarer reporting failure of the owner to return the seafarer to the home port;
- (b) evaluating records of repatriation in relation to those employed using a seafarer recruitment and placement service;
- (c) assisting distressed or abandoned South African seafarers, wherever they may be;
- (d) assisting distressed or abandoned seafarers in South Africa, whatever their nationality; and
- (e) any other matter in sections 115 to 120 of the Act.

(3) The Authority may invoke funds intended for ~~the Maritime Fund~~ seafarer welfare matters ~~levy~~ for any expenditure incurred in respect of any matter in section 122 of the Act: Provided that the funds used shall constitute a debt and the Authority may recover the funds used.

(4) For the purposes of sub-regulation (2), a seafarer shall be deemed to have been abandoned where the owner —

- (a) fails to cover the cost of the seafarer's repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for —
 - (i) a period of at least two months; or
 - (ii) any period during which the seafarer is lawfully imprisoned, unless the court hearing the case otherwise directs.

Provisions- Food and Catering

16. (1) The owner shall —

- (a) carry on board and serve food of appropriate quality, nutritional value and quantity that adequately covers the requirements of the fishing vessel and takes into account the differing cultural and religious backgrounds;
- (b) carry on board and serve drinking water of quality, nutritional value that shall be compliant with the appropriate potable standard as prescribed in the South African National Standard: Drinking Water Quality for Quality of Potable Water issued under the Water Services Act, 1997 (Act No. 108 of 1997) and quantity that adequately covers the requirements of the fishing vessel;
- (c) provide seafarers on board a fishing vessel with food and water free of charge during the period of engagement;

- (d) ensure that seafarers employed as ships' cooks with responsibility for food preparation shall, taking into consideration health and safety of crew, are —
 - (i) trained and qualified for the position on board fishing vessel; and
 - (ii) sufficient in number.
- (e) ensure that food storage, preservation and preparation facilities and equipment are in working order and are kept in hygienic conditions in accordance with the National Health Act, 2003 and when applicable, the International Health Regulations Act, 1974 and applicable food safety and hygiene standards.
- (f) ensure that food sourced for consumption on board comply with the requirements of the Foodstuffs, Cosmetics and Disinfectant Act, 1972 (FCD Act) and when applicable, the International Health Regulations Act, 1974

The National Department of Health requires that all foodstuffs shall be safe for human consumption in terms of the Foodstuffs, Cosmetics and Disinfectant Act, 1972 (FCD Act). This Act addresses the manufacture, labelling, sale and importation of foodstuffs. Matters regarding the hygiene of foodstuffs are addressed by the National Health Act, 2003, and the hygiene requirements at ports and airports including vessels and aircraft are addressed by the International Health Regulations Act, 1974.

The South African Bureau of Standards (SABS) falls under the jurisdiction of the Department of Trade and Industry and controls canned meat and frozen and canned fishery products through the Standards Act, 1993

CHAPTER 4 - SYSTEM OF PROTECTION

Protection System

17. (1) The owner shall have in place financial protection to cover the fisher for-
- (a) physical, mental health protection and medical care, access to medicines, medical equipment and facilities for diagnosis and treatment and to medical support, information and expertise, including for cases of violence and harassment;
 - (b) medical costs in the event of a sickness and injury of the seafarer occurring between the date of commencing duty and the date upon

which the seafarer is duly repatriated or arising from the seafarer's employment between those dates;

- (c) medical care including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board-and-lodging away from home until the sick or injured seafarer has recovered, or until the sickness or disability has been declared of a long term nature;
- (d) financial compensation in the event of death or long-term disability of the fisher due to occupational injury, sickness or hazard;
- (e) cost of burial expenses in the case of death occurring on board or ashore during the period of engagement, including the repatriation of the body;
- f) the cost of repatriation to cover travel by appropriate and expeditious means, normally by air, including provision for food and accommodation of the seafarer from the time of leaving the fishing vessel until arrival at the fisher's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment;
- (g) loss of any or all of the fisher's property on board the fishing vessel on which the fisher's is employed by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of that fishing vessel;
- (h) repatriation costs in the event that the fisher is stranded in any port;
- (i) outstanding wages, limited to four months;
- (j) long term disablement; and
- (k) any other minimum benefits prescribed under these Regulations.

(2) The minimum benefits in subregulation (1) shall be determined by the Authority.

Medical care on board and ashore

18. (1) The owner shall ensure that persons with responsibility for medical care on board are suitably trained and certificated in accordance with the provisions of the Merchant Shipping (Safe Manning, Training and Certification) Regulations, 2021.

(2) The number of persons with responsibility for medical care on board shall be in accordance with the provisions of the Merchant Shipping (Safe Manning, Training and Certification) Regulations.

(3) The Authority shall make determinations in relation to fishing vessels of different classes and types of voyages regarding -

- (a) the need for a hospital on the fishing vessel;
- (b) the carriage of medicines and medical equipment;
- (c) publications to be carried on board; and
- (d) the handling of controlled medicines on board a vessel.

Violence and harassment

19. (1) The owner, skipper and fishers shall comply with the Code Prevention and Elimination of Harassment in the Workplace, as promulgated under the Employment Equity Act, 1998 (Act No. 55 of 1998) and where –

- (a) the code shall apply to all fishers irrespective of their engagement status and hence any reference in the Code shall be read in line with the term ‘fisher’;
- (b) the workplace shall be a fishing vessel; and
- (c) a workplace complaints and/or grievance where any fisher may raise instances of harassment and/or victimization.

(2) the owner shall, to prevent shipboard violence and harassment, including sexual harassment, bullying and sexual assault-

(a) develop policies and measures to prevent and address shipboard violence and harassment, including sexual harassment, bullying and sexual assault;

(b) provide training, awareness and support on the Code in sub regulation (1)

(c) require fishers and all persons onboard to comply with the applicable policies and measures.

(d) ensure appropriate steps shall be taken, at all stages, to safeguard the confidentiality of complaints made by fishers

(e) report all matters relating to paragraph (a) to (d) to the Authority in a manner determined by the Authority;

Access to shore-based welfare facilities

20. (1) The Authority shall establish a Seafarer Welfare Committee.

(2) (a) The Ports Authority shall provide shore-based welfare facilities in all ports in the Republic.

(b) The Ports Authority shall ensure that the shore-based welfare facilities in paragraph (a) are easily accessible to seafarers.

(3) The Authority shall, in consultation through the Seafarer Welfare Committee-

- (a) ensure compliance with subregulation (2);
- (b) promote the development of welfare facilities; and
- (c) monitor and ensure the provision in designated ports, seafarers on fishing vessels that are in the Ports Authority’s ports with access to adequate welfare facilities and services.

Access to information and communication technology

20. (1) The owner shall provide fishers on the vessel with access to information and communication technology to enable communications from the vessel.

CHAPTER 5 - SEAFARER COMPENSATION

Compensation for loss of seafarer's property

21. (1) If by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a fishing vessel on which a fisher is employed the fisher sustains the loss of any of or all the seafarer's property, the seafarer shall, subject to section 140(4) of the Act and subregulation (2), be entitled to compensation from the owner of the fishing vessel for such loss, as follows:

(a) If—

- (i) a detailed list of the property carried in the fishing vessel has been made; and
- (ii) the replacement value of the property has been agreed to and certified by the skipper or chief engineer officer, or other responsible person on board the fishing vessel; and
- (iii) a copy of the list had been lodged with a proper officer or the owner of the fishing vessel, or a local representative of such owner, before the departure of the fishing vessel,

the compensation payable by the owner to the seafarer shall be the lesser of—

- (aa) the amount of the replacement value of the property lost as agreed to and certified in terms of subparagraph (ii); and
 - (bb) the applicable amount referred to in the relevant scale determined by the Authority; or
- (b) in the absence of compliance with paragraph (a)(i), (ii) and (iii), the compensation payable by the owner to the seafarer shall, upon proof by the seafarer of the loss of his or her property and of its replacement value to the satisfaction of any person referred to in paragraph (a)(ii), be the lesser of—
- (i) the amount of such replacement value of the property lost; and
 - (ii) 75 percent of the applicable amount referred to in the relevant scale determined by the Authority.

(2) A seafarer is not entitled to compensation under subregulation (1) in respect of any loss attributable to the seafarer's own gross negligence or wilful misconduct.

(3) In the event of a seafarer's loss of life by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a fishing vessel on which the seafarer was employed, compensation on the basis provided for in

subregulation (1) for the loss of the seafarer's property shall be payable by the owner of the fishing vessel to the estate of the deceased seafarer.

Loss of life

22. In the event of a seafarer's loss of life by reason of the seafarer's employment, compensation for the loss of the seafarer's life shall be payable by the owner of the fishing vessel to the estate of the deceased seafarer.

Relevant insurance certificates

23. For paragraph (b) of the definition of "relevant insurance certificate" and section 167 of the Act, each of the following is taken to be a relevant insurance certificate in relation to the fishing vessel concerned:

- (a) a document that evidences the registration, in terms of section 80 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), of the employer of the seafarer belonging to the fishing vessel; or
- (b) a document that evidences an equivalent arrangement under section 162 of the Act,

Provided the certificate in paragraph (a) and (b) complies with the requirements of the minimum benefits prescribed under these Regulations.

Minimum benefits and form of insurance certificate

24. The insurance or other financial security to be maintained in terms of section 167 of the Act –

- (a) shall provide minimum benefits as determined by the Authority; and
- (b) be in the form determined by the Authority.

Restrictions on termination and modification of insurance or other financial security

25. (1) Insurance or other financial security is taken not to meet the requirements of these Regulations if the insurance or financial security can cease, for reasons other than the expiry of the period of validity of the insurance or financial security specified in the certificate in section 167(1) of the Act, before 60 days have elapsed from the date on which written notice of its termination is given to the proper officer, unless, within that period, the certificate has been surrendered to that officer or a copy of a new certificate has been lodged with that officer in accordance with section 167(2) of the Act.

- (2) (a) The owner shall give the seafarer and the Authority notice where the financial security is to be cancelled or terminated.
- (b) The notice in paragraph (a) shall be given in writing no later than 31 days prior to such cancellation or termination.

(3) Modification of insurance or other financial security maintained in terms of section 162 of the Act that results in a change in the information required to be recorded on the certificate mentioned in section 167(1) of the Act shall not be effective before 30 days have elapsed from the date on which written notice of the modification is given to the proper officer, unless, within that period, an authentic copy of the updated certificate has been lodged with that officer in accordance with section 167(2) of the Act.

Right of fisher to remuneration

26. (1) Notwithstanding that the fisher was at the time of the accident acting contrary to any law applicable to the fisher's employment or engagement or to any order by or on behalf of the employer or owner of the fishing vessel, or that the fisher was acting without any order of the fisher's employer or the owner of the fishing vessel, or an agent or servant of the owner of the fishing vessel, remuneration shall be payable in terms of these Regulations.

- (2) (a) A fisher is deemed to have been engaged or employed from the date of conclusion of a fisher's work agreement, employment agreement or articles of agreement.
- (b) The fisher in paragraph (a) shall be entitled to remuneration payable in terms of these Regulations.

Compensation for and payment of benefits

27.(1) Where compensation is due to the seafarer and the amount payable is set out in the insurance or other financial security certificate, compensation shall be paid within 14 days from the date of determination of liability.

(2) In cases of long-term disability, if it takes longer than 14 days from the date on which the fishing vessel owner becomes liable, to determine the amount of compensation due, interim payments shall be made to the seafarer.

Restriction on defences for insurer or provider of financial security

28. Insurance or other financial security is taken not to meet the requirements of these Regulations if a failure by employer or owner, at any time, to comply with any statutory requirement applicable in relation to the fishing vessel or anyone on the fishing vessel constitutes a ground for repudiating a claim in terms of the insurance or security.

Lodgement of insurance certificate

29. For section 167(2) of the Act, an authentic copy of a certificate is taken to have been lodged with the proper officer if the authentic copy of the certificate is received at the office of the proper officer together with any fee payable upon its lodgement not later than seven days after the date of issue stated in the certificate.

CHAPTER 6 – SEAFARER RECORD OF EMPLOYMENT

Record of employment

- 30.**(1)(a) A seafarer shall be given a document containing a record of their employment on board the fishing vessel.
- (b) The record of employment document referred to in paragraph (a) shall not contain any statement as to the quality of the seafarers' work or as to their wages.
- (c) The form of the document referred to in paragraph (a), the particulars to be recorded and the manner in which such particulars are to be entered shall be in as determined by the Authority.

Persons entitled to record book

31. (1) Subject to subregulation (2), a person is entitled to apply for a record book if the person is employed—

- (a) on a fishing vessel registered in the Republic; or
- (b) on a fishing vessel registered outside the Republic, if the person is a South African citizen or is permanently resident in the Republic.

(2) Notwithstanding subregulation (1), the following persons are not entitled to a record book:

- (a) person employed in vessels used solely for sport or recreation who receive no wages for their service;
- (b) person employed on a fishing vessel engaged on a coastal voyage solely for the purpose of trials of the fishing vessel, its machinery or equipment, where such person is not ordinarily employed as a seafarer;
- (c) person in the employment of the State who is not ordinarily employed as seafarer; or
- (d) person employed on a fishing vessel solely in connection with the construction, alteration, repair or testing of the fishing vessel, and not engaged in the navigation of the fishing vessel, unless such person is a member of the crew.

Application for record book

32. (1) Application for a record book shall be made in the form determined by the Authority, by the applicant or through the applicant's employer or a duly authorised agent either of the applicant or of the employer.

(2) An application contemplated in subregulation (1) shall be lodged with a proper officer and shall, subject to subregulation (3), be accompanied by—

- (a) the prescribed fee; and
- (b) supporting documents determined by the Authority.

(3) Where application is made through an employer or agent, there shall be lodged in lieu of the original documents referred to in subregulation (2)(b), copies of such documents and certificates duly certified by a commissioner of oaths as being true copies of the originals.

Certificate of discharge

33. (1) When a seafarer who has signed the fisher's work agreement is discharged from a South African fishing vessel, the skipper shall complete a certificate of discharge in the record book issued to the seafarer.

- (2) (a) Where a seafarer is, for whatever reason, not in possession of a record book, the skipper shall issue to the seafarer an interim certificate of discharge in the form determined by the Authority.
- (b) The particulars appearing in an interim certificate of discharge shall, as soon as conveniently possible, be entered in the seafarer's record book by a proper officer, whereupon the interim certificate shall be surrendered to that officer.

(3) In subregulations (1) and (2), reference to a record book shall, in relation to a seafarer holding a document containing substantially the same information as a record book, issued by or under the authority of the government of another country, be taken to include reference to such a document.

Lost, mutilated, damaged or full record book

- 34.**(1)(a) Application for a new record book where the seafarer record book has been lost, mutilated or damaged, or is full, shall be made in the form determined by the Authority.
- (b) In the case of loss, mutilation or destruction, a declaration concerning the circumstances thereof shall be made before a proper officer or, if there is no proper officer, before a commissioner of oaths.

(2) An application contemplated in subregulation (1), together with the prescribed

fee and accompanied by the supporting documents determined by the Authority, shall—

- (a) where there is a proper officer, be lodged with that officer; or
- (b) in a location where there is no proper officer, be forwarded by the applicant to the proper officer nearest to the applicant, and the proper officer shall, if satisfied that the applicant is entitled to a record book and, as the case may be, that—
 - (i) the applicant has lost the record book; or
 - (ii) the applicant is the rightful owner of the record book and that the record book is mutilated or damaged to such an extent that the record book can no longer be used; or
 - (iii) the applicant's record book is full, issue to the applicant a new record book.

(3) A record book issued pursuant to subregulation (2)(b)(i) or (ii) shall have the same force and effect as the original.

Duty of owner and skipper of South African fishing vessel regarding seafarer record book

35. (1) The owner and the skipper of every South African fishing vessel shall ensure that every person entitled to a fisher record book who is employed and has signed a crew agreement on a South African registered fishing vessel, makes application to the Authority for the fisher record book before being allowed to assume duties on the fishing vessel.

Withdrawal of seafarer record book

- 36.** (1) The Authority may by written notice withdraw seafarer record book if –
- (a) the seafarer record book was issued based on fraudulent information or misrepresentation;
 - (b) a fraudulent entry has been made into the seafarer record book;
 - (c) the seafarer record book was issued based on incorrect information: provided the Authority may vary the seafarer record book; or
 - (d) the seafarer has misused the seafarer record book for any purpose.
- (2) The Authority shall, before withdrawing the seafarer record book —
- (a) notify the seafarer in writing of the intention to withdraw the seafarer record book and of the reasons for so doing;
 - (b) give the seafarer 30 days, calculated from the date the notice is given in terms of paragraph (a), an opportunity to make representations on why the seafarer record book should not be withdrawn;
 - (c) consider any representations received; and
 - (d) notify the seafarer of the decision.

CHAPTER 8 – ADMINISTRATIVE PROVISIONS

Exemptions

37. The Authority may grant exemption, on terms if any, as the Authority may specify, from all or any of the provisions of these Regulations, as may be specified in the exemption, in so far as the provisions relate to work of young persons where such persons are undergoing onboard training accredited by the Authority under the Act.

Offences and penalties

38. Any person who, without reasonable excuse, fails to comply with or contravenes regulation 4(1) read with subregulation (3), 6(1) read with subregulation (3); 5(4)(d); 7(1) read with subregulation (5), Chapter 3, Chapter 4, Chapter 5, Chapter 6 is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 12 months.

Offences due to fault of another person

39. Where the commission by any person of an offence in terms of these Regulations is due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence by virtue of this regulation, whether or not proceedings are taken against the first-mentioned person.

Complaints, Dispute resolution Procedures - onboard and ashore

- 40.(1)**
- (a)
 - (i) The owner shall provide all fishers on the vessel, with access to information and communication technology to enable communications from the vessel in respect of complaints as contemplated in this regulation.
 - (ii) The cost of the access to information and communication technology in subparagraph (i) shall not be deducted from the fisher's remuneration.
 - (b) For purpose of section 158(1) of the Act, procedures, manner and forms for complaints shall be substantially as contemplated in this regulation.
 - (c) Every fishing vessel must have an on-board complaints procedure which must/ shall:
 - (i) be made available to all fisher when joining the fishing vessel;
 - (ii) seek to resolve the complaint at the lowest level possible; and

- (iii) enable a fisher to report to the ship-board or fishing vessel board head of the department.
- (d) In all cases, the fisher shall retain a right to -
 - (i) complain directly to the skipper or, where the fisher considers it necessary, to the Authority or appropriate shoreside personnel or to appropriate external authorities; and
 - (ii) be accompanied or represented by a representative of their choice when making a complaint.
- (e) The procedure for complaints shall –
 - (i) provide safeguards against victimisation;
 - (ii) ensure and safeguard the confidentiality at all stages of complaints made by fishers; and
 - (iii) set timelines for complaints resolution.
- (f) For purposes of this regulation, “victimisation” includes any adverse action taken by any person with respect to complainants, witnesses and whistle-blowers.

(2) The owner or employer shall comply with the system of reporting, monitoring and investigating fisher complaints established by the Authority.

(3) Where a fisher deems appropriate to report a complaint ashore, the fisher may report the complaint to –

- (a) the proper officer, in case of a South African fishing vessel or a fishing vessel in South African waters;
- (b) the owner of the fishing vessel;
- (c) the SRPS, where the SRPS represents the owner;
- (d) the union; or
- (e) where applicable, the bargaining council or the statutory council.

(4) Where a complaint is reported in terms of subregulation (3)(a), the proper officer shall cause the complaint to be investigated and provide the required support to the complainant.

- (5) (a) When a dispute arises between the owner of a fishing vessel and a fisher, on any matter regulated in these Regulations, and the either party concerned submits such dispute for determination to a proper officer, the proper officer may hear and decide the dispute so submitted, and the decision of proper officer shall be final.
- (b) The proper officer may direct the parties to refer the dispute in paragraph (a) for resolution in terms of section 80 of the Basic Conditions of Employment Act.

Appeals

40. (1) An appeal against any decision made in terms of these Regulations may be submitted to the Authority, within 30 days of the decision.

(2) The appeal in subregulation (1) shall be in writing, accompanied by the prescribed fee and in the form determined by the Authority.

(3) The Authority shall, provide a final decision with reasons, on the appeal within 90 days of receipt of the appeal made in terms of subregulation (1).

Repeal of regulations

41. (1) The Merchant Shipping (Seafarer Recruitment and Placement) Regulations, 2017 published by GN R 986 in Government Gazette 41108 of 11 November 2017 are hereby repealed.

(2) The Merchant Shipping (Seafarer Compensation) Regulations, 1998 published by GNR.1654 in Government Gazette No. 19604 of 18 December 1998 are hereby repealed.

(3) The Provisions Regulations, 1961 published by GNR. 896 of 27 October 1961 are hereby repealed.

(4) The Distressed Seamen's Regulations, 1961 published by GNR. 895 of 27 October 1961 are hereby repealed.

(5) The Bedding, Towels, Mess Utensils and Other Articles for Personal Use Regulations, 1961 GNR. 897 of 27 October 1961 are hereby repealed.

(6) The Seamen's Welfare Regulations, 1961 published by GNR. 898 of 27 October 1961 are hereby repealed.

(7) The Merchant Shipping (Seamen's Documents) Regulations, 2000 published by Government Notice No. R. 432 Government Gazette 21136 / RG 6796 of 5 May 2000 are hereby repealed.