

THE SOUTH AFRICAN TUNA ASSOCIATION

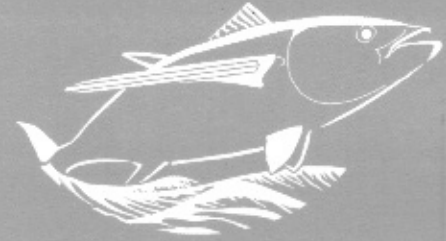
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UNIT 25 FOREGATE SQUARE

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16 March 2018

Mr Zolani Sakasa
Portfolio Committee on Labour
Via Email: zsakasa@parliament.gov.za

Dear Mr Sakasa

COMMENTS ON THE NATIONAL MINIMUM WAGE BILL (B 31-2017)

I write in my capacity as Chairman of the South African Tuna Association (SATA).

We would like to begin by thanking you for the opportunity to comment on the National Wage Bill. SATA represents some 72 of the 130 vessel owners active in the South African Tuna Pole Sector bringing our National membership base to around 55.38%. Our members are all South African owned and managed private vessel owners, who are reliant on the South Atlantic Albacore stock for their economic survival.

The highly migratory nature of the Albacore stock, which is only accessible within South African waters for a limited period of time each year (i.e. during its annual migration through the territorial waters of the various Coastal States of the Atlantic Ocean), makes this one of the highest risk and most unpredictable fishing sectors in not only South Africa, but the world. The International Recommendations adopted at the ICCAT RFMO meetings over the years to reduce the South Atlantic Albacore quota available to South Africa from a generous 29 000 t sharing arrangement, to just 4400 t, underpins the precarious position of this international stock our members are so dependent on.

One need not look further than the sunken vessels found within most of our fishing harbours to realize the difficulties of sustaining a business within this sector. The exorbitant price increases in capital outlay for basic necessities such as diesel, bait, ice, water, food and vessel maintenance, has further eroded this already pressurised environment. It is now common practice to witness vessels spending days and even weeks at sea hunting for albacore tuna, without bringing a single fish back to port.

It therefore goes without saying that this environment is not conducive towards sustaining any long term permanent job opportunities, as work can only be offered for around 20 to 30% of the year (i.e. during the historical months in which tuna swims through South African waters), and even then, there is no guarantee that vessels will find any tuna resulting in massive financial losses for our members. Crew working on board these vessels can therefore only be remunerated on a commission basis calculated against catches made on each trip.

Whilst we welcome a basic minimum wage and applaud the Department for the steps taken to address the disparities in income, we wish to comment on the published Bill so as to highlight the legal ramifications of this proposed Legislation in its current format, with reference to Seafarers, and more particularly the practical application thereof, within highly unpredictable, and extremely limited seasonal fishing sectors, such as tuna pole.

We extend a hand of co-operation and support towards ongoing consultation, which we trust will ensue this public comment period, so as to reach consensus on the application of the Bills overarching purpose in so far as Seafarers are concerned.

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Whilst Section 3 of the Bill states that *“This Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service”*, the absence of any reference to Seafarers, the Merchant Shipping Act 57 of 1951 and Merchant Shipping (Safe Manning, Training and Certification) Regulations, 2013, in itself suggests the intended application of this Bill is not, in its current form, geared towards, or suited to those persons employed on vessels at sea.

Worker is furthermore under Section 1 of the Bill defined as *“an employee as defined in section 1 of the Basic Conditions of Employment Act”*.

As the Application of the Basic Conditions of Employment Act categorically states, under Subsection (3), that *“This Act, except section 41, **does not apply to persons employed on vessels at sea** in respect of which the **Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies** except to the extent provided for in a sectoral determination*, one can reasonably conclude that the legal Application of the Minimum Wage Bill could not, in the absence either amending the Basic Conditions of Employment Act, or inclusion of both the Merchant Shipping Act and Regulations, as set out above, apply to Employees working at sea. The definition of Worker in itself under Section 1 of the Bill furthermore does not, in its current text extend to Seafarers.

The absence of any reference to a transitional period for Seafarers, as that afforded to our peers in the Farming or Forestry sectors, further compounds the Bill’s intention in respect to its application to those workers defined as Seafarers. Should the intention indeed be to apply this Minimum Wage Bill within the context of employment provided on board fishing vessels, then substantial consultation and amendments to the Bill is required.

Further evidence of the possible exclusion of the Bills application to Seafarers can be found within, amongst others, Section 1 and Chapter 2 Sections 4(7) and 5(2), which reads;

SECTION 1

“ordinary hours of work” means the hours of work permitted in terms of section 9 of the Basic Conditions of Employment Act or in terms of any agreement in terms of section 11 or 12 of the Basic Conditions of Employment Act; and

CHAPTER 2 NATIONAL MINIMUM WAGE

National minimum wage

4.

(7) Sections 32 and 33 of the Basic Conditions of Employment Act apply to the payments of the national minimum wage to workers; and

Calculation of wage

5. (2) A worker is entitled to receive the national minimum wage for the number of hours that the worker works on any day.

We reiterate again that these provisions of the Basic Conditions of Employment **do not apply** to Seafarers, and any intention of applying a minimum wage to Seafarers should therefore be written within the legal framework applicable to Seafarers, as set out in the Merchant Shipping Act instead.

As there is no defined hours of work, but rather rest periods for Seafarers as set out within the Regulations promulgated under the Merchant Shipping Act, working hours on board fishing vessels can in any event not be measured. Given the unique nature of what constitutes working hours for Seafarers therefore needs to be thoroughly examined and debated before any minimum wage based against working hours can be applied in our sector.

In light of the above, and in interest of avoiding unintended repercussions of the Bill, we strongly suggest either extensive consultation to consider the legal parameters required to include Seafarers, or failing which an amendment be made to Section 3 of the Bill to read as follows;

Application of this Act

3. (1) This Act applies to all employees and employers except—

(a) members of the National Defence Force, the National Intelligence Agency and the South African Secret Service; and

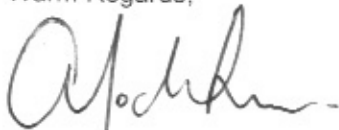
(b) with the exception of Section 41, does not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies except to the extent provided for in a sectoral determination.

Should the Minister not agree with this interpretation and rather suggests for Seafarers, for whom this Bill is clearly not suited, and possibly not intended, to apply for an Exemption as set out in Section 15 of the Minimum Wage Bill, then in such instance we must point out the obvious legal flaws in requesting one to apply for an Exemption against an Act, which does not apply to the Applicant in the first place.

We are therefore of the view that any intended Minimum Wage for Seafarers should, rather be applied within the context of the Merchant Shipping Act, and not the Basic Conditions of Employment Act. For your information Ms Norma Wheeler of Bowmans Attorneys is currently in the process of updating the Merchant Shipping Act and can be contacted in this regard at norma.wheeler@bowmanslaw.com.

In conclusion we trust that these comments will be taken into consideration and that together we can look forward to addressing the concerns of salary inequalities, in a practical and conducive manner, which suites both the legal and operational framework of our industry.

Warm Regards,



C. Bodenham
Chairman