

# CONSTITUTION

## of the SOUTH AFRICAN DEEP-SEA TRAWLING INDUSTRY ASSOCIATION

### 1. DEFINITIONS

In this constitution, unless inconsistent with the context, clause headings are for convenience and shall not be used in its interpretation, words which denote the singular include the plural and vice versa (other than a reference to "a company"), words which denote a natural person include an artificial person, words which denote any gender include the other genders and the following words and expressions bear the meanings assigned to them below with cognate words and expressions bearing corresponding meanings:

- 1.1 "access right" means a right of access to fish granted to a member in terms of the Act;
- 1.2 "the Act" means the Marine Living Resources Act, No. 18 of 1998, as may be amended from time to time, and any other Act that may be passed which replaces the Marine Living Resources Act;
- 1.3 "Association" means the South African Deep-Sea Trawling Industry Association;
- 1.4 "Commissioner" means the Commissioner for the South African Revenue Service;
- 1.5 "constitution" means the constitution of the Association as may be amended from time to time;
- 1.6 "days" means calendar days;
- 1.7 "the Department" means the government department responsible for the administration of the Act, it being recorded that, as at the date of adoption of this revised constitution, the responsible department is the Branch Marine & Coastal Management of the Department of Environmental Affairs & Tourism;
- 1.8 "fish" means any species of deep-sea trawled demersal fish which have been caught, processed and marketed in fresh, iced or frozen form;
- 1.9 "established members" means those members who are members of the Association at the date of adoption of this constitution and whose names appear in Annexure "A" hereto;
- 1.10 "member" means any rights holder that qualifies as a member of the Association from time to time in terms of Article 4 hereunder;
- 1.11 "postal ballot" means any method or form of voting, including but not limited to e-mail, telephone or facsimile, conducted between members outside of a formal meeting at the behest of the chairperson;
- 1.12 "rights holder" means the holder of a deep-sea trawling access right for hake in terms of the Act;
- 1.13 "Secretary" means the Secretary of the Association as appointed from time to time and "Secretariat" has a corresponding meaning and includes persons engaged by the Association to serve under the direction of the Secretary;
- 1.14 "TAC" means the Total Allowable Catch as defined in section 1 of the Act;
- 1.15 "trawling operations" mean the deployment of vessels on trawling grounds
- 1.16 "vessel" means a South African registered deep sea trawling vessel in excess of 100 GRT, directly engaged in the catching and/or processing of demersal fish by way of deep-sea trawling operations and in possession of a valid trawl permit;
- 1.17 "vessel operation" refers to the deployment and management of one or more duly registered trawling vessels, whether by means of outright ownership, partial ownership or bare boat charter;
- 1.18 partial ownership means the ownership of a "substantial share" in a registered trawling vessel(s) or a "substantial share" in a registered company having as its principal object owning and operating a trawling vessel;
- 1.19 A "substantial share" means a proportion of shares in a vessel(s) or company such that the degree of ownership measures out at more than 100 gross register tons on the South African Shipping Register;
- 1.20 "votes" accredited to members shall be determined on the basis of one (1) vote for every one per cent (1%) or part thereof of that portion of the hake total allowed catch reserved by the Authorities for deep-sea trawling.

## **2. RECORDAL**

- 2.1 The Association's first constitution was adopted on 24th March 1974 and was amended from time to time thereafter.
- 2.2 Mindful that circumstances have changed considerably since the founding of the Association the established members have decided to adopt a new constitution.
- 2.3 Further the members have taken cognisance of a need to open Membership of the Association to a wider range of vessel operators.
- 2.4 Accordingly this constitution replaces and supersedes the previous constitution of the Association.
- 2.5 Notwithstanding article 2.4 above, decisions, actions and procedures established under the previous Constitution of the Association will remain valid and binding on the parties subject to the provisions of this Constitution.

## **3. OBJECTS**

The objects of the Association are to:

- 3.1 Provide opportunities for collaboration and discussion between members on matters of mutual interest save that no discussion or collaboration may ever occur in relation to the pricing of fish products or other acts of market orchestration;
- 3.2 Protect and further the interests of the deep-sea trawling industry for which purpose the Association shall be empowered to deal with all matters designed to achieve these objects;
- 3.3 Promote the common interests of members carrying on the business of deep-sea trawling;
- 3.4 Act as an Industrial Body as envisaged in Section 8 of the Act;
- 3.5 Facilitate the resolution of disputes between members.

## **4. MEMBERSHIP**

- 4.1 Membership of the Association shall be open to any rights holders of a hake deep-sea trawling access right that are engaged in the catching, and processing of demersal fish derived from deep sea trawling operations with vessels registered in the Republic of South Africa as per definitions 1.16 to 1.19.
- 4.2 No rights holder other than established members of the Association shall be admitted as a member unless application for membership has been approved by a majority of members present and entitled to vote at a general meeting of the Association.
- 4.3 A holding company may achieve membership of the association in lieu of one or more wholly owned subsidiaries that have previously met the qualifications provided the change has been approved in general meeting. The rights, privileges, responsibilities and duties of such a holding company will not exceed those pertaining to the subsidiaries from which its membership derives.
- 4.4 There may be more than one member registered per deep-sea trawler provided each partial owner possesses a substantial share in an operational trawler or fleet of trawlers as set out in the definitions. The rights, privileges, responsibilities and duties of a member possessing a direct or indirect share in a vessel will be identical to members who own and operate vessels fully in their own right.
- 4.5 A member may withdraw or resign from the Association by giving three (3) calendar months' written notice of its intention to do so to the Secretary.

## **5. POWERS OF THE ASSOCIATION**

The Association shall have all powers as are necessary for the proper attainment of the objects set out above and shall in particular have the power to -

- 5.1 Impose and receive subscriptions, levies and contributions from its members;
- 5.2 Open and operate bank accounts in the name of the Association;
- 5.3 Apply funds for any purposes that comply with the objects of or in the interests of the Association and the members;
- 5.4 Invest and deal with any funds for any purpose related to the objects of the Association:-
  - 5.4.1 With a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act No. 39 of 1984;
  - 5.4.2 In such other prudent investments in financial instruments as the Commissioner may approve.

## **6. CORPORATE STATUS**

- 6.1 The Association shall:
  - 6.1.1 Be a corporate body, distinct and separate from its members;
  - 6.1.2 Not conduct its business for the purpose of gain;
  - 6.1.3 Have perpetual succession, notwithstanding any change in the number or identity of its members from time to time.
- 6.2 All legal proceedings shall be brought by or against the Association in its own name and the members may authorise any person to act on behalf of the Association, to sign all such documents and to take all such steps as may be necessary in connection with such proceedings.

## **7. NON-PROFIT ORGANISATION**

- 7.1 The income and assets of the Association must be applied for the attainment and promotion of its objects.
- 7.2 No portion of the Association's income or assets may be paid, either directly or indirectly, by way of dividend, donation or otherwise, to the members save that audited surpluses may be used to defray ongoing subscriptions of Members as decided in General Meeting.

## **8. SECRETARY AND STAFF**

- 8.1 A Secretary whose duties, powers and remuneration shall be defined by the Association from time to time in general meeting shall administer the Association.
- 8.2 The Association may engage additional staff to assist the Secretary under such conditions as it considers appropriate.

## **9. MEETINGS**

- 9.1 The Association will endeavour to hold no less than six meetings during each financial year.
- 9.2 An annual general meeting of members shall be held once in each calendar year, not later than six months after the end of the Association's financial year, at which the following business shall be transacted:
  - 9.2.1 the minutes of the previous annual general meeting shall be submitted for approval; (Notwithstanding this provision the Secretary will submit minutes of an AGM for provisional approval by the Chairman at the first opportunity )
  - 9.2.2 The balance sheet and statement of Income and expenditure covering the previous financial year, duly audited by the Association's auditors, shall be laid before the meeting for approval;
  - 9.2.3 The chairperson and vice-chairperson shall be elected from amongst nominated representatives to hold office until the next annual general meeting.
  - 9.2.4 Persons who will act as members of the executive committee shall be elected..
  - 9.2.5 Auditors shall be appointed;
  - 9.2.6 Such other business of which due notice has been given.
- 9.3 An ordinary general meeting, for purposes of attending to the ordinary business of the Association, may be called at any time upon request by any one member. The period of notice to be given for such meeting shall be fourteen (14) days, provided that shorter notice may be given if at least five (5) members agree that the particular circumstances warrant such shorter notice.
- 9.4 A special general meeting, to consider matters other than those of a purely business nature, may be called at the discretion of the chairperson or upon requisition by one or more members. Notice of all special general meetings, showing the business to be transacted thereat, shall be given in writing to members not less than five (5) days prior to the date of such meeting provided that shorter notice may be given if either the chairperson or at least five (5) members agree that the particular circumstances warrant such shorter notice.
- 9.5 At all general meetings (which for purposes of this Article 9 means the annual general meetings, ordinary general meetings and special general meetings) 50% (fifty percent as determined by a poll) of the total membership in person or by proxy shall form a quorum. If a quorum is not present at the time the meeting is due to commence, it shall stand adjourned for one hour and at such adjourned meeting the members present shall form a quorum.

- 9.6 The chairperson, or in his absence the vice-chairperson, shall preside at all general meetings of the Association. If neither the chairperson nor the vice-chairperson is present or being present is for any valid reason unable to preside, the meeting may elect a chairperson for the particular meeting.
- 9.7 Each member shall advise the Secretary in writing of the name and address of the person, and any alternate for such person, appointed to act as its representative at any meetings of the Association. An alternate may act as an observer at any general meeting at which the relevant principal representative is present.
- 9.8 Each member may be represented at general meetings either in person or by proxy.

## **10. VOTING**

- 10.1 Subject to clause 10.3, matters other than amendments to this constitution in terms of Article 14, in respect of which it may be necessary to resort to voting, shall be determined by a simple majority in a show of hands unless a member present calls for a poll vote. In that event, each member shall be able to cast votes in person or by proxy in accordance with the number of votes credited to that member as set out in 1.20 above and recorded in a register kept for the purpose of voting by the Secretary. A poll will, in turn, be decided on a simple majority of the votes cast and the result will supersede that of any prior show of hands at the meeting.
- 10.2 If, in between meetings of the Association, any matter arises which requires an urgent decision, the chairperson may authorise a postal ballot which will be conducted under the supervision of the Secretary. The decision of such postal ballot shall be considered a decision of the Association and entered into the minutes of the next general meeting.
- 10.3 The Association shall not take any decision which may directly or indirectly prejudice the deep sea trawl demersal fishing right (including in respect of any related bycatch) of any member unless such decision is supported by all the members present at a meeting of the Association and unless all members have been given notice of the proposed decision

## **11. COMMITTEES**

- 11.1 The Association may from time to time appoint committees for such purposes as the members in general meeting consider appropriate.
- 11.2 The Association in general meeting may delegate to any committee such powers as it deems appropriate.
- 11.3 Any committee appointed in terms of this Article may be disbanded by the Association in general meeting.
- 11.4 Persons appointed to a committee in terms of this Article need not necessarily be employees of the members of the Association other than appointments to the Executive Committee.
- 11.5 An executive committee consisting of no more than five persons shall be charged with conducting Association business between meetings or at short notice. The Executive Committee shall consist of the Chair and Vice Chair plus no more than three other persons elected at an Annual General Meeting and may deal with any day to day matter that arises between Meetings as mandated by the Association. Any decisions or actions of the Executive shall be circulated to Members within seven days and recorded in the minutes of the first General Meeting thereafter.

## **12. FINANCE**

- 12.1 The Association's financial year shall be from the 1st of January to the 31st day of December.
- 12.2 The Association shall be financed by way of subscription, levy or contribution as may be determined by the Association in general meeting. Voting strength shall be used in determining a formula for calculating Member's subscriptions.
- 12.3 Should any member be in arrears in the payment of its subscription, levy or contribution, the member shall be requested by the Secretary to effect payment and, if this is not done within one month of such request the member shall ipso facto cease to be a member of the Association upon being so informed by the Secretary in writing.
- 12.4 All funds accruing to the Association shall be banked with a recognised banking institution as agreed to by the Association in general meeting, and all withdrawals of moneys from such account shall require signatures representative of two panels comprising members of the executive committee or Secretary on the one hand, and any authorised member of the Secretariat on the other, or any two signatures from such panel of signatories as may be authorised from time to time.

### **13. DISPUTE RESOLUTION**

Unless otherwise contractually agreed upon, disputes that arise between members of the Association in regard to the trawling operations carried out by the members shall be resolved in the following manner:

- 13.1 The relevant members shall make every effort to settle the dispute on a consensual basis and to this end shall as soon as possible refer the dispute to the Chief Executive Officers of such members or their delegates, who shall make every effort to settle the dispute.
- 13.2 If the members are unable to resolve their dispute in terms of Article 13.1 above within 24 (twenty four) hours of the dispute being referred to the respective Chief Executive Officers or their delegates, or within such further period as may be agreed by the members in dispute, then the members to the dispute shall refer the dispute to a mediator nominated by the Arbitration Foundation of South Africa ("AFSA") to facilitate the resolution of the dispute.
- 13.3 If the dispute is not resolved within 3 (three) days after the referral thereof to the mediator, or within such additional period of time as may be agreed by the members in dispute, then the dispute shall be referred to an arbitrator appointed by AFSA, for determination and resolution in accordance with the rules of AFSA, provided that every possible effort must be made to resolve the dispute as expeditiously and inexpensively as possible.

### **14. AMENDMENTS**

This constitution may only be repealed, amended or added to by written resolution carried by at least two thirds of members at a special general meeting called for that purpose, of which the required notice in terms of Article 9.3 above has been given.

### **15. DISSOLUTION**

The Association may be dissolved by resolution passed by two-thirds majority of members present in person or by proxy at a special general meeting, convened for that purpose, of which the required notice has been given. If, upon dissolution of the Association, there remain any funds whatsoever, after the satisfaction of all debts and liabilities, the same shall be distributed to a similar organisation that has been approved as a tax exempt entity by the Commissioner, in such manner as may be determined at such general meeting.

### **16. SUSPENSION OR EXPULSION**

Should it be resolved by a majority in general meeting that, in the opinion of the members of the Association, the continuous membership of a member is contrary to the interests of the Association or that a member has lost the confidence of the Association, the Executive Committee may deprive such member of all or any of the rights, benefits or privileges of membership for such time as it deems fit provided that suspension may only be lifted if all moneys owed to the Association have been paid. Alternatively, the Executive Committee may terminate membership for the same reason. Where membership is terminated in terms of this Article, then the party concerned will be eligible for re-admission at some future time should members in general meeting consider this appropriate.

Adopted at a SPECIAL GENERAL MEETING held in CAPE TOWN on 12th September 2002.

## ANNEXURE "A"

Established Members of the  
**SOUTH AFRICAN DEEP-SEA TRAWLING INDUSTRY ASSOCIATION**  
as of the 12th September 2002

**Irvin & Johnson Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Sea Harvest Corp. (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Atlantic Trawling (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Marpro Trawling Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Viking Fishing Co (Deep Sea) (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Fernpar Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Blue Continent Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Sistro Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Hangberg Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Radaco Sea Products (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Eyethu Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**New South Africa Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Vuna Fishing Co (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED

**Combined Fishing Enterprises (Pty) Ltd**

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REPRESENTATIVE ALTERNATE SIGNED