

**CONSTITUTION**

**OF THE**

**SOUTH AFRICAN PELAGIC FISHING INDUSTRY  
ASSOCIATION**

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## 1. DEFINITIONS

- 1.1 In this Constitution, unless the context indicates a contrary intention, the following words and phrases shall have the meanings ascribed to them hereunder:-
- 1.1.1 “Association” means The South African Pelagic Fishing Industry Association;
- 1.1.2 the “Act” means the Marine Living Resources Act No. 18 of 1998;
- 1.1.3 the “Constitution” means this constitution;
- 1.1.4 “Fishing Right” means a right for the catching of pelagic fish, as allocated in terms of the Act;
- 1.1.5 the “Executive Committee” means the committee conducting the day to day business of the Association and constituted in terms of clause 8 below;
- 1.1.6 “Member” means a member of the Association as described herein and shall include, unless a contrary intention appears from the context, the representative of such member;
- 1.1.7 “Industry” means the pelagic fish industry; and
- 1.1.8 “Sea Management Committee” means a committee of the Association constituted in terms of clause 11 below.
- 1.2 If any provision in the abovementioned definitions is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that such provision is only contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Constitution.

1.3 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.

1.4 Words importing the singular shall include the plural and vice versa, words importing one gender shall include the other genders and words importing persons shall include partnerships, trusts and other created entities.

## 2. **NAME**

The name of the Association shall be THE SOUTH AFRICAN PELAGIC FISHING INDUSTRY ASSOCIATION.

## 3. **OBJECTS**

3.1 The Association shall be a non-profit making organisation whose object shall be to promote and protect the interests of its Members and, in furtherance of the above object, the Association shall perform the following functions:

3.1.1 to represent Members in negotiations with the Government of the Republic of South Africa or any other legislative or administrative body concerning matters affecting the Industry and the interests of its Members;

3.1.2 to consider, report, advise and make representations on existing or contemplated legislation or such other measures affecting the Industry, the interests of the Association or its Members and generally to promote, support or oppose such legislation or measures;

3.1.3 to join or become a member of any body or other organisation or to co-operate with such body or organisation whether within or without the Republic of South Africa if the interests of Members could be served thereby;

3.1.4 to assist Members of the Association regarding administrative and technical matters concerning their membership and the Association;

- 3.1.5 to establish the Sea Management Committee and assist in its functioning;
- 3.1.6 generally to take such steps as may be necessary to advance the interest of the Industry and generally to act on behalf of its Members in any direction in which their interests may be affected and to do such things and carry out such undertakings as may be necessary or incidental to such objects; and
- 3.1.7 to carry out the objectives set out in this clause 3 in compliance with the laws of South Africa and, in particular, the Competition Act No. 89 of 1998.

#### 4. **MEMBERSHIP**

- 4.1 Any person who has been allocated a Fishing Right shall be entitled to become a Member of the Association.
- 4.2 Every Member of the Association shall, in the fashion determined by the Executive Committee furnish details of his address and any change of his address to the secretary of the Association from time to time together with any other such details, whether regarding the nature of such Member's business or otherwise, as may reasonably be required by the Executive Committee and/or the secretary from time to time.
- 4.3 Any Member which is a corporate body may, by resolution of its directors or other governing body, appoint a person to act as its representative at any meeting of the Members of the Association and such representative shall be entitled to exercise the same rights on behalf of such corporate body as that corporate body could exercise if it were an individual who was a Member. The Executive Committee may, but shall not be obliged to, require proof to its satisfaction of the appointment or authority of such representative.

## 5. FINANCE

- 5.1 The Association's financial year shall commence on 1 January in each year and terminate on 31 December.
- 5.2 The Association and its activities shall be financed by way of subscription, levy or contribution from its Members as may be determined by the Executive Committee from time to time.
- 5.3 All funds accruing to the Association shall be banked with a recognised banking institution as resolved by the Executive Committee, and all cheques for monies withdrawn from such account shall be signed by any two signatories from a panel of signatories as may be authorised by the Executive Committee from time to time.
- 5.4 Upon any Member ceasing for any reason to be a Member of the Association, such Member shall have no claim whatsoever on the funds of the Association.
- 5.5 On dissolution of the Association the funds on hand shall, after all liabilities and obligations have been met, be disposed of in accordance with the provisions of clause 13.2.
- 5.6 All accounts of the Association and a balance sheet together with a statement of income and expenditure in respect of each year ending on 31 December will be prepared and finalised by the Executive Committee and reviewed by an independent auditor. True copies of the balance sheet and statement of income and expenditure for each year shall be available at the Association's office for inspection by Members who shall be entitled to copies thereof or to take extracts therefrom.

## 6. MEETING OF MEMBERS

- 6.1 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:
- 6.1.1 the minutes of the previous annual general meeting shall be submitted for approval;
  - 6.1.2 the balance sheet and statement of income and expenditure covering the previous financial year, as per clause 5.6 above, must be laid before the members at the annual general meeting for approval;
  - 6.1.3 the auditors shall, if required by Members, be appointed for the ensuing financial year;
  - 6.1.4 the Executive Committee for the following year shall be elected, subject to the provisions of clause 8 hereunder;
  - 6.1.5 such other business of which due notice has been given.
- 6.2 At least one general meeting of Members, over and above the annual general meeting, will be held during the financial year.
- 6.3 Any other meeting of Members for the purpose of attending to the normal business objects of the Association may be called at any time by the Executive Committee or upon the request therefor by any three Members of the Association and the period of notice to be given for such meeting, unless such requirement be waived by consent of all the Members, shall be three working days.
- 6.4 No business shall be transacted at any general meeting unless due notice of such meeting has been given to all Members and a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, fifteen Members present in person, or by proxy shall be a quorum.

- 6.5 Notices of meetings of Members shall be forwarded to Members at the addresses furnished by them in terms of clause 4.2 above by ordinary post or in such other manner as may be determined by the Members in general meeting and shall specify the place, the day and the time of the meeting. Where provision is made for the giving of a specified number of days notice, such period shall exclude the day upon which notice is served or deemed to be served and the day for which notice is given, provided that all notices forwarded to Members in accordance herewith shall be deemed to have been received on the fifth day after posting. The non-receipt of any notice by any Member shall not be a bar to the validity of any resolution taken at the meeting referred to in such notice or the validity of such meeting itself.
- 6.6 Any Member entitled to attend and vote at a meeting of Members shall be entitled to appoint and be represented at such meeting by a proxy provided that:
- 6.6.1 the instrument appointing such proxy shall be in writing under the hand of the appointer or his agent duly authorised in writing or, if the appointer is a corporate body, under the hand of an officer or agent authorised by such body. Only those persons contemplated in clause 8.2 hereunder shall be entitled to act as proxies;
- 6.6.2 the instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed shall be deposited with the general manager of the Association not less than twelve hours before the time for holding the meeting referred to therein;
- 6.6.3 the instrument appointing a proxy shall be in such form as shall be determined by the Executive Committee in its discretion from time to time.
- 6.7 If within half an hour after the time appointed for a meeting of Members a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case the meeting shall stand adjourned to a day not earlier than seven days and not later than twenty-one



days after the date of the original meeting and, if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person or by proxy shall be a quorum.

6.8 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than three days after the adjournment, send a written notice to each Member of the Association stating:

6.8.1 the date, time and place to which the meeting has been adjourned;

6.8.2 the matter before the meeting when it was adjourned; and

6.8.3 the ground for adjournment.

6.9 The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of clauses 6.7 and 6.8 shall *mutatis mutandis* apply to such adjournment.

## 7. VOTING RIGHTS

7.1 Each Member of the Association present in person or represented by proxy (or, if such Member is a body corporate, its representative) shall, at any meeting of the Association, be entitled to one vote.

7.2 In the case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.

7.3 Unless otherwise provided herein, all resolutions passed at any meeting of the Association shall be by simple majority of votes.

## 8. EXECUTIVE COMMITTEE

- 8.1 The secretary of the Association shall, together with the notice of the annual general meeting, forward a separate notice to Members calling for nominations for persons to serve on the Executive Committee of the Association and the Members shall, at the annual general meeting, elect not less than seven and not more than fifteen of such nominees as the Executive Committee for the following year.
- 8.2 The only persons who shall be eligible for nomination and election to the Executive Committee shall be:
- 8.2.1 Members of the Association who are natural persons; and/or
  - 8.2.2 any director or employee of any Member of the Association which is a company; and/or
  - 8.2.3 any director or employee of the holding company of any company which is a Member of the Association; and/or
  - 8.2.4 any member of any close corporation which is a Member of the Association; and/or
  - 8.2.5 any partner of any partnership which is a Member of the Association; and/or
  - 8.2.6 any trustee of any trust which is a Member of the Association.
- 8.3 In addition to the Members so elected, the general manager of the Association (if any) and a representative of the company or entity, appointed by the Association to attend to secretarial and other functions on its behalf, shall be members of the Executive Committee *ex officio*.
- 8.4 Immediately after the annual general meeting, the Members of the Executive Committee shall meet to elect a chairman (who may be independent and not a Member, a treasurer and such other office bearers as they may deem

appropriate who shall hold office until the next following annual general meeting.

8.5 No Member-, shall be entitled to be represented on the Executive Committee by more than one representative.

8.6 Any Member who individually holds, or Members within the same group of companies who together hold, a Fishing Right or Fishing Rights in total which exceeds 10% of all Fishing Rights of all species allocated to all Members shall be entitled, if not represented on the Executive Committee, to appoint one additional Member to the Executive Committee notwithstanding that this will have the effect of increasing the number of Executive Committee members beyond the number for which provision is made in clause 8.1 above.

8.7 The Members of the Association record that it is in principle desirable that the Executive Committee comprises representatives of the various types of Members comprising the Association, without such principle however derogating from any specific provisions contained in this Constitution.

8.8 An Executive Committee member shall cease to hold office:

8.8.1 upon ceasing to hold a Fishing Right;

8.8.2 upon the Member he represents ceasing to hold a Fishing Right;

8.8.3 on absenting himself from three consecutive meetings of the Executive Committee without the permission of the Executive Committee;

8.8.4 on giving written notice of resignation to the chairman;

8.8.5 if, in the opinion of the Executive Committee, he has infringed any of the terms of the Constitution or has acted in any manner which, in the opinion of the Executive Committee, is detrimental to the interests of the Association.

- 8.9 In the event of any vacancy arising on the Executive Committee, the vacating Member may nominate a person in his/her place to be co-opted, or the remaining members of the Executive Committee shall co-opt such additional Member or Members as may be necessary to fill such vacancy or vacancies and such co-opted Members shall serve on the Executive Committee until the next annual general meeting of the Association.
- 8.10 An Executive Committee Member to apply to the Executive Committee, in writing, to appoint a person as a alternate to represent him/her at an Executive Committee meeting when they are they are unable to attend,
- 8.10.1 such person must comply with 8.2 above,
- 8.10.2 such person be approved at an Executive Committee Meeting in session,
- 8.10.3 such person's term of office will be the same as the Executive member who applied for his/her appointment,
- 8.10.4 such person will have same powers in the absence of the Executive member and be regarded as an Executive member to comply with 9.4 below for quorum purposes,

## **9. MEETINGS OF THE EXECUTIVE COMMITTEE**

- 9.1 The Executive Committee shall meet at such times and places as it shall from time to time determine.
- 9.2 The chairman or any member of the Executive Committee shall be entitled to call a meeting of the Executive Committee.
- 9.3 At any meeting of the Executive Committee each member shall have one vote and all decisions taken shall be by a simple majority of votes.
- 9.4 A quorum at a meeting of the Executive Committee shall be two-thirds of members present in person.

9.5 If within half an hour after the time appointed for a meeting of the Executive Committee a quorum is not present, the meeting, if convened upon the requisition of Executive Committee members, shall be dissolved. In any other case, the meeting shall stand adjourned to a day not earlier than three days and not later than fourteen days after the date of the original meeting and, if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Executive Committee members present in person or by proxy shall be a quorum. The general manager of the Association shall give such notice of such adjourned meeting to the members of the Executive Committee as he is able in the circumstances and the failure by the general manager to convey such notice to any particular member of the Executive Committee shall not be a bar to the validity of any resolution taken at the meeting subsequently held or the validity of the meeting itself.

9.6 A resolution signed by all the members of the Executive Committee and inserted in the minute books of the Association shall be as valid and effective as if it had been passed at a meeting of the Executive Committee.

9.7 Any such resolution may consist of several documents, each of which may be signed by one or more Executive Committee members and shall be deemed to have been passed on the date on which it was signed by the last member who signed it unless a statement to the contrary is made in that resolution.

## 10. **POWERS OF THE EXECUTIVE COMMITTEE**

The Executive Committee shall, in conducting the day to day business of the Association, be vested with the following powers:

10.1 to elect persons to represent the Association on any body on which the Executive Committee deems it to be desirable or necessary that the Association should be represented;

10.2 to appoint a general manager of the Association;

- 10.3 to appoint any company or entity to undertake secretarial and other services on behalf of the Association;
- 10.4 to appoint from time to time such sub-committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the Executive Committee;
- 10.5 to institute or defend legal proceedings by or against the Association in the name of the Association;
- 10.6 to invest any monies of the Association surplus to its immediate requirements for expenses, upon such security and in such manner as it may from time to time determine and to raise, vary, re-invest or otherwise deal with such securities as from time to time are determined subject to the further provisions hereof; and
- 10.7 to do all such other lawful things not in conflict with this Constitution which in the opinion of the Executive Committee may appear to be in the interests of the Association and not inconsistent with the objects set out in clause 3 hereof. Any such actions taken shall be declared at a general meeting for ratification.

## **11. SEA MANAGEMENT COMMITTEE**

- 11.1 The Sea Management Committee established by the Association shall operate as a committee of the Association.
- 11.2 The members of the Sea Management Committee shall include:
  - 11.2.1 persons elected from amongst the Members;
  - 11.2.2 persons that are not Members, but are active in the Industry and appointed by the Sea Management Committee to be part thereof, including, but not limited to:
    - 11.2.2.1 fishermen, skippers and boat owners active in the Industry;

- 11.2.2.2 representatives of relevant Government authorities; and
- 11.2.2.3 any other persons which the Executive Committee deems appropriate to form part of the Sea Management Committee.
- 11.3 The functions of the Sea Management Committee shall include, but not be limited to:
  - 11.3.1 the appointment of a chief area controller and area controllers to manage and control the fishing of pelagic fish in the fishing areas along the South African coast;
  - 11.3.2 the management of pelagic fishing resources in the fishing areas along the South African coast;
  - 11.3.3 liaising with relevant Government bodies, administrations and representatives as and when required (on a daily basis if necessary);
  - 11.3.4 any other function which the Association deems appropriate to be undertaken by the Sea Management Committee.
- 11.4 The members of the Sea Management Committee shall, on an annual basis, elect a chairman from amongst their members to chair meetings of the Sea Management Committee.
- 11.5 The general manager of the Association, in conjunction with the chairman of the Sea Management Committee, shall be responsible for calling meetings of the Sea Management Committee at least twice a year and more frequently if necessary.
- 11.6 The procedure for meetings of members of the Sea Management Committee shall be in accordance with the provisions of clauses 9.3 to 9.7 which shall apply *mutatis mutandis*.

## 12. AMENDMENTS

The provisions of this Constitution shall only be capable of amendment in accordance with the following provisions:

- 12.1 twenty-one clear days notice of the meeting at which it is intended to propose any amendment shall be given to all Members;
- 12.2 such notice shall state clearly the nature of the amendment and the reason why it is deemed necessary to make such amendment;
- 12.3 a quorum at such meeting shall be Members holding between them not less than 50% of the voting rights of all Members, present in person at the meeting or represented by proxy;
- 12.4 the resolution shall be passed by a majority of not less than 75% of those Members present in person at the meeting or represented by proxy.

## 13. DISSOLUTION

- 13.1 The Association may be dissolved by resolution of the Members taken in the same fashion as a resolution referred to in clause 12 above *mutatis mutandis* save that the quorum required for such resolution shall be Members holding between them not less than 75% of the voting rights of all Members.
- 13.2 Upon dissolution of the Association the funds standing to the credit of the Association shall, after satisfaction of all debts and liabilities of the Association, be distributed amongst the Members in the same ratio as their contributions as set out in clause 5.2 or in such manner as may be determined by them.