

CONSTITUTION

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A COMPANY LIMITED BY GUARANTEE

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CONSTITUTION
OF
TASMANIAN ABALONE COUNCIL LIMITED

A COMPANY LIMITED BY GUARANTEE

INTRODUCTION

1. Replaceable Rules Excluded

1.1 The replaceable rules contained in the Corporations Act do not apply to the Council.

2. Definitions & Interpretation

2.1 In this Constitution unless there shall be something in the subject or context inconsistent therewith-

- (a) "Abalone Diver" means a person who is personally eligible to dive for abalone pursuant to any current legislative requirements and Ministerial guidelines;
- (b) "The Act" means the Living Marine Resources Management Act 1995 or any statutory modification amendment or re-enactment of that Act for the time being in force;
- (c) "The Constitution" means the Constitution for the time being of the Council;
- (d) "The Council" means the Council incorporated as Tasmanian Abalone Council Limited;
- (e) "The Corporations Act" means the Corporations Act 2001 (Commonwealth) or any statutory modification amendment or re-enactment of that Act for the time being in force;
- (f) "The Department" means the Department of Primary Industry, Water and the Environment or any successor to that department which undertakes the primary regulatory role in relation to the wild abalone marine resources;
- (g) "The Executive Committee" means the executive committee of the Council constituted in accordance with the Constitution;

- (h) "Full member" means a member of the Council who has become a Full Member under Rule 11;
- (i) "Honorary Member" means a Member of the Council who has become an Honorary Member under Rule 13;
- (j) "Life Member" means a Member of the Council appointed as such under Rule 12;
- (k) "Associate Member" means a Member of the Council appointed as such under Rule 14;
- (l) "Member" means a person who is a Full Member, a Life Member, an Honorary Member or an Associate Member;
- (m) "Month" means a calendar month and "year" means a calendar year;
- (n) "Office" means the registered office for the time being of the Council in the State of Tasmania;
- (o) "Person" includes an Association corporation partnership and unincorporated association;
- (p) "Present" when used in relation to a person at a meeting means present in person or represented by proxy;
- (q) "President" means any person elected to perform the duties of a President of the Council;
- (r) "the Register" means the register of members to be kept pursuant to the Corporations Act and this Constitution;
- (s) "Seal" means the common seal of the Council and includes any official seal of the Council;
- (t) "Secretary" means any person elected to perform the duties of the secretary of the Council;
- (u) "the State" means the State of Tasmania;
- (v) "Supervisor" means a Supervisor referred to in Section 89 of the Act;
- (w) "Treasurer" means any person elected to perform the duties of a Treasurer of the Council;
- (x) "Vice President" means any person elected to perform the duties of a Vice President of the Council;

- (y) “in writing” and “written” may include printing and other modes of representing or reproducing words in a visible form;
- (z) Words importing the singular include the plural and vice versa and words importing the masculine gender, the feminine gender or the neuter gender shall include all genders;
- (A) Any words or expressions defined in the Corporations Act shall have the same meaning in this Constitution and an expression used in a particular part or Division of the Corporations Act that is given by the Part or Division a special meaning has, in any of this Constitution that deals with a matter dealt with by that Part or Division, the same meaning as in that Part or Division,
- (B) “Wild abalone fishery” means the abalone fishery in Tasmania which occurs in the wild, it does not include any abalone from farmed or cultivated sources; and
- (C) Any headnote in this Constitution shall not affect the interpretation of the provisions following such headnote.

2.2 The registered office of the Council shall be situate at 262 Argyle Street, Hobart in Tasmania or at such other place as the Council may determine from time to time.

3. Objects

3.1. The objects for which the Council is established are:

- (a) to protect and sustain the long term viability of the abalone industry;
- (b) to promote the interests of the Tasmanian wild abalone fishery.
- (c) to advance the awareness of the public and to foster public understanding of the abalone industry;
- (d) to carry out research, gather compile, and disseminate statistical and other information relating to the abalone industry and assist in improving abalone fishing, handling, processing and marketing practices;
- (e) to consider promote and advocate policies and legalisation beneficial to the abalone industry including making recommendations and submissions with respect to legislation relating to the abalone industry including any law proposed or enacted by the Parliaments of the Commonwealth of Australia and of the several States and Territories thereof or the Parliament of another country;

- (f) to promote the abalone industry by all appropriate means;
- (g) to prosecute or defend or assist or aid in the prosecution or defence of any suits applications any proceedings before any court tribunal inquiry or any other regulatory or other body as may be deemed necessary or expedient in the interest of the Council or its members and in respect of any assistance or aid such assistance or aid may take whatsoever form the Council considers fit including the provision of financial assistance (by way of loan gift or otherwise) to any litigant or to any members of the Council;
- (h) to liaise and work in conjunction with governments statutory and similar authorities and other bodies in relation to the abalone industry;
- (i) to convene and hold seminars discussions lectures and conferences at such times and places as the Council may determine;
- (j) to publish and distribute journals books papers bulletins and newsletters of interest to the members of the Council;
- (k) to promote social activities amongst members and persons interested in the objects of the Council;
- (l) to examine means of and encourage and assist in improving procedures for the efficient disposal of disputes in the abalone industry; and
- (m) to raise moneys by any lawful means and to receive and enlist financial and other aid from individuals, trust companies, corporations, firms, associations, societies, institutions, governments and governmental and other organisations or authorities and to conduct fundraising activities for the purpose of furthering the objects of the Council;

4. Powers

- 4.1. The Council may carry out any of its objects (inter alia) by doing all or any of the following:
 - (a) to make known and further the objects and activities of the Council by the publication and distribution of papers and journals and other publications or by any other means thought desirable;
 - (b) to promote obtain and achieve each of the objects of the Council by or through the facilities available in any university

research institution council faculty school or other institution and make outright donations of money books and equipment to give subsidies and to endow scholarships to any of them;

- (c) to make grants to or in aid of or to make donations or give assistance to or make contracts with individuals trusts corporations companies societies institutions or other organisation or authorities whether within or outside Australia as the Council considers necessary or desirable;
- (d) to draw make accept endorse discount execute and issue promissory notes bills of exchange warrants and other negotiable instruments;
- (e) to borrow and raise money for any of the purposes of the Council and to secure the payments thereof in such a manner as may be lawful including (without prejudice to the generality of the foregoing) by any mortgage charge or debenture upon or over all or any of the property of the Council;
- (f) to lend or invest such of the moneys and funds of the Council as are not immediately needed in such securities or investments and upon such terms and conditions as the Council may determine;
- (g) to arrange engage in and carry on general or particular research work of such nature as the Council from time to time may determine and for those purposes to acquire erect equip maintain and conduct such facilities as the Council considers desirable;
- (h) to employ and engage officers employees and independent contractors whose services the Council considers necessary or desirable for the purpose of the operations of the Council;
- (i) to purchase take on lease or acquire by gift or otherwise real and personal property of any nature or description;
- (j) to sell or otherwise dispose of and transfer property or exchange it for other property;
- (k) to lease property on such terms at such rent and upon such conditions as may be deemed desirable;
- (l) to construct add to alter demolish repair maintain and deal with property in such a manner as may be deemed advisable;

- (m) to guarantee the performance of any obligation of any person corporation or unincorporated association and to give any security in support of such guarantee;
- (n) to promote establish superintend conduct control and assist branches committees and other forms of organisation and administration for the purpose of furthering the objects of the Council;
- (o) to assist in any way deemed desirable by the Council any other body or organisation in connection with the conduct of any research or similar work which the Council considers to be in the interest of the Council or to be conducive to the attainment of any of its objects;
- (p) to undertake and execute any trusts the undertaking whereof may be necessary or desirable for carrying out any of the objects of the Council and accept any gift endowment or bequest made to the Council generally or for the purpose of any specific object and to carry out any trusts attached to any gift endowment or bequest providing that the Council shall only deal with any property which is subject to any trusts in such manner as is allowed by law having regard to such trusts;
- (q) to make donations and grants to other persons, organisations and companies; and
- (r) generally to do all such acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of any of the objects of the Council.
- (s) The powers of the Council are restricted to the exercise of the objects referred to in Rule 3 of this Constitution.

5. Application of Income and Property

- 5.1. The income and property of the Council wheresoever derived shall be applied solely towards the promotion of the objects of the Council as set forth in this Constitution.

6. No Distribution to Members

- 6.1 No portion of the income or the property of the Council shall be paid or transferred directly or indirectly by way of dividend bonus or in any other manner by way of profit to the members of the Council. No remuneration or other benefit in money or money's worth shall be given by the Council to any member thereof except repayment of out-of-pocket expenses. Nothing in this clause shall prevent the payment in good faith of reasonable and proper remuneration to any officer employee or member of the Council (or

any firm or company of which such person is a member) in return for any services actually rendered to the Council nor prevent the payment of interest at a rate which the Council considers reasonable on money borrowed by the Council or reasonable and proper rent for premises demised or let or chattels leased to the Council.

7. Limited Liability

7.1. The liability of the Members is limited.

8. Guarantee

8.1 Each member of the Council undertakes to contribute an amount not exceeding \$20.00 to the property of the Council, in the event of its being wound up while he is a member or within one year after he ceases to be a member, if required for payment:

- (a) of the debts and liabilities of the Council (contracted before he ceases to be a member);
- (b) of the costs charges and expenses of winding up; and
- (c) for adjustment of the rights of the contributories among themselves.

MEMBERSHIP

9. Number of Members

9.1 The number of members for which the Company proposes to be registered is unlimited.

10. Classes of Members

10.1 The membership of the Council shall consist of the following classes of members:-

- (a) Full members;
- (b) Life members;
- (c) Honorary Members; and
- (d) Associate members.

10.2 A person whose application for membership of a particular class is accepted by the Executive Committee in accordance with this Constitution shall be a Member of the Council of that class.

11. Full Membership

11.1 Any person who is the holder of a fishing licence (abalone quota) or a fishing licence (abalone dive) or who is a supervisor of a fishing licence (abalone dive) approved under Section 87 of the Living Marine Resources Management Act 1995 or an abalone processors licence under the Living Marine Resources

Management Act 1995 and Regulations as amended from time to time may be admitted as a Full Member of the Council.

12. Life Membership

12.1 Any person who has rendered distinguished service to the Council may be admitted as a Life Member of the Council, at the invitation of the Executive.

13. Honorary Membership

13.1 Any person may be admitted as an Honorary Member of the Council at the invitation of the Executive.

14. Associate Membership

14.1 Any person who has an interest (but no ownership as outlined in 11.1 above) in the Tasmanian wild abalone fishery may be admitted as an Associate Member of the Council.

15. Application for Membership

15.1 An application for membership accompanied by the applicable subscription shall be lodged with the Secretary who shall bring the application before the Executive Committee as soon as practicable after its receipt.

15.2 The Executive Committee shall in its absolute discretion resolve whether or not to admit each applicant to membership.

15.3 The Executive Committee may require any applicant for membership to produce such further information or evidence as it desires before admitting the applicant to membership of the Council.

15.4 The Executive Committee may refuse any applicant for membership without assigning any reason therefore.

15.5 An applicant for membership shall be deemed admitted to membership upon the Executive Committee so resolving. After an applicant has become a member they shall be entered in the Register.

15.6 A person shall only become a Life Member of the Council at the invitation of the Executive Committee.

16. Form of Application

16.1 An application for membership as a full member of the Council shall be made in such form and in such manner as the Executive

Committee may from time to time direct, and be accompanied by the initial subscription if any

17. Rights of Membership

17.1 Membership of the Council shall be personal only and shall not be capable of assignment transfer or devolution on death.

17.2 Notwithstanding anything to the contrary hereinbefore contained a Life Member shall be deemed to be a member for life or until sooner determination of his membership and shall not be required to pay subscription.

17.3 All Full Members and Life Members shall be entitled to vote at any General Meeting of the Council. An Honorary Member or Associate Member shall not be entitled to exercise a vote at any General Meeting.

18. Register of Members

18.1 In accordance with the Corporations Act the Secretary shall prepare and maintain a Register of members. The Register shall record such details as the Committee may require and as may be required by the Corporations Act and shall specify the class of membership held by each member.

SUBSCRIPTIONS & LEVIES

19. Annual Subscription

19.1 If the Executive Committee has determined that an annual subscription shall be paid under Rule 19.2 then each member who is liable to do so pursuant to the determination shall be obliged to pay an annual subscription.

19.2 The Executive Committee may from time to time determine the annual subscription to be paid and may:

- (i) Determine different fees for different classes of members;
- (ii) Determine different fees based on the differing qualifications for membership under this Constitution;
- (iii) Determine different fees for members depending on the number of quotas held or the combination of licences and entitlement held.

19.3 Annual subscription if set shall be payable annually in advance and shall be due on the first day of July in each year or on such other date as may be determined from time to time by the Executive Committee.

19.4 A person applying for a new membership after the end of the month of December in any year or such other date as may be determined from time to time by the Executive Committee shall be required to pay only one half of the annual subscription for the then current year.

20. Unpaid Annual Subscription

20.1 If the Annual Subscription of a Member remains unpaid for a period of three (3) months after it becomes payable, the Member ceases to be entitled to any of the rights or privileges of membership, but these may be reinstated on payment of all arrears if the Executive Committee sees fit to readmit the Member. Only fully paid current financial members and Life Members of the Council will be admitted to any general meeting held.

21. Levy

21.1 The Executive Committee may

- (a) from time to time raise a levy from amongst the members at such rates as it may determine or such other rates as may be determined from time to time by resolution at a general meeting.
- (b) recommend, liaise and cooperate in relation to the setting and collection of a levy or other payment under the Act and may receive as funds of the Council such a levy or other payment notwithstanding that some members of the Industry may choose not to become a member of the Council. The receipt of such a levy will not prevent the raising of a separate levy under sub paragraph (a) hereof.

CESSATION OF MEMBERSHIP

22. Resignation

22.1 Any Member may resign from the Council by giving notice in writing to the Secretary but such resignation shall not prejudice his obligation to pay moneys which prior to the date of such resignation were owing by the Member to the Council.

23. Failure to Pay Subscription, if any

23.1 If a subscription or levy is payable by a Member then, if such subscription or levy remains unpaid for a period of three calendar months after notice of the default has been sent to the Member the Executive Committee may by resolution without prejudice to the Member's obligation to pay the subscription terminate the membership of such Member and thereupon his name shall be removed from the Register.

24. Termination of Membership

24.1 Subject to this Constitution the Executive Committee may at any time and from time to time terminate the membership of any Member in any of the following cases :-

- (a) If in the case of a Full Member the member ceases to be the holder of a fishing licence (abalone quota) or a fishing licence (abalone dive) or a Tasmanian Abalone Processing Licence or be a supervisor of a fishing licence (abalone dive) approved under Section 87 of the Act as amended from time to time; or

24.2 Upon termination of membership of any Member the name of such Member shall be removed from the Register and he shall cease to have the rights and privileges of membership. Any office held by him in the Council shall thereupon be deemed vacant.

25. Cessation of Membership

25.1 A Member ceases to be a member:

- (a) If it is wound up or otherwise dissolved or deregistered; or
- (b) If he or she dies.

26. Effects of Cessation of Membership

26.1 If any Member ceases to be a member under this Constitution the Member remains liable to pay to the Council any money which at the time the Member ceasing to be a Member owes to the Council on any account and for any sum not exceeding \$20.00 for which the Member is liable under Rule 8 of this Constitution.

EXECUTIVE COMMITTEE

27. Members of the Executive Committee

27.1 Subject as herein provided the business and general affairs of the Council shall be under the management of the Executive Committee which shall consist of a President, a Vice President, a Secretary, a Treasurer and seven other members.

28. Appointment of Members of the Executive Committee

28.1 The President and seven other members shall be elected for two year terms.

28.2 At the election conducted at the Annual General Meeting of 2015 the candidates for election to the TAC Executive Committee shall be elected for a term as follows. The four

candidates receiving the highest number of votes shall be elected for a two year term. The candidate receiving the next highest vote shall be elected for one year.

28.3 In subsequent years at the Annual General Meeting the Executive Committee Members will be elected for a two year term, with three Executive Committee Members being elected for a two year term one year, and four Executive Committee Members being elected for a two year term the next year. This rotation will; continue in perpetuity.

28.4 Thereafter at each Annual General Meeting there will be an election for positions falling vacant at the Annual General Meeting.

28.5 The three other members of the Executive shall be made up of the Chairman of the Abalone Processors Sub-Council, the Chairman of the Abalone Divers Sub-Council and the Chairman of the Abalone Quota Holders Sub-Council. The role of each such Chairman shall be to represent the views and vote in accordance with any instructions given by his or her respective Sub-Council (and in the absence of instructions shall express the views and vote in the manner as he or she considers best represents the views of members of the Sub-Council).

28.6 At the first meeting of the Executive following each Annual General Meeting the Secretary, the Treasurer and the Vice-President shall be elected by the Executive from its members.

29. Nominations for Election of Executive Committee

29.1 Nominations for election of the Executive Committee shall be by Members other than Honorary and Associate Members at the Annual General Meeting. If there be more than the required number nominated for election an election by ballot shall take place but if there be only the requisite number the President shall declare those nominated to be duly elected.

29.2 For the purposes of any ballot under this Rule, ballot papers shall be issued to all Members present and entitled to vote and such papers shall be counted by two or more scrutineers appointed by the President of the meeting. A candidate for any position shall not be a scrutineer and in the event of an equality of votes in favour of two or more candidates the President of the meeting shall draw lots between the candidates having an equality of votes so as to ensure the election of the necessary number to fill the vacancies.

30. Meetings of the Executive Committee

30.1 The Executive Committee shall meet for the transaction of business at such times and places as may be deemed necessary from time to time. A record of the members of the Executive Committee present and of all resolutions and proceedings of any such meeting shall be entered in a Minute Book to be provided for the purpose. The President shall preside at every meeting or if he is not present or unwilling to act as President the Vice President shall act as President of the meeting. If neither the President nor the Vice President is present or willing to act then the members present may elect their own President. The President of a meeting shall in any case where the voting is equal have a casting vote as well as a deliberative vote. The quorum for meetings of the Executive Committee shall be five (5) members personally present.

30.2 The President may at any time and the Secretary upon the agreement of not less than three (3) members of the Executive Committee convene a meeting of the Executive Committee.

31. Removal of Members of the Executive Committee

31.1 Subject to the provision of this Constitution the members in General Meeting may by ordinary resolution remove any member of the Executive Committee before the expiration of his period of office and may by ordinary resolution appoint another member in his stead. Any person so appointed shall hold office until the next ensuing Annual General Meeting.

32. Alternate Members of the Executive Committee

32.1 Subject to the provision of the Corporations Act whenever by absence or illness or for any other reason he shall be unable to attend to his duties as a member of the Executive Committee each member of the Executive Committee shall have power from time to time by writing under his hand or by facsimile, email, telex, telegram, cablegram, radiogram or other form of visible communication to appoint any person approved by a majority of the other members of the Executive Committee to act as an alternate member of the Executive Committee in his place, whether for a stated period or periods or until the happening of a specified event or from time to time and the following provisions shall apply to any such alternate member of the Executive Committee:-

- (a) he may be removed or suspended from office by written notice, letter, facsimile, email, telex, telegram, cablegram, radiogram or other form of visible communication from the member of the Executive Committee by whom he was appointed to the Committee;

- (b) he shall be entitled to receive notice of Executive Committee meetings and to attend and vote on behalf of the member of the Executive Committee by whom he was appointed if that member of the Executive Committee is not present;
- (c) he shall be entitled to exercise all the powers (except the power to appoint an alternate member of the Executive Committee) and perform all the duties of a member of the Executive Committee insofar as the member of the Executive Committee by whom he was appointed has not exercised or performed them;
- (d) he shall be either a Full Member or a Life Member;
- (e) he shall ipso facto vacate office if the member of the Executive Committee by whom he was appointed is removed or otherwise ceased to hold office for any reason; and
- (f) he shall, whilst acting as a member of the Executive Committee, be responsible to the Council for his own acts and defaults and shall not be deemed to be the agent of the member of the Executive Committee by whom he was appointed.

33. Casual Vacancy of Executive Committee

33.1 Any casual vacancy in the Executive Committee may be filled by election by the Executive Committee. Any such person so elected shall be subject to retirement according to the standard provisions of this Constitution.

34. Cessation of Membership of Executive Committee

34.1 A member of the Executive Committee shall ipso facto cease to be a member thereof:

- (a) if he ceased to be a person eligible to be a director by virtue of the Corporations Act;
- (b) if he becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health;
- (c) if he resigns his office by notice in writing to the Council;
- (d) if he is absent without permission of the Executive Committee from three consecutive meetings of the Executive Committee and the Executive Committee resolves that such person should no longer be a member of the Executive Committee;

- (e) if he is directly or indirectly interested in any contract or proposed contract with the Council and fails to declare the nature of his interest in the manner required by the Corporations Act (or in any event at the meeting of the Executive Committee as soon as practicable after the relevant facts have come to his knowledge) and the Executive Committee resolves that such person should no longer be a member of the Executive Committee; or
- (f) if he is guilty of any act proceeding or practice likely in the bona fide opinion of the Executive Committee to bring discredit to the Council or be inimical to its objects and the Executive Committee resolves that such person should no longer be a member of the Executive Committee.

35. Executive Committee Members to Disclose Interest

35.1 The nature of the interest of a member of the Executive Committee in any contract agreement or arrangement must be declared by him at the meeting at which the contract agreement or arrangement is first taken into consideration if his interest then exists or in any other case at the first meeting of the Executive Committee after the acquisition of his interest.

36. Effect of Interest in Contract

36.1 Subject to the provisions of the Corporations Act, no member of the Executive Committee or a proposed member of the Executive Committee shall be disqualified by his office from entering into any contract agreement or arrangement with the Council or from becoming or remaining a director of any association or corporation in which the Council is in any way interested or which is in any way interested in the Council nor shall any such contract agreement or arrangement or any contract agreement or arrangement entered into by or on behalf of the Council in which any member of the Executive Committee is in any way interested be avoided nor shall any member of the Executive Committee entering as aforesaid into any contract agreement or arrangement or being a director of such other association or corporation or being so interested be liable to account to the Council for any profits or remuneration realised by his so entering or being a director of such other association or corporation or being so interested by reason of him being a member of the Executive Committee of the Council or of the fiduciary relationship thereby established.

36.2 A member of the Executive Committee shall be entitled to vote at any meeting in respect of any contract agreement arrangement matter or thing in which he is interested and he shall be entitled to be counted in the quorum at any meeting at which any such contract agreement arrangement matter or thing in which he is

interested and he shall be entitled to be counted in the quorum at any meeting at which any such contract agreement arrangement matter or thing is considered and he may attest the affixing of the seal to any such contract or agreement or other document relating to any such contract agreement arrangement matter or thing.

36.3 A member of the Executive Committee may hold any other office or place of profit under the Council (except the office of Auditor) in conjunction with his office as a member of the Executive Committee for such period and on such terms as to remuneration and otherwise as the Executive Committee may determine.

36.4 The Executive Committee may by resolution adopt by-laws for the administration and activities of the Council.

37. Powers And Duties Of The Executive Committee

37.1 The business of the Council shall be managed by the Executive Committee which may exercise all powers of the Council and do such things on behalf of the Council which are not by the Corporations Act or by this Constitution required to be exercised by the Council in general meeting.

37.2 The Executive Committee shall consider from time to time whether on its own motion or at the written suggestion of any Member such matter affecting the objects of the Council as in the judgment of the Executive Committee should be the subject of investigation consideration discussion and action.

37.3 All appropriations or expenditure of funds of the Council must be made or approved by the Executive Committee or some member or members of the Council designated by the Executive Committee.

37.4 The Executive Committee may in good faith pay reasonable and proper remuneration to any employee of the Council not being an Executive Committee member in return for any services actually rendered to the Council. Subject to this Constitution the Executive Committee may resolve to reimburse an Executive Committee member for reasonable expenditure incurred by way of travelling expenses and for other expenses incurred in the service of the Council.

37.5 The Executive Committee shall cause minutes to be kept in books provided for the purpose -

- (1) of all appointments of office bearers made by the Executive Committee;

- (2) of the names of the Members of the Executive Committee present at the meeting of the Executive Committee and of any Sub-Committee thereof;
- (3) of all resolutions and proceedings at all meetings of the Council and of the Executive Committee and of Committees thereof; and
- (4) of all business transacted at the Executive Committee or Committee meetings;

and such minutes shall be signed by the President of the meeting at which the proceedings were held and by the President of the next succeeding meeting.

38. Proceedings Of Executive Committee

- 38.1 The Executive Committee may meet together for the dispatch of business adjourn and otherwise regulate its meetings as it thinks fit. The Secretary shall on the requisition of the Executive Committee or otherwise as provided for by this Constitution summon a meeting of the Executive Committee. The Executive Committee shall hold at least four meetings in each year.
- 38.2 At least seven (7) days notice of a meeting of the Executive Committee shall be given specifying the place, time and date of the meeting and the general nature of items to be discussed but shorter notice of such meeting may be given if three quarters or more of the members of the Executive Committee agree. Such notice shall be deemed to have been sufficiently given if posted or communicated by facsimile, email by telephone or delivered in person to or left at the address of the addressee as shown in the Register.
- 38.3 Subject to this Constitution questions arising at any meeting of the Executive Committee shall be decided by a majority of votes and a determination by a majority of the members present shall for all purposes be deemed a determination of the Executive Committee. In case of an equality of vote the President of the meeting shall have a casting vote.
- 38.4 The continuing Executive Committee members may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed pursuant to the Constitution as the necessary quorum of the Executive Committee the continuing Executive Committee members may act for the purposes of increasing the number of members to the fixed number or of summoning a general meeting of the Council but for no other purpose.

38.5 The President shall act as chairman of all meetings of the Executive Committee and in his absence the Vice President but if neither the President nor the Vice President are present the members present may choose one of their number to be chairman of the meeting.

38.6 A resolution in writing signed by all the members for the time being then in Australia of the Executive Committee or of any committee thereof shall be as valid and effectual as if it had been passed at a meeting of the Executive Committee or of such committee (as the case may be) duly convened and constituted.

38.7 For the purpose of Rule 38.6, two or more separate documents containing statements in identical terms each of which is signed by one or more members of the Executive Committee shall together be deemed to constitute one document containing a statement in those terms signed by those members of the Executive Committee on the respective days on which they signed the separate documents.

38.8 All acts done in good faith by any meeting of the Executive Committee or of a Committee thereof or by any person acting as an Executive Committee or Committee member or by any office bearer of the Council shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Executive Committee or committee member or person acting as aforesaid or that they or any of them were disqualified or if no or insufficient notice was given, be as valid as if every such person had been duly appointed and qualified or notice had been properly given.

39. Indemnity of Executive Committee Members

39.1 Every member of the Executive Committee shall be indemnified out of the assets of the Council against any liability arising out of the execution of the duties of his office which is incurred by him in defending any proceedings whether civil or criminal in which judgement is given in his favour or in which he is acquitted or in connection with any application under the Code in which relief is granted to him by the Court in respect of any alleged negligence default breach of duty or breach of trust.

40. Duty Of Office Bearers

40.1 The President shall subject to this Constitution supervise the affairs generally of the Council.

40.2 The Executive Committee shall have authority to appoint such committees as it may deem necessary to facilitate the business of the Council. Such committees shall report in writing to the

Executive Committee and their terms of office shall expire at the next annual general meeting of the Council following their appointment. The President shall be an ex-officio member of all committees.

40.3 In the President's absence the Vice President shall discharge the duties of the President.

40.4 The Treasurer shall manage the finances of the Council including collecting and disbursing all funds of the Council. At the Annual General Meeting of the Council and at meetings of the Executive Committee the Treasurer shall report in writing the financial performance and the financial position of the Council, including the balance of money on hand and any existing appropriations which may affect the same.

40.5 The Secretary shall notify the officers and all members of committees of their election or appointment and shall issue notices of all meetings. The Secretary shall perform such other duties as may from time to time be assigned by the Executive Committee.

SUB-COUNCILS

41. Abalone Divers Sub-Council

41.1 Every member of the Council who:

- (i) holds a fishing licence (abalone dive) and who is also an abalone diver but does not have a supervisor appointed and approved under Section 89 of the Act;
or
- (ii) is a supervisor in respect of a fishing licence (abalone dive) approved under Section 89 of the Act;
or
- (iii) holds a fishing licence (abalone dive) but has a supervisor appointed and approved under Section 89 of the 'Act'

shall be a member of the Abalone Divers Sub-Council.

41.2 In the event that a Member ceases to hold or supervise a fishing licence (abalone dive) as set out in Rule 41.1 hereof, that Member shall automatically cease to be a Member of the Abalone Divers Sub-Council, except as provided in Rule 41.3 hereof.

41.3 If the Chairman of the Abalone Divers Sub-Council ceases to hold or supervise a fishing licence (abalone dive) as set out in Rule 41.1

hereof the Chairman will continue to hold that position until the next meeting of the Abalone Divers Sub-Council, at which meeting the Chairman will cease to be a Member of the Abalone Divers Sub-Council and the meeting shall elect a new Chairman.

42. Quota Holders Sub-Council

42.1 A member of the Council who is the holder of a Tasmanian abalone quota unit shall be a member of the Quota Holder's Sub-Council.

42.2 In the event that a Member ceases to hold a Tasmanian abalone quota unit as set out in Rule 42.1 hereof, that Member shall automatically cease to be a Member of the Quota Holder's Sub-Council, except as provided in Rule 42.3 hereof.

42.3 If the Chairman of the Quota Holder's Sub-Council ceases to hold a Tasmanian abalone quota unit as set out in Rule 42.1 hereof the Chairman will continue to hold that position until the next meeting of the Quota Holder's Sub-Council, at which meeting the Chairman will cease to be a Member of the Quota Holder's Sub-Council and the meeting shall elect a new Chairman.

43. Abalone Processors Sub-Council

43.1 Every member of the Council who

(i) is the holder of a Tasmanian Abalone Processing Licence;

or

(ii) is the Nominated Natural Person of a Tasmanian Abalone Processing License;

shall be a member of the Abalone Processors Sub-Council.

43.2 In the event that a Member ceases to hold a Tasmanian Abalone Processing Licence as set out in Rule 43.1 hereof, that Member shall automatically cease to be a Member of the Abalone Processors Sub-Council, except as provided in Rule 43.3 hereof.

43.3 If the Chairman of the Abalone Processors Sub-Council ceases to hold a Tasmanian Abalone Processing Licence as set out in Rule 43.1 hereof the Chairman will continue to hold that position until the next meeting of the Abalone Processors Sub-Council, at which meeting the Chairman will cease to be a Member of the Abalone Processors Sub-Council and the meeting shall elect a new Chairman.

44. Sub-Council Procedures

44.1 Each Sub-Council shall hold a General Meeting once in every two years (being as close as is practicable to the Annual General Meeting for that year of The Council) for the purpose of electing a Chairman and such other office bearers of the Sub-Council as the meeting determines.

44.2 Each Sub-Council shall meet at such other times during each year as the Chairmen shall determine provided that at each Sub-Council meeting, the meeting may determine when its next meeting shall be held.

44.3 Each Sub-Council shall not be a separate organization but shall be a part of the Tasmanian Abalone Council and apart from being a forum for the expression of opinion and mechanism for providing a member of the Executive Committee shall only have authority to exercise such powers and perform such activities as may be delegated to it in writing by the Executive Committee and in exercising such authority shall operate as a sub committee of the Executive Committee.

44.4 Except that each member of a Sub-Council shall have one (1) vote on any issue or at an election and that a quorum of any meeting of a Sub-Council shall be:

(a) in the case of the Abalone Processors Sub-Council five (5) members

(b) in the case of the Abalone Divers Sub-Council ten (10) members

(c) in the case of the Quota Holders Sub-Council ten (10) members.

The Rules in the Constitution relating to procedure and elections shall, subject to the provisions of this Rule, apply with any necessary modifications to each Sub-Council.

44.5 If any question or dispute shall arise in relation to any procedure or the Rules or the validity of any election in relation to a Sub-Council then the same shall be determined by the Executive Committee (excluding the Chairman of the relevant Sub-Council) and the decision of the Executive Committee in respect of any such matter shall be final.

44.6 If at any Annual General Meeting there shall not be a quorum of members present of a Sub-Council or the members present shall determine not to elect a Chairman, then for that year the Executive Committee of the Council shall not include the Chairman or his nominee of such Sub-Council.

44.7 Each Sub-Council may appoint its own Sub-Committees.

COMMITTEES

45. Committees of the Executive Committee

45.1 The Executive Committee may from time to time delegate in writing any of its powers (other than that of delegation) to committees consisting of such persons as the Executive Committee shall think fit and may from time to time revoke any such delegation. Any committee so formed shall in the exercise of powers and authorities and discretions so delegated conform to any conditions that may be imposed on it in writing from time to time by the Executive Committee.

45.2 The Executive Committee may appoint one of the members of each committee to act as President of that committee but if at any meeting the President is not present within fifteen minutes after the time appointed for holding the meeting or if present is unwilling to act as President or if no President has been appointed the members of the committee present may choose one of their members to be President at the meeting.

GENERAL MEETINGS

46. Annual General Meeting

46.1 An Annual General Meeting shall be held once in every year (not being more than fifteen months after the holding of the last preceding Annual General Meeting) and at such place as the Executive Committee may determine.

46.2 All general meetings other than Annual General Meetings shall be deemed to be special general meetings.

47. Special General Meeting

47.1 The President or any three (3) members of the Executive Committee may call a special general meeting by directing the Secretary to do so. The Executive Committee shall convene a special general meeting upon the requisition of ten Members of more (other than Honorary and Associate Members) or otherwise on such requisition as is provided by the Code.

47.2 All business conducted at a special general meeting shall be in accordance with rule 56.

48. Notice of General Meetings

48.1 At least 35 days prior to a Special general Meeting or an Annual General Meeting notice of intention to call the meeting shall be given to the Members advising of the proposed place and day and

the hour of the meeting and that if any Member seeks to put a motion at the meeting such motion must be advised to the Secretary at least 28 days prior to the Meeting. This notice may in addition to any other means be given by advertisement in any newsletter sent to Members by post, email or otherwise.

48.2 'Not less than 21 days prior to a Special General Meeting or an Annual General Meeting notice shall be given to the Members advising of the place and the day and the hour of the meeting. In addition the Secretary shall not less than 21 days prior to such meeting cause to be forwarded to all Members, meeting papers, including all notices of motion.

48.3 The notice convening a general meeting shall give notice of the business to be transacted at that meeting.

48.4 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

49. Business Transacted at Annual General Meeting

49.1 Except for the consideration of the accounts balance sheets and the report of the Executive Committee and auditors prescribed by the Corporations Act the election of Executive Committee members (if required) and the appointment of the auditors, all business transacted at an Annual General Meeting shall be deemed to be special business.

50. Annual Report

50.1 At each Annual General Meeting the Executive Committee shall submit to the members a report which in addition to any other particulars they deem desirable shall contain a summary of activities of the Council for the period since the previous report. Such report shall before presentation at the Annual General Meeting be formally approved at a meeting of the Executive Committee.

51. Quorum

51.1 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. If a quorum is present at the commencement of business then the meeting (including the conduct of business) may continue to be conducted even if the number of members present at any time or times falls below the number required for a quorum. Save as herein otherwise provided

fifty (50) Members entitled to vote at that meeting (whether present in person or by proxy) shall constitute a quorum.

51.2 If within thirty minutes from the time appointed for the meeting convened upon the requisition of members a quorum is not present the meeting, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within thirty minutes from the time appointed for the meeting the members present (not being less than five in number) shall be a quorum.

52. President to Preside Over Meeting

52.1 Unless an independent Chairman has been appointed the President or in his absence the Vice President shall preside as President at every general meeting of the Council. If neither the President nor the Vice President is present within thirty minutes after the time appointed for holding the meeting or if being present he or they is or are unwilling to act as President the Members present (other than Honorary or Associate Members) shall choose one of their number to be chairman.

53. Adjournment of Meeting

53.1 The President of the meeting 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 from which the adjournment took place. When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

VOTING

54. Voting at General Meetings and in Respect of Special

Business at an Annual General Meeting

54.1 Voting at a general meeting and in respect of special business at an annual general meeting shall be conducted by a show of hands of members entitled to vote who are personally present or represented by proxy as per Rule 60 unless it is otherwise determined under the following procedure:

(a) Immediately prior to any vote on a resolution being conducted the Chairman of the meeting shall ask whether

there are nine (9) persons personally present and entitled to vote who require a vote conducted in accordance with the differing voting entitlement procedure set out in the Constitution.

- (b) If not less than nine (9) such persons shall by show of hands indicate that they require a vote in accordance with the differing voting entitlement procedure then the voting on that resolution shall be conducted in accordance with such procedure and prior to conducting such vote the Chairman shall ask whether there are nine (9) persons personally present and entitled to vote who require the vote to be conducted by secret ballot.
- (c) If not less than nine (9) persons shall by show of hands indicate that they require a secret ballot then a secret ballot shall be conducted.
- (d) Prior to conducting any vote the chairman of the meeting shall nominate two (2) members of the Executive Committee to act as scrutineers and if requested from the floor of the meeting by not less than nine (9) persons shall conduct a vote by show of hands to elect two additional scrutineers.

55. Motions for a General Meeting or Annual General Meeting

55.1 No motion may be put at a general meeting or as special business at an Annual General Meeting except under Rule 56 unless notice of the motion has been given in writing to the Secretary not less than twenty eight (28) days before the meeting and the Secretary has posted to all members notice of the motion.

56. Special Business

56.1 Any business that could be conducted at a General Meeting may also be conducted as special business at an Annual General Meeting. That special business shall be conducted as if that part of the meeting was a Special General Meeting.

56.2 At each Annual General Meeting a special business section shall be declared open for the purpose of:

- (a) Voting on any matter of which notice has been given in accord with Rule 48 of the Constitution.
- (b) Voting on the recommendation for the Total Allowable Catch for the year following, after receiving presentation of relevant information from stakeholders.

57. Differing Voting Entitlement Procedure

57.1 Voting in accordance with the differing voting entitlement procedure shall be conducted as follows:

- (a) Voting shall be conducted on the basis that each member shall be entitled to cast the total number of votes he is qualified to cast under the following tables:

Tables of votes for abalone quota units

For the number of abalone quota units held by a member he/she shall be entitled to cast **one vote** for each quota unit held.

Table of votes for diving licence

A member who is the holder of a fishing licence (abalone dive) or is a supervisor of such licence approved under Section 87 of the Act will be entitled to vote in accord with the following table:

A holder of a fishing licence (abalone dive) who is **3 votes** also an Abalone Diver and does not have a supervisor appointed and approved under Section 87 of the Act

A supervisor in respect of a fishing licence **2 votes** (abalone dive) (being a supervisor whose appointment has been approved under Section 87 of the Act)

A holder of a fishing licence (abalone dive) who **1 vote** does have a supervisor appointed (being a supervisor approved under Section 87 of the Act)

Table of votes for abalone processors licence

A Member who is the holder of an Abalone Processors Licence will be entitled to **21 votes**.

58. Voting Register and Entitlement to Vote

58.1 The Secretary shall maintain a voting register recording the number of votes entitled to be cast by each member and shall

at the close of each financial year amend the register according to the records held by the Department. If requested to do so the Secretary shall provide a copy of the register to any member requesting the same.

- 58.2 The voting entitlement of members will be confirmed from the licence lists issued to the Secretary by the Department and both the voting register and voting papers will be in accordance with the Department's list issued at the commencement of the current financial year (subject to paragraph 58.3).
- 58.3 At any time during the year upon being notified of any error or of any change to ownership of abalone quota units or diving licences or processor licences the Secretary shall cause a check to be made of the records held by the Department and shall amend the voting register to reflect any changes in such records.
- 58.4 No change may be made of the voting register until the relevant change in quota units or records have been made and confirmed by the Department.
- 58.5 The voting register shall not be concerned to record any form of trust mortgage, attorney or any type of estate or interest and shall only reflect the records of the Department and for the purposes of the register shall only have regard in respect of abalone quota units to the person whose name is registered on the face of the record as being the holder of the abalone units and in respect of any other licence to the person whose name is registered on the face of the record as the licence holder.
- 58.6 Should any licence or unit be held in more than one name on the records of the Department then a vote may only be cast by the Nominated Natural Person, as per the Department's records.
- 58.7 Should any licence or unit be held in the name of a corporation on the records of the Department, then the Nominated Natural Person, as per the Department's records shall be entitled to vote.
- 58.8 Each person which owns a unit/licence as per the Department's records shall be entitled to full membership of the Council but irrespective of the number of licences held shall be represented by one person in respect to each type of unit licence held by such person (who shall however be entitled to exercise the full rights of the Member under the

differing voting entitlements procedure should that procedure be used) at a meeting, irrespective of number of units/licences owned by that person.

- 58.9 At any meeting at which the differing voting entitlement procedure could be used the Secretary shall make available to the scrutineers ballot papers recording the number of votes each member is entitled to cast and a copy of the voting register. The scrutineers shall distribute to members personally present the appropriate ballot paper to enable them to vote personally and in respect of any proxy that they hold.
- 58.10 In the case of an ordinary vote each voting paper shall contain the members name and the number of votes that member is entitled to cast.
- 58.11 In the case of a secret ballot each member entitled to vote shall be issued with a voting slip appropriate to the number of votes he or she is entitled to cast. The voting paper or papers so distributed to each member shall not contain the name of that member or the name of any member for whom a vote is to be cast by proxy but the scrutineers shall record on a copy of the voting register the members who have been given voting papers and the number of votes allocated to each.
- 58.12 In the case of a secret ballot the scrutineers shall make available a box or other receptacle into which members may place completed voting papers, however, the scrutineers may if they think fit require members prior to casting votes either personally or by proxy to sign their name on a copy of the register acknowledging that they have cast the number of votes so recorded in the register.
- 58.13 A member who ceases to hold a licence referred to in Rule 11 but who remains a member shall immediately on ceasing to hold that licence cease to have any voting rights by virtue of that licence.

59. Voting Conducted by Show of Hands

- 59.1 On any vote conducted by show of hands every full member and life member present shall have one vote.

60. Proxy Votes

- 60.1 Proxy votes may be cast on:
- (i) any vote conducted by a show of hands
 - (ii) any election of the executive committee

- (iii) any voting conducted under differing voting entitlement procedure
- 60.2 A member not personally present may vote by delivering a proxy to be cast by a member personally present. To be valid a proxy must be in writing signed by and clearly identifying the member granting the proxy and specifying the member who is to be the grantee of the proxy. The grantee must be personally present at the meeting in order to exercise the proxy. The proxy must be delivered to the Secretary not less than three (3) working days prior to the commencement of the meeting and must identify the meeting at which it is to be used. A member personally present may hold a proxy of three (3) other members only.

ACCOUNTS, AUDITS & RECORDS

61. Accounts

- 61.1 The Executive Committee shall cause proper books of account to be kept with respect to -
- (a) all sums of money received and expended or otherwise dealt with by the Council and the matters in respect of which the receipts and expenditure take place;
 - (b) all sales and purchases of goods by the Council; and
 - (c) the assets and liabilities of the Council.
- 61.2 The books of account shall be kept at the registered office or subject to the Corporations Act at such other place or places as the Executive Committee thinks fit and shall always be open to the inspection of the members of the Executive Committee.
- 61.3 Subject to the Corporations Act the Executive Committee shall from time to time determine at what times and places and under what conditions or regulations the accounts and books of the Council or any of them shall be open to the inspection of Members not being members of the Executive Committee.
- 61.4 The Executive Committee shall from time to time and in accordance with the Corporations Act cause to be prepared and to be laid before the Council in general meeting such income and expenditure accounts balance sheets group accounts (if any) and reports as are referred to herein.
- 61.5 True accounts shall be kept of the sums of money received and expended by the Council and the matters in respect of which

receipts and expenditures take place and the property credits and liabilities of the Council and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution of the Council for the time being such accounts shall be open to the inspection of the members.

62. Audit of Accounts

62.1 At least once every year the accounts of the Council shall be examined and the correctness of the Balance Sheet ascertained by a properly qualified auditor who shall report to the members in accordance with the Corporations Act.

63. Appointment of Auditor

63.1 Auditors shall be appointed and their duties regulated in accordance with the Corporations Act.

EXECUTION OF DOCUMENTS

64. Cheques and Bills

64.1 All cheques bills of exchange and promissory notes shall be signed drawn accepted made or endorsed as the case may be for and on behalf of the Council in such manner as the Executive Committee may from time to time determine.

65. Common Seal

65.1 The Seal of the Council shall not be affixed to any instrument except by the authority of a resolution of the Executive Committee and in the presence of at least two Executive Committee members and those members shall sign every instrument to which the Seal is so affixed and in favour of any purchaser or person bona fide dealing with the Council such signatures shall be conclusive evidence of the fact that the Seal has been properly affixed.

66. Seal Register

66.1 A separate book shall be kept to be called the Seal Register in which prior to affixing the Seal to any instrument or other document there shall be entered a short title and description of the same together with the date of the resolution of the Executive Committee which shall be signed by the member or members of the Executive Committee who will attest the affixing of the Seal to such instrument or other document and shall be countersigned by the Secretary prior to such instrument or other document being delivered out of the custody of the Council.

NOTICES

67. Notices

67.1 Any notice, consent, offer, demand, request or other instrument required or authorised to be given or served upon a member pursuant to this Constitution shall be in the English language and in writing and be given by telex, telegram, cable, facsimile, post, email or hand to that member at his or its address shown in the Register.67.2. An instrument given or served in accordance with Rule 67.1 is deemed to have been received.

67.2 Where notice is required to be given or any document served on or lodged with the Secretary it must be given served or lodged by delivery to the Office of the Council

WINDING UP

68. Winding Up

68.1 If upon winding-up or dissolution of the Council there remains after the satisfaction of all its debts and liabilities any property whatsoever it shall not be paid to or distributed among the members of the Council but shall be given or transferred to some other association company institution or body having some objects similar to the objects of the Council and which shall prohibit the distribution of its income and property among its members to an extent at least as great as it imposed on the Council under or by virtue of this Constitution. Such other association company or institution shall be determined by the members of this Council at or before the time of dissolution and in default thereof by the Supreme Court of the State of Tasmania or a Judge thereof and if and so far as effect cannot be given to the aforesaid provisions then the distributions shall be made to some charitable object determined by the members.