

Constitution of Fisheries Inshore New Zealand Limited

This document should be read together with the Companies Act 1993

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CONSTITUTION OF FISHERIES INSHORE NEW ZEALAND LIMITED

1 Interpretation

In this Constitution:

(a) The following expressions have the following meanings:

ACE Holder means a person who from time to time holds ACE;

ACE Holder and Fisher Member means a Member recorded as an "ACE Holder and Fisher Member" on the membership roll in accordance with clause 14;

ACE Holder and Fisher Resolution means a resolution of ACE Holder and Fisher Members approved by more than 50% of the total votes exercised in relation to the proposal;

the Act means the Companies Act 1993;

Affiliated Commercial Stakeholder Organisation or Affiliated CSO means an entity that has been recognised by the Board as an "Affiliated Commercial Stakeholder Organisation" in accordance with clause 15;

Annual Landing means, in respect of any Stock that is not a Quota Management Stock, the aggregate amount in greenweight tonnes (expressed as kilograms) of that Stock land to a licensed fish receiver or sold during any Fishing Year;

Average ACE Price means, in respect of a Stock at a particular date, the average of the price of ACE for that Stock during a period comprising:

- (i) the duration to date of the then current Fishing Year; and
- (ii) the preceding two full Fishing Years prior to that date;

the Board means Directors who number not less than the required quorum acting together as the board of directors of the Company or, if the Company only has one Director, that Director;

Catch Coefficient has the same meaning as given to that term in the Second Schedule;

the Company means Fisheries Inshore New Zealand Limited;

this Constitution means this constitution as it may be altered from time to time in accordance with the Act and this Constitution;

Declared Port Price means, in respect of a Stock, a price (exclusive of GST), to be declared by the Company from time to time, and to be determined by

using an independent survey to establish the average port price that would have been paid for one kilogram of the Stock by an independent processor to an independent fisher during a period comprising:

- (i) the duration to date of the then current Fishing Year; and
- (ii) the preceding two full Fishing Years prior to that date;

Director means a person appointed as a director of the Company in accordance with this Constitution;

Fin Fish has the same meaning as both Fish and Quota Management Stock set out in section 2(1) of the Fisheries Act 1996;

Fisher means a person carrying on the activities of commercial fishing;

Fishing Year has the meaning set out in section 2(1) of the Fisheries Act 1996;

General Member Matter means a matter (not including a Quota Holder Matter) that Board determines should be put to the Members for consideration, having regard to the efficient advancement of the objects of the Company and desirability of direct participation by Members in key decision making (and the best balance between these factors in the circumstances);

General Member Resolution means a resolution of Members in relation to a General Member Matter, which may only be approved in accordance with clause 21.3;

Levy Order means an order made under the Commodity Levies Act that imposes a levy payable to the Company;

Member means persons admitted as a "member" of the Company under clause 14 of this Constitution and recorded on the membership roll in accordance clause 16.2, but excluding those persons whose membership status has been revoked under clause 17 of this Constitution;

Members' Proposal shall have the meaning given to the term in clause 20.1;

Memorandum of Understanding means a memorandum of understanding (if any) in relation to co-operate between the Company and Affiliated CSOs in relation to industry-good services;

Quota has the meaning set out in the Fisheries Act 1996;

Quota Holder means the holder of Quota;

Quota Holder Matter means any of the following:

- (i) adopting or amending this Constitution;

- (ii) approving a major transaction;
- (iii) approving the annual budget and business plan of the Company in accordance with the Second Schedule;
- (iv) approving an amalgamation of the Company;
- (v) putting the Company into liquidation;

Quota Holder Member means a Member recorded as a "Quota Holder Member" on the membership roll in accordance with clause 16;

Quota Holder Member Resolution means a resolution of Quota Holder Members in relation to a Quota Holder Matter, which may only be approved in accordance with clause 21.2;

Quota Management Stock has the meaning given to it in the Fisheries Act 1996;

Relative Dollar Value means, in relation to a Quota Holder Member:

- (i) in respect of any Stock that is a Quota Management Stock, an amount which is equal to the number of the Quota (expressed in kilograms) owned by the Quota Holder Member on a date nominated by the Company from time to time, multiplied by the Average ACE Price for that Stock, multiplied by the Catch Coefficient;
- (ii) in respect of any Stock that is not a Quota Management Stock, an amount which is equal to the number of the Annual Landing of the Quota Holder Member in the previous Levy Year, multiplied by the Declared Port Price for that Stock;

Seafood NZ means Seafood New Zealand Limited;

Share means a share in the Company;

Special Resolution means a resolution passed by shareholders whose votes together constitute not less than 75 percent of the votes cast by shareholders eligible to vote;

Stock has the meaning given to it in the Fisheries Act 1996;

Weighted Voting Entitlement means, in respect of a Quota Holder Member, the votes exercisable by a Quota Holder Member as calculated in accordance with clause 22.

- (b) Subject to clause (a) above:

- (i) expressions which are defined in the Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the Act;
- (ii) expressions which are defined in the Fisheries Act 1996 (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by that Act.

Where an expression is defined in the Act and/or the Fisheries Act 1996 more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution.

- (c) Headings appear as a matter of convenience and do not affect the interpretation of this Constitution.
- (d) The singular includes the plural and vice versa, and words importing one gender include the other genders.
- (e) A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- (f) The Schedules form part of this Constitution.
- (g) A reference in this Constitution to "written" or "in writing" shall include an email communication.

2 **Shareholders may alter or revoke this Constitution**

- 2.1 Subject to clause 13 the shareholders may alter or revoke this Constitution by special resolution.

3 **Objects of the Company**

- 3.1 The Company is incorporated to:

- (a) develop and lead the delivery of a business development strategy for the inshore Fin Fish sector as a whole;
- (b) act as the generic representative body for Members, and specifically to represent the interests of Members to Government, Government agencies and departments, and similar agencies and departments;
- (c) represent the interests of Members in seafood industry organisations and forums;
- (d) support and coordinate the activities of Affiliated CSOs and represent Affiliated CSOs on the Seafood NZ board; and
- (e) undertake such other industry-good activities as the Board considers fit.

- 3.2 To advance these objects, the Board will request Quota Holder Members to fund:

- (a) the activities of the Company as the Sector Representative Entity (as defined by the Constitution of Seafood New Zealand Limited) for the inshore Fin Fish sector;
- (b) the inshore Fin Fish sector's contribution to the national seafood body, Seafood NZ or any similar body that arises in the future where there is a need for a sector contribution, as determined by the Board; and
- (c) the employment of staff or the deployment of resources that may be required to undertake the purposes of the Company.

3.3 Nothing in clause 3.1 shall limit the capacity, powers, rights or privileges of the Company.

4 Directors to hold the Company's Shares on trust

4.1 At the time of the Company's incorporation all Shares shall be held jointly by the Directors for the time being on trust for all persons admitted as Members of the Company. The joint interest of a Director in the Shares does not constitute the personal property of that Director.

4.2 The votes attached to the Shares held jointly by the Directors must be exercised by the chairperson in accordance with clause 13.

4.3 A change in membership of the Board does not constitute the sale, transfer, exchange or other disposal of any Shares or any interest in any Share. Nor does any change in Board membership require any share transfer or other notice or (subject to clause 4.4) evidence of change in the registered holder of a Share.

4.4 The Board must ensure that that share register of the Company is promptly updated whenever there is any change in membership of the Board.

5 Board to issue Shares

Section 45 of the Act does not apply to the Company. The Board may only issue Shares to persons who hold the shares on trust for all persons admitted as Members of the Company. Subject to the requirement that Shares be held on trust the Board may issue Shares at any time, to any person, and in any number it thinks fit. Such Shares may rank as to voting or distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

6 Share transfers

Any person wishing to transfer Shares may only transfer Shares to a person who holds the shares on trust for all persons admitted as Members of the Company.

7 Board may refuse or delay a Share transfer in certain cases

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares if:

- 7.1 permitted to do so by the Act;

7.2 the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer; or

7.3 the transfer is not, in the Board's opinion, in the best interests of the Company.

8 Board must refuse a Share transfer in certain cases

The Board must refuse the registration of any transfer of Shares if:

8.1 it is required to do so by law; or

8.2 the transfer does not comply with clause 6 of this Constitution.

9 Company may acquire and hold Shares

The Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act. If the Company intends to transfer any Shares which it has acquired and held, such transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this Constitution for issues of Shares.

10 Company may issue and redeem redeemable Shares

The Company may:

10.1 issue redeemable Shares; and

10.2 redeem redeemable Shares in accordance with the Act and the terms of issue of the redeemable Shares; and

10.3 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares, in accordance with the Act and the terms of issue of the redeemable Shares.

11 Meetings of Members and meetings of shareholders

11.1 The Board shall call a meeting of Members at least once each year.

11.2 The provisions of the First Schedule to this Constitution shall apply in respect of a meeting of Members.

11.3 Schedule 1 of the Act shall apply to meetings of shareholders of the Company. Except as provided in Schedule 1 of the Act, a meeting of shareholders may regulate its own procedure through the chairperson.

12 Written shareholders' resolution instead of holding a meeting

A shareholders' resolution in writing, which complies with the requirements of the Act, is as valid as if it had been passed at a meeting of shareholders.

13 Voting entitlement of shareholders

Shareholders may only vote on any resolution or execute a written shareholders' resolution in relation to a Quota Holder Matter or a General Member Matter if the

shareholders have been authorised to do so, and directed on how to exercise the voting rights attaching to shares, by a Quota Holder Member Resolution or General Member Resolution (as applicable) in relation to the matter passed in accordance with clause 21. A shareholder must exercise the voting rights attached to their shares in the manner directed by Quota Holder Member Resolution or General Member Resolution (as the case may be).

14 Admission as a Member

14.1 The following persons shall be admitted as Members of the Company in accordance with (as applicable) clauses 14.2, 14.3, 14.4 and 15:

- (a) Quota Holders, in accordance with clause 14.2 or 14.3 (as applicable);
- (b) ACE Holders and Fishers, in accordance with clause 14.4; and
- (c) Affiliated CSOs relating to the inshore Fin Fish sector or such other sectors approved by the Board in accordance with clause 15.

14.2 Prior to the commencement of a Levy Order, Quota Holders shall be admitted as a Member upon written request to the Board, provided that the Board is satisfied that the Quota held by the Quota Holder is of a type that is relevant to the Company's objects in clause 3.1, as determined by the Board. Written request by a Quota Holder to be a Member shall be deemed to be acceptance by the Quota Holder of the rights and obligations of Quota Holder Members under this Constitution.

14.3 As soon as practicable following the commencement of a Levy Order, all Quota Holders in respect of Quota that is the subject of a Levy Order shall be admitted as a Quota Holder Member and recorded on the membership roll in accordance with clause 16.

14.4 ACE Holders and Fishers shall be admitted as a Member upon written request to the Board, subject to prior payment of the membership fees set out in clause 18. Written request by an ACE Holder or Fisher to be a Member shall be deemed to be acceptance by the ACE Holder or Fisher of the rights and obligations of ACE Holder and Fisher Members under this Constitution.

14.5 A Sector Representative Entity may not be admitted as a Member.

14.6 Persons who are not a Member (but are eligible to be a Member) cannot participate in any of the business of the Company, and will, as far as reasonably practicable, be prevented from directly benefitting from the activities of the Company.

15 Affiliated Commercial Stakeholder Organisations

15.1 Upon written application to the Board, the Board may recognise an entity as an Affiliated CSO and Member if the Board is satisfied that:

- (a) the entity is appropriately mandated to represent the sector of the seafood industry that it purports to represent;

- (b) that sector of the seafood industry is not represented by another Affiliated CSO; and
 - (c) the entity is, or will become, a party to the Memorandum of Understanding (if any) determined by the Board from time to time.
- 15.2 Each entity recorded on the membership roll as an Affiliated CSO as at 30 August 2015 shall continue to be an Affiliated CSO until such time as it ceases to be an Affiliated CSO in accordance with this Constitution.
- 15.3 The Board may revoke an Affiliated CSO's status as an Affiliated CSO if all directors (excluding any director appointed by that Affiliated CSO in accordance with clause 26) resolve to revoke its status as an Affiliated CSO on the basis that the entity does not meet the requirements for recognition as an Affiliated CSO under clause 15.1.
- 15.4 Written application to the Board by an entity to be a Member as an Affiliated CSO shall be deemed to be acceptance by the entity of the rights and obligations of Affiliated CSOs under this Constitution.
- 15.5 Until such time as a Levy Order commences, each Affiliated CSO shall use reasonable endeavours to encourage Quota Holders who are shareholders or members of the Affiliated CSO to become a Quota Holder Member in respect of the Company in accordance with clause 14.2.
- 16 Company to maintain a membership roll**
- 16.1 The Company shall establish and maintain a roll which records all current Members of the Company at any given time. If a person ceases to be a Member, the Board shall remove that person from the membership roll as soon as practicable.
- 16.2 Members will be recorded on the membership roll according to their eligible category of membership under this Constitution, being either:
- (a) a Quota Holder Member;
 - (b) an Affiliated CSO; or
 - (c) an ACE Holder and Fisher Member.
- 16.3 Only those persons recorded as a Member on the membership roll shall be entitled to exercise rights under this Constitution as a Member.
- 16.4 Any Member may inspect the membership roll on reasonable request to the Company.
- 17 Removal from membership roll**
- 17.1 Any Quota Holder Member or ACE Holder and Fisher Member's membership status may be revoked by the Board if:

- (a) the Member fails to pay any amount payable to the Company in accordance with this Constitution (including the membership fee required by clause 18 and the levy required by clause 39) in a reasonable time as determined by the Board, and in the case of membership fees, provided the Board has given prior notice of the deadline for payment of the membership fees; or
- (b) the Member no longer meets the requirements of their particular category of membership, as determined by the Board.

17.2 Where a Member has received notice of a deadline from the Board under clause 17.1(a) of this Constitution and that deadline has passed without payment of the required membership fee:

- (a) that Member may not exercise any rights under this Constitution, including, but not limited to, the voting rights set out in clause 21 of this Constitution;
- (b) a Director appointed by that Member (whether alone or in combination with one or more other Members) may not participate in discussions on any resolution, or exercise a vote in relation to any resolution,

in either case until such time as all outstanding membership fees or levies are paid in full by that Member.

17.3 Where the Board determines to remove a Member from the membership roll pursuant to clause 17.1 the Board must give written notice of the Board's decision to that Member as soon as is reasonably practicable.

18 **Membership fee**

18.1 Each ACE Holder and Fisher Member shall pay an annual membership fee for a year commencing on 1 October and ending on the following 30 September. The membership fee shall be \$150 (or such other amount as determined by the Board from time to time by unanimous approval).

18.2 Payment by an existing ACE Holder and Fisher Member of the annual membership fee required pursuant to clause 18.1 prior to 1 October of any year shall be deemed an application to the Board for renewal of membership. Upon payment of the membership fee, membership for a further year for the period from 1 October to 30 September shall be automatically renewed, subject to clause 17.

19 **Rights of Members with respect of general meetings**

19.1 Any Member:

- (a) may call a general meeting of the Members;
- (b) is entitled to receive a notice of a meeting of Members;
- (c) may attend a meeting of Members;
- (d) is entitled to receive a notice of a shareholders' meeting;
- (e) may attend a shareholders' meeting; and

- (f) may, subject to clause 20, propose in accordance with clause 20 a Members' Proposal for consideration at a meeting of Members.

20 **Members' Proposals**

- 20.1 Any Members who in total are 3% or more of the total number of Members shall together have the right to, acting jointly, propose that an issue be discussed and voted on by the Members at the next general meeting of the Members at which those Members are entitled to vote by giving written notice to the Board of the Members' Proposal.
- 20.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Members' Proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.
- 20.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, at the expense of the Members, give notice of the Members' Proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.
- 20.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, if practicable, and at the expense of the Members, give notice of the Members' Proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.
- 20.5 The Directors must give the proposing Members the right to include in or with the notice given by the Board a statement of not more than 500 words prepared by the proposing Members in support of the proposal, together with the names and addresses of the proposing Members.
- 20.6 The Board is not required to include in or with the notice given by the Board:
 - (a) any part of a statement prepared by Members that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (b) any part of a proposal or resolution prepared by Members that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).

21 **Rights of Members to vote and Member resolutions**

- 21.1 Members shall be entitled to exercise voting rights as follows:
 - (a) A Quota Holder Member may:
 - (i) in relation to a Quota Holder Matter, exercise voting rights in relation to a Quota Holder Member Resolution equal to the Quota Holder Member's Weighted Voting Entitlement as determined in accordance with clause 22;

- (ii) in relation to a decision or recommendation to be approved by Quota Holders in accordance with clause 23, exercise voting rights equal to the Quota Holder Member's Weighted Voting Entitlement as determined in accordance with clause 22;
 - (iii) in relation to a General Member Matter, exercise one vote in relation to a General Member Resolution on that General Member Matter.
 - (b) An ACE Holder and Fisher Member may, in relation to a General Member Matter or an ACE Holder and Fisher Resolution, exercise one vote in relation to a resolution on that General Member Matter or an ACE Holder and Fisher Resolution.
 - (c) An ACE Holder and Fisher Member may not exercise any votes in relation to a Quota Holder Matter.
 - (d) An Affiliated CSO may not exercise any voting rights in relation to any matter put to Members or shareholders for approval (whether a Quota Holder Matter or General Member Matter, or an ACE Holder and Fisher Resolution).
- 21.2 A Quota Holder Member Resolution shall only be deemed to be approved by Quota Holder Members if the Quota Holder Member Resolution is approved by 75% or more of the total Weighted Voting Entitlement entitled to be exercised in relation to the proposal.
- 21.3 A General Member Resolution made in accordance with clause 21.7 shall only be deemed to be approved by Members if the General Member Resolution is approved by more than 50% of the total votes exercised in relation to the proposal.
- 21.4 An ACE Holder and Fisher Resolution shall only be deemed to be approved by ACE Holder and Fisher Members if the ACE Holder and Fisher Resolution is approved by more than 50% of the total votes exercised in relation to the proposal.
- 21.5 A written resolution in relation to a matter signed or assented to by all of the Members then entitled to receive notice of a meeting of Members and vote on the matter is as valid and effective as if it had been passed at a meeting of the Members duly convened and held.
- 21.6 Any written resolution under clause 21.2 may consist of several copies of the resolution, each signed or assented to by one or more of the Members. A copy of a written resolution, which has been signed and is sent by email, facsimile or any similar means of communication will satisfy the requirements of this clause.
- 21.7 The Board may determine at its sole discretion that a matter proposed for consideration and vote by Members (whether as a Quota Holder Matter or a General Member Matter) be voted on any of the following bases:
- (a) a fish stock basis (with such number of fish stocks as the board determines at its sole discretion), so that approval of a matter requires the requisite level of

support under clause 21.2 or 21.3 (as applicable) within that complex of fish stocks.

- (b) a regional basis (with such number of regions as the board determines at its sole discretion), so that approval of a matter requires the requisite level of support under clause 21.2 or 21.3 (as applicable) within each region.

22 Calculation of Weighted Voting Entitlement of Quota Holder Members

A Quota Holder Member's Weighted Voting Entitlement shall be such number of votes equal to the Relative Dollar Value of Quota held by the Quota Holder Member.

23 Quota management areas and other matters requiring particular resolution

23.1 Subject to clause 23.2, the Company must not make any decisions, including decisions regarding recommendations to the Government (whether to a government department or Minister) concerning:

- (a) any proposed subdivision or amalgamation of any quota management area or areas for a Stock;
- (b) any alteration to the total allowable commercial catch concerning any quota management area for a Stock;
- (c) any other matter that the Board (by a majority of 75% of Directors voting on the question) considers to be of a nature that requires a prior mandate of the Quota Holder Members,

unless such decision or recommendations have first been approved by a resolution of at least **75%** of the Weighted Voting Entitlement (calculated in accordance with clauses 21.7 and 22) of Quota Holder Members who are registered as owners of any of the Quota in respect of any of the quota management areas concerned or in respect of any affected Quota (as applicable).

23.2 If a CSO has sole responsibility for a particular Stock (to the exclusion of any other CSO), then the Company shall not make any decision or recommendation concerning any matter referred to in clause 23.1 in relation to that Stock without the agreement of the CSO. For the avoidance of doubt, the Company may make a decision or recommendation in accordance with clause 23.1 in respect of a fishery for which more than one CSO has responsibility.

24 Composition of Board

24.1 The Board shall comprise:

- (a) such number of directors as are appointed or elected by Quota Holder Members in accordance with clause 25;
- (b) such number of directors as are appointed by Affiliated CSOs in accordance with clause 26;

- (c) a maximum of two directors elected by ACE Holder and Fisher Members in accordance with clause 27, provided that at least one of directors elected pursuant to clause 27.1 shall be an employee or officer of an active Fisher; and
- (d) any additional director appointed by the Board in accordance with clause 28.

25 Appointment of directors by Quota Holders

- 25.1 Any Quota Holder Member or group of Quota Holder Members who together are the registered owners of Quota the Relative Dollar Value of which is not less than 1.0% of the total aggregate Relative Dollar Value of stocks represented by the Company, may, by notice in writing to the Company, appoint one director, **PROVIDED THAT** such Quota Holder Member or group of Quota Holder Members will not be entitled to appoint or participate in the appointment or election of any other director to hold office during the term of a director appointed by that Quota Holder Member or group of Quota Holder Members, including pursuant to the procedure under clause 25.4.
- 25.2 The notice required by clause 25.1 must be:
- (a) given by the Quota Holder Member or group of Quota Holder Members and received by the Company at least 7 days before the next annual meeting;
 - (b) signed by the Quota Holder Member or group of Quota Holder Members; and
 - (c) accompanied by notice in writing, signed by the person being so appointed as a director, consenting to act as a director.
- 25.3 A director appointed under clause 24.1 shall hold office from the end of the next annual meeting until he or she:
- (a) resigns in accordance with clause 34; or
 - (b) is removed or vacates office in accordance with clause 30.
- 25.4 Any Quota Holder Member who has not participated in the appointment of a current director under clause 25.1 (in this clause 25.4, an "Eligible Quota Holder Member") may participate in the election of additional directors under clause 24.1(a) in accordance with the following procedure:
- (a) No less than two Eligible Quota Holder Members may together nominate for election as a director any person who is not disqualified under the Act from being a director, by notice in writing to the Company no later than 20 working days prior to the scheduled date of the next meeting of Members.
 - (b) All eligible nominations for election as a director received in accordance with clause 25.4(a) shall be included in the notice of the forthcoming meeting of Members sent to Members or otherwise published by the Board, along with an explanation to the effect that all Eligible Quota Holder Members are entitled to

vote in an election for additional directors of the Company in accordance with clauses 25.4(c) and 25.4(d).

- (c) All Eligible Quota Holder Members are entitled to vote only once in a single election for additional directors of the Company at a meeting of Members.
- (d) A person nominated for election as a director shall be deemed to be appointed as a director of the Company if at a vote taken at the meeting of Members the nominee is approved by Eligible Quota Holder Members who together are the registered owners of Quota the Relative Dollar Value of which is not less than 1.0% of the total aggregate Relative Dollar Value of stocks represented by the Company.
- (e) Any director so appointed in accordance with clause 25.4(d) shall hold office until the end of the annual meeting of Members that occurs in the second year following the director's appointment, when they shall be deemed to have retired. A director who shall cease to hold office may be re-nominated in accordance with clause 25.4(a) and re-appointed in accordance with clause 25.4(d).

26 **Appointment of directors by Affiliated CSOs**

- 26.1 Each Affiliated CSO may appoint one director by written notice to the Company where the Affiliated CSO represents Quota the Relative Dollar Value of which is not less than 1.0% of the total aggregate Relative Dollar Value of stocks represented by the Company, provided the person is not disqualified under the Act from being a Director.
- 26.2 For the avoidance of doubt, in the event that Affiliated CSO amalgamates or otherwise merges with one or more other Affiliated CSOs, the new consolidated CSO may only appoint one director under clause 26.1, however the Board shall have the discretion to appoint an additional director to provide regional representation.
- 26.3 Where an Affiliated CSO represents Quota the Relative Dollar Value of which is less than 1.0% of the total aggregate Relative Dollar Value of stocks represented by the Company, then notwithstanding the ability to establish separate a committee for particular Stocks, the Board may invite the Affiliated CSO to nominate a person for appointment as a director, and upon receipt of such nomination the Board may appoint the nominated person as a director in accordance with clause 28 to better provide for representation of the Stocks.

27 **Appointment of directors by ACE Holder and Fisher Members**

- 27.1 The ACE Holder and Fisher Members may appoint up to two directors pursuant to clause 24.1(c) in accordance with the following procedure:
 - (a) No less than two ACE Holder and Fisher Members may together nominate for election as a director any person who is not disqualified under the Act from being a director, by notice in writing to the Company no later than 20 working days prior to the scheduled date of the next meeting of Members.

- (b) All eligible nominations for election as a director received in accordance with clause 27.1(a) shall be included in the notice of the forthcoming meeting of Members sent to Members or otherwise published by the Board, along with an explanation to the effect that all ACE Holder and Fisher Members are entitled to vote in an election for additional directors of the Company in accordance with clauses 27.1(c) and 27.1(d).
- (c) All ACE Holder and Fisher Members are entitled to vote only once in a single election for additional directors of the Company at a meeting of Members. Each ACE Holder and Fisher Member shall have one vote in relation to the proposed appointment of directors by ACE Holder and Fisher Members.
- (d) On a vote of ACE Holder and Fisher Members taken in relation to the proposed appointment of directors by ACE Holder and Fisher Members:
 - (i) If two or more persons have been validly nominated, the two nominees receiving the highest number of votes shall be deemed each appointed as a director of the Company.
 - (ii) If only one person has been validly nominated, the nominee shall be deemed to have been appointed as a director if the appointment is approved by ACE Holder and Fisher Resolution.
- (e) Any director so appointed in accordance with clause 27.1(d) shall hold office until the end of the annual meeting of Members that occurs in the second year following the director's appointment, when they shall be deemed to have retired. A director who shall cease to hold office may be re-nominated in accordance with clause 27.1(a) and re-appointed in accordance with clause 27.1(d).

28 Appointment of directors by the Board

The Board may, including in the event that an Affiliated CSO amalgamates or otherwise merges with one or more other Affiliated CSOs, at its sole discretion appoint additional directors to provide appropriate regional or Stock representation on the Board.

29 Notices of appointment or removal of Directors

Any notice of appointment or removal of a director or the chairperson of the Board may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act, or from such later time as the notice states that it is to take effect.

30 Removal of directors

30.1 A director may be removed from office:

- (a) in the case of a director appointed under clause 25.1, by the Quota Holder Member or group of Quota Holder Members who appointed that director, in the same manner as the director was appointed; or

- (b) in the case of a director appointed under clause 25.4, by Quota Holder Resolution of all those Quota Holder Members who either:
 - (i) did not participate in the appointment of a current director under clause 25.1; or
 - (ii) have given notice under clause 30.2(b) where the relevant director is vacating office at the end of the annual meeting at which the Quota Holder Resolution is passed; or
- (c) in the case of a director appointed under clause 27.1, by an ACE Holder and Fisher Resolution.

30.2 A director appointed under clause 25.1 must vacate office:

- (a) immediately, if at any time the Quota Holder Member or group of Quota Holder Members who appointed that director no longer together are the registered owners of at least 1.0% of the Quota holdings referred to in clause 25.1; or
- (b) at the end of the next annual meeting, if any of the Quota Holder Members who appointed that director notify the Company in writing that they no longer wish to support the continuance in office of that director **UNLESS** the remaining Quota Holder Members who appointed the director and have not given such notice are together the registered owners of at least 1.0% of the Quota holdings referred to in clause 25.1.

31 Board may fill casual vacancy on the Board

The Board may appoint any person to be a director to fill a casual vacancy. Subject to clause 30, any person appointed by the Board as a director to fill a casual vacancy shall hold office only until the end of the next annual meeting of the Company.

32 Directors to elect Chair of Board

The directors shall elect one of the directors appointed by one or a group of Quota Holder Members under clause 25 as chair of the Board.

33 Office of director vacated in certain cases

33.1 The office of director is vacated if the person holding that office:

- (a) dies; or
- (b) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (c) resigns that office in accordance with clause 34; or
- (d) is removed from office in accordance with this Constitution or the Act.

34 Director's resignation procedure

A director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

35 Directors may appoint and remove alternate Directors

Every director may:

35.1 appoint any person who is not disqualified by the Act from being a director to act as an alternate Director in his or her place; and

35.2 remove that person from that office,

by giving written notice to that effect to the Company.

36 Alternate Director

36.1 While acting in the place of the director who appointed him or her, the alternate director:

(a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that director (including the right to receive notice of, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate director);

(b) is also subject to the same terms and conditions of appointment as that director, except in respect of remuneration.

36.2 The appointment of an alternate Director terminates automatically if the director who appointed him or her ceases to be a director.

37 Board to manage Company

The Company's business and affairs must be managed by, and under the direction or supervision of, the Board, except to the extent that the Act or this Constitution provides otherwise. Without limiting the obligation to act in good faith and what the director believes to be in the best interests of the company, each director shall have regard to the interests of Members holding one species of Quota and any combination of species of Quota, to the extent that those species of Quota are relevant to the Company's objects in clause 3.

38 Board has powers necessary to manage Company

38.1 The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this Constitution provides otherwise.

38.2 The Company may contract with any shareholder or group of shareholders, Member or group of Members to undertake a specific project as their agent.

39 Quota Holder Members to pay Levy

- 39.1 Quota Holder Members recorded on the membership roll must pay the Company a levy or contribution (including any amount payable under any Levy Order) authorised under this Constitution, and payable in accordance with the business plan, formulated and approved pursuant to the provisions of the Second Schedule.
- 39.2 A Quota Holder's rights shall be suspended if that Member fails to pay any amount payable to the Company in accordance with this Constitution (including any levy imposed pursuant to the Constitution, or a levy made under a Levy Order).
- 39.3 Levies and contributions authorised under this Constitution shall be invoiced on a periodic basis.

40 Extraordinary contribution or levy

- 40.1 The Board may resolve that an extraordinary event not anticipated in a budget or business plan approved in accordance with the provisions of the Second Schedule necessitates the imposition of an extraordinary contribution or levy calculated in accordance with clause 40.2 and clause 40.3.
- 40.2 Where the Board resolves that the extraordinary event affects all Quota Holder Members, the Board may require an extraordinary contribution or levy from all Quota Holder Members. The extraordinary contribution or levy required from each Quota Holder Member shall be in proportion to the amount of Quota of which the Quota Holder Member is the registered owner compared to the total holdings of Quota registered as owned by all the Company's Quota Holder Members at the time the contribution is required.
- 40.3 Where the Board resolves that the extraordinary event affects primarily the holders of Quota for a particular species, either as a whole or in relation to a particular quota management area or areas (in this clause 40.3 called the "relevant quota"), the Board may require an extraordinary contribution or levy from Members who are the registered owners of the relevant quota (in this clause 40.3 called the "Affected Members"). The contribution or levy required from each Affected Member shall be in proportion to the amount of relevant quota of which the Affected Member is the registered owner compared to the total holdings of relevant quota registered as owned by all Affected Members at the time the contribution is required.

41 Meetings of the Board

The Third Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.

42 Committee proceedings

The provisions of this Constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.

43 Directors must disclose their interests

43.1 As soon as a directors becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, that director must cause to be entered in the interests register, and disclose to the Board:

- (a) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
- (b) the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

44 General disclosure in certain cases will suffice

44.1 For the purposes of clause 43, a general notice entered in the interests register and disclosed to the Board to the effect that a director:

- (a) is a shareholder, director, officer, or trustee of another named Company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other Company or person,

shall be a sufficient disclosure of that interest in relation to such transactions.

45 Failure to disclose does not affect validity of transaction

Any failure by a director to comply with clause 43 does not affect the validity of a transaction entered into by the Company or the director. However, the transaction may be avoided under clause 46.

46 Company may avoid transaction if director interested

Where the Company enters into a transaction in which a director is interested, the Company may avoid that transaction in accordance with the Act.

47 Interested Director may vote

Under section 144 of the Act, a director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may vote on a matter relating to the transaction and otherwise act in his or her capacity as a director in relation to the transaction as if he or she were not interested in the transaction, except when restricted from doing so elsewhere in this Constitution.

48 Board's power to authorise remuneration and other benefits is limited

The Board may authorise payments or actions under section 161 of the Act only if the relevant payment or action has been approved by a Special Resolution or with the prior written agreement or concurrence of all Members. This clause does not apply to the payment of remuneration or the provision of other benefits to an executive director (if any) in his or her capacity as an executive or to any other director in respect of any professional services provided by that director to the Company.

49 **Restriction on Board's rights to delegate its powers**

The Board may delegate to a committee of directors, a director, an employee of the Company or any other person, any one of more of its powers other than those powers which cannot be delegated under the Act. Without limiting this clause, the Board may constitute a committee of directors and/or other persons to consider issues relating to a specific fish stock, groups of fish stocks, quota management areas or other regions.

50 **Board delegates to comply with regulations**

In exercising the Board's delegated powers, any committee of directors, director, employee or employees of the Company or any other person must comply with any regulations that the Board may impose.

51 **Company may indemnify directors and employees for certain liabilities**

The Company may indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

52 **Company may effect insurance for directors and employees**

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may affect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

53 **Manner of execution of deeds**

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) two or more Directors; or
- (b) if there is only one Director, that Director, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with the Act.

54 **Distribution of surplus assets in kind**

If the Company is liquidated the liquidator shall, at the direction of shareholders, and Quota Holder Members by Quota Holder Members Resolution, but subject to any other sanction required by the Act:

54.1 divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

- (a) fix such values for surplus assets as the liquidator considers to be appropriate, and

- (b) determine how the division will be carried out as between shareholders or different classes of shareholder; and

54.2 vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those Members as the liquidator thinks fit,

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

**FIRST SCHEDULE
MEETINGS OF MEMBERS**

1 Construction of First Schedule

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a Member present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a Member, a representative of a corporate Member, an attorney of a Member, and any person who may lawfully act on behalf of a Member.

2 Notice of meetings of Members

- 2.1 Written notice of the time and place of a meeting of Members must be sent to every Member entitled to receive notice of the meeting and to every Director and any auditor of the Company not less than 10 working days before the meeting.
- 2.2 The notice of meeting must be a written notice delivered by hand to the required recipients required by clause 1, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the required recipient provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.
- 2.3 The notice must:
- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and
 - (b) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice.
- 2.4 A proxy form must be sent with each notice of meeting.
- 2.5 Any irregularity in a notice of a meeting is waived if all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such shareholders and Members agree to the waiver.
- 2.6 The accidental omission to send notice of a meeting to, or the failure to receive notice by, any person entitled to that notice, does not invalidate the proceedings at that meeting.
- 2.7 If a meeting is adjourned for fewer than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 2.8 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

3 **Meetings of Members**

A meeting of Members may be held either:

- (a) by a number of Members, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of an audio, or audio and visual, communication by which all Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4 **Quorum for meetings of Members**

- 4.1 Business may be transacted at a meeting of Members only if a quorum is present at the time when the meeting proceeds to business.
- 4.2 A quorum for a meeting of Members is present if enough Members are present in person or by proxy (or, if applicable, who exercise votes by postal vote) such that more than 50 percent of the total Weighted Voting Entitlements of all Quota Holder Members are present.
- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding Weighted Voting Entitlements together carrying at least 3 percent of the Weighted Voting Entitlements entitled to be exercised, the meeting will be dissolved automatically.
- 4.4 If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.

5 **Chairperson of meetings of Members**

- 5.1 The chairperson of a Members' meeting shall be the chairperson of the Board, if one is present.
- 5.2 If no chairperson of the Board is present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the Directors present may elect one of their number to be chairperson of the meeting.
- 5.3 If at any meeting of Members, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Members present may elect one of their number to be chairperson of the meeting.
- 5.4 The chairperson of a meeting at which a quorum is present:
 - (a) may adjourn the meeting with the consent of the Members present who are entitled to attend and vote at that meeting; and
 - (b) must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

- 5.5 The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.
- 5.6 If the chairperson proposes to dissolve a meeting pursuant to clause 5.5 and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

6 Voting at meetings of Members

- 6.1 In relation to:
- (a) a Quota Holder Members Resolution, voting shall be conducted by poll;
 - (b) a General Member Resolution or an ACE Holder and Fisher Resolution, voting shall be conducted by poll or by a show of hands or by voice vote, as the chairperson may determine
- 6.2 In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson does not have a casting vote.
- 6.3 Unless a poll is conducted, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner is carried by the requisite majority or lost shall be conclusive evidence of that fact.

7 Voting by polls

- 7.1 At a meeting of Members, a poll may be demanded, either before or after a vote by show of hands or voice vote, by the chairperson, at his or her absolute discretion.
- 7.2 A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.
- 7.3 If a poll is taken, votes must be counted according to the votes eligible to be exercised in relation to the particular matter, as determined in accordance with this Constitution.
- 7.4 The chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted.

7.5 The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

7.6 The auditor of the Company (including employees and agents of the auditor) for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

8 **Proxy voting**

8.1 Any Member may either exercise the right to vote by being present in person or represented by proxy.

8.2 A proxy for a Member is entitled to attend and be heard at a meeting of Members as if the proxy were the Member.

8.3 A proxy must be appointed by a notice in writing that is signed by the Member, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be an employee or shareholder of the Member company.

8.4 No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

8.5 A notice appointing a proxy shall be in such form as the Board may direct.

8.6 Proxy forms must provide for two-way voting on all resolutions, enabling the Member to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. "chairman of directors") filled in as proxy holder.

8.7 So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

8.8 Where:

- (a) the Member has ceased to be a Member; or
- (b) the Member has ceased to be entitled to vote on any matter on which a Member would usually be entitled to vote; or
- (c) the proxy, or the authority under which the proxy was executed, has been revoked,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that cessation or transfer before the start of the meeting, the vote of the proxy is valid.

9 **Postal votes permitted at discretion of the Board**

A shareholder or Member may not exercise the right to vote at a meeting by casting a postal vote, if the Board at its discretion approved postal voting for a particular meeting and gives notice to Members in the notice of meeting, to the effect that Members are entitled to cast votes by post.

10 **Corporations may act by representative**

A body corporate which is a Member may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the Member.

11 **Board must keep minutes of proceedings**

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

12 **Chairperson may regulate other proceedings**

Except as provided in this Schedule, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.

**SECOND SCHEDULE
PROCEDURE GOVERNING SETTING OF LEVY RATE**

1 Construction

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

2 Definitions

In this Schedule:

Affected Quota Holder Members means Quota Holder Members who are registered owners of the specific Quota to which a proposed Stock Specific Levy for a Stock Specific Activity relates;

Annual Landing means, in respect of any Stock that is not a Quota Management Stock, the aggregate amount in greenweight tonnes (expressed as kilograms) of that Stock land to a licensed fish receiver or sold during any Fishing Year;

Average ACE Price means, in respect of a Stock at a particular date, the average of the price of ACE for that Stock during a period comprising:

- (a) the duration to date of the then current Fishing Year; and
- (b) the preceding two full Fishing Years prior to that date;

Catch Coefficient means, in relation to calculating the Relative Dollar Value of a Stock, the applicable multiplier for the Stock from amongst the following options:

- (a) if the total landings of the Stock during the Fishing Year immediately preceding the Levy Year for which the levy is collected are greater than 60% of the Total Allowable Commercial Catch for that Stock, the multiplier for that Stock shall be 1.0; or
- (b) if the total landings of the Stock during the Fishing Year immediately preceding the Levy Year for which the levy is collected are greater than 30% and less than or equal to 60% of the Total Allowable Commercial Catch for that Stock, the multiplier for that Stock shall be 0.6; or
- (c) if the total landings of the Stock during the Fishing Year immediately preceding the Levy Year for which the levy is collected are greater than 5% and less than or equal to 30% of the Total Allowable Commercial Catch for that Stock, the multiplier for that Stock shall be 0.3; or
- (d) if where the total landings of the Stock during the Fishing Year immediately preceding the Levy Year for which the levy is collected are less than or equal to 5% of the Total Allowable Commercial Catch for that Stock, the multiplier for that Stock shall be 0.0;

Core Service Activities means:

- (a) industry-good services or activities provided or to be provided by the Company to Quota Holders in general, and which overall benefit Quota Holders as a whole; and
- (b) participating in an entity (including Seafood NZ) that provides services that benefit the seafood industry as a whole or Quota Holder Members generally, and obtaining and providing funding for the allocated share of associated costs;

Core Services Levy means that part of the Total Levy that may be used by the Company for the purposes of Core Service Activities, including funding of:

- (a) general running and administration costs to be incurred by the Company in the performance of the Core Service Activities; and
- (b) the Company's allocation of costs requested by Seafood NZ, recommended by the Fisheries Inshore Board and Directors and agreed at the relevant AGM;

Core Services Levy Rate means the rate at which the Core Services Levy is set in accordance with the procedure set out in clause 5 expressed as a percentage of Relative Dollar Value of Quota or Annual Landing;

Fishing Year has the meaning set out in section 2(1) of the Fisheries Act 1996;

Levy Order means an order made under the Commodity Levies Act that imposes a levy payable to the Company;

Levy Payer means a Member who is required to pay a levy or contribution (including any amount payable under any Levy Order) pursuant to clause 39.1 of this Constitution;

Levy Year means an initial period determined by the Board, and, after that initial period, each 12 month period commencing on 1 October every year;

Maximum Levy Rate means a rate equal five percent of the Relative Dollar Value of Quota or Annual Landing of a particular Stock;

Minimum Levy Amount means the amount (if any) determined by the Board under clauses 3.3 and 6.1 of this schedule;

Minister has the meaning set out in section 2(1) of the Commodity Levies Act 1990;

Relative Dollar Value means, in relation to a Quota Holder Member:

- (a) in respect of any Stock that is a Quota Management Stock, an amount which is equal to the number of the Quota (expressed in kilograms) owned by the Quota Holder Member on a date nominated by the Company from time to time, multiplied by the Average ACE Price for that Stock, multiplied by the Catch Coefficient for that Stock;
- (b) in respect of any Stock that is not a Quota Management Stock, an amount which is equal to the number of the Annual Landing of the Levy Payer in the previous Levy Year, multiplied by the Declared Port Price for that Stock;

Stock Specific Activities means any industry-good services or activities undertaken primarily for the benefit of Quota Holders in respect of one or more particular Stocks, either as a whole or in relation to a particular quota management area or areas or any combination thereof;

Stock Specific Levy means that part of the Total Levy that is to be levied in respect of a particular Stock for the purpose of funding Stock Specific Activities provided or to be provided by the Company or an Affiliated CSO in relation to the particular Stock;

Stock Specific Levy Rate means the rate at which the Stock Specific Levy is set in accordance with the procedure set out in clause 5, expressed in Relative Dollar Value of Quota or Annual Landing;

Support Referendum means the support referendum (as defined in section 2(1) of the Commodity Levies Act 1990) relied on by the Minister when the Minister recommended that the Governor-General make the Levy Order;

Total Allowable Commercial Catch has the meaning set out in section 2(1) of the Fisheries Act 1996;

Total Levy Rate means the rate determined in accordance with *clause 4*;

Total Levy means, subject to clause 12 of this Second Schedule, the total amount (exclusive of GST) to be levied in respect of a particular Stock, and is determined by the following formula:

$$T = R \times V$$

where:

T is the Total Levy;

R is the Total Levy Rate; and

V is the Relative Dollar Value of Quota or Annual Landing owned by Levy Payers for the Stock.

3 Board to determine Levies

- 3.1 The Board shall, in accordance with the provisions of this Schedule, determine the Total Levy payable in respect of each Stock for each Levy Year.
- 3.2 The Total Levy payable in respect of a Stock shall be a rate (expressed as a percentage of the Relative Dollar Value of Quota or Annual Landing) equal to the Total Levy Rate for that Stock.
- 3.3 The Board may, in accordance with the Schedule, determine a Minimum Levy Amount for each levy year.
- 3.4 If the aggregate Total Levy amount calculated for a Quota Holder Member in respect of a particular Levy year is less than the Minimum Levy Amount, the Board shall determine that the amount of levy payable under clause 39.1 of the constitution for the Levy Year by the Quota Holder Member shall be the Minimum Levy Amount (and not the aggregate Total Levy amount for that Quota Holder Member).
- 3.5 Notwithstanding any other provision in this Schedule, the Minimum Levy Amount for the Levy Year commencing 1 October 2013 shall be the amount that is stated to be the proposed Minimum Levy Amount in the annual budget and business plan for that year, provided that the annual budget and business plan is approved by Quota Holder Members in accordance with this constitution.

4 Calculation of Total Levy Rate

The Total Levy Rate for a Stock shall be a rate equal to the aggregate of:

- 4.1 the Core Services Levy Rate; and
 - 4.2 the Stock Specific Levy Rate for that Stock (if any),
- but shall not exceed a rate equal to the Maximum Levy Rate.

5 Procedure for approval of Total Levy Rate and Minimum Levy Amount

- 5.1 The Board may not determine the Total Levy Rate and the Minimum Levy Amount for a Levy Year unless it has first complied with the following provisions of this clause 5.
- 5.2 The Board shall formulate an annual budget and business plan for the Company for the forthcoming Levy Year, including:
 - (a) a description of the activities proposed to be undertaken by the Company or funded by the Company and undertaken by an Affiliated CSO during the Levy Year, including identifying separately any Core Service Activities and Stock Specific Activities, with such description to contain sufficient detail to enable those Quota Holders to form a reasoned judgement in relation to the proposal;
 - (b) the proposed level and timing of levies required by Members to fund the proposed activities, either as a Core Services Levy or Stock Specific Levy; and
 - (c) the proposed Minimum Levy Amount (if any).
- 5.3 The Board shall provide details of the proposed annual budget and business plan for the Company for the Levy Year for which the Total Levy Rate and Minimum Levy Amount (if any) will apply, by:
 - (a) sending a summary of the annual budget and business plan to all Quota Holder Members; and
 - (b) publishing the full annual budget and business plan on the Company's website (if any),

not less than 10 working days prior to the meeting of Members at which the proposed annual budget and business plan is to be discussed, and by providing a full copy of the annual budget and business plan to any Levy Payer on request.
- 5.4 The Board shall seek the approval of the proposed annual budget and business plan at a meeting of Members as follows:
 - (a) Approval of the Core Service Activities, the associated Core Services Levy and Minimum Levy Amount as provided for in the proposed annual budget and business plan shall only be by Quota Holder Members Resolution, with all Quota Holder Members eligible to exercise their respective Weighted Voting Entitlement under clause 22 of this Constitution;
 - (b) Approval of the Stock Specific Activities and associated Stock Specific Levy as provided for in the proposed annual budget and business plan shall only be by Quota Holder Members Resolution, with only Affected Quota Holder Members eligible to vote (and who shall be entitled to exercise their respective Weighted Voting Entitlement).

6 Determination of Total Levy Rate and Minimum Levy Amount

- 6.1 Subject to the Board first complying with clause 5, the Board shall determine, prior to the commencement of a Levy Year:
- (a) the Core Services Levy Rate in respect of the Core Service Activities to apply in respect of that Levy Year;
 - (b) any Stock Specific Levy Rate for a Stock to apply in respect of that Levy Year; and
 - (c) any Minimum Levy Amount.
- 6.2 The Core Services Levy Rate, Stock Specific Levy Rate and Minimum Levy Amount determined by the Board under clause 6 shall:
- (a) be no greater than the Core Services Levy Rate, Stock Specific Levy Rate and Minimum Levy Amount (as applicable) proposed in the annual budget and business plan for that Levy Year approved by Quota Holder Members in accordance with clause 5.4;
 - (b) apply from and including the first calendar day of the relevant Levy Year to and including the last calendar day of that Levy Year.
- 6.3 Subject to clause 7, the Core Services Levy Rate shall be the same for all Stocks.
- 6.4 The Stock Specific Levy Rate shall not exceed a rate which is equal to the difference between the Maximum Levy Rate less the Core Services Levy Rate for that Levy Year.

7 Adjustment to Core Services Levy Rate for specific Stocks

- 7.1 The Board may, in its absolute discretion, determine that the Core Services Levy Rate payable in respect of a particular Stock in any Levy Year shall be less than the Core Services Levy Rate for that Levy Year determined in accordance with clause 6 of this Schedule if:
- (a) the Board is satisfied that an Affiliated CSO has entered into arrangements with the Company which will ensure that the Company will receive, in respect of the Stock for which a lesser Core Services Levy Rate for that Stock is proposed, funds available for use by the Company for the purposes for which any Core Services Levy may be used and which are equal to the funds which the Company would otherwise have received from the Levy Payers represented by the Affiliated CSO; or
 - (b) the Board is satisfied that the amount collected by the Company in any previous Levy Year in respect of any Stock Specific Levy was greater than the amount expended by the Company or payable by the Company to an Affiliated CSO for the services provided by the Company or the Affiliated CSO under the relevant Project Plan,

in which case, the Board may adjust the Core Services Levy Rate for any such Stock in accordance with clause 7.2.

- 7.2 If any of the circumstances described in clause 7 apply, the Board may adjust the Core Services Levy Rate for a Stock as follows:
- (a) in respect of any Stock to which clause 7(a) applies, the Board may set the Core Services Levy Rate for that Stock at zero; or

- (b) in respect of any Stock to which subclause 7(b) applies, the Board may, having regard to the amount of surplus funds retained by the Company in respect of that Stock, adjust the Core Services Levy Rate for that Stock to a rate which, in the reasonable opinion of the Board, is intended to result in the Company having funds available for use by the Company for the purposes for which any Core Services Levy may be used and which are equal to the funds which the Company would otherwise have received in respect of that Stock had no adjustment to the Core Services Levy Rate for that Stock been made.

8 Initial Core Services Levy Rate specified in Support Referendum

Subject to clause 12 of this Schedule, if a Levy Order has commenced, the Board shall set the Core Services Levy Rate for the first Levy Year following commencement of the Levy Order at the rate specified in the Support Referendum.

9 Notice of Total Levy Rate

9.1 The Board shall give notice of the Total Levy Rate, the Core Services Levy Rate and any Stock Specific Levy Rate for each Stock, and the Minimum Levy Amount (if any) as at the commencement of a Levy Year:

- (a) if a Levy Order has commenced, by giving notice in the *New Zealand Gazette*; and
- (b) in all cases by giving written notice to all Quota Holders,

not less than 10 working days prior to the commencement of the relevant Levy Year.

10 Where Stock Specific Activities to be provided by an Affiliated CSO

10.1 If a Stock Specific Levy is approved by the Board on the basis that the Stock Specific Service is to be provided or procured by an Affiliated CSO as identified in the annual budget and business plan, then:

- (a) the relevant Affiliated CSO shall be engaged by the Company to provide the relevant services;
- (b) the terms on which any Affiliated CSO is retained by the Company to provide services referred to in a Project Plan must provide, among other things, that the total amount payable by the Company to the relevant Affiliated CSO for those services shall be the lesser of:
 - (i) the price to be paid by the Company for those services specified in those terms; or
 - (ii) the total amount of the Stock Specific Levy actually received by the Company in respect of that Stock.

11 Application of excess Stock Specific Levy amounts

If the amount collected by the Company for any Stock Specific Levy on a Stock exceeds the total amount expended by the Company or payable by the Company to the relevant Affiliated CSO for the services referred to in the relevant Project Plan, then the balance may be retained by the Company and may be applied by the Company, against any Stock Specific Levy payable in respect of that Stock in any future Levy Year(s).

12 Special Provision that may Apply if Levy Order Commenced

Notwithstanding any other clause in this Schedule, if a Levy Order has commenced and the applicable levy payable by a Quota Holder Member in a Fishing Year when calculated in

accordance with clauses 1 to 11 of this Schedule is less than the Minimum Levy Amount, the Board may in its absolute discretion set a Total Levy (comprising a single levy amount) payable by such a Quota Holder Member at an amount that is less than the Minimum Levy Contribution (including zero).

THIRD SCHEDULE PROCEEDINGS OF THE BOARD

- 1 Director's power to convene meetings**
A director, or any other person at the request of a director, may convene a meeting of the Board by giving notice in accordance with this Schedule.
- 2 Notice to be sent to director's address**
The notice of meeting must be a written notice delivered by hand to the director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the director provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.
- 3 Notice to contain certain details**
The notice of meeting must include the date, time and place of the meeting and the matters to be discussed in sufficient detail to enable a reasonable director to appreciate the general import of the matters.
- 4 Period of notice required to be given to Directors**
At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.
- 5 Absent directors**
Where a director is absent from New Zealand or another usual country of residence, but supplies the Company with a facsimile number, address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that director. Otherwise notice need not be given to any director who is absent from New Zealand or another usual country of residence. However, if he or she has an alternate director who is in New Zealand or that other usual country of residence, then notice must be given to that person.
- 6 Directors may waive irregularities in notice**
Any irregularity in the notice of a meeting, or failure to comply with *clauses 1 to 5* of this Schedule is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all directors entitled to receive notice of the meeting agree to the waiver.
- 7 Methods of holding meetings**
A meeting of the Board may be held either:

 - 7.1 By a number of directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 7.2 By means of audio, or audio and visual, communication by which a quorum of directors participating can simultaneously hear each other throughout the meeting.
- 8 Quorum for Board meeting**
The quorum necessary for the transaction of business at a meeting of the Board is a majority of directors, unless the Company has only one director, in which case the quorum is one director. The shareholders may change the number of directors required for a quorum by

Special Resolution. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the directors present will constitute a quorum.

10 Chairperson to chair meetings

The chairperson of the Board will chair all meetings of the Board at which he or she is present. If the office of chairperson of the Board is vacant, or if at a meeting of the Board the chairperson of the Board is not present within 5 minutes from the time appointed for the meeting, then the directors present may elect one of their number to chair the meeting.

11 Voting on resolutions

11.1 Each director has one vote. A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it. A director present at a meeting of the Board may abstain from voting on a resolution, and any director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

11.2 A director may not participate in discussions on any resolution, or exercise a vote in relation to any resolution, for so long as the rights under this Constitution of the Member who appointed the director are suspended under clause 39.2 of the Constitution.

12 Chairperson does not have a casting vote

In the case of an equality of votes, the chairperson of the Board does not have a casting vote.

13 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

14 Written resolutions of Board permitted

14.1 A written resolution signed or assented to by all of the directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

14.2 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

15 Board may regulate other proceedings

Except as set out in this Schedule, the Board may regulate its own procedure.