Constitution of FishSA

1. **Name**

   The name of the association shall be FishSA

2. **Definitions**

   2.1. The following words and expressions used in this constitution shall have the meanings hereinafter respectively assigned to them unless otherwise stated or inconsistent with the context in which they appear:

   2.1.1 "the Act" means the Marine Living Resources Act, No. 18 of 1998 (as amended from time to time), and any other Act which may be passed having the effect of replacing the Act, in whole or in part. References to the Act shall be taken to include any regulations, policy documents or notices published pursuant thereto;

   2.1.2 "the Association" means FishSA;

   2.1.3 "business day" means any day except a Saturday, Sunday or public holiday;

   2.1.4 "the Department" means the Department of Agriculture Forestry and Fisheries, or any other government department that may in the future become responsible for the administration of the Act, any part thereof or any power or obligation thereunder. Any reference to the Department shall include, where appropriate, a reference to the Minister, his/her delegated functionary, official, employee, advisor or other representative of the Department;

   2.1.5 "the Branch" means the Branch Fisheries of the Department of Agriculture Forestry and Fisheries and includes any entity to which the Branch is successor at law.

   2.1.6 "fishing" means the harvesting of any marine animal, whether piscine or not, caught by a boat or other vessel, and harvested in terms of a fishing right; and includes the legal harvesting of any fish caught in conjunction with target species, or the production by
2.1.7 "fish"

means of marine aquaculture of species that would otherwise be the result of fishing.

2.1.8 "fishing right"

means a right to catch fish granted to the holder in terms of Section 18 the Act, and includes any permit or other authorisation granted pursuant to such right;

2.1.9 "founding member"

means a member who accedes to this Constitution at the date of adoption and whose name appears in Annexure “A” hereto

2.1.10 "member"

means a member of the Association as set out in this constitution and includes, unless the context indicates to the contrary, the representative of such Member as nominated by the Member from time to time;

2.1.11 "postal ballot"

means any method or form of voting, including but not limited to e-mail, telephone or facsimile, conducted between members by the Secretary outside of a formal meeting at the behest of the chairperson

2.1.12 "Minister"

means the Minister of Agriculture, Forestry and Fisheries or any other relevant Minister when non-fishery related matters are at issue.

2.1.13 "Sector"

means one of the commercial fishing sectors officially recognised by the Department.

2.1.14 "Register"

means the document placed in the minute book reflecting members in good standing and their voting rights, to be kept by the Secretary

2.2 Words not defined herein shall have their ordinary meanings, in the event of ambiguity, words will have the meaning imputed to them by the Chairman in General Meeting.

2.3 Unless the context clearly indicates a contrary intention, words importing:

2.3.1 any one gender shall include the other gender;
2.3.2 the singular shall include the plural and *vice versa*;

2.3.3 natural persons shall include created entities (whether corporate or non-corporate) and *vice versa*.

2.4 Where any number of days is prescribed in this constitution, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day.

3. **Objects**

3.1 The objects of the association are -

3.1.1 generally to promote the development of the commercial fishing sector by engaging with the Department, the Branch and the Minister and other Authorities on matters that affect the commercial fishing industry as a whole to ensure the optimal utilisation of the resource in a sustainable manner; consistent with an ecosystem approach to fisheries.

3.1.2 to engage with the Department, the Branch and the Minister and other Authorities interacting with Members, including the South African Maritime Safety Authority and the National Regulator for Compulsory Standards, to ensure that adequate consultation and proper information is provided on the development of policy applicable to the commercial fishing industry, and to facilitate co-management initiatives in the sector;

3.1.3 to establish a forum for communication between members and the Department, the Branch and the Minister and other Authorities;

3.1.4 to encourage the optimum utilisation of the commercial fish stocks in a manner that develops South African capacity, creates employment and facilitates human resource development in a manner that is consistent with the principles and objectives of the Act;

3.1.5 to support the carrying out of regular scientific research in a manner to allow best practice fisheries management;

3.1.6 to protect and further the common interests of right holders in the leading commercial sectors of the fishing industry as defined in the Act.

3.1.7 to engage in any representative fishing industry related business referred to by a constituent Member saving that any one Member may veto the conduct of such business provided that the Member has a legitimate interest in the business in question.

3.1.8 to act as an Industrial Body as envisaged in section 8 of the Act;
3.1.9 to provide opportunities for collaboration and discussion between members on matters of mutual interest save that no discussion or collaboration may ever occur in relation to the pricing of fish products or other acts of market orchestration whether in relation to products or production factors;

3.1.10 to protect and further the interests of FishSA for which purpose the Association shall be empowered to deal with all matters designed to achieve these objects consistent with the objectives in General

3.1.11 to raise, administer and invest funds to achieve the objects of the Association;

3.1.12 facilitate the resolution of disputes between members

3.1.13 to perform all such other lawful acts as are incidental or conducive to the attainment of the objects of the Association.

3.2 It is specifically recorded that the Association shall not engage in any discussions or activities contrary to the guidelines of the Competition Act

4. Powers

The Association shall have all the powers necessary for the proper attainment of the objects set out above, saving that FishSA may take no action in derogation of the powers of any of its constituent Members. Without derogating from the general powers of the Association, it shall have the power to -

4.1 impose and receive subscriptions, levies and contributions from its members;

4.2 open and operate banking accounts in the name of the Association;

4.3 apply funds for any purposes that comply with the objects of or in the interests of the Association and the members;

4.4 to appoint and remunerate any person or persons in cash for services rendered in its formation or in the development and attainment of its objects inclusive of an Accounting Officer

4.5 to appoint a Secretary; who will be responsible for the administrative affairs of FishSA and who will serve as a Member of the Management Committee ex officio

4.6 invest money;

4.7 enter into contracts and to execute any contracts, deeds and documents; and

4.8 institute and defend any legal proceedings.

5. Status

5.1 The Association shall:
5.1.1 be a corporate body, distinct and separate from its members;
5.1.2 not conduct its business for the purpose of gain;
5.1.3 have perpetual succession, notwithstanding any change in the number and identity of its members from time to time.

5.2 The income, assets and monies of the Association from whatsoever source derived shall be applied solely towards the promotion of the objects of the Association as set forth in this constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits to the persons who are at any time or have been members of the Association or to any persons claiming through them, provided however that nothing herein contained shall prevent the payment in good faith of their out-of-pocket expenses to any officer or member of the Association, or to the payment in good faith of remuneration of any person (whether a member of the Association or not) for any services rendered to the Association.

5.2.1 All legal proceedings shall be brought by or against the Association in its own name, and the members may authorise any person to act on behalf of the Association to sign all such documents and to take all such steps as may be necessary in connection with such proceedings.

6. **Membership**

6.1 **eligibility**

6.1.1 Membership of the Association shall be restricted to leading industrial bodies of the commercial fishing industry recognised under section 8 of the Act as published by notice in the Government Gazette saving that founding members may agree amongst themselves that certain constituted industrial bodies may be recognised as leading industrial bodies by custom and practice for the purpose of attaining membership notwithstanding that the Department may not (yet) have granted formal recognition to some such bodies

6.1.2 Membership of FishSA will be restricted to industrial bodies able to show they are representative of the constituents of the sector in which they have been accorded recognition. For representivity purposes the threshold shall be greater than 40% (by mass in TAC designated fisheries or effort in TAE fisheries)

6.1.3 Membership of the Association shall initially be open to the following industrial bodies recognised under section 8 of the Act:

6.1.3.1 South African Deep-Sea Trawl Industry Association;
6.1.3.2 South African Pelagic Fishing Industry Association;
6.1.3.3 South East Coast Inshore Fishing Association
6.1.3.4 South Coast Rock Lobster Industry Association;
6.1.3.5 West Coast Rock Lobster Association;
6.1.3.6 South African Midwater Trawling Association.
6.1.3.7 South African Tuna Association
6.1.3.8 South African Squid Management Industrial Association

6.1.4 The signatories to "Annexure A" to this constitution shall be the founding members of the Association.

6.1.5 Every industrial body recognised under section 8 of the Act, other than a founding member, desirous of becoming a member of the Association shall make application to the Association in writing in a manner as may be stipulated from time to time by the Management Committee.

6.1.6 The Management Committee shall consider each application on receipt and shall decide whether or not to admit such applicant as a member of the Association.

6.1.7 The decision of the Management Committee shall be final and the Management Committee shall not be obliged to give any reasons for any such decisions.

6.2 resignation

Any member may resign as a member at any time by giving 3 (three) months written notice of its intention to do so to the Management Committee.

6.3 Forfeiture and Suspension

6.3.1 A member shall forfeit its membership of the Association if it conducts itself in a manner which in the sole and absolute opinion of the Management Committee is unbecoming for a member of the Association. If in the opinion of the Management Committee the offense does not warrant loss of Membership, the offending Member may be suspended for a period at the discretion of the Management Committee.

6.3.2 The Management Committee shall not make any decision involving the forfeiture or suspension of a member's membership without in writing, inviting the member to attend a Management Committee meeting to explain why its membership should not be forfeited or suspended for reasons set out in such written invitation.

6.3.3 The decision of the Management Committee regarding forfeiture of membership shall be final and binding.
6.4 entrance fee

The Management Committee may from time to time determine what entrance fee shall be payable by members upon their election as members of the Association.

6.5 subscription fees

6.5.1 The Management Committee shall from time to time determine the annual subscription fees payable by members.

6.5.2 The Management Committee shall notify each member annually of the subscription fees due and payable by that member.

6.5.3 Members shall pay their subscription fees within such time limits as may be prescribed by the Management Committee from time to time.

6.6 liabilities

Members shall not be liable to meet the debts, engagements or liabilities of the Association and the liabilities shall be limited solely to the amounts due by them in respect of the entrance or subscription fees payable by them in terms of this constitution.

6.7 addresses

Each member shall be obliged to furnish to the Management Committee a postal address, and email address to which the Association shall be entitled to forward all correspondence for the attention of such member.

7. Meetings of Members

7.1 general meetings

7.1.1 The Association shall hold a meeting of its members, to be its annual general meeting not later than six months after the end of each financial year of the Association and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

7.1.2 The annual general meeting of the Association shall be held at such place and at such time as the Management Committee shall from time to time determine

7.1.3 An inaugural meeting of FishSA will directly follow upon a meeting called for the sole purpose of considering and adopting this Constitution. The inaugural meeting shall then transact the necessary business of an annual general meeting except such business as would be inappropriate in foundationary circumstances.

7.1.4 The annual general meeting shall be held for the purposes of -
7.1.4.1 receiving the Management Committee's report for the preceding financial year;

7.1.4.2 receiving and approving the financial statements of the association for the preceding financial year

7.1.4.3 determine the remuneration of the Accounting officer for the current financial year;

7.1.4.4 the election of members of the Management Committee as and when required;

7.1.4.5 reviewing the financial situation of FishSA and determining subscriptions payable in the light thereof.

7.1.4.6 considering such resolutions in respect of which proper notice has been given; and

7.1.4.7 general discussion.

7.2 special general meetings

7.2.1 The Management Committee may call a special general meeting whenever it thinks fit provided that it shall call a general meeting of members if requested to do so in writing by not less than such number of members as will constitute a quorum at general meetings of the Association.

7.2.2 A special general meeting of the Association shall be held at such place and at such time as the Management Committee shall from time to time determine.

7.2.3 The purpose of a special general meeting of members of the Association shall be to consider a resolution of which general notice has been given and the Management Committee shall only be obliged to call a special general meeting of the Association at the request of members, if, when requisitioning such a meeting, they set out details of the resolution(s) to be considered.

7.3 notice of general meeting

7.3.1 Notice of any general meeting shall set out the hour, day and venue of the proposed meeting and shall detail the resolutions to be considered at such meetings.

7.3.2 Such notice shall be sent by post, facsimile, or email to each member, or a representative of each member (as nominated in writing from time to time by the relevant member), at least seven days prior to the meeting provided that the accidental omission to send such notice to any member shall not invalidate such meeting.
7.4 **quorum**

The quorum for any general meeting of the Association shall be a number of members that is equal to at least one-third of all members of the Association in good standing, present at the time that the general meeting commences.

7.5 **adjournment**

7.5.1 If within half an hour of the time appointed for the holding of a general meeting, a quorum is not present, the meeting shall be dissolved, unless it is an annual general meeting in which case it shall stand adjourned to such time and place as the chairman shall appoint and due notice shall be sent to all members to that effect.

7.5.2 If at such adjourned meeting a quorum is not present within half an hour of the time appointed for the holding of such meeting, the members present shall be a quorum.

7.6 **chair**

The chairman of the Management Committee, or failing him or her, the vice chair, shall preside at every general meeting of the Association provided that if both are unable to or are not present at the time appointed for the holding of such meeting, the members present may choose some other member of the Management Committee to preside as chairman.

7.7 **voting**

7.7.1 At all meetings of the Association will endeavour to arrive at a consensus, where there is no consensus each Member in good standing will be entitled to one vote, any resolution put to the vote of the meeting shall be decided by a simple majority on a show of hands unless a Member present calls for a secret ballot where a simple majority will also prevail.

7.7.2 A declaration by the chair of the meeting that a resolution has been carried or not carried by a particular majority shall be conclusive and an entry to that effect shall be made in the minute book of the Association which shall be conclusive evidence thereof always provided that no Member exercises rights in terms of 3.1.7 of this Constitution at any stage.

7.7.3 If, between meetings of the Association, any matter arises which requires an urgent decision, the chairperson may authorise a postal ballot the result of which will stand unless a member calls for a short notice meeting in lieu of the ballot. The decision of such postal ballot shall be immediately reported to members by the Secretary and considered a decision of the association and entered into the minutes of the next general meeting.
7.7.4 In the case of an equality of votes, whether on a show of hands or secret ballot, the chair of the meeting shall be entitled to a second or casting vote.

7.8 minutes

The Management Committee shall procure that minutes of the meeting are prepared and recorded in a minute book of the Association and minutes signed by the chairman as being correct subsequent to their adoption at the next meeting shall be conclusive evidence of the happenings at any meeting of members.

8. Management

8.1 management committee

The management of the affairs of the Association shall vest in the Management Committee whose members shall be persons nominated by Members, elected at annual general meetings of the Association and who shall hold office from the termination of the annual general meeting at which they are elected until the termination of the second annual general meeting after the meeting at which they were elected saving that the Secretary's position will be subject to Clause 4.5.

8.2 composition

8.2.1 The Management Committee shall comprise of the following office bearers -

8.2.1.1 the chair;
8.2.1.2 the vice chair;
8.2.1.3 the Secretary; and
8.2.1.4 no less than three other persons

8.2.2 The Management Committee shall have the power to co-opt any member of the Association to fill any casual or other vacancy on the Management Committee or to form such sub-committee with such powers as it may from time to time decide.

8.2.3 A Member may nominate an observer/commentator to attend a Management Committee Meeting. Such a commentator/observer will not vote but will have the power to exercise the veto as set out in Clause 3.1.7.

8.2.4 The Management Committee may invite such other persons, whether members of the Association or not, as they may deem fit, to attend one or more meetings of the Management Committee to advise on various topics being discussed by the Management Committee provided that such invitees shall have no voting power on such Management Committee.
8.3 election of management committee members

8.3.1 Electable Management Committee members shall be elected by members of the Association present and entitled to vote at an annual general meeting after first having been nominated as follows -

8.3.1.1 at any time prior to the commencement of an annual general meeting a member may in writing nominate to the Management Committee, a member of the Association for election to a particular post where the person so nominated has agreed in writing to his nomination, In the absence of sufficient written nominations the Chairperson may cause to have persons nominated from the floor in such manner as may be deemed fit.

8.3.1.2 all retiring members of the Management Committee shall be deemed to have been nominated unless they have in writing declared themselves to be unwilling for re-election.

8.3.2 The election of Management Committee members to fill each post shall be taken in such manner as the chairman of the annual general meeting shall in his sole discretion determine subject to the provisions of this Constitution.

8.4 powers

8.4.1 Subject to the provisions of this constitution and to any directions given by members of the Association at any general meeting of members, the Management Committee shall be vested with all powers of the Association in terms of this constitution.

8.4.2 The Management Committee shall be entitled to operate banking accounts by way of nominating two panels each consisting of two persons to be signatories. The persons comprising the first panel shall be drawn from Management Committee members. One person from each panel shall sign all instructions to the bank including cheques.

8.4.3 The Management Committee shall be deemed to have delegated all or any of its powers to an Executive Management Committee comprising any three elected Management Committee members, of which the chairman or vice chairman shall be one, and that Executive Management Committee may by unanimous decision bind the Association in regard to any matter which is urgent.

8.5 proceedings

8.5.1 The Management Committee shall meet as often as the business of the Association may require but not less than four times in each financial year.

8.5.2 At least two clear days written notice with an agenda for the meeting shall be given of all meetings, unless members of the Management Committee agree to accept shorter notice.
The secretary shall, on the written instructions of the chairman or on a written request of not less than two members of the Management Committee, convene a meeting of the Management Committee provided that the notice calling such meeting shall set forth the agenda for such meeting.

The Management Committee shall not transact any business other than that set out on the agenda saving that any other business may be transacted provided it adheres to the objects of FishSA and the Management Committee agree unanimously thereto.

Decisions of the Management Committee shall be made by majority vote. All members of the Management Committee present at a meeting shall be entitled to one vote each. In the case of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.

quorum

A quorum for Management Committee meetings shall be half the number of Members of the Management Committee.

minutes

The Management Committee shall cause proper minutes to be kept of the proceedings of all meetings of the Management Committee and such minutes if signed by the chairman shall be conclusive evidence of further proof of the facts stated therein.

Minutes and draft minutes of the Management Committee shall only be open to the inspection members.

resignation and termination of membership

Any Management Committee member may resign by submitting his resignation in writing.

A member of the Management Committee shall cease to be such a member if -

he absents himself without leave for more than three consecutive meetings of the Management Committee, of which due notice has been given;

he is removed by ordinary resolution of members at a general meeting of the association;

he is removed by a resolution passed or supported by not less than three-quarters of all members of the Management Committee whether present at the Management Committee meeting at which the resolution is taken or not.
8.9 advisors

The Management Committee may by resolution invite any person to attend Management Committee meetings for the purposes of advising the Management Committee on any matter which it may deem expedient.

8.10 indemnity

8.10.1 Each member of the Management Committee is hereby indemnified out of and from the funds and property of the association, against all losses, charges, costs, damages and other liability which that member may incur or be put to in connection or about the execution of his duties as a member of the Management Committee and no such member shall be held answerable or deemed to be in any way responsible for any act or default of any other member of the Management Committee or for any deficiency or insufficiency of any title or security whatsoever taken by the association.

8.10.2 No member of the Management Committee shall be liable for any losses occasioned by the banker or other persons with whom monies or securities of the association are deposited or entrusted for safe custody, investment or otherwise, nor for any loss, misfortune or damage which may happen or take place in the fair and reasonable execution of that member's duties or as a result thereof.

8.10.3 Notwithstanding the provisions of this sub-clause 8.10 each member of the Management Committee shall be liable for all loss or damage which is occasioned by that member's *mala fide* acts or through that member's wilful default.

9. Finances

9.1 year end

9.1.1 The financial year of the Association shall commence on 1st January each year and shall end on 31st December.

9.2 accounts

9.2.1 The Management Committee shall cause to be kept such books of account as are necessary to exhibit a true and fair view of the state of the Association's affairs and such books shall be kept at such place as the Management Committee thinks fit.

9.2.2 The Management Committee shall cause to be prepared and laid before the Association at each annual general meeting, an "income and expenditure account" for the financial year and a "balance sheet" as at the end of each financial year.

9.2.3 Each balance sheet shall be accompanied by a report of the Management Committee as to the state and condition of the Association and the report, income and expenditure account and
balance sheet shall be signed by two officers of the Management Committee appointed by the Management Committee for that purpose.

9.2.4 At least once in each year the accounts of the Association shall be examined and the correctness of the "income and expenditure account" and the "balance sheet" shall be certified by an accounting officer with necessary experience appointed as accounting officer for FishSA.

9.2.5 The accounting officer for each financial year shall be appointed by the AGM.

9.2.6 The remuneration and appointment of the accounting officer shall be fixed at the annual general meeting of the Association.

9.2.7 The accounting officer shall at all times have access to the books of account of the Association and they may in relation thereto examine Management Committee minutes.

9.2.8 The accounting officer shall make a report to the members as to the correctness of the "income and expenditure account" and the "balance sheet" and such report shall be laid before the members at the annual general meeting.

9.2.9 Every account of the Association when presented and approved at an annual general meeting shall be deemed conclusively correct and shall not be re-opened, save if any area be discovered therein within three months after the approval thereof in which event the accounts shall forthwith be corrected and thenceforth shall be conclusive.

9.3 **bank accounts**

9.3.1 The Association shall open such accounts with such banks as may be determined by the Management Committee.

9.3.2 All monies received by the Association shall be paid into, and all payments made by the Association shall be made electronically or by cheque drawn on, such bank accounts.

10. **Amendment**

10.1.1 This constitution may not be varied, added to, deleted from or substituted except at a general meeting of the Association called in terms of a notice giving full details of the variation, addition, deletion or substitution.

10.1.2 No resolution varying, adding to, deleting or substituting this constitution shall be passed save by a two-thirds majority of members present and voting at the meeting considering any resolution to that effect.
11. Dissolution

11.1.1 The Association may only be dissolved by a resolution passed at a general meeting of the association by a two-thirds majority of members present and entitled to vote.

11.1.2 In the event of the Association being dissolved, the Management Committee shall be empowered to dispose of the assets of the Association by -

11.1.2.1 redeeming all the liabilities of the Association from its funds; and

11.1.2.2 allocating the balance (if any) of the funds and assets to such other charitable organisation which in their sole and absolute opinion has objects similar to those of the Association.

Adopted at a Constitutional Meeting held in Cape Town on 14th June 2011.
Annexure A
FOUNDING MEMBERS

Name: T. W. REDOERLE Signature: 
For an on behalf of 
South African Deep-Sea Trawl Industry Association;

Name: G. J. de VILLIERS Signature: 
For an on behalf of 
South African Pelagic Fishing Industry Association;

Name: R. DE VOS Signature: 
For an on behalf of 
South Coast Rock Lobster Industry Association;

Name: J. COOPER Signature: 
For an on behalf of 
South East Coast Fishing Industry Association;

Name: J. E. G. BROWN Signature: 
For an on behalf of 
West Coast Rock Lobster Association;

Name: A. E. G. MOIR Signature: 
For an on behalf of 
South African Midwater Trawling Association.

Name: E. D. CURTIS Signature: 
For an on behalf of 
South African Tuna Association.

Name: E. D. CURTIS Signature: 
For an on behalf of 