

Instructions

Harbour Authority Model By-law (1)

Mandatory Provisions Only

There are only two by-law provisions that are mandatory under the NFP Act. At a minimum, a corporation's by-laws need to address the following:

- Conditions required for membership (see explanation below)
- Notice of meetings to members who are entitled to vote at the meeting (see explanation below)

If there are no other provisions in the by-laws, the default rules will automatically apply. If the needs of your corporation are met by the default rules and you only need the 2 mandatory provisions, you may wish to use this model Harbour Authority Model By-laws (1) – Mandatory Provisions.

If you need to change 1 or more of the default rules, then you should use Harbour Authority Model By-Law (2) – Full By-laws and chose specific provisions from that Model.

Membership Conditions

1. These must be the same as what you submitted to Industry Canada in the corporation's Articles of Continuance.
2. What to consider when considering membership conditions for your Harbour Authority: Page: 1
 - ✓ How many members should have a vote?
 - ✓ Do you want to have voting and non-voting members?
 - ✓ How many classes of members are required?
 - ✓ Consider what types of groups/ representation from the community, municipality, recreational boaters, local business, etc. you would like involved in the Harbour Authority.
 - ✓ Can you provide a membership list (names and addresses) for all of your members?
 - ✓ Is your membership wide enough to include various interests in the Harbour Authority?
3. The last clause in each of the model provisions is standard and the paragraphs mentioned above are outlined in the Act and deal with the following: 197(1) (e) – change of condition required for being a member; (h) – add, change or remove a provision respecting the transfer of membership; (l) – change the manner of giving notice to members entitled to vote at a meeting of members; and (m) – change the method of voting by members not in attendance at a meeting of members.

Notice of Members Meetings

1. Consider Page: 1
how you typically communicate with your members?
 - ✓ Mail, courier, personal delivery
 - ✓ Telephone
 - ✓ Electronically (e-mail, Facebook, website, etc.)
 - ✓ Notice boards
 - ✓ Local newspaper

Please note that anything in blue are instructions or clarifications and should be removed from your final document.

If you require any additional information Industry Canada has produced a very useful "Transition Guide" which can be found on their website at the following link:

[http:// www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04962.html](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04962.html)
<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04962.html>

Please consult "Step 3" of this guide for information related to By-Laws.

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A by-law relating generally to the conduct of the affairs of

(the "insert name of Harbour Authority")

1. Membership Conditions

OPTION for ONE membership class composed of individuals, corporations and other entities which are all considered "persons".

Suggested wording for a Harbour Authority with one (1) class of membership made up of commercial fishers:

Subject to the articles, there shall be one class of members in the Corporation made up of **<commercial fishers>**. Membership in the Corporation shall be available to persons interested in furthering the Corporation's purposes and who have applied for and been accepted into membership in the Corporation by resolution of the board or in such other manner as may be determined by the board. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendments to this section of the by-laws if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

OPTION for two or more membership classes composed of individuals, corporations and other entities which are all considered "persons".

Suggested wording for three classes of membership:

Class A: commercial fishers – voting

Class B: recreational boaters - voting

Class C: Others - non-voting

You may wish to define the classes (i.e. commercial fishers, recreational boaters, etc.)

Subject to the articles, there shall be three classes of members in the Corporation, namely, Class A members, Class B and Class C members. The board of directors of the Corporation may, by resolution, approve the admission of the members of the Corporation. Members may also be admitted in such other manner as may be prescribed by the board by resolution. The following conditions of membership shall apply:

Class A Members (VOTING)

1. Class A voting membership shall be available to persons who are **<commercial fishers>** and who have applied and have been accepted for Class A voting membership in the Corporation.
2. The term of membership of a Class A voting member shall be annual, subject to renewal in accordance with the policies of the Corporation.
3. As set out in the articles, each Class A voting member is entitled to receive notice of, attend and vote at all meetings of members and each such Class A voting member shall be entitled to **X** vote(s) at such meetings.

Class B Members (VOTING)

4. Class B voting membership shall be available to persons who are **<recreational boaters>** and who have applied and have been accepted for Class B voting membership in the Corporation.
5. The term of membership of a Class B voting member shall be annual, subject to renewal in accordance with the policies of the Corporation.
6. As set out in the articles, each Class B voting member is entitled to receive notice of, attend and vote at all meetings of members and each such Class B voting member shall be entitled to **X** vote(s) at such meetings.

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Class C Members (NON-VOTING)

- 1. Class C non-voting membership shall be available to <other persons> who have applied and have been accepted for Class C non-voting membership in the Corporation.
- 2. The term of membership of a Class B non-voting member shall be annual, subject to renewal in accordance with the policies of the Corporation.
- 3. Subject to the Act and the articles, a Class C non-voting member shall be entitled to receive notice of, attend but NOT entitled to vote at meetings of the members of the Corporation.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendments to this section of the by-laws if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

2. Notice of Members Meeting

Suggested wording for a Harbour Authority who communicates by mail, courier, personal delivery, telephone or electronic means:

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- 1. by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- 2. by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change the manner of giving notice to members entitled to vote at a meeting of members.

3. Effective Date

Subject to the articles, the board of directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation. Any such by-law, amendment or repeal shall be effective from the date of the resolution of directors until the next meeting of members where it may be confirmed, rejected or amended by the members by ordinary resolution. If the by-law, amendment or repeal is confirmed or confirmed as amended by the members it remains effective in the form in which it was confirmed. The by-law, amendment or repeal ceases to have effect if it is not submitted to the members at the next meeting of members or if it is rejected by the members at the meeting.

This section does not apply to a by-law that requires a special resolution of the members according to subsection 197(1) (fundamental change) of the Act because such by-law amendments or repeals are only effective when confirmed by members.

CERTIFIED to be By-Law No. 1 of the Corporation, as enacted by the directors of the Corporation by resolution on the _____ day of _____, 20____ and confirmed by the members of the Corporation by special resolution on the _____ day of _____, 20____.

Dated as of the _____ day of _____, 20____.

[Indicate name of director/officer]

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ANNEX A - Default Rules

Provision	Default Rule	Alternate Rule to Consider (By-Law would be required)*
Financial Matters		
Borrowing Powers	Directors can borrow and grant security without authorization of members.	Can restrict borrowing powers.
Providing annual financial statements to members	Annual financial statements must be sent to members 21-60 days before the annual meeting.	Can send notice to members that financial statements are available at the registered office.
Membership		
Transferability of membership	Membership can only be transferred back to the not-for-profit corporation.	Can specify different rules for transferability.
Place of meeting of members	The meeting of members is to be held at a place in Canada that the directors determine or a place outside Canada if all members entitled to vote at the meeting agree.	Can provide otherwise.
Members call a meeting	Members who hold 5% of the vote can request a meeting of members.	Can set a percentage lower than 5% but not higher.
Electronic participation at meetings	Participation by electronic means is permitted.	Electronic participation can be prohibited or restricted.
Meeting held entirely by electronic means	Not permitted	Can be permitted as long as all participants can communicate adequately with each other.
Electronic participation at meetings	Participation by electronic means is permitted.	Electronic participation can be prohibited or restricted.
Quorum for meetings	Quorum is a majority of members, and if quorum is present at the opening of a meeting, business may proceed even if quorum is not present throughout the meeting.	By-laws with a different quorum must set it out as a fixed number of members, a percentage of members or a number or percentage of members that is determinable by a formula. Can provide that an opening quorum at a meeting is not sufficient where there is a loss of quorum later in the meeting.
Manner of voting by members	Voting is by a show of hands or by electronic participation. A member entitled to vote at the meeting can demand a ballot.	Can specify manner of voting.

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Provision	Default Rule	Alternate Rule to Consider
		(By-Law would be required)*
Absentee voting by members	Not permitted except for electronic participation.	Can specify absentee voting will be allowed by proxy, mailed in ballot, or by telephone, electronic or other communication facility. Must set out procedures for collecting, counting and reporting the results of any vote.
Rights on termination of membership	Rights of a member cease to exist on termination of membership.	Can provide otherwise.
Directors		
Remuneration of directors	Directors can fix the reasonable remuneration of directors, officers and employees.	Can provide otherwise.
Place of meeting of directors	Directors may meet at any place.	Can provide otherwise.
Appointment of directors	No appointments allowed.	Cannot be overridden by the by-laws.
Important note: The general rule is that directors are elected by a majority of the votes cast at a general meeting. This means that ex officio directors are NOT allowed, that is, persons who are appointed to the board by virtue of the office they hold.		
Quorum of directors	A majority of the number of directors or minimum number of directors required by the articles constitutes a quorum.	Can provide otherwise.
Borrowing powers	Directors may borrow money and grant security on property of the corporation without member authorization.	Can restrict the power in the by-laws or articles.
Appointment of officers	Directors designate the offices, appoint officers and specify their duties.	Can provide otherwise.
By-laws	Directors make, amend or repeal by-laws except those requiring two-third vote of members. The by-law, amendment or repeal is effective until the next meeting confirm, amend or reject it.	Can provide otherwise, i.e. required to present changes to members.

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Provision	Default Rule	Alternate Rule to Consider (By-Law would be required)*
Other		
Electronic documents	Electronic documents are permitted.	Can provide otherwise.

*For examples of wording for these alternatives, please consult the **basic model by-law template** which can be found under “Step 3” of the Industry Canada Transition Guide.

<http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04962.html>

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