


DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of the )  
Incorporation )  
 )  
 of )  
 )  
 HAWAIIAN SWIMMING )  
 UNITED STATES SWIMMING, INC. )  
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FILED 06/28/2001 11:31 AM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii 

ARTICLES OF INCORPORATION

HAWAIIAN SWIMMING  
USA SWIMMING, INC.  
1322 Nanawale Place  
Kailua, Hawaii 96734

06/08/200120036

**ARTICLES OF INCORPORATION**  
**OF**  
**HAWAIIAN SWIMMING, UNITED STATES SWIMMING, INC.**

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii, do hereby execute the following Articles of Incorporation:

**ARTICLE I**

**NAME**

The name of the corporation will be: HAWAIIAN SWIMMING, UNITED STATES SWIMMING, INC.

**ARTICLE II**

**OFFICES**

The address of the corporation's initial office is 1322 Nanawale Place, Kailua, Hawaii 96734. The corporation may have such other offices within and without the State of Hawaii as it may from time to time require.

**ARTICLE III**

**DURATION**

The period of the corporation's duration is perpetual.

**ARTICLE IV**

**PURPOSES**

Hawaiian Swimming is an amateur sports organization whose primary purpose is the education, instruction and training of individuals to develop and improve their capabilities in the sport of swimming. Hawaiian Swimming shall promote swimming for the benefit of swimmers of all ages and abilities in accordance with the standards, rules, regulations, policies and procedures of FINA, USS, and Hawaiian Swimming.

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## ARTICLE V

### MEMBERSHIP

A. Membership. Membership in the corporation may be held by any person who is qualified and selected for membership, as specified in the corporation's Bylaws. The Membership shall consist of Group Members and Individual Members and such other members as may be specified in the corporation's Bylaws. Members of the corporation will be admitted or expelled in the manner provided by the Bylaws.

B. Voting Rights. Members will annually elect representatives to the House of Delegates, who will elect the officers. Upon election, the officers and representatives will hold office until the next annual meeting and thereafter until their successors are duly elected and qualified. Members may vote only on such other matters as may be specifically set fourth in these Articles or in the corporation's Bylaws. For purposes of any vote of the members, each member will be entitled to one vote on each matter submitted to a vote of the members.

## ARTICLE VI

### HOUSE OF DELEGATES

A. Number and Qualifications. The number of delegates to the House of Delegates shall be equal to the number of Group Members, at-large representatives, athlete representatives, coach representatives and the members of the Board of Directors and may be increased or decreased from time to time by the members, provided, however, that the number may not be less than three (3) and no decrease in the number will have the effect of shortening the term of any incumbent delegate. Members of the House of Delegates must maintain their status as Individual Members in good standing throughout their terms of office.

B. Duties and Powers. Except as may be otherwise provided in the Articles, in the corporation's Bylaws or by law, the House of Delegates shall oversee the management of the all of the affairs of Hawaiian Swimming and the establishment of policies, procedures and programs.

## ARTICLE VII

### BOARD OF DIRECTORS

A. Number and Qualifications. The Board of Directors of the corporation will consist of President (a.k.a. General Chairman), Administrative Vice-President (a.k.a. Administrative Vice-Chairman), Senior Vice-President (a.k.a. Senior Vice-Chairman), Age Group Vice-President (a.k.a. Age Group Vice-Chairman), Financial Vice-President (a.k.a. Finance Vice-Chairman), Secretary, Treasurer, one or more Coaches Representative(s), one or more Athlete Representative(s), Registration/Membership Coordinator, Technical Planning Chairman, Safety Coordinator, Officials Chairman, OVC/Records Coordinator, one or more at-large members, and such other members and agents as may be deemed necessary and as prescribed in the corporation's Bylaws. The directors shall be elected by the House of Delegates.

B. Duties and Powers. All directors and agents of the corporation will have such authority and perform such duties in the management of the corporation as may be prescribed by the Bylaws, or as may be determined by the resolution of the Board of Directors not inconsistent with the Bylaws.

## ARTICLE VIII

### OFFICERS

A. Number and Qualifications. The officers of the corporation will consist of General Chairman, Administrative Vice-Chairman, Finance Vice-Chairman, Senior Vice-Chairman, Age Group Vice-Chairman, Secretary, Treasurer, Technical Planning Chairman, Registration/Membership Coordinator, and such other officers, assistant officers, and agents as may be deemed necessary and as prescribed in the corporation's Bylaws. The officers shall be elected by the House of Delegates. Any two or more offices other than General Chairman, Finance Vice-Chairman and Treasurer, may be held by the same individual, provided, however, that the corporation shall have at least five members as officers.

B. Duties and Powers. All officers and agents of the corporation will have such authority and perform such duties in the management of the corporation as may be prescribed by the Bylaws, or as may be determined by the resolution of the Board of Directors not inconsistent with the Bylaws.

## ARTICLE IX

### INITIAL DIRECTORS AND OFFICERS

The number of directors constituting the initial Board of Directors will be five (5). The names and residence addresses of the persons who are to act as the initial directors and officers of the corporation until the first annual meeting of the members and thereafter until their successors are elected and qualified are as follows:

#### Directors

<u>Names</u>	<u>Residence Addresses</u>
Robin Flanagan	6800 Hawaii Kai Drive, Honolulu, Hawaii 96825
Kenneth Suenaga	1396 Komo Mai Drive, Pearl City, Hawaii 96782
Fred Tester	417 Keaniani Street, Kailua, Hawaii 96734
Kathy Fay	213 Kaha Street, Kailua, Hawaii 96734
Gale Wilson	2521 Halekoa Drive, Honolulu, Hawaii 96821

Officers

<u>Offices</u>	<u>Names</u>	<u>Residence Addresses</u>
President	Robin Flanagan	6800 Hawaii Kai Drive, Honolulu, Hawaii 96825
Administrative Vice-President	Kenneth Suenaga	1396 Komo Mai Drive, Pearl City, Hawaii 96782
Age Group Vice-President	Fred Tester	417 Keaniani Street, Kailua, Hawaii 96734
Secretary	Kathy Fay	213 Kaha Street, Kailua, Hawaii 96734
Treasurer	Gale Wilson	2521 Halekoa Drive, Honolulu, Hawaii 96821

ARTICLE X

NONPROFIT

The corporation is nonprofit in nature and will not authorize or issue shares of stock. No dividend will be paid and no part of the income or profit of the corporation will be distributed to its members, directors or officers, except the corporation may pay compensation in a reasonable amount to its members, directors or officers for services actually rendered to the corporation, and the corporation may confer benefits on its members in conformity with its purposes.

ARTICLE XI

CHARITABLE

Notwithstanding any other provision of these Articles, the corporation is organized and will be operated exclusively for charitable, scientific, literary, religious or educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended. The corporation will not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by a corporation, contributions to which are deductible under 170(c)(2) of the Internal Revenue Code of 1986, as amended. Accordingly:

A. No part of the assets, funds or income of the corporation will inure to the benefit of any member, director, or officer of the corporation or any private individual, except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes, and no member, trustee, or officer of the corporation or any private individual will be entitled to share in distribution of any of the corporate assets on dissolution of the corporation;

B. No substantial part of the activities of the corporation will be the carrying on of propaganda, or otherwise attempting to influence legislation, (except as otherwise provided by 501(h) of the Internal Revenue Code of 1986, as amended), and the corporation will not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office;

C. In the event of dissolution, all of the remaining assets and property of the corporation will be distributed, after payment of necessary expenses thereof, to United States Swimming, Inc., to be used exclusively for educational or charitable purposes. If United States Swimming, Inc., is not then in existence, or is not then a corporation which is exempt under section 501(c)(3) of the IRS code of 1986, as amended, and to which contributions are deductible under 170(c)(2) of the Internal Revenue Code of 1986, as amended, the net assets of Hawaiian Swimming will be distributed to a corporation or other organization exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

D. In any taxable year in which the corporation is a private foundation as described in section 509(a) of the Internal Revenue Code of 1986, as amended, the corporation will distribute its income for said period as such time and manner as not to subject it to tax under section 4942 of the Code, and the corporation will not (a) engage in any act of self-dealing as defined in section 4941(d) of the Code; (b) retain any excess business holdings as defined in section 4943(c) of the Code; (c) make any investments in such manner as to subject the corporation to tax under section 4944 of the Code; or (d) make any taxable expenditures as defined in section 4945(d) of the Code or corresponding provisions of any subsequent federal tax laws.

## ARTICLE XI

### Liability and Indemnification of Officers, Directors, Employees and Agents

Section 11.1 No Liability to Corporation. No director, officer, employee or other agent of the Corporation and no person serving at the request of the Corporation as a trustee, director, officer, employee or other agent of another corporation, partnership, joint venture, trust or other enterprise and no heir or personal representative of any such person shall be liable to the Corporation for any loss or damage suffered by it on account of an action or omission by such person as a trustee, director, officer, employee or other agent if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of this Corporation, unless with respect to an action or suit by or in the right of the Corporation to procure a judgment in its favor such person shall have been adjudged to be liable for negligence (or gross negligence in the case of directors or officers serving without remuneration or expectation of remuneration) or intentional misconduct in the performance of his or her duty to this Corporation.

### Section 11.2 Indemnity.

(1) The Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceeding (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or is or was serving in such capacity at the request of the Corporation in any other corporation, partnership, joint venture, trust or other enterprise, against expenses, attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The terminating of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the

Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(2) The Corporation shall indemnify each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by or in the right of the Corporation by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or is or was serving in such capacity at the request of the Corporation in any other corporation, partnership, joint venture, trust or other enterprise against expenses and attorneys' fees actually and reasonably incurred by such person in the defense or settlement of such action or suit if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation; provided that no indemnification shall be made in respect of any claim, issue, or matter as to which (i) a person serving as a director or officer of the Corporation without remuneration or expectation thereof, has been adjudged to be liable for gross negligence, or (ii) any other director, officer, employee or agent of the Corporation has been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation, unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability described in clause (i) or (ii) above, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses and attorneys' fees which such court deems proper.

(3) To the extent that a person seeking indemnification under Section 11.2(1) or 11.2(2) above has been successful on the merits or otherwise in defense of any action, suit or proceeding, or any claim, issue or matter therein, the Corporation shall indemnify such person against expenses and attorneys' fees actually and reasonably incurred in connection therewith.

(4) The Corporation shall make indemnification payments to or on behalf of the person seeking them only if authorized in the specific case upon a determination that indemnification of such person is proper because such person meets the applicable standards of conduct set forth in Section 11.2(1) or 11.2(2) above. Such determination may be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable, or if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion to the Corporation, or (3) by the court in which such action, suit or proceeding was pending upon application made by the Corporation or the person seeking indemnification or the attorney or other person rendering services in connection with the defense, whether or not such application is opposed by the Corporation.

(5) The Board of Directors shall authorize payment in advance of final disposition of an action, suit or proceeding for the expenses and attorneys' fees incurred by a person seeking indemnification under Section 11.2(1) or 11.2(2) above, provided that such person delivers a written undertaking to repay such amount unless it is ultimately determined that such person is entitled to be indemnified under this Section 11.2.

(6) The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification are entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who ceases to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

(7) The Corporation may purchase and maintain insurance on behalf of any person described in Section 11.2(1) or 11.2(2) above against any liability asserted against or incurred by such person in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under this Section 11.2.

(8) This Section 11.2 shall be effective with respect to any person who is a director, officer, employee or agent of the Corporation or is serving in such capacity at the request of the Corporation in any other corporation, partnership, joint venture, trust or other enterprise, at any time on or after the effective date of these Articles of Incorporation with respect to any action, suit or proceeding pending on or after that date against such person based upon his or her acting in such capacity before or after that date.

## ARTICLE XII

### Corporate Liability

The property of the Corporation shall alone be liable in law for the debts and liabilities of the Corporation. The members, officers and directors of the Corporation shall incur no personal liability for said debts and liabilities by reason of membership or position.

## ARTICLE XIII

### BYLAWS

The initial Bylaws of the corporation will be adopted by its Board of Directors. The power to alter, amend or repeal the Bylaws or adopt new Bylaws, will be vested in the Board of Directors.

## ARTICLE XIV

### AMENDMENT

No members are entitled to vote on any amendment of these Articles of Incorporation. Any amendment will be adopted at a meeting of the Board of Directors upon its receiving the vote of a majority of the directors in office. Any number of amendments may be submitted and voted upon at any one meeting.



I certify under the penalties of Section 4158-158, Hawaii Revised Statutes, that I have read the above statements and that the same are true and correct.

Signed this 26<sup>th</sup> day of June, 2001.

  
Robin Flanagan, Incorporator

Signed this 26<sup>th</sup> day of June, 2001.

  
Kenneth Suenaga, Incorporator