MEMORANDUM OF AGREEMENT

Between

NOAA's National Marine Fisheries Service
U.S. Department of Commerce

And

Rhode Island Department of Environmental Management

For The

Administration of a Pilot Permit Bank Program

June 2010

I. Parties to the Agreement

This document constitutes an agreement between the Northeast Regional Office (NERO) of NOAA's National Marine Fisheries Service (NMFS), U.S. Department of Commerce, and the Rhode Island Department of Environmental Management (RIDEM).

NMFS is responsible for the management, conservation, and protection of living marine resources within the U.S. Exclusive Economic Zone. NMFS also plays a supportive and advisory role in the management of living marine resources in coastal areas under state jurisdiction, provides scientific and policy leadership in the international arena, and implements international conservation and management measures as appropriate.

RIDEM is responsible for the management, conservation, and protection of the living marine resources within the marine waters of the State of Rhode Island. RIDEM also serves as a member of the New England Fishery Management Council and, in that capacity, contributes to the development of the fishery management plans for marine fisheries in the offshore Federal waters seaward of the states of Connecticut through Maine.

See Attachment A for identification of contact representatives for each party.

II. References and Authorities

NMFS has programmatic authority to participate in this project pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Federal grant award to RIDEM for the purposes of establishing a permit bank is allocated under NOAA's Unallied Management Program, which is authorized under the Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 661; Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.; National Fisheries Research and Development Program, 15 U.S.C. 713c-3(d); and the Department of Commerce Appropriation Act of 1999. Projects under this program provide economic, sociological, public policy, and other information needed by Federal and state natural resource administrators for conserving and managing fishery resources and protected species and their environment in Federal, state, and U.S. territorial waters.

Pursuant to sections 42-17.1-2(1) and 20-1-2 of the Rhode Island General Laws, the Director of RIDEM is vested with the authority and responsibility to supervise and

control the protection, development, planning, and utilization of the fishery resources of the state. Pursuant to section 20-2.1-9(2) of the Rhode Island General Laws, the Director is authorized to establish a system of adaptive fisheries management that serves, in part, to complement federal and regional management programs. And pursuant to section 42-17.1-2(6) of the Rhode Island General Laws, the Director is specifically authorized to cooperate with the Rhode Island Economic Development Corporation (RI EDC) in its planning and promotional functions, particularly in regard to those resources relating to agriculture, fisheries, and recreation.

III. Background

The Magnuson-Stevens Act establishes a regime for the management of fishery resources that occur in the U.S. Exclusive Economic Zone and establishes the New England Fishery Management Council (Council) as the body responsible for the development of fishery management plans for fisheries in the Atlantic Ocean seaward of the states of Connecticut through Maine.

The Council developed, and NMFS has implemented, Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP), which expands a catch-share program known as "sectors" for the Northeast multispecies fishery. Catch-share management programs, when designed correctly, may help to prevent overfishing, eliminate the race to fish, reduce overcapacity and bycatch, and improve economic efficiency. However, catch-share programs may also result in the consolidation of fishing effort, reduce community involvement in local fishing, decrease access by small-scale fishermen to local fishery resources, create barriers to entry into the fishery by increasing the demand for capital to participate, and create competition among fishermen for access rights.

The sector management program allows groups of Northeast multispecies permit holders to pool individual potential sector contributions (PSC) to share among the sector members while fishing under quotas limited by the sum of the members' individual PSC. Northeast multispecies permit holders who do not join a sector would fish in the "common pool" under individual allocations of days-at-sea (DAS). With the implementation of Amendment 16, sectors may lease additional annual catch entitlement (ACE) from other sectors to supplement the members' contributions, and members of the common pool may lease additional DAS from other common pool members to supplement their individual allocations. Under Amendment 16, members of sectors may also lease additional DAS from other members of sectors (but not from common pool vessels) for the purpose of fishing for monkfish and/or skates.

IV. Purpose

Both RIDEM and NMFS have an interest in promoting the effective implementation of catch-share programs in New England, while minimizing any potential adverse socio-economic impacts to rural fishing communities and small-scale fishing businesses that

are sometimes attributed to catch-share programs. Permit banks may be useful to mitigate some of the adverse impacts associated with catch-share programs. Permit banks can be used to preserve fishing opportunities for small-scale fishermen operating in small, rural fishing ports that may otherwise be disproportionately negatively affected by the consolidation of fishing effort that often follows implementation of catch-share programs. Permit banks may help ease the transition to catch-share programs by:

- Providing options to fishermen with little access to capital;
- Helping fishermen to improve cooperation and operating efficiencies;
- Maintaining small-boat enterprises through the combination of a variety of permit attributes (e.g., DAS, PSC) to meet the needs of fishermen and fishing communities for access to fishery resources; and
- Helping fishing communities achieve stable access to local fishery resources for local fishermen.

NOAA is providing funding to the State of Rhode Island, in the form of a Federal grant award to RIDEM, for the express purpose of establishing a bank of Northeast multispecies fishing vessel permits (Permit Bank). The Federal grant award is intended to facilitate a partnership between RIDEM and NMFS for the establishment of a pilot permit bank program to inform the potential expansion of permit banking programs to other states and regions. RIDEM and NMFS intend for this Permit Bank to achieve the following objectives:

- To secure continued access to fishery resources for local, small-scale fishermen from small fishing communities throughout Rhode Island;
- To create and protect sustainable local fisheries;
- To supplement existing access rights held by fishermen in small Rhode Island communities; and
- To mitigate the effects of fishing effort consolidation on small-scale fishermen and rural fishing communities in Rhode Island.

V. Definitions

Annual Catch Entitlement (ACE) means the amount (weight) of each stock that can be harvested by a sector that year. The ACE is derived as the share of the annual total allowable catch (TAC) for a stock that is allocated to a sector, calculated based on the landings history attached to each permit that joins a sector in a given year, multiplied by the available catch. The ACE may be adjusted, if necessary, due to prior overages and/or penalties.

Common Pool means the collection of vessels whose owners did not join a sector, and will fish under the constraints of the DAS system and any other regulations imposed for non-sector vessels.

Days-at-Sea (DAS) are the total days, including steaming time, that a boat spends at sea to fish. Amendment 13 to the Northeast Multispecies FMP categorized DAS for the multispecies fishery into three categories, based on each individual vessel's fishing history during fishing years 1996 through 2001. The three categories are: Category A, which can be used to target any groundfish stock; Category B, which can only be used to target healthy stocks; and Category C, which cannot be used until some point in the future. Category B DAS are further divided equally into Category B-regular and Category B-reserve.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Potential sector contribution (PSC) means an individual fishing vessel permit's share (proportion) of the annual catch limit for each stock, based upon the fishing history associated with each permit.

Sector means a group of persons (three or more persons, none of whom have an ownership interest in the vessels owned or permits held by the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC in order to achieve objectives consistent with applicable FMP goals and objectives. For the purposes of this Agreement, a Sector is one of the qualifying groups identified in 50 CFR 648.87.

VI. Terms and Conditions

The special award conditions of the Federal grant award require RIDEM and NMFS to agree to a set of terms and conditions for the development, implementation, and operation of the Permit Bank. As such, the parties do hereby agree to the following terms and conditions:

1. That as per Federal regulations at 50 CFR 648.4(n), the NMFS Regional Administrator, Northeast Region, retains the authority to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, obtained by RIDEM using a Federal grant award for the purposes of this Permit Bank if RIDEM, in the use of said permit and/or the operation of this

Permit Bank, violates, or deviates in any way from, the terms and conditions of this Agreement.

2. That upon dissolution of the Permit Bank or termination of this Agreement by either party, the NMFS Regional Administrator, Northeast Region, may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, obtained by RIDEM using a Federal grant award for the purposes of this Permit Bank.

3. That RIDEM may, pursuant to an inter-agency Memorandum of Understanding (MOU), engage the RI EDC for the purpose of administering the Permit Bank, in accordance with the terms and conditions set forth herein. The agreement between the agencies shall reflect RIDEM's plenary role as administrator of the Federal grant award and the owner of record for permits held by the Permit Bank. Upon enactment, RIDEM shall submit the inter-agency MOU to NERO, and notify NMFS of any changes to the inter-agency MOU with RI EDC.

4. That RIDEM may not permanently transfer, sell, or otherwise provide or surrender any of the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by RIDEM using funds from a Federal grant award for the purposes of the Permit Bank (including, but not limited to DAS and/or ACE) to any individual, Sector, corporation, non-profit organization, or government entity other than NMFS.

5. That the fishing vessel permits obtained by RIDEM for the purposes of the Permit Bank may not be held on active vessels, such that no fishing or other on-the-water activities may be engaged by any vessels to which these permits are assigned (e.g., the Permit Bank permits should be held in Confirmation of Permit History).

6. That, in addition to the specific terms and conditions described herein, RIDEM shall operate the Permit Bank such that all transactions regarding leases of DAS and/or ACE associated with the fishing vessel permits held by RIDEM for use in the Permit Bank fully comply with all applicable Federal regulations.

7. That RIDEM shall operate the Permit Bank such that all fishing vessel permits held and/or obtained by RIDEM using funds from a Federal grant award shall only be used for the following purposes: (a) Leasing of ACE to qualifying Sectors; (b) leasing of groundfish DAS to qualifying vessels in qualifying Sectors for the purpose of fishing for monkfish and/or skates; or (c) for fishing year 2010 and 2011, leasing of DAS to qualifying vessels in the Common Pool, and beginning in fishing year 2012, leasing of DAS to qualifying vessels to be used only while engaged in cooperative research projects, in order to facilitate the completion of the on-the-water cooperative research activities (i.e., DAS leasing may not be used for compensation).

8. That RIDEM shall prepare, and submit to NERO at least 30 days prior to leasing, a proposal describing how RIDEM plans to allocate available DAS and/or ACE from the Permit Bank to fishing vessel owners and/or Sectors from among those applicants

that qualify for access to said DAS and/or ACE according to the terms and conditions of this Agreement, as well as any additional terms and conditions imposed by RIDEM. Any changes to the allocation proposal must be made in writing and submitted to NERO prior to implementing the revised allocation plan.

9. That RIDEM shall operate the Permit Bank such that no individual, Sector, corporation, non-profit organization, or government entity may be granted, or have access to, the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by RIDEM using funds from a Federal grant award for the purposes of the Permit Bank (including, but not limited to DAS and/or ACE), unless that individual, Sector, corporation, non-profit organization, or government entity meets all of the following criteria:

    a. Owns and materially participates in the operation of a fishing vessel permitted to fish in the Federal limited access Northeast multispecies fishery that is not more than 45 feet in registered length overall, according to the vessel baseline specifications as documented in the NMFS vessel permit database at the time the lease application is submitted;

    b. Has, for the current fishing year and at least the preceding 3 fishing years, no record of substantial Federal permit sanctions or major violations of any Federal fishing regulations;

    c. Resides in, and/or operates his/her fishing vessel from, a community with a population of no more than 30,000 residents; and

    d. Agrees to and signs a contract with RIDEM agreeing to fish in a responsible and sustainable manner.

10. That RIDEM shall operate the Permit Bank such that no fishing vessel shall be utilized to fish under DAS and/or ACE leased from the Permit Bank in accordance with this Agreement unless that fishing vessel meets all of the following criteria:

    a. Is permitted to participate in the Federal limited access Northeast multispecies fishery;

    b. Is not more than 45 feet in registered length overall, according to the vessel baseline specifications as documented in the NMFS vessel permit database at the time the lease application is submitted; and

    c. The vessel owner resides in, and/or operates the vessel from, a community with a population of no more than 30,000 residents.

11. That RIDEM shall operate the Permit Bank such that no Sector shall be granted, or have access to, the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by RIDEM using funds from a Federal grant award for the purposes of the Permit Bank, unless that Sector meets all of the following criteria:

    a. That the Sector includes qualifying Rhode Island fishing vessels as members; and

b. That the Sector agrees to sign a contract with RIDEM stipulating that the ACE and/or DAS leased from the Permit Bank will be used only by qualified Rhode Island vessels.

12. That RIDEM shall obtain, from any qualifying Sector selected to receive ACE leased from the Permit Bank, an agreement signed by the manager of said Sector identifying the specific fishing vessels enrolled in the Sector that are intended to utilize the leased ACE, prescribing the amount of ACE, in pounds and by stock, to be assigned to the qualifying vessel(s).

13. That RIDEM shall ensure that that sub-leasing of ACE and/or DAS initially leased to a qualifying fishing vessel or Sector does not occur, with the following exception: Sub-leasing of ACE by a Sector to another Sector may occur in the last 2 weeks of the fishing year for which the initial lease transaction was processed, or in the first 2 weeks of the subsequent fishing year.

14. That RIDEM may not use the Permit Bank, or any fishing vessel permits held by the Permit Bank, for the purpose of leasing in additional DAS and/or ACE.

15. That on or before April 1 of each Northeast multispecies fishing year (May 1-April 30), RIDEM shall submit to the NMFS contact representative (see Attachment A) a written declaration for each Federal fishing vessel permit subject to the terms and conditions of this Agreement identifying whether the fishing access rights associated with that permit are to be used in the coming fishing year for either: (a) DAS leasing to Common Pool vessels; or (b) leasing ACE to qualified vessels in qualified sectors (including the leasing of DAS to sectors for the purpose of fishing for monkfish and/or skates). Such declaration shall be binding for the duration of the coming fishing year.

16. That if RIDEM, through either State or external funding, acquires additional fishing vessel permits to be used in the Permit Bank, that terms and conditions of this Agreement shall not apply to the operation of the Permit Bank for those additional permits only. However, if additional fishing vessel permits for the Permit Bank are acquired either wholly or in part with funds from a NOAA grant specifically for that purpose, then all the terms and conditions of this Agreement apply.

17. That changes to either party's contact representative (see Attachment A), or contact information for that representative, shall be made by written notification to each party within 30 days of the change.

VII. Period of Performance

This Agreement shall be effective on the date it is signed by all parties and shall be automatically renewed every 3 years on the first of May of the third year, unless one of the parties terminates the agreement, in writing, prior to the first of January of any year. Furthermore, the Agreement may be terminated in writing at any time by the State or NMFS upon 90 days advance notice.

VIII. Funding, Payments, and Program Revenue

There will be no exchange of funds between the parties unless otherwise agreed in a separate agreement. Each party shall arrange for appropriate funding necessary to discharge its respective responsibilities under this agreement.

The ability of the parties to carry out their responsibilities under this Agreement is subject to their respective funding procedures and the availability of appropriated funds. Should either party encounter budgetary problems in the course of its respective internal procedures that may affect the activities to be carried out under this Agreement, that party will notify and consult with the other party within 45 days.

All revenue generated through the operation of the Permit Bank, either through the leasing of DAS or ACE, or through other means, shall be considered as program income, as defined in Department of Commerce regulations at 15 CFR 24.25, and shall be retained by RIDEM and used to offset costs incurred by RIDEM in the operation and administration of the Permit Bank program, consistent with the terms of Department of Commerce regulations at 15 CFR 24.25.

IX. Performance Reports

RIDEM shall prepare, and submit to the NMFS contact representative, annual reports documenting the performance of the Permit Bank. Such reports shall be due to NMFS on June 1 of each year following the calendar year in which this Agreement first becomes effective, and shall include, at a minimum, the following information:

a. For each Permit Bank lease transaction in the preceding fishing year:
    1) The Federal permit number of the permit held by the Permit Bank and whether the fishing access rights associated with the permit were used for (1) DAS leasing or (2) ACE leasing;
    2) The number of DAS or amount of ACE leased (by stock);
    3) The Federal fishing vessel permit number(s) of the fishing vessel(s) that received the lease of either DAS or ACE associated with the subject Permit Bank permit(s);
    4) For ACE or DAS leases to a Sector, the name of the Sector and a copy of the leasing agreement with that Sector (see item 12 under section VI);
    5) The price paid by the lessee for the lease (by DAS or, for ACE, by stock);
    6) The effective date of the lease.
b. Summary information for the preceding fishing year, including:

1) The total number of lease transactions;
2) The total number of DAS leased;
3) The total amount of ACE leased, by stock;
4) The number of unique vessels receiving leases;
5) The total program income generated by RIDEM from the DAS and ACE leases; and
6) Total costs incurred by RIDEM associated with the operation and administration of the Permit Bank, delineated by type (personnel, documentation, travel, facilities, etc.).

c. An evaluation of the impact of the Permit Bank program, including:
1) The degree to which the operation of the Permit Bank achieved the purposes and objectives of the Permit Bank identified in section IV above;
2) Issues, concerns, or problems related to the operation of the Permit Bank; and
3) Suggestions/recommendations to improve the operation of Permit Bank to more fully achieve the purposes and objectives.

X. Enforcement

During the performance of the NOAA grant to the State of Rhode Island, the NOAA Grants Officer, in consultation with the NERO, shall be authorized to take appropriate actions if RIDEM, as grant recipient, fails to meet its obligations under the terms and conditions of the grant award. Such actions include all those stipulated at 15 CFR 24.43, and include, by extension, those actions stipulated at 50 CFR 648.4(n).

Upon closeout of the grant award, as determined by the NOAA Grants Officer, the Regional Administrator, Northeast Region, NMFS, shall have the authority to take whatever action under 50 CFR 648.4(n) that she deems appropriate for the remaining period of effectiveness of this Agreement, including all subsequent amendments and revisions thereto.

XI. Amendments and Review

This Agreement may be amended in writing at any time by agreement of the parties. All necessary changes will be accomplished in writing, either by an amendment to this Agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties. At a minimum, both parties shall review and consult on the terms and conditions of this Agreement once every 3 years.

XII. Other Provisions

This Agreement shall be construed to be consistent with the Magnuson-Stevens Act and other applicable Federal laws and regulations promulgated thereunder.

Nothing herein is intended to conflict with current U.S. Department of Commerce, NOAA/NMFS, or RIDEM directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of this Agreement that are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. Should such an inconsistency be identified, the parties shall, at the first opportunity, amend this Agreement consistent with section XI above.

Should disagreements arise on the interpretation of the provisions of this Agreement, or any amendment and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days of the latest presentation of a party's position, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

The terms and conditions described in this Agreement regarding the operation of the Permit Bank, particularly as to the qualifying criteria of individual fishing vessels, vessel owners, and Sectors for access to the DAS and/or ACE held by the Permit Bank, are intended to serve as minimum criteria. RIDEM may decide to impose more restrictive criteria, or additional requirements, on potential participants, but will consult with NERO prior to imposing such additional restrictions.

XIII. Terms of the Agreement

The terms of this agreement shall become effective upon the signature of both the approving officials of the respective agencies entering into this agreement.

The terms of this agreement shall remain in effect until terminated by: Mutual agreement, in writing; 90 days advanced written notice by either party; or the ending date of the period of performance, whichever shall occur first.

For the purposes of this Agreement, all Federal fishing vessel permits obtained by the State of Rhode Island for the purpose of operating the Permit Bank shall be considered "intangible property" under the terms of 15 CFR 24.34(b). Accordingly, such permits shall be used for the originally authorized purpose as long as needed for that purpose (determined as the period of effectiveness of this Agreement) and the State of Rhode Island, or its agents, shall not dispose of or encumber its title or other interests. When no

longer needed for the originally intended purpose, and upon mutual agreement by all parties, disposition of such permits shall be made as provided in 15 CFR 24.32(e).

APPROVED:

National Marine Fisheries Service
Northeast Region

By: _____
Patricia A. Kurkul
Regional Administrator

Date: JUNE 25, 2010

Rhode Island Department of Environmental Management

By: _____
W. Michael Sullivan
Director

Date: 6.25.10

Attachments

A. Contact Representatives
B. Statement of Work from RIDEM

Attachment A

Contact Representatives

National Marine Fisheries Service
Northeast Regional Office
Contact:

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Rhode Island Department of Environmental Management
Contact:

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