

## **PORT CLYDE COMMUNITY GROUND FISH SECTOR**

### **Fishing Year 2010-2011 Operations Plan and Agreement**

This OPERATIONS PLAN AND AGREEMENT (this "Agreement") is entered into as of this 31st day of August, 2009 by and among the permit owners listed on the signature pages hereto and any other permit owners that are admitted pursuant to the terms of this Agreement (each, a "Member" and, collectively, the "Members").

#### **RECITALS**

WHEREAS, under the Northeast Multispecies Fishery Management Plan ("Groundfish FMP"), Amendment 16 to the Groundfish FMP ("Amendment 16"), and the regulations implementing the FMP, a self-selecting co-operative, or "sector," of fishermen is authorized to submit to the New England Fishery Management Council (the "Council") a proposal for the allocation of catch of regulated groundfish species to such sector;

WHEREAS, the Members voluntarily formed a fishery sector through the Port Clyde Community Groundfish Sector (the "PCS" or "Sector"), for the purposes of establishing a legally responsible entity (i) to obtain an aggregate annual sector allocation ("Annual Catch Entitlement" or "ACE") of regulated large mesh multispecies ("Groundfish") from the National Marine Fisheries Service ("NMFS"), as authorized by Amendment 16, and to sub-allocate such ACE among the Members and/or their permits and vessels, (ii) to participate in Special Access Programs ("SAPs") or other approved measures in order to access closed areas to the extent that such SAPs or measures are available to the Sector (iii) to take such actions as may be necessary to ensure that the Sector, its Members and their vessels conduct groundfish harvesting activities in compliance with the Plan, Amendment 16, the Magnuson-Stevens Fishery Conservation and Management Act (the "MSA" or "Act"), the MSA's implementing regulations, and other applicable laws and regulations;

WHEREAS, Amendment 16 defines a sector as a group of 3 or more persons, none of whom have an ownership interest in the other two persons in the Sector, and that documentation demonstrating that the PCS has met this definition has been provided to NMFS as Exhibit G hereto through Permit No. 220989 (MRI 87) under the distinct ownership of Preston S. Carter, Jr., Permit No. 220363 (MRI 2237) under the distinct ownership of Russell Daggett, and Permit No. 139950 (MRI 1823) under the distinct ownership of Mitchell T. Nunan, and;

WHEREAS, in connection with the formation of the Sector, the Members desire to enter into this Operations Plan and Agreement, dated August 31, 2009 (the "Agreement") in order begin operations for the 2010-2011 fishing year.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, rights and obligations set forth in this Agreement, the benefits to be derived therefrom and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

**Article I. Representations and Warranties of the Members.** As of the date hereof, each of the Members represents and warrants to the other Members and the Sector that:

Section 1.01. Eligibility. Each Member has been issued a valid limited access multispecies permit with documented landings of Groundfish between May 1, 1996, and April 30, 2007, which are the 1996 through 2006 fishing years (such period of time shall hereinafter be referred to as the “Qualifying Period”). Each permit that the Member intends to enroll in the Sector is listed below such Member’s name on the signature pages attached hereto identified by the Moratorium Right Identifier (MRI)(each, a “Permit”). Exhibit D includes a list of all Sector vessels, an indication of whether the vessel will fish, and all of the state and federal permits held by members with an indication whether or not those permits are enrolled in any Sector or the Common Pool. Notwithstanding the list of participating vessels set forth in Exhibit D, for purposes of this Agreement, “Participating Vessel” shall mean the vessel to which a Member’s Permit applies at any given time.

Section 1.02. Organization and Authority. Each Member (i) to the extent that it is an entity, is duly organized, validly existing and in good standing in its state of organization and (ii) has all authority, corporate or otherwise, to enter into this Agreement on its own behalf and on behalf of the Participating Vessels that it represents. This Agreement constitutes a legally valid and binding obligation of each Member, enforceable against such Member in accordance with its terms. Each of the Members represents that its Participating Vessel(s) and Permit(s) have no sanctions or other restrictions against them that would prevent such Participating Vessels and Permits from enrolling in the Sector and/or complying with the terms of this Agreement.

**Article II. Membership**

Section 2.01. Voluntary Membership. Participation in the Sector is completely voluntary among the Members, their Permits, and the related Participating Vessels.

Section 2.02. Scope of Membership Obligations. The obligations of the Members set forth in this Agreement shall only apply to the Permits and Participating Vessels (and not to any other permits or vessels owned by the Members that are not enrolled in the Sector pursuant to the terms hereof) to the extent that such Permits or Participating Vessels are fishing commercially with gear that is capable of harvesting Groundfish. Notwithstanding the foregoing, the Members acknowledge and agree that the Sector and its Members may, from time to time, be permitted to participate in certain Special Access Programs (each an “SAP”) and that it may be necessary to expand the scope of the membership obligations hereunder, in order to ensure that the Sector and its Members are in compliance with the rules and regulations relating to each such SAP. Therefore, the Members hereby agree to execute any amendments or supplements to this Agreement,

which may reasonably be requested by the Sector or the Sector Manager in order to comply with the rules and regulations relating to any such SAP, including, without limitation, any amendments or supplements that expand the scope of the membership obligations hereunder to apply to vessels and/or permits that are not enrolled in the Sector.

**Section 2.03. Length of Commitment.** Each Member hereby agrees to cause each of its Permits and the related Participating Vessels enrolled in the Sector at the beginning of the fishing year following the date on which such Member enrolled in the Sector to remain enrolled in the Sector for that entire (one) fishing year (the "Commitment Period"); provided, however, that if the Members seek to extend the terms of this Agreement consistent with Article IX below and NMFS does not approve the Sector's Operations Plan and Agreement, as the same may be amended, for the subsequent fishing year, then the obligation of such Member under this Section 2.03 shall terminate on the last day of the existing Commitment Period. Each Member further agrees that if its Permit leaves the Sector for any reason during the Commitment Period, or beginning for fishing years 2011 and beyond fails to notify the Manager of intent to leave Sector by the September 1 preceding the start of the next fishing year, (i) such Member shall be subject to the penalty or penalties described on the Schedule of Penalties (as hereinafter defined), and (ii) such Member, its Permit and the related Participating Vessel shall be ineligible to participate in the Sector for a period of up to five [5] years following the date of such departure from the Sector as determined by the Board. Each Member acknowledges and agrees that 50 CFR Part 648.87 requires that each of its Permits and the related Participating Vessels must remain in the Sector for the entire fishing year in which such Permits and/or Participating Vessels are enrolled in the Sector, and that each Member's Participating Vessels may not fish outside the Sector under a multispecies DAS program during any fishing year in which its Permits and/or Participating Vessels are enrolled in the Sector. Notwithstanding anything to the contrary in this Section 2.03, (i) for Fishing Year 2010 Members shall notify the Manager of their intent to leave the Sector prior to December 31, 2009, and (ii) the penalties described in this Section 2.03 shall not apply if Permits or Participating Vessels are withdrawn from the Sector prior to the beginning of the 2010 fishing year (May 1, 2010).

**Section 2.04. New Members.** The owner of a permit that is eligible under the criteria set forth in Section 1.01 hereto, but that is not enrolled as a Member (and/or whose permit is not so enrolled) may apply to the Board (as hereinafter defined) for membership in the Sector. For fishing year 2011 and thereafter, such application shall be made in writing no later than 30 calendar days prior to the September 1 for the fishing year in which he wishes to enroll and shall include evidence of eligibility. The Board shall, in its reasonable discretion, determine whether the applicant shall be admitted as a Member of the Sector and/or its permit included as a Permit. Notwithstanding the foregoing, no such admission shall be effective until such new Member has agreed in writing to be bound by, and to cause its Permit and Participating Vessel to comply with, the terms of this Agreement, and until the provisions of this Agreement shall have been amended or modified to reflect such additional Member, Permit and/or Participating Vessel.

**Section 2.05. Permit Transfers.** Each Member agrees that so long as it is a party to this Agreement, such Member (i) shall not have the authority to sell, lease or transfer the ownership of its Permit to a party that is not or does not agree in writing to be bound by this Agreement for the remainder of the fishing year in which such sale, lease or transfer is to occur, (ii) shall not transfer, lease or assign any days-at-sea allocated to its Permit by NMFS to any permit not enrolled in a sector, and (iii) shall comply with the right of first refusal provisions of Section 2.08 hereof prior to the consummation of any proposed sale, lease or transfer permitted hereunder. To the extent that a Member sells, leases or transfers its Permit to another individual or entity (a “Transferee”) in compliance with the foregoing, then (a) such Transferee shall only be permitted to participate in the Sector for the remainder of the fishing year in which the transfer occurred (the “Transfer Year”) and (b) prior to the commencement of the fishing year immediately following the Transfer Year, the Transferee must apply for admission to the Sector pursuant to the provisions of Section 2.04 hereof in order to be admitted to the Sector as a Member. For the avoidance of all doubt, for the purposes of calculating a Member’s Commitment Period under Section 2.03 hereof, no portion of a Transfer Year shall be included in such calculation.

**Section 2.06. Membership Dues.** The Sector may, to the extent necessary for the payment of the costs and expenses associated with the administration and management of the Sector (including the payment of the Manager’s salary), require the payment by the Members of annual membership dues and/or poundage fees. Such annual membership dues and/or poundage fees shall be fixed by resolution of the Board on a fair and equitable basis prior to the commencement of the applicable fishing year or at such other time as the Board may deem necessary or appropriate.

**Section 2.07. Member Training.** Each Member shall participate in training in the Sector’s business rules prior to fishing during the 2010 fishing year. Such training shall be led by the Sector Manager and may involve other qualified persons as determined by the Board. Upon completion of such training, the Business Manager shall notify NMFS in writing.

**Section 2.08. Right of First Refusal.** In the event that any Member (a “Transferring Member”) at any time proposes to sell, transfer or lease (a “Transfer”) its Permit to any proposed Transferee who shall make a good faith, bona fide written offer therefore (a “Bona Fide Offer”), then the Transferring Member shall first deliver to the Sector a written notice (“First Refusal Notice”) that the Transferring Member proposes to make such Transfer, which First Refusal Notice shall (i) state the identity of the prospective Transferee, (ii) state the amount of consideration for the Permit and the material terms and conditions upon which the proposed Transfer is to be made (the date on which the Sector receives the First Refusal Notice being the “First Refusal Notice Date”), (iii) represent that the Bona Fide Offer is an actual bona fide offer, and (iv) include a copy of any written proposal, letter of intent or other agreement relating to the Bona Fide Offer. The Sector or any Member shall have a period of 7 calendar days following the First Refusal Notice Date (the “Election Period”) in which to elect to purchase or lease the Permit at the price and subject to the same material terms and conditions set forth in the First Refusal Notice. The Sector or Member shall exercise its right to purchase or lease such Permit by delivering a written notice (“Election Notice”) to the Transferring

Member within the Election Period. In the event that the Sector or member desires to purchase the Permit, then the parties shall schedule a closing for the payment for, and the delivery of, the Permit, which shall be no later than 90 calendar days after the First Refusal Notice Date. The Transferring Member agrees to enter into and deliver an agreement for the benefit of the Sector or Member, containing standard and customary representations, warranties, covenants and indemnities by the Transferring Member for the benefit of the Sector. If the Sector or Member has not elected to purchase the Permit within the Election Period, then the Transferring Member is free to Transfer the Permit to the Transferee; provided that such Transfer is on the terms and conditions specified in the First Refusal Notice. If the proposed Transfer is not consummated within 90 calendar days following the termination of the Election Period, the Transferring Member may not Transfer the Permit without complying again with all the provisions of Section 2.05 and this Section 2.08.

**Section 2.09. Release of Confidential Data.** Pursuant to section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 881a(b)(1)(F), the undersigned parties hereby authorizes the release to the PCS of information regarding the catch of various species of fish associated with the limited access Northeast multispecies permit with the noted MRI submitted to the National Marine Fisheries Service in compliance with 50 C.F.R § 648.7 and § 648.87 that such undersigned party has authority to access. This information includes, but is not limited to, vessel trip reports (VTR), dealer reports, and information collected by the Northeast Fishery Observer Program (NEFOP), the sector dockside monitoring program, and (if applicable) the sector at-sea monitoring program. This information shall be used exclusively by the sector for matters pertaining to sector management, including record retention requirements. Such information may not be released by the sector to another entity. When information released to the sector by the National Marine Fisheries Service is no longer needed for sector management, it shall be destroyed or returned by the sector manager to the undersigned at his or her election. When the undersigned ceases to be a member of the sector, this authorization shall be deemed null and void.

### **Article III. ADMINISTRATION**

**Section 3.01. Sector Manager.** The Board of Directors (the “Board”) of the Sector shall appoint a manager of the Sector (the “Manager”), which Manager shall have the authority to manage the day-to-day business of the Sector and to act as its designated agent for service of process. James Frank, Washington, Maine, is the current agent for service of process and will continue in that role if appointed Manager, as anticipated.

**Section 3.02. Manager Authority.** The Manager shall have the authority (i) to monitor the activities of the Members and the Participating Vessels and to take such other actions as may be necessary to ensure compliance by the Members and their Permits and Participating Vessels with this Agreement and other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws, as well as applicable laws, rules and regulations, and (ii) subject to the authority of the Board or a committee delegated thereby pursuant to this Agreement, the Sector’s Bylaws or any other agreement relating to the Sector’s internal governance, to enforce this Agreement,

including specifically, without limitation, the authority to impose penalties set forth in the Schedule of Penalties (as hereinafter defined). The Manager shall also act as the liaison between NMFS and the Sector.

**Section 3.03. Infractions Committee.** The Board shall appoint an Infractions Committee (the “Committee”) consisting of a minimum of 3 Members. Such Committee shall include at least one Member from each of the primary gear types in the Sector (currently trawl and gillnet), shall include at least one member whose home port is north of Portland and one whose home port is south of Portland, and no Committee member shall be on the Board. The Committee shall ensure fair, consistent and appropriate enforcement of this Agreement, the Harvesting Rules, the ACE (as hereinafter defined) requirements set forth on Exhibit B hereto, the Plan, the Framework Adjustment and other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws. The Committee shall prepare and recommend to the Board for its approval a schedule of penalties, which shall be similar in form to Exhibit A hereto (the “Schedule of Penalties”), for any unauthorized fishing activities (whether under applicable laws, rules and regulations or otherwise) and for violations of this Agreement, the Harvesting Rules, the ACE requirements, the Plan, Amendment 16, and other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws. Such schedule of penalties may be based on reductions in ACE instead of or as an alternative to dollars amounts. The Board shall review and approve any Schedule of Penalties prepared and recommended by the Committee prior to the commencement of the fishing year for which such Schedule of Penalties has been prepared. In addition, the Committee, on its own or at the request of a Manager or Member pursuant to Section 3.04 hereof, shall have the authority to take any number of enforcement measures against the Members for the non-payment of membership dues and/or poundage fees. Such enforcement measures may include requesting expulsion of the violating Member under Section 8.02 and issuing a “stop fishing” order against such Member.

**Section 3.04. Procedures for Investigations.** In addition to the Manager’s authority to impose penalties under the Schedule of Penalties pursuant to Section 3.02 hereof, the Manager may, on his own, and shall, at the request of a Member, request that the Committee conduct an investigation of possible infractions of the Agreement, the Harvesting Rules, the Plan, Amendment 16, or other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws, by calling a meeting of the Committee and presenting it with the information that is the basis for the Manager’s or Member’s opinion that an infraction occurred. The Committee shall operate as a “blind” committee, such that the identity of the Member, Permit and/or Participating Vessel under consideration shall only be known to the Manager. The Committee shall assign a number of its members, which constitutes no more than 50% of the Committee, to investigate the matter further and to recommend action, if any, to the full Committee. Such Committee member assignments shall be rotated. If, upon the conclusion of such investigation, the Committee determines by an affirmative vote of a majority (51%) of its members that a violation of this Agreement, the Harvesting Rules, the Plan, the Framework Adjustment or other Sector requirements (as may be adopted under the terms of this Agreement or the Sector’s Bylaws) has occurred, it may, and is hereby given the authority to (in addition to the imposition of any penalties prescribed in

the Schedule of Penalties), invoke sanctions, ranging from letters of warning to reductions in ACE to the Member, its Permits and its Participating Vessels by the Sector, or issue stop fishing orders. The Committee shall exercise all reasonable efforts to ensure that penalties and settlements are commensurate with the nature and extent of the violation, are designed to further the purposes of the Plan, Amendment 16, and are uniform with those reached in similar circumstances. All appeals from such Committee action shall be taken in accordance with Section 7.05 hereof. Each of the Members agrees to cooperate fully with the Manager and the Committee in such investigations and procedures (including cooperation with any requests for information or data that may be made by the Manager or the Committee).

**Section 3.05. Sector Weekly and Daily Catch Reports** The sector will submit required reports using the format and procedure prescribed by NMFS. The Manager will retain and maintain all sector data, paper and electronic, and shall, on a weekly basis, transmit to NMFS catch reports (“Sector ACE Reports”) providing data required by NMFS that includes, but are not limited to, (i) catch data by cumulative live weight landings and discards by stock, statistical area, and status of ACE for each of the stocks allocated to the Sector; (ii) administrative data including week ending date, number of trips, gear used, submission date of report, and whether the record was new or updated; (iii) observer data including data collected on an observed trip by a Northeast Fisheries Observer Program Observer, and shall extrapolate that across the entire Sector (cumulative) in the manner prescribed by NMFS; (iv) monitoring data including catch data collected on monitored trips by independent, third-party catch monitors, with extrapolation across the entire Sector (cumulative) in the manner prescribed by NMFS; (v) issues regarding data discrepancies, such as outstanding catch records and any actions being taken to resolve such discrepancies, (vi) any enforcement or compliance issues, including issues that were resolved or issues under investigation (unless administrative only), and (vii). a list of vessels landing during the week, a summary of the dockside and at sea monitoring effort that includes the vessels monitored, the date and location of monitoring, and any discrepancies observed.

The Manager shall notify NMFS upon reaching 80 percent of the ACE for any allocated stock, or when, for two consecutive weekly reporting periods 20 percent or more of the remaining portion of any ACE is harvested, whichever occurs first. Upon reaching either such harvest threshold, the reporting due date for the sector manager’s weekly report will be increased to daily. Thus, for the latter trigger point, if a sector in one-week harvests 25 percent of the remaining ACE for Gulf of Maine cod for that sector, and the following week harvests 22 percent of that ACE, the trigger will have been reached and sector reporting will be changed to daily. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed upon by the Sector and NMFS. The Manager shall include in such notice whether it intends to distribute the ACE reserve, consistent with sections 4.03 and 4.04.

**Section 3.06. Annual Report.** The Manager shall prepare and submit to the Council and NMFS an annual year-end report on the fishing activities of its Members, including the harvest levels of all species by Sector vessels (landings and discards by gear type), the number of sector vessels that fished for regulated groundfish, and the permit and MRI

numbers associated with those vessels (except when this would violate protection of confidentiality), the number of vessels that fished for other species, the method used to estimate discards, the landing ports used by Sector vessels while landing regulated groundfish, any enforcement actions taken against the Members, and other relevant information required by the Regional Administrator to evaluate the Sector's performance, within 60 days of the end of the fishing year.

#### **Article IV. ALLOCATION AND HARVEST**

**Section 4.01. Sector Allocation.** The Sector will be allocated an Annual Catch Entitlement ("ACE") of all allocated groundfish stocks consistent with Amendment 16 and as set forth in Exhibit B hereto. Sector ACE for each groundfish stock will be based on the landings history of each permit during the time period FY1996-FY2006, except for GB Cod, which is allocated to certain permit/MRIs based on FY1996-FY2001 (see Amendment 16).

**Section 4.02. Annual Distribution, Consolidation, and Harvest.** Each Member hereby acknowledges and agrees that the aggregate allocation of Groundfish authorized by Amendment 16 and NMFS to the Sector (the "Sector ACE") shall be harvested in accordance with the Harvesting Rules, which are set forth as Exhibit C hereto, and the provisions for allocation set forth in Exhibit B hereto. Consistent with Exhibit B, prior to the commencement of the Fishing Year, the Board shall make an initial distribution of the Sector's ACE to members based on the Members' fishing history ("Individual ACE"). After the initial allocation of ACE is made, and at any time during the fishing year, Members are free to transfer, lease, or sell any Individual ACE to any other Member consistent with Section 4.09. Members with or without ownership interests in multiple Permits may consolidate ACE to harvest from a single or fewer vessels, provided that the Manager is notified and provides his consent to such transfer. *See also* Exhibit B and Table B.3.

Each Member agrees to, and agrees to cause its Participating Vessels to, exercise all commercially reasonable efforts to (i) assist in harvesting an amount of Groundfish equal to, but not greater than, the Sector ACE, as further set forth on Exhibit C, and (ii) to comply with all of the other Sector requirements set forth in Exhibit B and Exhibit C hereto. If at any time during the fishing year the Board determines that the Sector ACE may not be fully harvested, the Board shall, subject to the provisions of this Section 4.02, seek to redistribute the Sector ACE, through Individual ACE, monthly Sector ACE targets or otherwise, to ensure that the Sector ACE is fully harvested. In addition, to the extent that the Sector ACE is adjusted upward or downward after the commencement of any fishing year, whether by the authority of NMFS, by framework adjustment or by other regulatory action, the Board shall have the authority to redistribute the adjusted Sector ACE through adjustments to Individual ACE, monthly quotas, or otherwise, to ensure that the adjusted Sector ACE is properly harvested by the Members.

**Section 4.03. Sector ACE Reserve.** Each Member agrees that the Board may, in its sole discretion, establish a reserve of each Groundfish species in order to ensure that the Sector remains in compliance with its Sector ACE limit; provided, however, that such



reserve shall not exceed 10 percent (10%) of the Sector ACE. The amount of the reserve shall be deducted from the Sector ACE before such Sector ACE is distributed among the Members, their Permits and their Participating Vessels through Individual ACE, monthly quota targets, or otherwise.

**Section 4.04. Distribution of Sector ACE Reserve.** If the Board, subsequent to the establishment of a reserve pursuant to Section 4.03 hereof, determines that the Sector ACE, as adjusted pursuant to Section 4.03, will be harvested by the Participating Vessels, the Board shall release and authorize the harvesting of the reserve by the Members. Such release and authorization shall be conducted in a manner consistent with all other requirements herein and any additional Board requirements approved as part of the authorization in order to ensure the Sector ACE is not exceeded.

**Section 4.05. Research Reserve.** Each Member agrees that the Board may establish a reserve of ACE for each Groundfish species for purposes related to research. The terms and conditions for the distribution of ACE placed into the reserve shall be established through an agreement between the Board and the Member(s) electing to place ACE in the reserve. The amount of the reserve shall not exceed the ACE of such Member(s), their Permits, and their participating Vessels, and shall be deducted from the Sector ACE before such Sector ACE is distributed through Individual ACE, monthly quota targets, or otherwise.

**Section 4.06. Distribution of Research Reserve.** The Board, subsequent to the establishment of a Research Reserve pursuant to Section 4.05 hereof, shall release and authorize the harvesting of the Research Reserve by the Members as specified in the agreement(s) establishing such reserve. Such release and authorization shall be conducted in a manner, consistent with this plan, that continues to ensure the Sector ACE is not exceeded.

**Section 4.07. Fishing History in Sector.** The Members agree that any fishing history, which is accumulated or established using the Individual ACE attributed to a Member's Permit while it is participating in the Sector (the "Sector History"), shall be attributed to such Member's Permit, and not to any other permits. The Members further agree that any future allocations of Groundfish made within the Sector shall be based on the fishing history of the Members' Permits that is accumulated during the relevant Qualifying Period.

**Section 4.08. Non-Prejudicial.** It is the intent of the Members that the allocation of ACE to any Member's Permit during the Qualifying Period, derived from reports to NMFS prior to joining the Sector, shall not be diminished or penalized as a result of participation in the Sector in lieu of participation in the multispecies DAS program.

**Section 4.09. ACE Transfer/Carryover.** The Sector may carry up to 10 percent of its unused ACE forward into the next fishing year. Participating Vessels and/or Permits may transfer Individual ACE to other Participating Vessels and/or Permits, or otherwise pool or redistribute Individual ACE, provided that the Manager is notified and provides his

consent to such transfer.

There is no limit on the amount of ACE that can be transferred between Sectors. This exchange can occur at any time during the fishing year and up to 2 weeks into the following fishing year. Members must notify the Manager prior to requesting a transfer of ACE to another Sector and such request must be approved by the Board prior to the Sector transmitting the ACE transfer request to NMFS. The transfer does not become effective until approved by NMFS and both Sectors are notified.

Since ACE transfers may take place after fishing has commenced and it will not be clear whether sectors are able to balance overages by acquiring ACE until all transfers have been processed, the Sector recognizes that, consistent with Amendment 16, NMFS will hold 20 percent of the Sector ACE for each stock in reserve until 61 days after the beginning of the fishing year in order to ensure that sectors will have sufficient ACE to balance overages from the previous year.

**Section 4.10. ACE Overages.** Any Sector ACE overage that is not accounted for through a subsequent ACE transfer will be considered a violation of the Plan and regulations. NMFS may hold Members and the Sector jointly and severally liable for such overage as indicated in Article VII below. If the Sector or a Member exceeds its or their allocation, the overage will be deducted the following year on a pound for pound basis, after accounting for any transfers. A permanent reduction in Sector ACE will follow any vessels that leave the Sector.

The Harvest Rules, Exhibit C, show how the Sector plans to avoid exceeding its ACE, along with actions to be taken should the ACE be exceeded. Overage penalties are identified in the schedule of penalties (Exhibit A). NMFS will withhold 20 percent of the Sector ACE at the beginning of the fishing year for a period of 61 days to allow time to process any end-of-year transfers of ACE and to determine whether any reductions in ACE are necessary due to overage in the previous year.

If an overage occurs and a vessel(s) leaves the Sector but the remaining vessels have enough ACE to cover the overage deduction, the impacts on departing Members will be determined by the Infractions Committee and Board.

If an overage occurs and the Sector disbands completely each permit will receive a percentage reduction in DAS equal to the maximum percentage overage of the Sector (e.g. The Sector goes over by 5% on stock A and 10% on stock B, therefore each permit receives a 10% DAS reduction).

If a vessel causes a Sector ACE overage, leaves the Sector, and there is insufficient ACE in year 2 to cover the year 1 overage, consistent with Amendment 16 there will be a pound-for-pound penalty applied to that permit in the new Sector or a percentage DAS reduction if the Member joins the Common Pool.

**Section 4.11 Non-target Fisheries.** The PCS will undertake measures to avoid or minimize catching groundfish in non-groundfish fisheries participated in by sector vessels by adhering to all monitoring and reporting requirements, using gear that minimizes groundfish bycatch such as nordmore grates and topless trawls in the shrimp fishery, and adjusting its fishing patterns (time and area restrictions) or its gear at the request of the Sector Manager if groundfish catch approaches either an individual's or the Sector's ACE. If at any point an individual or the Sector does not have ACE available and groundfish catch cannot be avoided in a non-groundfish fishery for which there is not a separate sub-ACL of groundfish, then its vessels shall not participate in such fisheries.

## **Article V. ADDITIONAL MEMBERSHIP REQUIREMENTS, RESTRICTIONS, AND EXEMPTIONS**

**Section 5.01. Letters of Authorization and Proof of Sector Membership.** Upon approval, each sector vessel will be issued a Letter of Authorization (LOA) specifying any exemptions from Federal regulations and laws. Vessels must comply with all applicable Federal regulations and laws not specifically exempted in the LOA. Each Member agrees that its Participating Vessel(s) shall maintain on-board at all times while fishing for groundfish a LOA from NMFS verifying such Participating Vessels' participation in the Sector, contact information for the Sector Manager, and a copy of the Operations Plan and Agreement in effect for the current fishing year.

**Section 5.02. Gear Restrictions.** While the primary gears used by Participating Vessels will be otter trawls and sink gillnets, there is some history of use of other gear including demersal long lines and handlines. The PCS is authorized to use any gear allowed by regulations including automated hook, jigs, handlines, Scottish seines, beam trawls, or pots.

**Section 5.03. Area Restrictions.** Each Member and Participating Vessel agrees that it shall not fish commercially with gear that is capable of harvesting Groundfish outside the Gulf of Maine Regulated Mesh Area (RMA or "Area"), as identified in the Harvesting Rules set forth in Exhibit C hereto.

**Section 5.04. Operators.** Each Member agrees to ensure that any operators of its Participating Vessels fully comply with the obligations and restrictions set forth in this Agreement. Each Member further agrees to accept responsibility hereunder for the actions of any such operators that result in a violation of this Agreement.

**Section 5.05. Designated Landing and Departure Ports.** To enable the Members and the Manager to monitor, observe and verify catches, each Member agrees that each of its Participating Vessels will only offload fish in, and depart to fish from, the designated ports as follows ("Remote" locations are noted. See Section 6.07 below for additional information regarding monitoring at remote ports.):

1. Portland Harbor, Portland, ME
2. Port Clyde Harbor, Port Clyde ME (Remote\*)
3. Cape Porpoise Harbor, Kennebunkport, ME (Remote)

4. Kennebunkport Harbor, Kennebunkport, ME (Remote)
5. Sebasco Harbor, Phippsburg, ME (Remote)
6. Boothbay Harbor, Boothbay Harbor ME (Remote)
7. Cundys Harbor, Harpswell, ME (Remote)
8. Camp Ellis, Saco, ME (Remote)
9. Gloucester Harbor, Gloucester, MA
10. Monhegan Island, ME (Departure Port Only)

\* There is a dealer in Port Clyde but some fish are trucked to Portland and therefore it may at times operate as a remote port.

**Section 5.06. Landing Port Exceptions.** Landings in ports other than those listed in Section 5.05 are permitted on a temporary, case-by-case basis, subject to prior approval of the Manager; provided, that the Manager determines that the excepted landing will not impair effective enforcement and monitoring of the Sector and this Agreement. Such exceptions may be granted in the sole discretion of the Manager. The Manager shall notify the Dockside Monitoring Vendor (“DMV”) of landing port exceptions in a manner and timeframe agreed upon by the DMV and Manager, and such agreement shall ensure compliance with the Sector’s Dockside Monitoring requirements. The Manager shall report to NMFS any landing port exceptions that are of a significant or prolonged nature. For the purposes of this paragraph, landing port exceptions that are of a significant or prolonged nature, would include, but not be limited to, more than two exceptions per month for a vessel, or if the timeframe for any such exception is greater than two days.

**Section 5.07. Observed Offloading.** Each Member agrees that, in order to enhance the monitoring and enforcement of the provisions in this Agreement, the Manager may timely request that an observer be present during offloading operations. If such a request is made, each Member agrees not to permit its Participating Vessels to offload fish until the Manager or his designee is present.

**Section 5.08. Advanced Notice of Offloading.** Consistent with the requirements of Section 6.01, vessels shall notify the Sector Manager and/or DMV through the vessel’s Vessel Monitoring System (VMS) or other means a minimum of 6 hours prior to landing, or within a shorter period of time so long as it is agreed by the Member, Manager, DMV and NMFS that notice is adequate. Vessels shall provide location and approximate time of landing, and estimation of pounds to be landed. As indicated in Section 6.01 below, for trips less than 6 hours or occurring less than 6 hours of port, the trip start hail will also provide estimated date and time of arrival to port and estimated date and time of offload. The trip end hail will be sent upon completion of the last tow with required updated information.

**Section 5.09 Exemptions.** The PCS is exempt from certain regulations otherwise applicable to participants in the Groundfish FMP. Such exemptions include all of the “universal exemptions” approved as part of the Groundfish FMP and Amendment 16. These universal exemptions applicable to the PCS include the following:

1. Trip limits on allocated stocks (described more fully in Exhibit C)
2. Groundfish days-at-sea (DAS) restrictions (note that DAS regulations will still exist for certain non-groundfish fisheries including monkfish)
3. Portions of the Gulf of Maine Rolling Closure Areas

In addition, as described in Exhibit C, if approved by NMFS the PCS will be exempt from certain gillnet block requirements. Specifically, under this exemption, participating gillnet vessels would not be required to adhere to those provisions of 50 C.F.R. 648.82(j)(1)(ii) requiring that during each fishing year, day gillnet vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Participating vessels would continue to be required to comply with applicable spawning season restrictions, including the 20 day spawning block (March-May) requirement, and all other gillnet requirements, in accordance with the groundfish FMP and NMFS regulations.

**Section 5.10. Potential Redirection of Effort.** The PCS does not anticipate significant geographic redirection of effort as a result of the formation of the Sector as surveys and Member interviews have indicated that Members intend to continue to fish in approximately the same areas as the most recent prior years. The most likely change indicated by Sector Members is related to the change in rolling closures approved as part of Amendment 16, which is most likely to redirect some effort during May to statistical blocks 130-131 and 136-137, and June to 143-144.

If the 120 days out exemption is approved, there will likely be different effects for different PCS gillnet vessels. Approximately one-half of the vessels (six) fish from Boothbay and Cundy's harbors in statistical areas 138, 139, 146, and 147. It is anticipated that under this exemption they will continue to fish the same areas but be able to stretch out their effort in statistical areas 146 and 147 earlier into April and May, when they currently take time out of the fishery,.

For the approximately six vessels that fish from Kennebunkport and Cape Porpoise, which fish primarily only in areas 139 and 140 year-round, the exemption will allow them to fish in these areas during the fall "flanking season," after September 9 when they currently take time out of the fishery.

As indicated in Exhibit B, the PCS anticipates that up to two currently active vessels may not participate in the multispecies fishery in FY 2010. One of these vessels holds permits to fish in the Maine lobster and shrimp fisheries and it is unlikely there will be any shift in effort to these or other fisheries by that vessels. The second vessel holds federal herring and scallop permits and there could be a minimal shift in effort into these fisheries.

The PCS has conducted considerable mapping of historic effort by Members and the Sector Manager will monitor trends and report to NMFS in writing should a significant and adverse shift in effort occur. The Sector Manager may establish additional area or gear restrictions designed to mitigate the adverse impacts of such shift, including bycatch issues (marine mammal or otherwise) should they occur do to spatial shifts in effort or

increases in soak times. The Manager will monitor any redirection of effort as part of the heightened monitoring requirements contained in the PCS Operations Plan and will include that information in the Manager's reports to NMFS. Members that violate related provisions will be subject to penalties in accordance with Exhibit A of the Operations Plan. Further, any increase in "equity" issues would be addressed by the Board, which will be comprised of both gillnet and trawl fishermen.

Further, the Members acknowledge that limited redirection of fishing effort onto stocks not managed under the Plan could occur as a result of insufficient ACE for a directed fishery on regulated groundfish species. If any redirection occurs, Members agree that while using fishing gear capable of harvesting regulated groundfish stocks, they will not redirect effort onto stocks which are overfished or for which overfishing is occurring. Any redirection of effort into other fisheries where non-specified gear is used will be closely monitored throughout the year and reported in the Annual Report. Through the reporting requirements contained in this Agreement, the Manager will monitor any redirection of effort and include that information in the Manager's reports to NMFS. Members that violate this provision will be subject to penalties in accordance with Exhibit A.

#### **Article VI. CATCH MONITORING AND VERIFICATION**

**Section 6.01. Sector Hails/Reporting.** Consistent with Exhibit E, each Participating Vessel operator will provide a trip start hail prior to departing port at the beginning of a commercial fishing trip when commercial fishing with gear capable of harvesting regulated groundfish. This will be sent as an email via VMS to the dockside monitoring vender who will relay the message to the sector manager and to NOAA Fisheries Office for Law Enforcement (OLE) upon receiving the transmission. The transmission will contain the vessel permit number, trip ID# (VTR number for the first VTR page) and an estimated trip duration. For trips less than 6 hours or occurring less than 6 hours of port, the hail trip start will also provide estimated date and time of arrival to port and estimated date and time of offload. The trip end hail will be sent upon completion of the last tow with required updated information including the estimated time of arrival, time of offload and estimated total weight of each species on board. An alternative timing for the trip end hail may be implemented during the 2010 fishing year if agreed upon by the sector, sector monitoring provider, and NMFS. The dockside monitoring vender will immediately send a confirmation to the vessel that the trip start hail was received; if the vessel does not receive the confirmation within 10 minutes, the captain must contact the vender to confirm the trip start hail via a back up system, e.g., a phone call.

A trip end hail will be provided by the vessel operator 6 hours before landing for trips that are at least 6 hours in duration and more than 6 hours from port. This will also be sent as an email through VMS to the dockside monitor provider the message will contain: the vessel permit #, trip ID # (VTR number on the first VTR page), intended offloading location(s) including the dock or dealer, port or harbor and the state. This message will also contain estimated date and time of arrival, estimated date and time of offload and estimated total weight of each species on board. The Dockside Monitoring Provider will relay all information provided in the trip end hail to the sector manager and to OLE as

well as provide confirmation back to the vessel operator. If the vessel does not receive confirmation within 10 minutes, the captain must contact the vender to confirm the hail trip end via a back up system, e.g., a phone call. Alternative standards for trips that are at least 6 hours may be implemented during the 2010 fishing year if agreed upon by the sector, the monitoring provider, and NMFS.

In accordance with and defined by Amendment 16, all Sector vessels will also be required to make a declaration to NMFS via VMS prior to departing port identifying whether they intend to fish in one broad reporting area or multiple reporting areas. Vessels that fish in multiple areas will be required to provide additional daily reports to NMFS as required by Amendment 16.

The sector will submit required reports using the format and procedure prescribed by NMFS.

**Section 6.02. Participating Vessel Catch Reports.** To enable each Member and the Sector to monitor the Members' compliance with this Agreement, each Member agrees to report each of its Participating Vessels' entire catch by species on a landing-by-landing basis, by providing the Manager with a copy of the official Vessel Trip Report, Electronic Vessel Trip Report (EVTR), or other reporting document authorized by NMFS within 24 hours of offloading retained catch or prior to departing on a subsequent trip, whichever occurs first, in the form and manner prescribed by the Manager. If electronic VTR reporting has been approved for use in the 2010 fishing year, vessels will either submit an electronic VTR or a paper VTR. If electronic reporting has not been approved for use in 2010 fishing year the vessel will submit a paper VTR and, if required by the sector manager, an electronic VTR to the sector manager. As provided in Section 3.05, the sector manager will retain and maintain all sector data, including records of all paper and electronic VTRs.

The Members agree that these records shall be maintained by the Manager. The Manager shall provide such Member with the Sector's catch information that is generated from such records as described in Exhibit C, or upon the request of any Member. As described in Section 3.05 the Manager shall, on a weekly basis, transmit to NMFS the Sector ACE Reports generated from such information along with Vessel Trip Reports or other documents required by NMFS.

**Section 6.03. Dealer Reporting.** Each Member agrees to (i) sell the landings of its Participating Vessels only to a dealer licensed under the Plan by NMFS and (ii) cause any such dealer to provide the Manager with a copy of the official dealer weigh out slip or other official reporting document required by NMFS on a weekly basis, or if pursuant to Section 3.05 daily reporting is required by NMFS, within 24 hours. Each Member further acknowledges and agrees that (a) it is responsible for ensuring timely dealer reporting in accordance with the provisions of this Section 6.03 and (b) failure of the dealer to timely deliver the reports for a Member's Participating Vessel in accordance with this Section 6.03 shall be deemed a breach of this Agreement by such Member. It is the responsibility of the Member to ensure that a dealer is licensed and Member shall

provide evidence of such licensure to Manager upon request.

**Section 6.04. Catch Verification.** The Manager shall, and each Member shall ensure that the Manager does compare, verify and validate each Participating Vessel's landings records with the dealer reports for such Participating Vessel on a continuing and frequent basis. If the Manager identifies a discrepancy, he shall immediately notify the affected Member and seek to resolve the discrepancy. If the Manager is unable to satisfactorily reconcile the catch records, he shall notify the Committee of the discrepancy for its consideration and resolution. Each Member further agrees to cooperate fully with any requests for information or data that are made by the Manager or the Committee in an effort to resolve such discrepancy.

**Section 6.05. Monitoring Program Vendors.** The PCS is considering the following independent, third-party monitoring providers (Monitoring Vendors) for its dockside and at-sea monitoring programs. Exhibit H provides the individual Monitoring Vendor credentials, including the following: corporate structure; statement of non-conflict if interest; statement of convictions; federal contacts and/or decertification; prior experience and performance ability; insurance; monitor benefits and services; emergency action plan; statement of good financial standing; reporting problems; refusal to deploy; and record keeping. The sector will contract a NMFS-approved provider from the following list to provide dockside [and/or] at-sea monitoring services before May 1, 2010 and will notify NMFS of its selection:

A.I.S., Inc.  
89 North Water Street  
New Bedford, MA 02747

East West Technical Services  
34 Batterson Drive  
New Britain, CT 06053

MRAG Americas  
65 Eastern Ave.  
Unit B2C  
Essex, MA 01929

Saltwater Inc.  
733 N. Street  
Anchorage, AK 99501

**Section 6.06. Dockside Monitoring (DSM) Program**

The Sector will implement through a contract with one or more of its selected Monitoring Vendors a reliable dockside monitoring program that is consistent with the standards and requirements developed by NMFS and included as Exhibit E. Under the DSM Program, dockside monitors will be deployed in such a way as to achieve 50 percent coverage of trips that is random and representative of the fishing activities of the sector, using a methodology approved by NMFS. The PCS DSM monitoring programs proposed by its



selected Monitoring Vendors are included in Exhibit H.

NMFS shall notify the Manager which of the selected Monitoring Vendors have been approved. Approved Vendors will submit bids to the Sector for implementing their proposed DSM programs, and the Board will select which Monitoring Vendor will provide the Sector's DSM. If a Monitoring Vendor loses its approved status in the course of the fishing year, NMFS will immediately alert the Manager and the Sector will establish a contract with another approved Vendor from the list and notify NMFS. Requirements related to Monitoring Vendors can be found in Exhibit G.

**Section 6.07 Offloading Catch.** The designated ports for offloading fish are identified in section 5.05. The ports of Portland, Gloucester, and Port Clyde have a dealer, but some fish offloaded in Port Clyde is trucked to Portland, as is fish offloaded in the "remote ports" of Cape Porpoise, Sebasco Harbor, Camp Ellis, Boothbay Harbor, Cundys Harbor and Kennebunkport. Remote ports (ports where there is no licensed dealer, regardless of whether there is a scale for weighing fish), may require two monitored events; the vessel offload and the dealer (truck) offload. Section 5.06 discusses exceptions to offloading at designated ports.

**Section 6.08. At-Sea Monitoring (ASM) Program.** The PCS will participate in the Northeast Fisheries Observer Program (NEFOP) and the NMFS-funded at-sea monitoring programs. Any additional at-sea monitoring coverage beyond the NMFS-funded level (currently 30 percent, *see* NMFS, Letter to Sector managers and Representatives (August 20, 2009)) will be provided pursuant to an independent contract between the PCS and a NMFS approved provider. This additional at-sea monitoring coverage will have vessel and trip selection coordinated through NMFS, will be conducted in the same manner with the same protocols as the NMFS-funded ASM program, and will use approved at-sea monitors. Also, this additional coverage will not be allowed to replace or interfere with either the coverage of NEFOP or the NMFS-funded at-sea monitoring program. The Manager will maintain a database of all catch data, including but not limited to VTR, dealer, monitor, and observer data. NMFS will provide the PCS with data from NEFOP and the ASM program.

**Section 6.09 Observer Safety.** The Sector Manager will work with the at sea monitoring Vendors and Participating Vessels to ensure they meet the minimum safety standards.

**Section 6.10 Pre-trip Notification.** The designated ports for departure are identified in section 5.05. For the pre-trip at sea monitoring notification, the Sector Vessels will notify the at-sea monitoring Vendor a minimum of 48 hours prior to deployment and shall occur via a telephone call. Day boats may call in their notification for all trips up to 10 days in advance. The Vendor is required to be capable of taking telephone calls 24hrs per day, 7 days per week. Once the Vendor receives notice of a trip, they shall notify the Sector Manager, NEFOP and OLE via electronic mail or telephone. Exhibit H provides further details of related protocols.

**Section 6.11 Electronic Data Transfers.** Data from observed trips shall be provided electronically to the Vendor, the Sector Manager, the NEFSC and NMFS, in a format

approved by NFMS, within 48 hours of a trip.

**Section 6.12 Discard Rates.** Sectors will commence FY 2010 with discard rates provided by NMFS and will apply in-season discard rates as provided by NMFS.

**Section 6.13 ASM Program Adjustments.** The Sector Manager will work with the Vendor and NEFSC on an ongoing basis to improve all aspects of its ASM Program, including making any necessary adjustments to achieve desired levels of coverage while meeting other Program requirements.

## **Article VII. ENFORCEMENT**

**Section 7.01. Agreement Enforcement.** Each Member agrees that the Sector, by or through its representatives, and/or any other Member may enforce this Agreement on behalf of the Sector and/or its Members. Each Member agrees to take all actions and to execute all documents necessary or convenient to give effect to the enforcement procedures contemplated by this Agreement, the Harvesting Rules, and any Schedule of Penalties.

**Section 7.02. Liability.** The Members acknowledge and agree that the Sector itself is a legal entity, and therefore may be held liable for violations of the law, applicable regulations, and this Agreement committed by its members. Each Member participating in the Sector must comply with all applicable requirements and conditions of this Agreement and their Letter(s) of Authorization. It shall be unlawful and subject to enforcement by NMFS for the Sector or any Members to violate any such conditions and requirements unless they are identified as exclusive to the administration of the Sector. Those conditions and requirements that are considered to be exclusive to the administration of the Sector which are contained in the following sections:

- **Section 1.02. Organization and Authority**
- **Section 2.01. Voluntary Membership**
- **Section 2.02. Scope of Membership Obligations**
- **Section 2.03. Length of Commitment**
- **Section 2.04. New Members**
- **Section 2.05. Permit Transfers**
- **Section 2.06. Membership Dues**
- **Section 2.08. Right of First Refusal**
- **Section 2.09. Release of Confidential Data**
- **Section 3.01. Sector Manager**
- **Section 3.02. Manager Authority**
- **Section 3.04. Procedures for Investigations**
- **Section 4.01. Sector Allocation**
- **Section 4.02. Annual Distribution, Consolidation, and Harvest**
- **Section 4.03. Sector ACE Reserve**
- **Section 4.04. Distribution of Sector ACE Reserve**

- Section 4.05. **Research Reserve**
- Section 4.06. **Distribution of Research Reserve**
- Section 5.04. **Operators**
- Section 5.10. **Potential Redirection of Effort**
- Section 6.04. **Catch Verification**
- Article VII. **ENFORCEMENT**
- Article VIII. **EXPULSION OF MEMBERS**
- Article IX. **TERM/TERMINATION**
- Article X. **MISCELLANEOUS**

Section 7.03. **Joint and Several Liability and Restrictions on Fishing Activity.** The Members also acknowledge and agree that a violation of this Agreement or applicable federal fishery regulations by one or more Members (or the Members' Permits, Participating Vessels or Participating Vessels' operators, if any) that causes the Sector to exceed its ACE for any species, or a hard total allowable catch or "hard-TAC", or results in the discarding of legal sized fish or the misreporting of catch (landings or discards), could subject the Sector and its Members to joint and several liability for civil penalties and permit sanctions pursuant to 15 C.F.R. Part 904.

The Members further acknowledge and agree that monetary penalties could be inadequate recourse under such circumstances and that consistent with Amendment 16 if an ACE or hard-TAC is exceeded in more than one fishing year, the Sector's share may be permanently reduced or the Sector's authorization to operate may be withdrawn. Therefore, the Members acknowledge and agree that each of them will (and will cause their Permits, Participating Vessels and Participating Vessels' operators, if any, to) comply with a "stop fishing" order from the Sector, which shall be issued by the Board, the Manager or the Committee, and each of the Members further agrees that if any Member (or its Permits, its Participating Vessels or the Participating Vessels' operators) fails to comply with such order, the Sector shall have the authority to obtain an injunction, restraining order or other equivalent form of equitable relief to give effect to such "stop fishing" order.

Section 7.04. **Penalties for Violations.** Any penalties that are imposed upon a Member by the Sector pursuant to the terms of this Agreement shall be in addition to, and not in lieu of, any other potential state or federal penalty that may be imposed upon such Member.

Section 7.05. **Appeal from Infractions Committee Decision.** If the Committee (i) has determined, pursuant to the procedures set forth in Section 3.04 hereof, that a Member has violated this Agreement or (ii) makes any other determination with respect to a Member under this Agreement (including, specifically, without limitation Section 5.03 hereof), such violating Member shall have five business days following the date of the Committee's determination to request reconsideration of the enforcement or other action and/or propose an alternative form of penalty. Such request shall be made in writing and shall be addressed to the Board. The Board may, in its sole discretion, grant or deny any request for reconsideration and may, in its sole discretion, approve or disapprove any

alternative form of penalty; provided, that the Board shall exercise all reasonable efforts to ensure that penalties and settlements are commensurate with the nature and extent of the violation, are designed to further the purposes of the Groundfish Plan, Amendment 16, the PCS, and are uniform with those reached in similar circumstances.

**Section 7.06. Penalties and Attorneys' Fees.** Penalties for any violations of this Agreement shall, to the extent addressed in the Schedule of Penalties, be limited to the amounts set forth on the Schedule of Penalties plus all costs, fees and expenses, including attorneys fees, incurred by the Sector or, in a case in which the Sector does not take enforcement action, by the Members bringing such action, in enforcing the provisions of this Agreement. To the extent the Schedule of Penalties addresses such matter, the Members and the Sector hereby waive any claims to actual, direct, or indirect damages, and instead agree that payment of the amounts set forth on the Schedule of Penalties and costs of enforcement shall be their sole remedy for breaches of this Agreement. In connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and attorney's fees associated with the proceeding.

**Section 7.07. Application of Penalties, Fines and Damages.** All penalties, fines and/or other damages paid to the Sector shall, first, be applied to the cost of enforcement of such violations and, second, any remaining amounts shall be applied to the costs and expenses of the administration, management and preservation of the Sector. Any funds remaining after the application of the foregoing sentence shall be used to further research into efficient management of groundfish stocks for the benefit of the resource and those that harvest the resource; provided that any such use of funds shall comply with all applicable laws, including the provisions of the Internal Revenue Code, as amended, that may apply to the Sector from time to time.

**Section 7.08. Dispute Procedures.** Notwithstanding the provisions of Section 7.01 hereof, prior to instituting any litigation or other dispute resolution, the parties shall follow any applicable procedures set forth in this Agreement, including specifically Sections 3.04, 6.04, and 7.03, for the resolution of such dispute. Any litigation taken with respect to any dispute that arises in connection with this Agreement shall be taken in the federal district court in Maine or, if said court does not have jurisdiction, in such courts in the State of Maine that do have jurisdiction.

**Section 7.09. Specific Performance.** In furtherance and not limitation of Section 7.03 hereof, each of the Members and the Sector shall have the right to have any provision of this Agreement specifically enforced, through injunction, restraining order or other form of equitable relief.

**Section 7.10. Indemnification.** Each party that violates this Agreement (the "Indemnitor") hereby severally agrees to indemnify, defend and hold harmless the other parties hereto (each, an "Indemnitee") in respect of their respective Losses; provided, that such Losses result or arise from a third party claim or governmental proceeding brought against or involving the Indemnitee, which is based on or relates to such Indemnitor's (or its Permits', its Participating Vessels' or such Participating Vessels operators', if different

from such Indemnitor) (i) violation of applicable laws, rules or federal fishery regulations or (ii) breach of any covenant, agreement or obligation contained in this Agreement, the Harvesting Rules or other Sector requirements as may be adopted under the terms of this Agreement or the Sector's Bylaws. The indemnification obligations of the parties hereto shall be several and not joint and several. For the purposes of this Section 6.09, "Losses" shall mean any and all claims, liabilities, obligations, judgments, liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, taxes, losses, fines, penalties, expenses, fees, costs, amounts paid in settlement (including reasonable attorneys' and witness fees and disbursements in connection with investigating, defending or settling any action or threatened action) arising out of any claim, complaint, demand, cause of action, action, suit or other proceeding asserted or initiated or otherwise existing. The obligations under this Section 7.10 shall survive the termination of this Agreement and the expulsion of any Member pursuant to Article VIII.

### **Article VIII. EXPULSION OF MEMBERS**

Section 8.01. Cause. The Members agree that any Member, its Permits and/or its Participating Vessels may be expelled from the Sector if (i) the actions of such Member and/or its Participating Vessels (or the Participating Vessels' operators) seriously undermine and threaten the existence of the Sector, (ii) the actions of such Member and/or its Participating Vessels (or the Participating Vessels' operators) have exposed other Members of the Sector to monetary penalties and/or legal actions, (iii) such Member has been convicted of a serious crime, or (iv) such Member has not paid its membership dues and/or poundage fees as required by Section 2.06.

Section 8.02. Procedure. Any Member, the Committee or the Manager may submit to the Board a request to have a Member, its Permits and/or its Participating Vessels expelled from the Sector (the "Expulsion Request"). Such Expulsion Request shall be in writing and shall include an explanation of the basis for expulsion. The Board shall vote on such Expulsion Request within fourteen (14) days of receipt of such Expulsion Request. The affirmative vote of three-fourths (75%) of the members of the Board shall be required in order to expel a Member, its Permits and/or its Participating Vessels. Expulsion shall be effective immediately upon the receipt of the requisite vote by the Board. As required by 50 CFR Part 648.87 and Amendment 16, a Member, its Permits and/or its Participating Vessels expelled during any fishing year may not fish outside of the Sector under a multispecies DAS program, participate in another groundfish sector, or lease or transfer any DAS or ACE assigned to that Member's Permits or Participating Vessels during the remainder of such fishing year. Upon expulsion of any Member, its Permits and/or its Participating Vessels, the Manager shall immediately notify NMFS via certified mail that the Member's Permits and/or Participating Vessels are no longer included in the Sector.

### **Article IX. TERM/TERMINATION**

This Agreement takes effect upon the approval hereof by the Regional Administrator in accordance with 50 CFR Part 648.87 and terminates on the last day of

the 2010 fishing year (which occurs in April 2011) (the “Term”). The Term of this Agreement may be extended by the written consent of the Members. Such written consent to extend the Term of this Agreement shall be given 20 calendar days in advance of the date by which the Sector’s Operations Plan and Agreement for the upcoming fishing year must be submitted to NMFS. Notwithstanding the foregoing, if NMFS shall not approve the Sector’s Operations Plan and Agreement, as the same may be amended, for any fishing year during the Term or any extension thereof, then this Agreement shall terminate on the last day of the last fishing year for which the Sector’s Operations Plan and Agreement shall have received approval from NMFS.

## **Article X. MISCELLANEOUS**

**Section 10.01. Entire Agreement.** This Agreement, including the Exhibits hereto, the Schedule of Penalties and any other documents incorporated by reference herein, constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof.

**Section 10.02. Succession and Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the Manager, such consent not to be unreasonably withheld or delayed, nor is this Agreement intended to confer upon any person except the parties hereto any rights, interests, benefits, obligations or remedies hereunder. Any assignment in contravention of this Agreement shall be null and void.

**Section 10.03. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**Section 10.04. Notices.** All notices, requests, demands, consents, claims and other communications hereunder shall be deemed duly given (i) one business day following the date sent when sent by overnight delivery, (ii) five business days following the date mailed when mailed by registered or certified mail return receipt requested and postage prepaid, and (iii) upon delivery confirmation when sent by facsimile, at the contact information provided by each such Member to, and maintained by, the Manager.

**Section 10.05. Governing Law.** This Agreement shall be governed by and construed in accordance with federal fisheries laws and, to the extent that federal fisheries laws do not apply, with the domestic laws of the State of Maine without giving effect to any choice of law provision or rules (whether of Maine or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Maine.

**Section 10.06. Change in Law.** If and to the extent that any laws or regulations that govern any aspect of this Agreement shall change, so as to make any aspect to this Agreement unenforceable, then the parties agree to make such modifications to this

Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by the parties.

**Section 10.07. Consent to Jurisdiction and Venue.** Subject to and without limiting the dispute resolution procedures set forth in Article VI, each of the Members consent to the exclusive jurisdiction and venue of the federal district court in Maine or, if said court does not have jurisdiction, in such courts in the State of Maine that do have jurisdiction, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Each of the Members accepts, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any objection as to venue, and any defense of *forum non conveniens*.

**Section 10.08. Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the Members.

**Section 10.09. Severability.** Any term or provision of this Agreement that is held invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

**Section 10.10. Expenses.** Except as otherwise provided herein, each of the members shall bear its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with this Agreement.

**Section 10.11. Incorporation of Exhibits and Other Documents.** The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the undersigned parties have executed the Port Clyde Community Groundfish Sector Operations Plan and Agreement for Fishing Year 2010-2011, as of the date first written above.

**[THE ELECTRONIC COPY OF THE SIGNATURES IS ATTACHED AS A SEPARATE FILE]**

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

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/s/ \_\_\_\_\_

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/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_

/s/ \_\_\_\_\_

Name/Co: \_\_\_\_\_

MRI #: \_\_\_\_\_



**EXHIBIT A**

<b>Port Clyde Community Groundfish Sector Penalty Schedule</b>			
<b>VIOLATION</b>	<b>FIRST</b>	<b>SECOND</b>	<b>THIRD</b>
<b>VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, EXEMPTION PERMIT REQUIREMENTS</b>			
Violations including but not limited to: providing false statements or supporting documentation on applications or reports to the Sector; late or non-reporting; failure to comply with a permit condition/ restriction/ letter of authorization or exemption issued by the Sector; failure to notify Manager of intent to leave Sector by the September 1 preceding the start of the next fishing year (except for FY2010); providing false statements; failure to participate in the Sector Catch Monitoring Program; interfering with onboard data collectors; or failing to comply with VMS/DAS requirements. NOTE: While technical and minor violations may result in a letter of warning, due to the critical importance of timely and accurate reporting it is likely that even first time reporting violations will result in a penalty.	Up to \$5,000 (and/or stop fishing order)	\$5,000-\$15,000 (and/or stop fishing order)	\$20,000- (and/or stop fishing order)
<b>VIOLATIONS REGARDING TIME AND AREA RESTRICTIONS</b>			
Violations including, but not limited to: exemption areas, closed fisheries, closed seasons, restricted gear/management areas and ACE violations.	Up to \$50,000 (stop fishing order for 30 days)	\$50,000-\$100,000 (unable to fish for the remainder of the fishing year)	Expulsion
<b>VIOLATIONS THAT PLACE THE SECTOR AGREEMENT AT RISK</b>			
Violations including but not limited to a violation of a stop order, fishing in a closed area, transfer of fish from a non-sector vessel to a sector vessel,	Up to \$50,000 (loss of	Expulsion	

transferring fish to a non-Sector vessel (including a non-Sector vessel owned or operated by a Permit holder), subverting the reporting requirements (misappropriating landings) or any other action which could cause the authorized PCS allocation to be in violation of its agreement.	fishing rights for 365 days)		
<b>VIOLATIONS REGARDING MEMBERSHIP COMMITMENT</b>			
Violation of 50 CFR Part 48 or failing to remain in the Sector for the Commitment Period (i.e., breach of Section 2.03 of the Agreement).	\$10,000	N/A	N/A

**EXHIBIT B**

**SECTOR AND INDIVIDUAL ACE ALLOCATION**

**Fishing Year 2010-2011**

**Port Clyde Community Groundfish Sector (“PCS” or “Sector”)**

As determined in Groundfish Amendment 16, “Sector ACE” will be based on the landings history of each permit brought into the Sector for the time period FY1996-FY2006 (the “Potential Sector Contribution”). The Sector ACE, therefore, is the sum of all of the individual permit ACE’s brought into the Sector. As determined by PCS Members, the initial individual allocation of the Sector ACE to its Members will be equal to each Member’s individual Potential Sector Contribution, and is referred to as an “Individual ACE”.

Table B.1 shows the preliminary Sector ACE as a percentage of the overall total allowable catch for each allocated species. This estimate is based on the final roster as of January, 2010 and the final allocation alternative approved in Amendment 16 described above. The final FY 2010 Sector ACE, on both a percentage and total pounds basis (Table B.2), may be subject to final adjustments by NMFS. Individual ACE allocations will be received and maintained by each individual Member and the Sector Manager.

**Table B.1 – Sector ACE  
As a Percentage of the Total Allowable Catch**

Cod (GOM)	4.7608%
Cod (GB)	0.2087%
Haddock (GOM)	2.3198%
Haddock (GB)	0.0956%
Yellowtail Flounder (GB)	0.0034%
Yellowtail Flounder ( SNE/Mid-Atlantic)	0.6989%
Yellowtail Flounder (Cape Cod/GOM)	0.9803%
American Plaice	6.4221%
Witch Flounder	4.4525%
Winter Flounder (GB)	0.0069%
Winter Flounder (GOM)	2.1540%
*Winter Flounder (SNE)	n/a
Redfish	2.5565%
White Hake	4.6155%
Pollock	4.2959%
Windowpane Flounder (Northern)	n/a
Windowpane Flounder (Southern)	n/a
Ocean Pout	n/a
Atlantic Wolffish	n/a
Atlantic halibut	(1 per trip)

Notes: Sector vessels are prohibited from landing ocean pout, Atlantic wolffish, northern and southern windowpane flounder, and SNE/MA winter flounder. Atlantic halibut is limited to 1 per trip. Amendment 16 determined that an allocation of SNE winter flounder will not be made, but one may be made in the future through the biennial specifications/ framework process.

**Table B.2 – Sector ACE  
Total Pounds Live Weight**

Cod (GOM)	479,342
Cod (GB)	1,555
Haddock (GOM)	42,193
Haddock (GB)	42,663
Yellowtail Flounder (GB)	79
Yellowtail Flounder ( SNE/Mid-Atlantic)	5,121
Yellowtail Flounder (Cape Cod/GOM)	16,835
American Plaice	403,270
Witch Flounder	83,629
Winter Flounder (GB)	288
Winter Flounder (GOM)	7,494
Winter Flounder (SNE)	n/a
Redfish	385,879
White Hake	260,074
Pollock	260,292
Windowpane Flounder (Northern)	n/a
Windowpane Flounder (Southern)	n/a
Ocean Pout	n/a
Atlantic Wolffish	n/a
Atlantic Halibut	(1 per trip)

As indicated in section 4.09 and Exhibit C, ACE may be pooled or transferred within the Sector. In addition, transfers of ACE between Sectors may also be authorized by NMFS. The Members of the PCS are all smaller-scale fishermen from coastal Maine, an area that has already experienced substantial consolidation. Nonetheless, there will be some redistribution of ACE within the Sector. As indicated in Table B.3, there are 43 enrolled permits and 35 potentially active vessels.

In FY 2009, 35 out of 43, or 81 percent of the permits, which are enrolled in the Port Clyde Community Groundfish Sector (PCS) for FY 2010 are attached to vessels actively fishing for NE Multispecies. For FY 2010, 28 out of 43 permits currently enrolled, or 65 percent are anticipated to actively fish for NE multispecies. While these numbers may change, based on them the PCS expects that compared to FY 2009 there will be a minimal net consolidation within the sector as the share of ACE contributed by member permits is fished by fewer active vessels than DAS fished by those permits in FY2009. However, it is not clear that this amount of consolidation is greater, equal to, or less than the consolidation that would have taken place if the 43 permits stayed in the common pool in FY 2010. This is because the consolidation occurring in the fishery under the DAS system has been significant in recent years and interviews with PCS fishermen indicate that several were considering getting out of the fishery through leasing or retiring if they did not have the opportunity to join the sector.

It may be anticipated that fewer active fishing vessels will result in job losses for fishing crews (each of the seven vessels employed 1 crew part time for this fishery) and the associated negative impacts may spread to the fishing communities and industries reliant on commercial fishing. While fishermen who remain in the fishery could be better off, there would be fewer active fishermen in the NE multispecies fishery. On the other hand, the permit holders who do not intend to fish in this fishery intend to continue to fish and employ crew in other fisheries. Further, the PCS is anticipated to help make the Midcoast Fishermen’s Cooperative (MFC) more viable and to help it grow. The MFC has hired workers into fisheries related jobs workers and if the MFC remains viable and grows it will likely provide additional jobs and benefits to the communities affected by the PCS.

**Table B.3 – PCS Participants  
Based on Final Roster**

Permits	43
Potential Active Vessels	35
Active Fishing Vessels	28
Primarily Gillnet Only	14
Primarily Trawl Only	11
Primarily Handlines	1
Trawl and Gillnet	2
Target Groundfish	28

## EXHIBIT C

### HARVESTING RULES

#### Fishing Year 2010

#### Port Clyde Community Groundfish Sector (“PCS” or “Sector”)

The Members and the Participating Vessels of the Sector agree to be legally bound to follow the Harvesting Rules for the fishing year 2010 as described herein notwithstanding those rules and regulations applicable to Common Pool multispecies vessels .

### QUOTA MANAGEMENT

1. Sector ACE Allocation: The National Marine Fisheries Service (“NMFS”) will determine the PCS’s Large Mesh Multispecies (“Groundfish”) Annual Catch Entitlement (“Sector ACE”) for each species<sup>1</sup> (Exhibit B).

2. Individual ACE Allocation: Each participating Permit and Participating Vessel will receive its “Individual ACE” allocation as set forth in Exhibit B to the Agreement. This allocation will be maintained by each individual Member and the Sector Manager.

3. ACE Limit: The Members agree that they will not harvest more Groundfish than their Individual ACE and that they will not collectively harvest more Groundfish than the Sector ACE for allocated species. Once a Member’s Individual ACE allocation is reached for any species, or if the Sector ACE for any species is reached, such Member or Members shall not fish commercially in that stock area with any fishing gear capable of catching Groundfish unless additional ACE for that species is acquired. Consistent with Amendment 16 and Section 4.09, ACE transfers are allowed within the PCS and between the PCS and other sectors, and carryover of up to 10 percent of the Sector ACE is permitted.

4. Monthly Quota Targets: A percentage of the Sector ACE for each species will be allocated to each month of the fishing year for each Individual and for the Sector as a whole and the cumulative total catch will be monitored on a monthly basis (see Table below) in order to help monitor and control the rate at which ACE is harvested. ACE that is not landed during a month will be rolled over into the next month. If landings exceed the monthly quota, the excess will be deducted from subsequent monthly quotas to help ensure the Sector and its individual Members do not exceed the Sector ACE. The following table, based on the historic catch data for Sector Members, shows the monthly and cumulative monthly quota target percentages.

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<sup>1</sup> Note that NMFS will not assign ACE for Atlantic halibut, ocean pout, northern windowpane flounder, southern windowpane flounder, Atlantic wolfish, and southern New England winter flounder (*see* Exhibit B above).

### Target Monthly Quotas

Allocated Groundfish		May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April
Monthly	%	8	22	21	16	8	5	3	3	2	2	5	5
Cumulative	%	8	30	51	67	75	80	83	86	88	90	95	100

5. Weekly quota targets: In addition to the monthly quota targets, the Manager may impose weekly or trip target quotas to help slow down harvest rates. If such target quotas are imposed, Sector members agree to adjust their fishing operations to avoid exceeding these quotas.

6. Additional Measures to Prevent Ace Overages: The Sector Manager will provide Sector Members with a monthly report detailing their remaining Individual ACE for each stock and the remaining Sector ACE for each stock for the Sector. In addition, when an individual Member's remaining Individual ACE reaches less than 50 percent for any stock, or when the Sector's remaining Sector ACE for a stock reaches less than 50 percent, the Sector Manager will provide Members with a report detailing their remaining Individual ACE and the Sector's remaining Sector ACE at the conclusion of each trip.

In addition, Sector members will be notified when the Sector ACE reaches 80 percent of the ACE for any stock, or when, for two consecutive weekly reporting periods 20 percent or more of the remaining portion of the Sector ACE is harvested, whichever occurs first. When either trigger point is reached, sector reporting to NMFS will be changed to daily. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed upon by the Sector and NMFS. Sector Members agree to adjust their fishing operations to avoid exceeding their Individual ACE and the Sector ACE.

Members shall stop fishing prior to exceeding their allocation (unless they acquire additional Individual ACE). If the Sector ACE for a stock is exceeded, the sector must cease operations in that stock area until it can acquire additional ACE through a transfer with another Sector to balance the catch, and the sector also must comply with other overage penalties that may be applicable.

7. Sector Hails: consistent with the operations Plan, each Participating Vessel must hail in and out to the Manager or his designated representative, and NMFS Office of Law Enforcement prior to departing from or returning to port when using fishing gear capable of catching Groundfish.

8. ACE Transfers and Pooling: Participating Vessels and/or Permits may transfer ACE to other Participating Vessels and/or Permits, or otherwise redistribute or pool ACE to other Participating Vessels and/or Permits, provided that the Manager is notified and provides his consent to such redistribution or pooling. A Participating Vessel and/or Permit may only transfer or lease ACE to or from vessels or permits participating in other sectors with appropriate approval from the Regional Administrator, as required by Amendment 16 and its implementing regulations.

9. Full Retention of Legal-Size Groundfish: All legal size Groundfish harvested during any fishing operation must be retained and counted against the Sector and Individual ACE, unless

otherwise accounted for through a sub-ACL, except that ocean pout, northern windowpane flounder, southern windowpane flounder, Atlantic wolffish and southern New England winter flounder shall not be retained, and there will be a 1 fish per trip limit on Atlantic halibut, as required by Amendment 16 and its implementing regulations.

10. Species Trip Limits: Participating vessels are exempt from trip limits on stocks for which the Sector receives an allocation. Participating vessels are subject to any trip limits required by NMFS for non-allocated species.

## **GEAR RESTRICTIONS**

11. Gear Restrictions: While it is anticipated that Sector members will fish primarily with otter trawls and sink gillnets, Participating Vessel may fish for Groundfish with any legal gear including hook and line gear (demersal longlines, automated hook, jigs, and handlines), Scottish seines, beam trawls and pots. All Participating Vessels are subject to the same gear restrictions, such as marking, tagging, mesh size, and number of gillnets, applicable to common pool vessels using the same type of gear.

12. Gillnet Block Requirement Exemption: If approved by NMFS, Participating Vessels are not required to adhere to those provisions of 50 CFR 648.82(j)(1)(ii) requiring that during each fishing year, day gillnet vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Participating Vessels must continue to comply with applicable Spawning Season Restrictions including the 20 day spawning block (March-May) requirement, and other gillnet requirements, in accordance with the groundfish FMP and NMFS regulations.

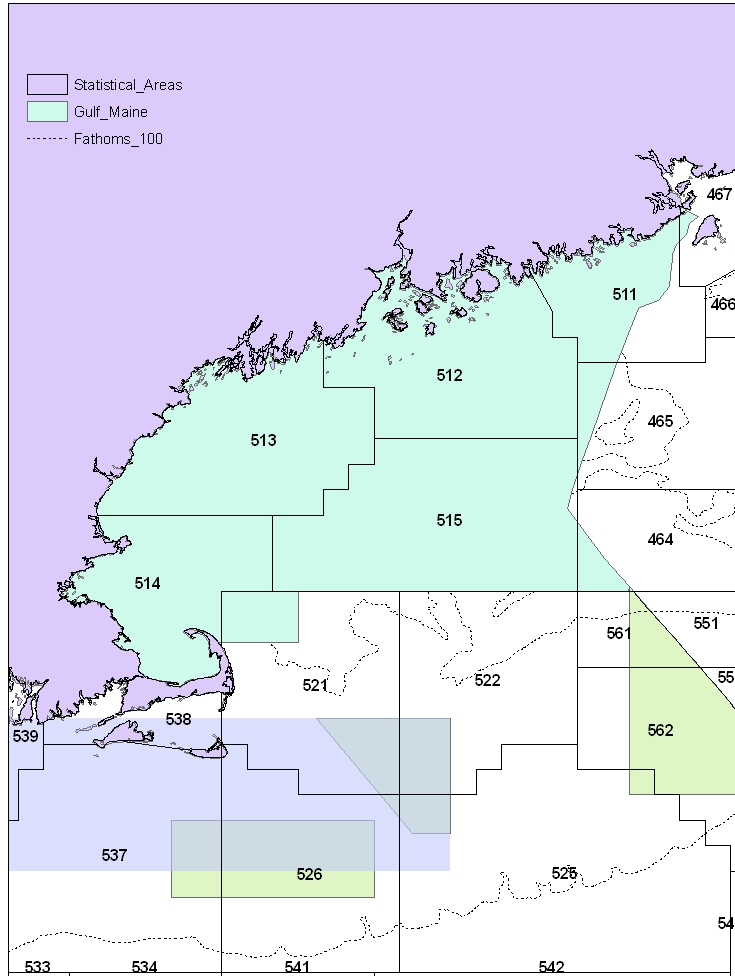
13. Spawning Season Restrictions: All Participating vessels must continue to comply with the spawning season restrictions, including the 20-day spawning block (March–May) requirement.

14. Closed Areas: Consistent with Amendment 16, Participating Vessels are exempt from portions of the GOM rolling closures. Participating vessels remain subject to all other closed area restrictions, unless additional authorizations are provided by NMFS.

15. Operating Area: Participating vessels are restricted to fishing in the Gulf of Maine Regulated Mesh Area when using fishing gear capable of catching any regulated species managed under the Groundfish Plan. The geographic boundaries of the management area are, shown in the chart below.



# Gulf of Maine Regulated Mesh Area



## EXHIBIT D

### PORT CLYDE SECTOR MEMBERS' PERMITS AND VESSELS

Allard, Roger

MRI: 14441 (Enrolled in PCS)

Vessel: Wade's Way (Not Active)

Gear: N/A

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster, Monkfish, Red Crab, Skate and Tilefish

State Permit(s): (ME) Lobster and Commercial Fishing

Benner, Steve

MRI: 286 (Enrolled in PCS)

Vessel: High Roller (Active)

Gear: Trawl

Other Federal Permit(s): Herring, Scallop, Monkfish and Skate

State Permit(s): (ME) Shrimp

Balzano, Vincent/ Balzano LLC

MRI: 222 (Enrolled in PCS)

Vessel: North Star (Active)

Gear: Trawl

Other Federal Permit(s): Spiny Dogfish, Herring, Scallop, Lobster Non Trap, Lobster Trap, Monkfish, Skate, Squid, Butterfish, Mackerel and Tilefish

State Permit(s): (ME) Lobster, Scallop, Shrimp, Commercial Fishing

Bichrest, Bryan

MRI: 2204 (Enrolled in PCS)

Vessel: Haven Lyne (Skiff) (Not Active)

Gear: N/A

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Monkfish, Red Crab, Skate, Squid, Butterfish, Mackerel and Tilefish

State Permit(s): N/A

Bichrest, Bryan

MRI: 2341 (Enrolled in PCS)

Vessel: Safe Haven I (Active)

Gear: Gillnet

Other Federal Permit(s): Spiny Dogfish, Herring, Lobster Trap, Monkfish, Quahog, Surf Clam, Squid, Butterfish and Mackerel

State Permit(s): (ME) Lobster, Herring, and Commercial Fishing

Bichrest, Bryan

MRI: 5 (Enrolled in PCS)

Vessel: Safe Haven II (Active)

Gear: Gillnet  
Other Federal Permit(s): Spiny Dogfish and Lobster Trap  
State Permit(s): (ME) Lobster

Bichrest, Robert  
MRI: 2260 (Enrolled in PCS)  
Vessel: Beverly Joyce (Active)  
Gear: Gillnet  
Other Federal Permit(s): Spiny Dogfish, Herring, Lobster Trap, Monkfish, Squid, Butterfish and Mackerel  
State Permit(s): (ME) Lobster

Bichrest, Troy /Michaela Alice Inc.  
MRI: 1815 (Enrolled in PCS)  
Vessel: Pamela Grace (Active)  
Gear: Gillnet  
Other Federal Permit(s): Spiny Dogfish, Herring, Lobster Trap, Monkfish, Ocean Quahog and Surf Clam  
State Permit(s): (ME) Lobster, Shrimp

Bichrest, Troy  
MRI: 461 (Enrolled in PCS)  
Vessel: Threes Enough (Skiff) (Not Active)  
Gear: N/A  
Other Federal Permit(s): Spiny Dogfish, Summer Flounder, Lobster Trap, Monkfish and Red Crab  
State Permit(s): (ME) Lobster

Carter, Preston  
MRI: 1455 (Enrolled in PCS)  
Vessel: Shannon Dawn (Not Active)  
Gear: NA  
Other Federal Permit(s): Monkfish, Lobster Trap and Skate  
State Permit(s): (ME) Lobster, Scallop, and Shrimp

Carter, Preston  
MRI: 87 (Enrolled in PCS)  
Vessel: Hannah Ruth (Active)  
Gear: Trawl & Hook & Line  
Other Federal Permit(s): Scallop, Monkfish, Tilefish, Lobster Trap and Skate  
State Permit(s): (ME) Lobster, Scallop, and Shrimp

Casamassa, Thomas  
MRI: 1835 (Enrolled in PCS)  
Vessel: Theresa Irene III (Active)  
Gear: Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Scallop, American Lobster Trap, Monkfish, Red Crab, Surf Clam, Skate, Squid, Butterfish, Mackerel and Tilefish  
State Permit (s): (ME) Lobster, Shrimp, Scallop, and Commercial Fishing

Cushman, Gerald /Windsong Corp.

MRI: 419 (Enrolled in PCS)

Vessel: Skiff (Not Active)

Gear: Trawl

Other Federal Permit(s): Bluefish, Spiny Dogfish, Monkfish, Skate, Squid, Butterfish and Mackerel

State Permit(s): Lobster, Shrimp

Cushman, Gerald

MRI: 268 (Enrolled in PCS)

Vessel: Generation (Skiff) (Not Active)

Gear: NA

Other Federal Permit(s): Spiny Dogfish, Summer Flounder, Herring, Lobster Non-Trap, Lobster Trap, Monkfish, Red Crab, Scup, Liligo, Butterfish and Tilefish

State Permit(s): (ME) Lobster, Shrimp

Cushman, Randy

MRI: 383 (Enrolled in PCS)

Vessel: Ella Christine (Active)

Gear: Trawl

Other Federal Permit(s): Spiny Dogfish, Herring, Monkfish, Quahog, Red Crab, Surf Clam, Skate, Mackerel, and Tilefish

State Permit(s): Scallop, Shrimp, and Quahog

Daggett, Russell

MRI: 49 (Enrolled in PCS)

Vessel: Anne Marie (Not Active)

Gear: Gillnet

Other Federal Permit(s): Spiny Dogfish, Lobster Trap, Monkfish, Skate, Squid, Butterfish and Mackerel

State Permit(s): (ME) Lobster, Quahog

Daggett, Russell

MRI: 2273 (Enrolled in PCS)

Vessel: Sarah Gale (Active)

Gear: Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Lobster Trap, Monkfish, Squid, Butterfish and Mackerel

State Permit(s): (ME) Lobster, Quahog

Durant, Brian

MRI: 130 (Enrolled in PCS)

Vessel: Freebird (Active)  
Gear: Gillnet & Hook and Line  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Trap, Monkfish, Red Crab,  
Atlantic Mackerel and Tilefish  
State Permit(s): (ME) Lobster, Shrimp

Eddie, Tim/ T&M Fisheries Inc.  
MRI: 156 (Enrolled in PCS)  
Vessel: Persistence (Active)  
Gear: Trawl  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Scallop, American Lobster, Monkfish, Red  
Crab, Scup, Skate, Squid, Butterfish and Mackerel  
State Permit(s): (ME) Lobster, Shrimp, and Commercial Fishing

Frank, James  
MRI: 1642 (Enrolled in PCS)  
Vessel: Iroquois (Active)  
Gear: Trawl & Hook & Line  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Non Trap, Lobster Trap,  
Monkfish, Quahog, Red Crab, Surf Clam, Skate, Squid, Butterfish, Mackerel, and  
Tilefish  
State Permit(s): (MA) Squid, Fluke, Lobster Non-Trap (ME), Shrimp, and Commercial Fishing

Hatch, Gary  
MRI: 1446 (Enrolled in PCS)  
Vessel: Carol Ann (Not Active)  
Gear: N/A  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Monkfish, Red Crab, Skate, Squid,  
Butterfish, Mackerel and Tilefish  
State Permit(s): (ME) Lobster, Shrimp

Hawkes, Corydan /West Head Inc.  
MRI: 196 (Enrolled in PCS)  
Vessel: West Head (Not Active)  
Gear: N/A  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Monkfish, Ocean Quahog, Red  
Crab, Surf Clam, Skate, Squid, Butterfish, Mackerel and Tilefish  
State Permit(s): (ME) Lobster, Shrimp

Hawkes, Gary  
MRI: 2052 (Enrolled in PCS)  
Vessel: Amanda Elizabeth (Not Active)  
Gear: N/A  
Other Federal Permit (s): Lobster Trap, Monkfish, Quahog, Red Crab, Skate, Squid,  
Butterfish and Mackerel  
State Permit (s): (ME) Lobster, Bait Gillnet, Shrimp, and Halibut,

Kolseth III, Richard  
MRI: 47858 (Enrolled in PCS)  
Vessel: Sarah Belle (Active)  
Gear: Handlines  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Red Crab, Skate, Squid,  
Butterfish, Mackerel, and Tilefish,  
State Permit(s): N/A

Libby, Roger and Gary / R & B Fisheries Inc.  
MRI: 1474 (Enrolled in PCS)  
Vessel: Leslie & Jessica (Active)  
Gear: Trawl  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Non-Trap, Lobster Trap,  
Monkfish, Red Crab, Skate and Tilefish  
State Permit(s): (ME) Shrimp

Libby, Roger and Glen / Hilda & Helen Inc.  
MRI: 112 (Enrolled in PCS)  
Vessel: Capt'n Lee (Active)  
Gear: Trawl & Hook & Line  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Scallop, Monkfish, Red Crab,  
Skate and Tilefish  
State Permit(s): (ME) Shrimp, Scallop, and Commercial Fishing

Martel, Dale  
MRI: 1864 (Enrolled in PCS)  
Vessel: Endeavor (Active)  
Gear: Gillnet  
Other Federal Permit(s): Scallop, Monkfish, Surf Clam, Mackerel, Squid, Butterfish, Spiny  
Dogfish, Bluefish, Tilefish, Shark Incidental, Herring, Lobster Trap, Red Crab and  
Skate  
State Permit(s): (ME) Lobster

Nickerson, Arnold  
MRI: 97 (Enrolled in PCS)  
Vessel: Hayley Ann (Active)  
Gear: Gillnet and Trawl  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Scallop, American Lobster Trap,  
Monkfish, Red Crab, Skate, Squid, Butterfish, Mackerel and Tilefish.  
State Permit(s): (ME) Lobster, Shrimp, Scallop, and Commercial Fishing

Nieuwkerk, Reinier / FV Hannah Jo LLC.  
MRI: 2404 (Enrolled in PCS)  
Vessel: Cammie Kendrick (Active)  
Gear: Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Non Trap, Lobster Trap,  
Monkfish, Skate, Squid, Butterfish and Mackerel  
State Permit(s): (ME) Lobster, Commercial Fishing, and Shrimp

Nieuwkerk, Reinier  
MRI: 290 (Enrolled in PCS)  
Vessel: Hannah Jo (Active)  
Gear: Gillnet

Other Federal Permit(s): Spiny Dogfish, Herring, Lobster Non Trap, Lobster Trap,  
Monkfish, Quahog, Scup, Surf Clam, Loligo, Squid, Butterfish and Mackerel  
State Permit(s): (ME) Lobster, Shrimp

Nieuwkerk, Reinier & Lucinda  
MRI: 2237 (Enrolled in PCS)  
Vessel: Cutter (Skiff) (Not Active)  
Gear: Gillnet

Other Federal Permit(s): Spiny Dogfish, Herring, Monkfish, Squid, Butterfish and  
Mackerel  
State Permit(s): N/A

Nunan, Mitchell  
MRI: 1823 (Enrolled in PCS)  
Vessel: Pretender (Active)  
Gear: Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Scallop, Lobster Trap,  
Monkfish, Quahog, Surf Clam, Skate, Squid, Butterfish, Mackerel and Tilefish  
State Permit(s): (ME) Lobster

Paulsen, Donald  
MRI: 235 (Enrolled in PCS)  
Vessel: Misty Mae (Active)  
Gear: Trawl

Other Federal Permit(s): Spiny Dogfish, Summer Flounder, Monkfish, Scup, Skate, Loligo,  
Butterfish and Mackerel  
State Permit(s): (ME) Shrimp, Commercial Fishing

Pearce, Brian  
MRI: 78 (Enrolled in PCS)  
Vessel: Gretchen Marie (Active)  
Gear: Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster, Monkfish, Red Crab, Scup,  
Skate, Squid/Butterfish, Mackerel, Tilefish  
State Permit(s): (ME) Shrimp, Commercial Fishing

Pinkham, Kelo  
MRI: 163 (Enrolled in PCS)

Vessel: Jeanne C (Active)  
Gear: Trawl  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Summer Flounder, Herring, Lobster Trap,  
Monkfish, Quahog, Red Crab, Surf Clam, Squid, Butterfish, Skate and Mackerel  
State Permit(s): (ME) Lobster, Shrimp

Spear, Willis/Easy Does It Inc.  
MRI: 164 (Enrolled in PCS)  
Vessel: Providence (Active)  
Gear: Gillnet  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster, Monkfish, Squid/Butterfish  
and Mackerel  
State Permit(s): (ME) Lobster, Shrimp and Commercial Fishing

The Nature Conservancy & The Island Institute  
MRI: 1801 (Enrolled in PCS)  
Vessel: Delilah Jones (Skiff) (Not Active)  
Gear: N/A  
Other Federal Permit(s): Monkfish, Spiny Dogfish, Bluefish, Tilefish, Herring, Red Crab,  
Skate, Lobster Trap, and Lobster Non-Trap  
State Permit(s): (ME) Shrimp

Thomson, Mathew  
MRI: 1808 (Enrolled in PCS)  
Vessel: Rig a Jig (Skiff) (Not Active)  
Gear: NA  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Monkfish, Red Crab, Skate,  
Mackerel and Tilefish  
State Permit(s): N/A

Thomson, Mathew / Storm Lobster Corp.  
MRI: 154 (Enrolled in PCS)  
Vessel: Alice Rose (Active)  
Gear: Gillnet & Hook & Line  
Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Non Trap, Lobster Trap,  
Monkfish, Quahog, Red Crab, Surf Clam, Skate, Squid, Butterfish, Mackerel, and  
Tilefish  
State Permit(s): (ME) Lobster

Thorbjornson, Edward /Lauren Dorothy Inc.  
MRI: 508 (Enrolled in PCS)  
Vessel: Lauren Dorothy II (Active)  
Gear: Trawl  
Other Federal Permit(s): Multispecies, Bluefish, Spiny Dogfish, Herring, Scallop, Lobster Non  
Trap, Monkfish, Quahog, Red Crab, Surf Clam, Skate, Squid, Black Sea Bass, Summer  
Flounder, Loligo, Butterfish, and Tilefish



State Permit(s): Shrimp, Scallop

Thorbjornson, Edward /Lauren Dorothy Inc.

MRI: 434 (Enrolled in PCS)

Vessel: Foxy Girl (Not Active)

Gear: NA

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Scallop, Lobster Non Trap, Monkfish, Scup, Skate, Black Sea Bass, Summer Flounder, Loligo, Butterfish, Mackerel, and Tilefish

State Permit(s): Shrimp, Scallop

Watts, Harold Todd & Lauren

MRI: 276 (Enrolled in PCS)

Vessel: Megaltay (Not Active)

Gear: N/A

Other Federal Permit(s): Multispecies (MRI # 127 – Common Pool), Bluefish, Spiny Dogfish, Summer Flounder, Herring, Monkfish, Red Crab, Skate, Squid, Butterfish, Mackerel, Lobster Trap, and Tilefish

State Permit(s): (ME) Shrimp, Scallop

Wells, Proctor /Ridleys Landing Inc.

MRI: 307 (Enrolled in PCS)

Vessel: Tenacious (Active)

Gear: Trawl & Gillnet

Other Federal Permit(s): Bluefish, Spiny Dogfish, Herring, Lobster Trap, Monkfish, Red Crab, Squid, Butterfish, and Mackerel

State Permit(s): (ME) Lobster, Shrimp

**EXHIBIT E**  
**DOCKSIDE MONITORING PROGRAM**  
**STANDARDS AND REQUIREMENTS**

for Fishing Year 2010

August 24, 2009

PURPOSE STATEMENT: *NOAA's National Marine Fisheries Service's (NMFS) has developed these standards for dockside monitoring (DSM) programs (a modified version of what was originally developed collaboratively by the Sector Monitoring Working Group). In June 2009 the New England Fishery Management Council approved 50 percent random DSM in 2010, and 20 percent random DSM in following years, for sectors as a requirement in Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan. It will be the responsibility of individual sectors to adopt a DSM program that is consistent with these standards. NMFS revised this document in August 2009 to reflect regulatory expectations and requirements, as well as lessons learned from the Dockside Monitoring Pilot Study Final Report 2009 authored by AIS, Inc., and funded by Environmental Defense.*

**1) HAIL**

- i) Transmission of all vessel hails must be either as an email via Vessel Monitoring System (VMS) or some other electronic method, as determined by the sector. In all instances hail notification must be provided by either the sector manager (SM) or DSM vendor to NOAA Fisheries Office for Law Enforcement (OLE); the mechanism for hail notification must be detailed in the sector's operations plan.
- ii) Prior to leaving port on a sector trip for which catch will count against sector annual catch entitlements (ACE), each sector vessel must hail trip start, meaning notify the SM and DSM vendor that the vessel is departing on a sector trip. The trip start hail must include vessel permit number, the trip ID# (which is the VTR number on the first VTR page used for that trip), and estimated trip duration. The DSM vendor must immediately send a confirmation to the vessel that the trip start hail was received; if the vessel does not receive confirmation within 10 minutes, the captain must contact the vendor to confirm the trip start hail via an independent backup system (*e.g.*, a phone number) that must be set up by the DSM vendor.
- iii) At the appropriate time before landing (detailed below), the sector vessel must hail trip end to the DSM vendor. For all trips greater than 6 hours in length, and occurring more than 6 hours from port, vessels must hail trip end at least 6 hours in advance of landing. For trips less than 6 hours in length, or occurring within 6 hours of port, trip end hail notification time must be defined in the sector's operations plan, after being agreed upon by the sector, the monitoring provider, and OLE.

The trip end hail must include the following:

- A) Permit number;

- B) Trip ID#;
- C) Specific offloading location(s): Dock/dealer, port/harbor, and state (for all dealers or facilities where the vessel intends to offload);
- D) Estimated landing time;
- E) Estimated offloading time; and
- F) Estimated weight of each species of fish being landed.

- iv) The DSM vendor must immediately send a confirmation to the vessel that the trip end hail was received. If the vessel does not receive confirmation prior to landing, the captain must use the backup system to contact the DSM vendor prior to landing. The DSM vendor must inform the vessel in the trip end hail confirmation (and no earlier) that:
  - A) The vessel will have a dockside monitor (DM) or roving monitor (RM) present; **or**
  - B) The vessel is issued a DSM waiver for the trip (meaning no DM or RM will be present to witness the offload).
  
- v) If the DM has an emergency and cannot meet the vessel as scheduled, the DSM vendor must notify the vessel, the sector manager, and OLE as soon as possible to resolve the pending DSM event.
  
- vi) If the vessel retains a portion of the landings from a trip to be offloaded during a future landing event, the VTR for the trip on which the landings were caught must include those landings with the code for fish retained for future sale. The VTR for the subsequent trip, after which the retained landings are finally sold, must include the previously retained landings in addition to the current landings from trip. The previously retained landings must be identified by a unique code on the VTR. Landings will only count against ACE once.

## 2) Monitoring of Offload at Dealer

### i) If the vessel will get a DSM Waiver:

The DSM vendor, when confirming that it has received the trip end hail, must notify the vessel that the vessel is receiving a waiver from DSM for the trip. The vessel operator must provide copies of all VTRs and dealer receipts for the trip to the SM, or SM-designated third party, within 24 hours of offloading.

### ii) If the vessel has been selected for DSM:

- A) The vessel may land, but no offloading may commence until the DM is present.

- B) Vessels offloading at more than one dealer or facility must have a DM present during offload at each location.
- C) Upon meeting the vessel at the offloading site, the DM must:
  - (1) Take copies of all VTRs filled out for the trip, with all information available (no blocked cells).
  - (2) Record whether or not the scales are certified by the dealer's state.
  - (3) Observe and record whether ice and box weights are tared by the dealer before the catch is added. If the dealer does not tare the box and ice, the DM must obtain the estimated weight of the ice and box from the dealer and record that weight in his/her report.
  - (4) Ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The DM must record the captain's estimate of weight of each species being retained for home use or retained on the vessel and record the reason(s).
  - (5) Either the DM or dealer must record the weight of offloaded fish, by species (and market class, if culled), in a report. This report must be signed by the DM, and the DM must keep a copy of the signed report.
  - (6) Provide accurate and complete data to the SM, and/or any SM-designated third party, within 24 hours of the completion of the DSM event.
  - (7) Send copies of the VTR(s), the dealer receipt(s) if separate from the DM's report, and the DM's report to the SM or any SM-designated third party.
  - (8) Keep a copy of his/her report, which must be electronically stored by the DSM vendor.

### **3) Monitoring Offload to a Truck**

- i) Each sector must specify in its operations plan the remote unloading facilities where sector members will be allowed to offload catch to trucks.
- ii) Offloading of landings to trucks and subsequent weigh out of landings at all dealer facilities are considered separate (in terms of individual monitors) but conjoined (in terms of fishing trip) events. If a trip is selected for DSM and will offload to a truck, the trip must have a RM present to witness all offload activities, as well as a DM present at each dealer that receives the fish to certify weigh-out of all landings. The RM and DM may be the same or different individuals.
- iii) If the landings are weighed by a representative of the receiving dealer in front of the RM before being loaded into the truck, the event must follow the protocol for offload at a dealer (Section 2 of this document).
- iv) If the landings are not weighed by a representative of the receiving dealer in front of the RM before being loaded into the truck, all requirements of DSM when offloading to a dealer will apply (except weight and dealer-receipt records), and the additional requirements of this section will also apply.
- v) Additional requirements:
  - A) All fish must be weighed in the presence of a DM at the receiving dealer(s) when the truck offloads.
  - B) Upon meeting the vessel at the offloading site the RM must:
    - (1) Take copies of all VTRs filled out for the trip with all information available (no blocked cells).

- (2) If there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight of each species in each tote.
- (3) Ask the captain whether all fish have been offloaded, and whether any are being retained for home use. The RM will record the captain's estimate of weight of any species being retained for home use or retained on the vessel and record the reason(s).
- (4) Record all offloaded fish, by species (and market class, if culled), in a report, unless the driver creates such a report that the RM may use. This report shall be signed by the RM, and the RM shall keep a copy of the signed report.
- (5) Ensure that each tote is tagged with appropriate identifying information, including but not limited to: Serial number of first VTR page filled out for that trip, RM name, tote number, and species.
- (6) Send copies of the VTR(s), driver manifest(s) if separate from the RM's report, and the RM report to the sector manager or SM-designated third party.
- (7) Keep a copy of his/her report, which must be electronically stored by the DSM vendor.

#### **4) Responsibilities of the DSM Vendor**

- i) The DSM vendor must ensure that all individual monitors are trained as required in Amendment 16 (Section 4.3.3.5.5). The DSM vendor also must ensure that background checks and any authorizations (such as Transportation Worker Identification Credential cards) needed for individuals to access fishery facilities and vessels at ports serviced by the DSM vendor are obtained.
- ii) The DSM vendor must have a back-up communications method (*e.g.*, phone), capable of circumventing problems with the electronic hail system.
- iii) The DSM vendor must be able to receive hails 24 hours per day, 7 days per week, and must be able to send a confirmation of the hail back to the vessel within 10 minutes of receiving the hail.
- iv) The DSM vendor must keep a running list of all open trips.
- v) The DSM vendor is responsible for developing a randomized methodology that assigns DSM to 50 percent of sector trips and issues a DSM waiver to the other 50 percent. The method must assign DSM without regard to any preference of the sector or its members, the assignment of DSM must be representative of fishing activities within the sector, and the method must be approved by NMFS in the sector operations plan. The DSM vendor must determine whether or not a trip is assigned a DM or RM after the DSM vendor provides a confirmation that the trip start hail was received.
- vi) Upon receiving a trip end hail, the DSM vendor must respond by sending the vessel a confirmation that the hail was received. The confirmation must inform the vessel whether or not the trip is assigned a DM or RM. The DSM vendor must either provide a time certain for the DM or RM to meet the vessel, or stipulate that the DM or RM will communicate with the vessel to coordinate a time for offloading to commence. This may be any time agreeable to the unloading facility, the vessel, and the DM or RM, but not less than the required time notice between the trip end hail and landing.

- vii) The DSM vendor must immediately notify and provide the SM and OLE with all information contained in the trip end hail (including a breakdown of species to be landed and estimated weight of each species on board) and whether or not the vessel is assigned a DM or RM for the trip.
- viii) The DSM vendor must ensure a DM or RM, when assigned, is present at the offload site by the vessel's specified offloading time.
- ix) In cases where reproducible dealer-receipt forms, driver-manifest forms, and tote tags are not provided or utilized by fishing industry personnel, the DSM vendor must develop such materials or capabilities and provide them to each DM or RM that may encounter these cases.
- x) The DSM vendor must keep an electronic record of information collected from each offload and must make electronic and other records available to NMFS upon request.
- xi) The DSM vendor must work with the SM and OLE to establish an acceptable process for safe harbor situations when a sector vessel is unable to follow normal DSM protocols due to an emergency situation.

## **5) DEFINITIONS**

Dockside Monitoring (DSM) – Monitoring of all landings from sector trips taken by sector vessels in order to verify landings of the vessel at the time they are weighed by a dealer and to certify the landed weights are accurate as reported on the dealer report.

DSM Event – The observation of landings either offloaded to a truck or being weighed by a dealer.

Dockside Monitor (DM) – A certified dockside monitor tasked with observing either the weighing of fish by a dealer at the time of landing or the weighing of fish by a dealer at the time of offload from a truck.

Roving Monitor (RM) – A certified dockside monitor tasked with observing the offload of fish to a truck at the time of landing without first being weighed.

DSM Vendor – A sector monitoring service provider approved by NMFS to conduct dockside monitoring (DSM).

Landing Time – The time when a vessel arrives in port.

Port – Defined by the local port agent.

Offloading Time – The time when a vessel begins offloading fish.

Trip Duration – The time range from when the vessel departs port until its return to port (landing time).

Trip ID# – The VTR number on the first VTR page used for that trip.

## **EXHIBIT F**

### **MONITORING PLAN REQUIREMENTS FOR SECTOR OPERATIONS PLANS**

(NMFS Guidance on Monitoring Program Detail  
Necessary for Sectors 8-24-09)

Assuming Amendment 16 is approved, in its yearly operations plan, each sector must demonstrate that its sector monitoring program adheres to the sector monitoring and reporting requirements outlined in Amendment 16 to the Northeast Multispecies Fishery Management Plan, including the use of an approved service provider for dockside and at-sea monitoring services, and standards issued by NOAA's National Marine Fisheries Service (NMFS) before the operations plan can be approved by NMFS.

#### **Dockside**

Sectors are required to develop and implement an independent third-party dockside monitoring system, beginning in fishing year (FY) 2010, for monitoring and validation of landings as an input to monitoring the utilization of annual catch entitlements (ACE). The details of the dockside monitoring system must be provided in the sector's operations plan and be satisfactory to NMFS. Standards for dockside monitoring programs are attached.

The dockside monitoring plan information in the operations plan must include:

1. A list of specific ports where members will land fish; specific exceptions should be noted (e.g., safety, weather) and allowed, provided there is reasonable notification of a deviation from the listed ports.
2. Who (either the dockside monitoring provider or sector manager) will maintain the database of vessel trip reports (VTR), dealer, observer, and monitoring reports.
3. How the sector plans to implement the dockside monitoring standards (attached) issued by NMFS. Specifically, the operations plan must specify:
  - a. Method of transmission of hails;
  - b. Timing of trip end hails for trips less than 6 hours in length, or occurring within 6 hours of port;; and
  - c. A plan to select an approved provider.

#### **Monitoring Provider Approval**

NMFS will approve service providers for the at-sea and dockside programs as eligible to provide sector monitoring services based upon criteria specified in Amendment 16 and standards issued by NMFS, and can revoke any approval of service providers and/or individual monitors if such criteria are no longer being met.

NMFS shall approve or disapprove a service provider detailed in sector operations plans based upon the completeness of the application and a determination of the applicant's ability to perform the duties and responsibilities of a sector monitoring service provider, as further defined in Amendment 16.

**As part of that application, potential service providers must provide the following information to any interested sector to include in its sector operations plan:**

1. Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate.
2. Contact information for official correspondence and communications.
3. A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties.
4. A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and any previous decertification actions while working as an observer or observer service provider, or dockside monitor.
5. A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.
6. A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside or at-sea monitoring services, or both.
7. The geographic area in which the provider is able to provide its services.
8. Evidence of adequate insurance to cover injury, liability, and accidental death for dockside, roving, and at-sea monitors (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the dockside, roving, and at-sea monitors; vessel owner; and service provider. Service providers shall provide copies of the insurance policies to dockside, roving, and at-sea monitors to display to the vessel owner, operator, or vessel manager, when requested.
9. Details of the benefits and personnel services in accordance with the terms of each monitor's contract or employment status.



10. Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course that is consistent with the curriculum used in the current Northeast Fisheries Observer Program (NEFOP) training course, unless otherwise specified by NMFS.
11. An Emergency Action Plan (EAP) describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation.
12. Evidence that the company is in good financial standing.

**Monitoring service providers must be able to document compliance with the following criteria and requirements, but do not need to provide such documentation to any sector to include in its operations plan:**

1. A service provider must have a comprehensive plan to deploy NMFS-approved dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, including the following requirements:
  - a. Be available to industry 24 hours per day, 7 days per week, with a sufficient telephone system monitored to ensure rapid response to industry requests.
  - b. Be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by this section, or a subset of ports as part of a contract with a particular sector.
  - c. Report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector.
  - d. Assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved monitors and other at-sea monitoring mechanisms.
  - e. Assignments for dockside, roving, and at-sea monitor must be representative of fishing activities within each sector and must be able to monitor fishing activity throughout the fishing year utilizing information provided by the sector managers.
  - f. For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip, compare the estimated discard weights to discard weights reported on VTRs to utilize the most accurate source of discard data, and provide such information to the sector manager and NMFS, as appropriate and required.

2. The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload.
3. The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS.
4. Service providers must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors.
5. Service providers must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.
6. A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on or to a requesting fishing vessel for any reason including, but not limited to, the following:
  - a. If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements.
  - b. If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider.
  - c. If the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at 50 CFR 600.746.
  - d. For any other reason, including failure to pay for previous deployments of dockside, roving, or at-sea monitors other approved at-sea monitoring mechanism.
7. A service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers. This does not apply to corporations providing reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations.

8. A system to record, retain, and distribute the following information for a period specified by NMFS:
  - a. Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals.
  - b. Incident/non-compliance reports (e.g., failure to offload catch).
  - c. Hail reports, landings records, and other associated communications with vessels.
9. A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.
10. A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

**EXHIBIT G**

**OWNERSHIP INTERESTS  
OF AT LEAST THREE VESSELS**

[See Attached]

**EXHIBIT H**  
**PORT CLYDE SECTOR**  
**VENDOR PROPOSED MONITORING PROGRAMS**  
**AND CREDENTIALS**

[See Attached]

**ADDENDUM**  
**AMENDMENTS TO**  
**PORT CLYDE**  
**FY 2010**  
**OPERATIONS PLAN**

**AMENDMENT 1 TO THE PORT CLYDE COMMUNITY GROUND FISH  
OPERATIONS PLAN**

APPROVED BY THE NATIONAL MARINE FISHERIES SERVICE APRIL 30, 2010

EFFECTIVE MAY 1, 2010, FOR THE 2010 FISHING YEAR

Section 6.05. Monitoring Program Vendors. The PCS is considering the following independent, third-party monitoring providers (Monitoring Vendors) for its dockside and at-sea monitoring programs. Exhibit H provides the individual Monitoring Vendor credentials, including the following: corporate structure; statement of non-conflict if interest; statement of convictions; federal contacts and/or decertification; prior experience and performance ability; insurance; monitor benefits and services; emergency action plan; statement of good financial standing; reporting problems; refusal to deploy; and record keeping. The sector will contract a NMFS-approved provider from the following list to provide dockside [and/or] at-sea monitoring services before May 1, 2010 and will notify NMFS of its selection:

A.I.S., Inc.  
89 North Water Street  
New Bedford, MA 02747

East West Technical Services  
34 Batterson Drive  
New Britain, CT 06053

MRAG Americas  
65 Eastern Ave.  
Unit B2C  
Essex, MA 01929

Saltwater Inc.  
733 N. Street  
Anchorage, AK 99501

Atlantic Catch Data Ltd.  
99 Wyse Road, Suite 815  
Dartmouth, Nova Scotia  
CANADA B3A 4S5

**AMENDMENT 2 TO THE PORT CLYDE COMMUNITY GROUND FISH  
SECTOR OPERATIONS PLAN**

APPROVED BY THE NATIONAL MARINE FISHERIES SERVICE MAY 6, 2010

EFFECTIVE MAY 1, 2010, THROUGH APRIL 30, 2011 - THE 2010 FISHING YEAR

This amendment officially recognized Atlantic Catch Data Ltd as the authorized dockside monitoring service provider for the Port Clyde Community Groundfish Sector for fishing year 2010. Specific contact information, also found in Amendment 1, is:

Atlantic Catch Data Ltd.  
99 Wyse Road, Suite 815  
Dartmouth, Nova Scotia  
CANADA B3A 4S5

Section 3.01. Sector Manager. The Board of Directors (the "Board") of the Sector shall appoint a manager of the Sector (the "Manager"), who shall have the authority to manage the day-to-day business of the Sector and to act as its designated agent for service of process. Cindy Smith, Brunswick, Maine, has been hired as the agent for service of process the role of Manager.



**AMENDMENT 3 TO THE PORT CLYDE COMMUNITY GROUND FISH  
SECTOR OPERATIONS PLAN**

APPROVED BY THE NATIONAL MARINE FISHERIES SERVICE MAY 17, 2010

EFFECTIVE MAY 1, 2010, THROUGH APRIL 30, 2011 - THE 2010 FISHING YEAR

This amendment officially recognizes the final fishing year (FY) 2010 Port Clyde Community Groundfish Sector membership based on the final sector roster, submitted on April 30, 2010. The final roster is summarized below:

<b>OWNER/ENTITY</b>	<b>Permit #</b>	<b>MRI #</b>	<b>Vessel Name</b>
BRIAN DURANT	212165	130	FREEBIRD
BRYAN BICHREST	150323	2204	HAVEN LYN
BRYAN BICHREST	242844	2341	SAFE HAVEN
BRYAN BICHREST	148076	5	SAFE HAVEN
TROY BICHREST/ MICHAELA ALICE INC	150946	196	JETHRO
DALE MARTEL/FATHERS & SONS FISHERIES	114793	1864	ENDEAVOR
DONALD J PAULSEN	240143	235	MISTY MAE
EDWARD & TRAVIS THORBJORNSON/ LAUREN DOROTHY INC	310354	508	LAUREN DOROTHY II
GARY & ROGER LIBBY/ R & B FISHERIES INC	250558	1474	LESLIE & JESSICA
GARY HATCH/GALLEY HATCH FISHERIES	250907	1446	CAROL ANN
GERALD CUSHMAN/ WINDSONG CORP	250582	419	WINDSONG
GERALD R CUSHMAN	149638	268	GENERATION
HAROLD TODD / LAUREN WATTS	240423	276	MEGALTAY
TAD MILLER/JOHN V MILLER INC	231459	1642	JULIE ANN
ROGER & GLEN LIBBY/HILDA & HELEN INC	242567	112	CAPT'N LEE
KELO S PINKHAM	230524	163	JEANNE C
MATHEW THOMSON/STORM LOBSTER CORP	230353	154	ALICE ROSE
MATHEW W THOMSON	150316	1808	RIG A JIG
MITCHELL T NUNAN	139950	1823	PRETENDER
PRESTON S CARTER	221941	1445	SHANNON DAWN
PRESTON S CARTER	220989	87	HANNAH RUTH
RANDY V CUSHMAN/MELONY CUSHMAN	250387	383	ELLA CHRISTINE
REINIER NIEUWKERK/ FV HANNAH JO LLC	214857	2404	CAMMIE KENDRICK
REINIER W NIEUWKERK	147517	290	HANNAH JO
REINIER/LUCINDA NIEUWKERK	149493	2237	CUTTER
ROBERT BICHREST	150163	2260	BEVERLY JOYCE
RUSSELL DAGGETT	220149	49	ANNE MARIE
RUSSELL DAGGETT	220363	2273	SARAH GALE
STEVEN C BENNER/LORRAINE BENNER	240636	286	HIGH ROLLER
THE NATURE CONSERVENCY AND THE ISLAND INSTITUTE	250573	1801	Delilah Jones
TROY BICHREST	150572	461	THREES ENOUGH
TROY BICHREST/ MICHAELA ALICE INC	242777	1815	PAMELA GRACE

<b>OWNER/ENTITY</b>	<b>Permit #</b>	<b>MRI #</b>	<b>Vessel Name</b>
THOMAS CASAMASSA	140344	1835	THERESA IRENE III
VINCENT BALZANO/BALZANO LLC	240081	222	NORTH STAR
ARNOLD (JOE) NICKERSON/HAYLEY MARITIME INC	221740	97	HAYLEY ANN
TIM EDDY/T & M FISHERIES INC	230390	156	PERSISTENCE
GARY HAWKS	242609	2052	AMANDA ELIZABETH
WILLIS SPEAR/EASY DOES IT INC.	223592	164	PROVIDENCE
BRIAN PEARCE/DANNY BOY FISHERIES	220685	78	GRETCHEN MARIE
ROGER ALLARD	149079	1441	WADE'S WAY
EDWARD B THORBJORNSON	150043	434	FOXY GIRL

**AMENDMENT #4 TO THE PORT CLYDE COMMUNITY GROUND FISH  
SECTOR FISHING YEAR (FY) 2010 SECTOR OPERATIONS PLAN**

APPROVED BY THE NATIONAL MARINE FISHERIES SERVICE  
DECEMBER 23, 2010

EFFECTIVE DECEMBER 23, 2010, THROUGH APRIL 30, 2011

This amendment officially recognizes that the Port Clyde Community Groundfish Sector FY2010 Operations Plan has been amended to include the following additional exemptions from regulations of the Northeast (NE) Multispecies Fishery Management Plan, made effective through a final rule published December 23, 2010 (75 FR 80720).

**Vessels participating in the Port Clyde Community Groundfish Sector are granted the following additional exemptions (as described in 75 FR 80720):**

1. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels: Exemption from the declaration of time out of the gillnet fishery, specified in § 648.82(j)(1)(ii);
2. 20-Day Spawning Block: Exemption from the declaration of 20 days out of the fishery for the spawning season, specified in § 648.82(g);
3. Limitation on the Number of Gillnets for Day Gillnet Vessels: Exemption from the limit on the number of sink gillnets that a Day gillnet vessel may fish in any of the Regulated Mesh Areas, specified in §§ 648.80(a)(3)(iv)(B)(2), (a)(4)(iv)(B)(1), (b)(2)(iv)(B)(1), and (c)(2)(v)(B)(1), and the requirement for two gillnet tags per roundfish net specified in §§ 648.80(a)(3)(iv)(B)(4), (a)(4)(iv)(B)(3), (b)(2)(iv)(B)(3), and (c)(2)(v)(B)(3), with the caveat that a sector vessel may fish up to 150 roundfish or flatfish nets in any of the RMAs, not to exceed 150 nets total, and must tag both roundfish and flatfish nets with one tag per net;
4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear: Exemption from the tagging requirements specified in §§ 648.14(k)(6)(ii)(A) and 648.84(a), such that a sector vessel may fish gillnets marked and tagged by another vessel, provided the gear is tagged with each sector vessel's gillnet tags consistent with §§ 648.80(a)(3)(iv)(B)(4), 648.80(a)(4)(iv)(B)(3), 648.80(b)(2)(iv)(B)(3), and 648.80(c)(2)(v)(B)(3) or exemption 3 above, and all gear is marked consistent with § 648.84(a);
5. Limitation on the Number of Gillnets that May Be Hauled on Georges Bank (GB) When Fishing Under a Groundfish/Monkfish Day-at-sea (DAS): Exemption from the limit on the number of gillnets that may be hauled on GB specified in § 648.80(a)(4)(iv)(B)(1), provided the vessel is fishing under concurrent NE multispecies and monkfish DAS and does not haul more than 150 nets total;
6. Limitation on the Number of Hooks that May Be Fished: Exemption from the limit on the number of hooks that may be fished in any of the RMAs, specified in §§ 648.80(a)(3)(v), 648.80(a)(4)(v), 648.80(b)(2)(v), and 648.80(c)(2)(iv);
7. Length and Horsepower Restrictions of the DAS Leasing Program: Exemption from the restriction on the length and horsepower of a Lessee vessel, specified for the DAS Leasing Program in § 648.82(k)(4)(ix); and
8. GOM Sink Gillnet Mesh Exemption: Exemption from the minimum mesh size for a

sink gillnet in the Gulf of Maine (GOM) RMA, specified at § 648.80(a)(3)(iv)(A)(I) and (B)(I), when fishing in the GOM RMA with roundfish nets January 1, 2011, through April 30, 2011, provided the vessel uses minimum 6" mesh roundfish nets. The sector vessel may not fish with, haul, possess, or deploy flatfish nets in the GOM RMA during this period, but may transit the area with flatfish nets, provided they are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b).