

**OPERATIONS PLAN for FISHING YEAR 2010**  
**TRI-STATE SECTOR**

*Submitted September 1, 2009*

*Revised October 7, 2009*

*Revised November 30, 2009*

*Revised January 25, 2010*

*Revised February 3, 2010*

*Revised February 11, 2010*

*Revised February 18, 2010*

This OPERATIONS PLAN AND AGREEMENT (this “Agreement”) is entered into as of this 31<sup>st</sup> day of August, 2009, and revised as required by the National Marine Fisheries Service (NMFS) on January 26, 2010 for approval 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”) for participating in the Tri-State Sector for the Fishing Year (FY) 2010 (May 1, 2010 – April 30, 2011).

**RECITALS**

**WHEREAS**, the Tri State Sector is a legal entity incorporated in the state of Maine and as a non profit 501-c-(5) by the IRS, as such it may be held liable for the violations committed by its members,

**WHEREAS**, under Amendments 13 and 16 to the Northeast Multispecies Fishery Management Plan (“Plan” and “FMP”) and the regulations promulgated thereunder, a self-selecting co-operative, or “Sector,” of fishermen is authorized to submit to the New England Fishery Management Council (Council) a proposal for the allocation of catch of regulated groundfish species to such Sector;

**WHEREAS**, the Members applied to the Council for authorization of the Tri-State Sector, in April 2007, (and again in April 2008), and that in June 2009 the Council did agree to consider the Sector as one of a group of Sector applications to be authorized by Amendment 16 to the Plan,

**WHEREAS**, the Northeast Regional Administrator of the National Marine Fisheries Service (NMFS) is authorized under the Plan, Amendments 13 and 16, and the regulations promulgated thereunder to consider and approve a legally binding Operations Plan for the Sector,

**WHEREAS**, the Members desire to form the Sector contemplated by Amendment 16, for the purposes of (i) obtaining an aggregate annual allocation of multispecies stocks from NMFS, as authorized by Amendment 16, and to sub-allocate such aggregate Sector allocation among the Members and/or their permits and vessels and (ii) participating in Special Access Programs (“SAPs”) to the extent that such SAPs are available to the Sector,

**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**

As of the date hereof, each of the Members represents and warrants to the other Members and the Sector that:

### **Section 1.1    Eligibility**

Each Member has been issued a limited access multispecies permit, which, if volunteering to join a sector, is allocated a percentage of the annual Total Allowable Catch (TAC) called a 'percent sector contribution' (psc). The psc is based on the permit's landings history for FY 1996 through 2006 under Amendment 16, (May 1, 1996 – April 30, 2007).

Some limited access multispecies permits were previously part of either the Georges Bank (GB) Cod Hook Sector or the GB Cod Fixed Gear Sector. The psc for GB cod for those permits (which were in one of the early GB cod sectors) is based on the permit's landings history from FY 1996 – FY 2001 (May 1, 1996 through April 30, 2002 (the 1996-2001 fishing years). Each permit in the sector GB cod Hook Sector is listed below such Member's name on the signature pages hereto (each, a "Permit").

Notwithstanding the list of Participating Vessels set forth on the signature pages hereto, for purposes of this Agreement, "Participating Vessel" shall mean the vessel to which a Member's Permit applies at any given time.

### **Section 1.2    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 represent 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.

### **Section 1.3    Incorporation as a Legal Entity**

The Tri State Sector is a legal entity incorporated in the state of Maine and as a non profit 501-c-(5) by the IRS, as such it may be held liable for the violations committed by its members.

### **Section 1.4    Definition of Sector as Three Entities**

Amendment 16 to the NE multispecies Fishery Management Plan (FMP) defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector. This criteria has been fulfilled with permit number **310940** under the

distinct ownership of **Michael Silva**; permit number **320287** under the distinct ownership of **Joseph L Rose**; and permit number **150611** under the distinct ownership of **Jeffrey Carver**.

#### Section 1.5    **Fishing Locations**

Sector vessels will fish on the waters of the Gulf of Maine, Georges Bank and Southern New England/Mid Atlantic on sector trips. Sector Trips are defined as trips directed on groundfish, dogfish, skates, and on monkfish when they have not used up their groundfish DAS. On sector trips all groundfish catch counts against the sector's ACE. Trips in exempted fisheries or using exempted gear are excluded from sector trips.

## ARTICLE II – MEMBERSHIP

### Section 2.1    **Voluntary Membership**

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

### Section 2.2    **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 multispecies species managed under the Plan. 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, regulations, and legislative intent 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, regulations, or legislative intent 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.

“Pursuant to Section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1881a(b)(1)(F), the undersigned hereby authorizes the release to the **Tri-State Sector** of information regarding the catch of various species of fish associated with the limited access Northeast multispecies permit with the Moratorium Right Identifiers (MRI) listed in EXHIBIT E submitted to the National Marine Fisheries Service in compliance with 50 CFR 648.7 and § 648.87 that the undersigned 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 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.*”

### Section 2.3    **Length of Commitment**

Each Member hereby agrees to cause each of its Permits and the related Participating Vessels to remain enrolled in the Sector for the entire fishing year following the date on which such Member enrolled in the Sector (the “Commitment Period”); provided, however, that if NMFS shall not approve the Sector’s Operations Plan and Agreement, as the same may be amended, for any fishing year during a Member’s Commitment Period, then the obligation of such Member

under this Section 2.3 shall terminate on the last day of the last fishing year for which the Sector's Operation Plan and Agreement shall have received approval from NMFS.

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.

#### **Section 2.4    New Members**

The owner of a permit that is eligible under the criteria set forth in Section 1.1 hereto, but that is not enrolled as a Member (and/or whose permit is not so enrolled), may apply to the Manager for membership in the Sector. Such application shall be made in writing prior to June 1 of the fishing year that precedes the fishing year for which the applicant seeks to be included as a Member (i.e., the application must be received at least 11 months prior to the fishing year for which the applicant seeks to be included as a member), 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 the new Member has paid the annual entry fee as set by the Board of Directors and 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 2.5    Permit and Annual Catch Entitlement 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 or the right to harvest any portion or all of the Permit's individual harvest share (share) to a party that is not 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 DAS allocated to its Permit by NMFS to any non-Sector permit, and (iii) shall comply with the right of first refusal provisions of Section 2.7 hereof prior to the consummation of any proposed sale, lease or transfer permitted hereunder.

#### **Section 2.6    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 prior to the commencement of the applicable fishing year or at such other time as the Board may deem necessary or appropriate.

#### **Section 2.7    Right of First Refusal**

In the event that any Member (a “Selling Member”) at any time proposes to sell, transfer or lease (a “Sale”) its Permit and/or any part of its share to any proposed Buyer who shall make a good faith, bona fide written offer therefore (a “Bona Fide Offer”), then the Selling Member shall first deliver to the Sector Members a written notice (“First Refusal Notice”) that the Selling Member proposes to make such Sale, transfer, or lease which First Refusal Notice shall (i) state the identity of the prospective Buyer, (ii) state the amount of consideration for the Permit or any part of its share and the material terms and conditions upon which the proposed Sale, transfer or lease 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 Members shall have a period of five (5) calendar days following the First Refusal Notice Date (the “Election Period”) in which to elect to purchase or lease the Permit or any part of the Permit’s share at the price and subject to the same material terms and conditions set forth in the First Refusal Notice. The Sector Members shall exercise the right to purchase or lease such Permit by delivering a written notice (“Election Notice”) to the Selling Member within the Election Period. In the event that a Sector Member desires to purchase the Permit or share, 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. If a Sector Member has not elected to purchase the Permit within the Election Period, then the Selling Member is free to sell the Permit to the Buyer; provided that such sale is on the terms and conditions specified in the First Refusal Notice.

## **Section 2.8     Proof of Membership**

Upon approval, each sector vessel will be issued a Letter of Authorization (LOA) specifying the exemptions granted. Vessels must comply with all applicable Federal regulations and laws not specifically exempted in the LOA.

## **Section 2.9     Joint and Several Liabilities**

Sector members acknowledge and agree that they and the sector may be held jointly and severally liable for discarding legal sized fish, misreporting, and Annual Catch Entitlement (ACE) overages as specified in Federal regulations.

## **ARTICLE III – ADMINISTRATION**

### **Section 3.1     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 submit all sector reports as required by NMFS.

The Sector’s attorney shall be the designated agent for service of process. He is:

Mr. Nicholas H. Walsh, P.A.  
111 Commercial Street,  
Portland Maine 04101

### **Section 3.2     Manager Authority**

The Manager shall have the authority (i) to monitor the fishing, fish offload, and fish sale 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 Section 3.3 of 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 3.3     Infractions Committee**

The Board shall appoint an infractions committee (the “Committee”) to ensure fair, consistent and appropriate enforcement of this Agreement as well as other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws. The Committee shall annually prepare and recommend to the Board for its approval a schedule of penalties, which shall be in 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 and other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws. 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 Article VI (Section 6.3) 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 expulsion of the violating Member under Article 8 (Sections 8.1 and 8.2) and /or issuing a “stop fishing” order against such Member.

#### Section 3.4     **Procedures for Investigations**

In addition to the Manager's authority to invoke penalties under the Schedule of Penalties pursuant to Section 6.3 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, 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, 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 impose any penalties prescribed in the Schedule of Penalties 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, and are uniform with those reached in similar circumstances.

All appeals from such Committee action shall be taken in accordance with Section 7.4 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 3.5     **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 Participating Vessels of all species, any enforcement actions taken against the Members, their Permits or Participating Vessels, and other information necessary to evaluate the Sector's performance as directed by NMFS.



## **ARTICLE IV – ALLOCATION**

### **Section 4.1     Annual Distribution**

Each Member hereby acknowledges and agrees that the Annual Catch Entitlement (ACE) of multispecies authorized by Amendment 16 and NMFS to the Sector (the ACE) shall be harvested in accordance with the Harvesting Rules, which are set forth as Exhibit D hereto.

Sector members will be allocated a portion of the Sector's total allocation based on the proportion of each stock that they contribute to the Sector's initial ACE. Those members who have more than one vessel enrolled in the Sector may decide to consolidate their fishing effort to one or more vessels.

The shares allocated to individual Sector members will be monitored through sector-required (as distinct from NMFS-required) daily electronic reporting of all allocated stocks (catch by stock area). It is anticipated that through daily electronic reporting of catch by stock area, the sector manager will be able to track the sector's ACEs on a real time basis.

The attached roster lists all permits in the Sector and indicates whether the vessel is expected to be active in the groundfish fishery in 2010.

### **Section 4.2     Reserve**

Each Member agrees that a reserve in the amount of **10%** of allocated stocks within the initial ACE will be established to ensure that the Sector remains in compliance with its ACE limit. The amount of the reserve shall be deducted from the ACE before such ACE is distributed among the Members, their Permits and their Participating Vessels.

### **Section 4.3     Distribution of Reserve**

If the Board determines that the ACE pursuant to Section 4.2 will not be fully harvested by April 1 by the Participating Vessels, the Board shall vote to either carry forward the remaining ACE into the next fishing year or to authorize the harvesting of the reserve by the Members, their Permits and their Participating Vessels.

### **Section 4.4     Fishing History in Sector**

The members acknowledge that under Amendment 16, fishing history is frozen at the level determined by their landings of fishing years 1996 – 2006. It is the intent that that any fishing history, which is accumulated or established by 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. Members acknowledge that in Amendment 16, multispecies landings history for all limited access multispecies permits is frozen as of the allocation period (fishing years 1996 – 2006, inclusive).

#### Section 4.5    **Non-Prejudicial**

It is the intent of the Members that the fishing history and DAS allocation of any Member's Permit during the Qualifying Period, as reported 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 4.6    **Consolidation and Redistribution of Catch/Effort**

It is the intent of the Members to harvest the ACE in accordance with the Harvesting Rules described in Exhibit D. To the extent that any consolidation or redistribution of catch or effort occurs between Members, such consolidation or redistribution will be for the duration of the Agreement or in accordance with the provisions described in Section 4.1.

It is expected that the fishing activity in the groundfish fishery of the vessels listed in Exhibit B as active or inactive will not substantively change during the 2010 fishing year. It is the intent of the Members to continue their historical participation in the scallop, monkfish, fluke, skate, dogfish, squid, whiting, and shrimp fisheries for which they possess federal or state permits.

##### 4.6.1    **Consolidation**

In FY 2009, 14 (63 %) of the 22 permits enrolled in the Tri-State Sector for FY 2010 were attached to vessels actively fishing for NE Multispecies. For FY 2010, the Tri State Sector has 22 permits enrolled. Of those permits 10, (45%) are anticipated to actively fish for NE multispecies in FY 2010. While these numbers may change, the Tri State Sector expects that compared to FY 2009 there would be only a minor changes from the consolidation rate that previously occurred under the DAS Leasing Program or the consolidation rate that may take place in the common pool in FY 2010. Those permits that are not attached to active NE multispecies vessels in FY 2010 are the same permits that leased out their DAS allocations in FY 2009. In most cases, a member who owns multiple permits fished the DAS allocations of all those permits on a single hull and will now continue to fish the ACE contributed by all those permits on the same single hull, resulting in no additional consolidation.

##### 4.6.2    **Redirection of Effort**

The Tri-State Sector anticipates that vessels will not switch fishing efforts into other fisheries. It is the intent of the Members to continue their historical participation in the scallop, monkfish, herring, mackerel, skate, dogfish, squid, whiting and shrimp fisheries for which they possess federal or state permits.

#### Section 4.7    **Not Exceeding the Sector's Allocation**

In addition to the 10% of the ACE of each stock that will be set aside in reserve, the sector will avoid exceeding their ACE for any stock by having daily electronic reporting from all vessels actively fishing to the sector manager of the catch and discards of allocated stocks (see also section 5.2). By keeping close track of the catch of all participating vessels, and close accounting of the sector's allocation of each stock, the sector manager will be able to alert all

members of the situation if it is necessary for them to stop fishing.

If the daily reporting indicates that sector catch is approaching the reserve, then the sector manager will issue a temporary 'stop fishing order' to all members (to ensure the sector's ACE is not exceeded) until the Sector Manager acquires additional ACE, or until any discrepancies (which may have clouded the calculations of actual catch) are resolved.

The Tri State Sector will allow the internal transfer of shares from one member to another, which will be tracked and recorded by the sector manager. These internal share transfers will be critical to prevent each sector member from exceeding his own portion of the share.

At the request of any member, at any time, and before the sector as a whole catches 80% of the ACE of any stock, the sector manager will seek additional shares to lease/trade from other sectors. NMFS will be notified of any transfers between sectors and members acknowledge that no transfer is in effect until it has been approved by NMFS and such notice received by the sector manager.

If the sector exceeds its ACE for any allocated stock, the sector manager will immediately issue a stop fishing order to all participating vessels. If additional ACE is acquired, then the 'stop fishing order may be suspended.

Finally, instead of authorizing the harvest of the reserve in the final month of the fishing year, the sector may choose to carry forward up to 10% of their ACE as allowed under Amendment 16.

## **ARTICLE V - CATCH MONITORING, DISCARDS, VERIFICATION, OVERAGES, PORTS and CERTAIN OTHER MEMBERSHIP REQUIREMENTS**

### **Section 5.1    Sector Reporting**

The Tri-State Sector will submit required weekly and daily reports using the format and procedures prescribed by NMFS.

The Sector Manager will report weekly as required by Amendment 16 by gathering and aggregating data from vessels (Vessel Trip Reports (VTRs)), Dockside Monitors (for 50% of trips) dealers, (including but not limited to the weekly electronic dealer reports to be posted on the NMFS 'sector information management' web portal), daily discard rates as calculated and supplied by NMFS based on the Northeast Fishery Observer Program (NEFOP), and other data sources as they are available. The Manager shall, on a weekly basis, transmit to NMFS such aggregate catch information generated from such reports ("Aggregate Reports").

Weekly reports may include a section notifying NMFS of outstanding catch records and the results of any investigations into data discrepancies. Any resolutions and / or ongoing internal sector investigations will be noted.

The reporting due date for the Sector Manager's weekly report will be increased to daily when a threshold of either 80% of any of the Sector's ACE is reached, or when, for two consecutive weekly reporting periods 20% or more of the remaining portion the Sector's ACE is harvested, whichever occurs first. Thus, for the latter trigger point, if a sector in one week harvests 25% of the remaining ACE for Gulf of Maine cod for that sector, and the following week harvests 22% 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 both the sector and NMFS.

### **Section 5.2    Participating Vessel Catch Reports**

All participating vessels are required to report to NMFS as required by the FMP in addition to reporting to their sector manager.

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 from sector trips (including discards) by pounds, by species, and by broad groundfish statistical area so the Sector Manager can determine which stock of a species has been caught on a daily via VMS. Sector vessels which do not fish on sector trips agree that the Sector Manager will use VTR and dealer data as submitted to NMFS to do compile the required annual report.

Additionally, Members will provide a copy of their official Vessel Trip Reports and other reporting documents authorized by NMFS to the Sector Manager within 24 hours of offloading fish in the form and manner prescribed by the Manager. The Members agree that the Manager shall maintain these records. The Manager shall, upon the request of any Member, provide such Member with the Sector's aggregate catch information that is generated from such records.

Vessel operators may be subject to investigation and/ or penalty by the sector if they do not meet the sector-determined deadlines for submitting their VTRs, dealer and dockside monitoring reports.

Each member acknowledges and agrees that (a) it is responsible for complying with all permitting requirements, recordkeeping, catch reporting, and VMS requirements described in 50 CFR part 648.

### **Section 5.3     Dealer Reporting**

Each Member agrees to (i) sell the catch of its Participating Vessels only to a dealer licensed by NMFS and (ii) provide the Sector Manager with a copy of the official dealer weigh out slip at the end of each trip. If the trip was assigned a Dockside monitor, then the official dealer weigh-out slip will be signed by the dockside monitor. Each Member further acknowledges and agrees that (a) it is responsible for ensuring timely reporting in accordance with the provisions of this Section 5.2 and (b) failure to deliver the reports for a Member's Participating Vessel in accordance with this Section 5.2 shall be deemed a breach of this Agreement by such Member.

### **Section 5.4     Catch Verification**

The Manager (or his designated agent) shall, and each Member (or its designated agent) shall ensure that the Manager does compare, verify and validate each Participating Vessel's catch records with the dealer reports for such Participating Vessel, as well as the Dockside Monitoring reports, on a continuing and frequent basis. If the Manager identifies a discrepancy he shall notify the affected Member and seek to resolve the discrepancy and will also note the discrepancy in the sector's weekly report.

Each Member agrees to cooperate fully with any and all requests for information or data that are made by the Manager or the Committee in an effort to resolve any discrepancy

### **Section 5.5     Vessel Hails and Dockside Monitoring Requirements**

Each member agrees to comply with the dockside monitoring provisions described in the Harvesting Plan (Exhibit D) and the NMFS Dockside Monitoring Standards as drafted in the August 24, 2009 document "Dockside Monitoring Standards for 2010".

The Tri-State Sector will contract with one or more NMFS-approved monitoring providers from the following list to provide dockside and/or at sea monitoring services before May 1, 2010 and will notify NMFS of its selection. Possible Dockside Monitoring Vendors to be contracted include: AIS, Inc, Atlantic Catch Data, East-West Technical Services, Saltwater Inc, and MRAG Americas.

If a Dockside Monitoring Company contracted to the Tri State Sector loses its certification during the fishing year, the Sector will establish a contract with another approved company and notify NMFS.

Dockside monitors will be deployed in such a way as to achieve 50% coverage of trips that is random and representative of the fishing activities of the Sector.

#### Section 5.5.1 **Vessel Hails**

All members agree to hail 'Trip Start' and 'Trip End' via VMS to the Sector Manager and their selected Dockside Monitoring Company. Such hails will be forwarded to the NMFS Office of Law Enforcement (OLE) upon confirmation by the Dockside monitoring company.

Vessels will hail **Trip Start** to the Sector Manager and the dockside monitoring company prior to leaving port. Hail Trip Start will include at least the following: vessel permit number, the trip ID number and estimated trip duration. (The trip ID number is defined as the serial number from the first page of the first VTR filled out for the trip.) The Dockside Monitoring Company is required to send a confirmation to the vessel that it has received the Trip Start Hail within ten minutes. If the vessel operator does not receive the confirmation in the required time, they must contact the Dockside monitoring company by an alternative phone.

Vessels will hail **Trip End** to the Sector Manager, their selected Dockside Monitoring Company and NMFS at least six hours in advance of landing to allow a Dockside Monitor (DM) to be present in time to witness offloading. Hail Trip End will include the following: permit number, trip ID number, specific offloading location including state, port/harbor and dock, for all dealers/facilities where they intend to offload, estimated time of arrival, estimated time of offloading, and estimated weight of each species being landed.

For trips less than six hours in length or occurring within six hours of port, the estimated time of arrival to port and time of offload will be provided in the Trip Start hail. The Trip End hail will be sent upon completion of the last tow with all required updated information. An alternative timing for the trip end hail may be implemented during FY 2010 (May 1, 2010 – April 30, 2011) if agreed upon by the sector, the monitoring provider, and NMFS OLE.

The dockside monitoring company will is required to send a confirmation of receiving the Trip End hail and whether the vessel will have a RM or DM present for offloading OR they will be issued a DM Waiver for the trip. If the vessel operator does not receive a confirmation of the Trip End hail, he must call the Dockside Monitoring Company by back-up system (phone) prior to landing. The dockside monitoring company will also notify the Sector Manager and NMFS Law Enforcement when it sends the confirmation with the complete hail Trip End information and whether the vessel will have a DM / RM present at offloading or not.

If the Vessel is issued a Waiver, the vessel operator will provide the Sector Manager with their VTR and Dealer receipt within 24 hours of offloading.

If the vessel is selected for dockside monitoring, then the vessel will not offload unless a DM or RM is present.

In the event of bad weather or other emergency that results in a participating vessel entering port without being able to give six hour notice prior to landing, the vessel will notify the sector

manager and the Dockside monitoring company as soon as it is safe to do so. Such notification will include all required trip end hail information. Upon receiving such notification, the Dockside Monitoring Company will send a confirmation and inform the vessel if it will have a dockside monitor or receive a waiver for the trip, and will also notify NMFS of the unexpected arrival in port. If assigned a Dockside monitor, then all participating vessels agree to not unload fish unless a Dockside Monitor is present. Further, the vessel owner agrees to pay any additional costs for the required DM as may accrue as a result of invoking the landing port exception.

If a Tri State Sector vessel decides to offload at more than one facility, they agree to have a DM present during offload at each location.

#### Section 5.5.2                      **Dockside Monitoring Procedures**

Upon meeting the vessel at the offloading site, the DM will:

- 1) take copies of all VTRs for the trip;
- 2) record whether the scales are certified;
- 3) observe and record whether ice and box weights are tared before catch is weighed; and
- 4) ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The DM will 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) The DM or Dealer will record and sign a report of the weight of offloaded fish by species.
- 6) The DM will send the Sector Manager a copy of the VTRs and a copy of the DM report and dealer receipts (if separate from the DM report) electronically and within 24 hours of the end of the offloading event.
- 7) The DM Company will keep an electronic copy of the DM report.

If a vessel is selected for having a DM, and is offloading at a remote port, (meaning their fish will be trucked before it is weighed), the vessel may enter port and tie at safe berth but no offloading can commence until the RM or DM is present. If the truck does not have scales, then members agree to have a RM present when the vessel offloads to the truck and a DM to record weights when the truck is offloaded at the dealer's location. The DM and RM of a trip that is unloaded in a remote location will follow all requirements described for dockside monitoring (above) to ensure all groundfish from the trip are accounted for and accurately reported to the Sector Manager.

If the offload is weighed at the offload site in front of the RM before being loaded into the truck the event must follow the protocol for offload at a dealer. Upon meeting the vessel at the remote offloading site, the RM will:

- 1) take copies of all VTRs for the trip;
- 2) record whether or not the scales are certified; and
- 3) observe and record whether ice and box weights are tared by the dealer before the catch is weighed, and.
- 4) Ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The RM will 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 RM or dealer will record the weight of offloaded fish, by species (and market class, if culled), in a report. This report will be signed by the RM and the RM will keep a copy of the signed report.
- 6) The RM will send copies of the VTR(s), the RM's report, and the dealer receipt(s) (if separate from the RM's report), to the Sector Manager within 24 hours of the end of the offloading event.
- 7) The DM Company will keep an electronic copy of the RM report.

If the offload is not weighed at the offload site in front of the RM before being loaded into the truck, then all fish must be weighed in the presence of a DM at the receiving dealer(s) when the truck offloads following the same procedures as a vessel offloading at a dealer, and the RM will:

- 1) take copies of all VTRs, and
- 2) 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: vessel name and permit number, serial number of first VTR page filled out for that trip, RM name, tote number, and species.
- 6) The RM will send copies of the VTR(s), the RM report and the driver manifest(s) (if separate from the RM's report) to the Sector Manager within 24 hours of the end of the offloading event.
- 7) The DM Company will keep an electronic copy of the RM report.

All members agree to hail trip start and trip end via VMS or other authorized electronic means to the Sector Manager and their selected Dockside monitoring company. Members shall agree to allow the DM or RM to board the vessel to confirm that all fish have been offloaded.

## **Section 5.6    Designated Landing Ports**

Members shall agree to offload catch from sector trips in the following ports.

- |                    |            |
|--------------------|------------|
| ➤ Chatham, MA      | ➤ Salem MA |
| ➤ Harwichport, MA  |            |
| ➤ Gloucester, MA   |            |
| ➤ New Bedford, MA  |            |
| ➤ Provincetown, MA |            |
| ➤ Scituate, MA     |            |
| ➤ Beverley, MA     |            |

### **5.6.1    Remote Ports (Ports Where Fish May be Trucked)**



- Scituate, MA
- Provincetown, MA
- Beverley, MA
- Salem, MA

## **Section 5.7    Landing Port Exceptions**

To promote safety at sea and ensure the safety of vessel and crew, certain circumstances beyond a vessel operators control may occasionally occur which require participating vessels to enter port somewhere other than the designated landing ports listed above. If a Tri State Sector participating vessel is required to enter port somewhere other than a designated landing port, then the vessel operator will notify the Sector Manager and the Dockside Monitoring Company by appropriate means as soon as it is safe to do so.

Such circumstances include but are not limited to severe weather, mechanical failures, compromised hull integrity, instances of pump failures and danger of sinking, crew injury or life threatening illness and any other emergency situations that may arise.

In the event of bad weather or other emergency that results in a participating vessel entering port without being able to give six hour notice prior to landing, the vessel will notify the sector manager and the Dockside monitoring company as soon as it is safe to do so. Such notification will include all required trip end hail information. Upon receiving such notification, the Dockside Monitoring Company will send the required confirmation and inform the vessel if it will have a dockside monitor or receive a waiver for the trip, and will also notify NMFS of the unexpected arrival in port. If assigned a Dockside monitor, then all participating vessels agree to not unload fish unless a Dockside Monitor is present. Further, the vessel owner will pay any additional costs for the required DM as may accrue as a result of invoking the landing port exception.

## **Section 5.8    Discards**

### **5.8.1    Discard Rate**

Sector will commence operations (when approved through the federal rule making process) for FY 2010 with discard rates provided by NMFS and will apply in-season discard rates as provided by NMFS via their “Sector Information Management’ web portal.

The members of the Sector agree that discards will be calculated as directed by NMFS. The resulting Sector-specific discard rate will be applied to all Sector trips.

## **Section 5.9    Overages**

### **5.9.1    Individual exceeding an individual allocation of a stock**

The Sector Manager will issue (and may ask NMFS to enforce) a temporary ‘Stop Fishing Order’ to any participating vessel that has fished 90% of its share for any stock until additional allocation for that stock has been acquired. The vessel owner will be responsible for acquiring additional ACE for that stock, first from within the Sector, and if none is available, then he will notify the Sector Manager to assist him in acquiring additional ACE of that stock from another sector at his own expense.

If the Sector Manager is not able to acquire additional ACE of that stock then the Manager will issue a “stop fishing order” for the duration of the fishing year to that individual member for that stock area where his vessel exceeded his share.

#### **5.9.2 Individual exceeding the allocation of a stock for the entire sector**

To prevent an overage, the Tri-State Sector agrees to set aside **10%** of their ACE as a reserve (*see Section 5.1*). The Sector expects to acquire additional ACE from other sectors as needed during the fishing year to prevent exceeding its ACE of any stock.

If anyone in the Sector causes the Sector’s allocation of any particular stock to be exceeded, the Sector Manager will issue a “Stop Fishing Order” and then attempt to acquire additional ACE for that stock at the expense of the individual whose vessel caused the ACE to be exceeded. If the Sector Manager is not able to acquire additional ACE of that stock, then member vessels will be prohibited from fishing in that stock area on trips directed at groundfish dogfish, monkfish or skates (because all groundfish caught in those fisheries counts against the Sector’s ACE).

The Sector Board will initiate an investigation into how an ACE was exceeded and develop mechanisms to prevent it from happening in the future. Such mechanism may include, but will not be limited to, increasing the Sector’s reserve percentage (*see infractions procedures, Sections 3.3, 3.4 and 6.2-7.8*).

Each member acknowledges and agrees to account for any overage, and agrees to the overage penalties detailed in Exhibit A.

Each member acknowledges that if the Sector exceeds its ACE, then NMFS will reduce the Sector’s allocation of that stock by the appropriate amount in the subsequent fishing year. If there is not enough ACE to subtract from the sector’s allocation in the second year to cover the overage from the previous year, then those Sector members who leave the Sector for the second year will have their DAS allocations sanctioned by NMFS in proportion to the overage.

Each member acknowledges that if the Sector disbands completely and no Sector exists to cover the overage deduction in the following year, or there is insufficient ACE in year two to cover the year one overage, then, to account for the overharvested fish, each member will be held responsible each member will be held responsible by having its individual permit’s DAS allocation for the following year will be reduced by NMFS.

If there is not enough ACE in year 2 to cover an overage from year 1 and active vessels in the Sector depart the Sector (by the end of one fishing year) to participate in the common pool the

following year, after causing an overage that is not balanced by an ACE acquisition, those individual permit's DAS allocation for the year will be sanctioned by NMFS

## **Section 5.10 Area Restrictions**

### **5.10.1 Hot-Spot Reporting System**

Each member agrees to report to the Sector Manager any areas of high bycatch including undersized regulated species, observed spawning areas and/or any stock for which the Sector is approaching their threshold. Upon receiving a hot spot report, the Sector Manager will send an alert to all member vessels to avoid those particular areas.

### **5.10.2 Additional Area or Gear Restrictions**

Each member agrees that the Board of Directors may impose seasonal area or gear restrictions to avoid catch (including discards) of species of particular concern (i.e. species for which the Sector ACE is low.)

## **Section 5.11 Exemptions**

### **5.11.1 Universal Exemptions**

Members shall be exempted from those management measures in the multispecies fisheries management plan determined by NMFS and the Council to be “universal exemptions” for Sectors.

The universal exemptions approved by the Council in June 2009 are expected to be granted for all approved sectors in Amendment 16. They include the following:

1. Exemption from DAS requirements implemented by the NE Multispecies FMP (e.g., reductions and any differential DAS counting areas implemented as an AM).
2. Exemption from trip limits on regulated large mesh multispecies except for the following:
  - a. Halibut: trip limit will continue to be one fish per trip;
  - b. No vessels, whether they are in the common pool or in any sector will be allowed to possess any windowpane flounder, ocean pout, wolffish, or SNE/MA winter flounder on board at any time. When caught, they must be discarded.
3. Exemption from the Georges Bank Seasonal Closure Area in May.
4. Exemption from any additional mortality controls adopted by Amendment 16 (see paragraph below for additional details).

5. Revised GOM Rolling Closure Areas as recommended at the June 2009 Council meeting.<sup>1</sup>
6. Vessels using a haddock separator trawl or the Ruhle trawl to target haddock while minimizing the cod bycatch are exempt from the requirement for 6.5-inch mesh and are authorized to use 6-inch mesh in the codend in the Georges Bank Regulated Mesh Area.

In addition, should Amendment 16 adopt additional mortality controls, such as additional seasonal and year-round closed areas, gear requirements, differential DAS counting, and/or restricted gear areas, sectors would not be required to adhere to these additional measures since mortality by sector vessels is controlled by a hard TAC on each allocated stock.

#### 5.11.2            **Requested Exemptions**

The Tri-State Sector requests exemption from the following management measures:

1. The 120-day block out of the fishery for gillnet vessels.
2. The 20-day spawning block out of the fishery required for all vessels.
3. Length and horsepower restrictions on DAS leasing for Tri State participating vessels and those of any other sectors that is granted this exemption.

#### 5.11.3            **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 full responsibility hereunder for the actions of any such operators that result in a violation of this Agreement.

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<sup>1</sup> Many of the GOM Rolling Closure Areas are universally exempt, except for the following: 1.) Blocks 124 and 125 in April; 2.) Blocks 132 and 133 in April-May; 3.) Block 138 in May; 4.) Blocks 139, 140 in May-June; and 5.) Blocks 145, 146, 147, and 152 in June.

## **ARTICLE VI FISHING ENFORCEMENT**

### **Section 6.1 Investigations**

If the Sector Manager discovers, when comparing VTR, DM and dealer reports, a discrepancy of > 15%, then the Sector Manager will notify the Sector member and the vessel operator to learn why there was such a large error in reporting.

If the Sector Manager discovers that such error is ongoing, the Sector Manager shall inform the Board and initiate an investigation.

### **Section 6.2 Infractions Committee**

When necessary, the Board shall appoint an infractions committee (the “Committee”) to ensure fair, consistent and appropriate enforcement of this Agreement, the Harvesting Rules, the Plan and other Sector requirements as adopted under the terms of this Agreement and the Sector’s Bylaws.

The Committee will be comprised of three Board members, excluding any Board member who may be subject to investigation.

The Committee shall annually prepare and recommend to the Board for its approval a schedule of penalties, which shall be similar in form to Exhibit A (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 Plan and other Sector requirements as may be adopted under the terms of this Agreement or the Sector’s Bylaws.

The Board shall review and approve any Schedule of Penalties prior to the commencement of the fishing year.

In addition, the Committee 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 expulsion of the violating Member under Section VIII and /or issuing a “stop fishing” order against such Member.

If a member has been issued a “stop fishing” order the Sector Manager will notify NMFS immediately.

### **Section 6.3 Procedures for Investigations**

In addition to the Manager’s authority to invoke penalties under the Schedule of Penalties, 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 or other Sector requirements 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.

Such Committee member assignments shall be rotated. If, upon the conclusion of such investigation, the Committee determines by an affirmative vote of a majority of its members that a violation of this Agreement, the Harvesting Rules, the Plan or other Sector requirements 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, to 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 and are uniform with those reached in similar circumstances.

All appeals from such Committee action shall be taken in accordance with Section 7.4 of the Operations Plan.

Each Member 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).

## **ARTICLE VII OPERATIONS PLAN ENFORCEMENT**

### **Section 7.1 Agreement Enforcement**

Each Member agrees that the Sector, 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 7.2 Restrictions on Fishing Activity**

The Members acknowledge they may be held jointly and severally liable for civil penalties to NMFS that result from 1) any member causing the Sector to exceed its ACE; 2) any member discarding legal sized allocated groundfish; 3) any member or vessel operator misreporting their own catch and discards of allocated groundfish species to NMFS or the Sector Manager; and/ or 4) any deliberate misreporting by the Sector Manager to NMFS.

The Members further acknowledge and agree that monetary penalties could be inadequate recourse under such circumstances.

Therefore, the Members acknowledge and agree that each of them will 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 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 7.3 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 7.4 Appeal from Committee Decision**

If the Committee has determined, pursuant to the procedures set forth in Section 6.1, that a Member has violated this Agreement or makes any other determination with respect to a Member under this Agreement (including, specifically, without limitation section on catch verification), 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 Plan and Amendment 16 and are uniform with those reached in similar circumstances.

#### **Section 7.5 Penalties and Attorneys' Fees**

Penalties for any violations of this Agreement shall, 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 7.6 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.

#### **Section 7.7 Dispute Procedures**

Prior to instituting any litigation or other dispute resolution, the parties shall follow any applicable procedures set forth in this Agreement, including specifically Sections 6.3, 7.4 and 7.8, for the resolution of such dispute.

Any appeals taken with respect to any dispute that arises in connection with this Agreement shall be taken in the federal district court in Portland, Maine or, if said court does not have jurisdiction, in such courts in the State of Maine that do have jurisdiction.

#### **Section 7.8 Specific Performance**

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 7.9     **Indemnification**

Each party that violates this Agreement (the “Indemnitor”) hereby severally agrees to indemnify, defend and hold harmless the other parties hereto (each, an “Indemnatee”) 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 Indemnatee, which is based on or relates to this Agreement violation of applicable laws, rules or federal fishery regulations or 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 shall be joint and several.

For the purposes of this Section, “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 shall survive the termination of this Agreement and the expulsion of any Member pursuant to Article VIII.

## **ARTICLE VIII EXPULSION OF MEMBERS**

### **Section 8.1     Cause**

The Members agree that any Member may be expelled from the Sector if the actions of such Member and/or its Participating Vessels (or the Participating Vessels' operators) seriously undermine and threaten the existence of the Sector, 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, such Member has been convicted of a serious crime, or such Member has not paid its membership dues and/or poundage fees as required by the bylaws.

### **Section 8.2     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. Board members cannot vote on the expulsion of one or more of their own vessels.

As required by 50 CFR Part 648.87 or any substitute or successor provision, 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 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 that the Member's Permits and/or Participating Vessels are no longer included in the Sector.

## **ARTICLE IX            EXPECTATION OF NMFS ENFORCEABILITY**

### Section 9.1

The following sections of this Operations Plan **will not be enforced by NMFS**, but are administrative to Sector Operations.

#### Article II

- Sections 2.1, through 2.7;

#### Article III

- Sections 3.3 and 3.4;

#### Article IV

- Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6;
- Section 4.7 paragraphs 1, 2, 3, and 5

#### Article V

- Sections 5.1 only paragraphs 2 and 6;
- Sections 5.2 paragraph 2,
- Section 5.3, 5.4, 5.6, 5.7, and 5.8;
- Section 5.9.1 and 5.9.2, paragraphs 1, 3, 4, 6
- Section 5.10.1 and 5.10.2
- Section 5.11.3

#### Article VI

- All Sections of Article VI are internal sector business and will not be enforced by NMFS

#### Article VII

- Sections 7.1, 7.2 paragraphs 1 and 2 only, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, and 7.9

#### Article VIII

- Sections 8.1 and 8.2 except the last paragraph (7) in section 8.2

### Section 9.2

The following sections **will be enforced by NMFS** as they are required by federal regulations.

#### Article I

- Sections 1.1 through 1.4

#### Article II

- Sections 2.8 and 2.9

#### Article III

- Sections 3.1, 3.2 and 3.5

#### Article IV

- Section 4.7 paragraph 4 only.

#### Article V

- Sections 5.1 paragraphs 1,3,4 and 5
- Sections 5.2 paragraphs 1 and 3
- Sections 5.5
- Section 5.9.1 (paragraph 2 only), and 5.9.2 paragraphs 2, 5, 7, 9, 10 and 11;
- Sections 5.11.1 and 5.11.2

#### Article VII

- Section 7.2 paragraph 3 only

#### Article VIII

- Section 8.2 – Paragraph 7 - Expulsion will be enforced by NMFS

## EXHIBIT A: ALLOCATION AND PENALTY SCHEDULE

Penalty Schedule			
VIOLATION	FIRST	SECOND	THIRD
<b>VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, EXEMPTION PERMIT REQUIREMENTS</b>			
All 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; providing false statements or failing to comply with VMS/DAS requirements (technical and minor violations may result in a letter of warning); Exceeding ACE and not acquiring additional ACE to replace it.	Up to \$5,000 (and/or stop fishing order) plus the cost of the sector acquiring additional ACE, and all legal and administration fees	\$5,000-\$10,000 (and/or stop fishing order) plus the cost of the sector acquiring additional ACE, and all legal and administration fees	\$10,000 + (and/or stop fishing order) plus the cost of the sector acquiring additional ACE, and all legal and administration fees
<b>VIOLATIONS REGARDING TIME AND AREA RESTRICTIONS</b>			
All violations including, but not limited to: exemption areas, closed fisheries, closed seasons, restricted gear/management areas and Days at Sea violations.	\$2,000-\$50,000 (stop fishing order for 30 days) and all legal and administration fees	\$10,000-\$100,000 (unable to fish for the remainder of the fishing year) and all legal and administration fees	Expulsion and all legal and administration fees
<b>VIOLATIONS THAT PLACE THE SECTOR AGREEMENT AT RISK</b>			
All violations including but not limited to a violation of a stop order, entering a closed area, transfer of fish from a non-Sector vessel to a Sector vessel, subverting the reporting requirements (misappropriating landings) or any other action which could cause the Authorized SECTOR to be in violation of its agreement.	Up to \$50,000 (loss of fishing rights for 365 days) and all legal and administration fees	Expulsion and all legal and administration fees	
<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 and all legal and administration fees	N/A	N/A

**EXHIBIT B -- ROSTER WITH EXPECTED ACTIVITY FOR FY 2010**

<b>Count</b>	<b>MRI</b>	<b>Permit Number</b>	<b>Vessel Name</b>	<b>Expected Active / Not Active in Groundfish in2010</b>
1	201	231525	FV Shooting Star	Yes
2	325	310940	Teri M	Yes
3	391	250431	Ancora Praia	Yes
4	578	330823	Pacifics	No
5	585	320266	Capt. Ralph	Yes
6	591	320287	Susan Rose	No
7	635	320549	Bailey Boy	No
8	721	330153	C-Venture	No
9	723	330812	Bald Eagle II	No
10	724	330161	Joyce D	Yes
11	752	330786	Sassy Sarah	No
12	785	310988	Vickie II	No
13	788	410584	Lady Anna	No
14	875	330873	Bridgot Denise	Yes
15	1619	150767	1973 sea ray	No
16	1835	222163	FV Jean B	Yes
17	1852	150611	Sally J	Yes
18	2122	241823	Charlie III	Yes
19	2325	150797	TriWerx	No
20	2692	150529	Beacon	No
21	3015	149404	DH Boatworks	Yes
22	3327	150763	Dolphin	No

**EXHIBIT C: LIST OF MEMBERS' FEDERAL AND STATE PERMITS (and see attached pages)**

<b>Owner Name</b>	<b>Additional Federal Permits not in the Sector</b>	<b>State Permits</b>
FV Shooting Star Inc	None	MA gillnet dogfish, coastal lobster
Michael Silva	None	MA coastal lobster, dogfish, CAP,
Sandia Fishing Corp.	None	MA - coastal lobster, dogfish, CAP,
Delores of Wanchese Inc.	Atlantic Tuna, Gulf of Mexico shrimp, S Atlantic Rock Shrimp, Rock shrimp	MA - commercial scallop, fluke, offshore lobster, NY - comm marine; NJ, NC - comm fish, stand comm fish, land flounder; VA - landing permit, flounder, Black Sea Bass,
Roanoke Fish Co.	251721, 141936 (shark incidental, Spanish mackerel)	MA: offshore lobster, fluke, scup, NY: marine permit, comm. food, NJ – comm. Marine, Delaware bay gillnet, comm. Crab pot, trawl; VA: seafood landing lic.; NC shellfish, menhaden
Joseph L Rose	Atlantic Tuna, Atlantic Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp,	MA: offshore lobster, fluke, scup, NY: marine permit, comm. food, NJ – comm. Marine, Delaware bay gillnet, comm. Crab pot, trawl; VA: seafood landing lic.; NC shellfish, menhaden
Bailey Boy Inc	Atlantic Tuna, Atlantic Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp,	MA Scup, Black Sea Bass, offshore lobster, VA Flounder, Black Sea Bass, horseshoe crab, NC flounder, striped bass
William F Callaway Inc	Atlantic Tuna, Atlantic Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp,	MA: offshore lobster, fluke, scup; NJ fluke; VA seafood landing; NC (not legible)
Fisherman's Wharf Fillet Inc	Atlantic Tuna, Atlantic	MA - comm scallop, fluke, lobster, NJ - comm landing,

	Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp,	flounder, Black sea bass, NC - comm fishing, stand comm fish, land flounder, VA - landing, flounder, black sea bass
Henry Daniels Inc	Atlantic Tuna, Atlantic Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp,	MA: offshore lobster, fluke, scup, NY: marine permit, comm. food, NJ – comm. Marine, Delaware bay gillnet, comm. Crab pot, trawl; VA: seafood landing lic.; NC shellfish,
Hiwall Inc .	Atlantic Tuna, Atlantic Dolphin/Wahoo, S Atlantic Rock Shrimp, S Atlantic Penaeid shrimp, Rock shrimp	MA - commercial scallop, NJ, NY marine permit NC - comm fish, stand comm fish, land flounder; VA - landing flounder
Captain Malc Inc	Atlantic Tuna, Gulf of Mexico shrimp, S Atlantic Rock shrimp, S Atlantic Penaeid shrimp, Atlantic Dolphin/Wahoo	MA - commercial, scallop, fluke, offshore lobster; NJ, NC - comm fish, stand comm fish, land flounder, VA - landing permit, flounder, black sea bass
Esther Joy Inc	Atlantic Tuna, Gulf of Mexico Shrimp, South Atlantic Rock shrimp, S Atlantic Penaeid shrimp, Rocks shrimp	MA - commercial, scallop, fluke, offshore lobster; NY comm marine, NJ, NC - comm fish, stand comm fish, land flounder, VA - landing permit, flounder, black sea bass
James Bergstrom	118951	MA – coastal lobster, dogfish, CAP
Richard Birarelli	None	MA – coastal lobster, dogfish, CAP
Jeffrey Carver	None	MA: coastal lobster, dogfish, groundfish, gillnet, CAP, ocean quahog, shellfish
Mary / Chuck Harris	None	MA – coastal lobster, dogfish, groundfish, gillnet, CAP,
Michael Ginley	None	MA coastal lobster, dogfish, CAP



**EXHIBIT D: HARVESTING RULES for FY 2010**  
**(Revised) February 18, 2010**

**Quota Management**

**ACE and Annual Distribution**

1. Each Member agrees that the ACE of multispecies authorized by Amendment 16 and NMFS to the Sector (the “ACE”) shall be harvested in accordance with the Harvesting Rules, which are set forth below.
2. Sector members will be allocated a portion of the Sector’s total allocation based on the proportion of each stock that they contribute to the Sector’s initial ACE. Those members who have more than one vessel enrolled in the Sector may decide to consolidate their fishing effort to one or more vessels.

**Reserve**

1. Each Member agrees that a reserve in the amount of **10%** of each stock within the initial ACE will be established to ensure that the Sector remains in compliance with its ACE limit. The reserve shall be deducted from the ACE before such ACE is distributed among the Members, their Permits and their Participating Vessels.
2. Distribution of Reserve - If the Board determines that as of April 1, the ACE pursuant to Section 4.2 has not been fully harvested by the Participating Vessels, the Board may release and authorize the harvesting of the reserve by the Members, their Permits and their Participating Vessels provided all vessels report to the sector manager daily. Alternatively, the Board may decide to carry that reserve forward to the next fishing year.

**Full Retention of Legal Sized Fish**

1. Tri State Sector vessels will retain all legal sized groundfish of those stocks for which they have an allocation.
2. Tri State Sector vessels will be required to discard SNE Winter flounder, Atlantic Wolfish, and both stocks of Windowpane flounder.
3. Tri State Sector vessels will be allowed to keep one legal sized halibut per trip.

**Stock Area Declaration**

1. When they send the Hail Trip Start, and when they report (daily) to the sector manager, participating vessel operators will indicate which broad stock area they will be fishing in for the next 24 hours and that which they have been fishing in during the previous 24 hours.
2. This will allow the sector manager to attribute catch appropriately and anticipate whether the sector is running low on a particular stock.

**Vessels Fishing Multiple Stock Areas**

- Tri State Sector participating vessels fishing in multiple stock areas will report daily to the Sector Manager and in so-doing will indicate an estimate of their catch (including discards) from each stock area.

### Fishing in US/Canada Areas

1. Tri State Sector participating vessels intend to fish in the both the Eastern and Western US/Canada Areas.
2. When reporting their daily catch to the Sector Manager, the operators of all Tri State Sector member vessels will specify the volume of catch and discards from each area.
3. Members electing to enter the Eastern US/CA area are still obligated to comply with the observer notification requirements. All requirements (observer notification, reporting and VMS) are maintained.

### Closed Areas

- Tri State Sector participating vessels will access the Closed Areas as authorized under the Multispecies FMP as revised by Amendment 16.

### Catch Reports

1. Tri State Sector member vessels will report via VMS or other approved electronic means to the Sector Manager at least once in every 24 period that they are away from dock.
2. Daily reports will consist of permit number, vessel name, and the operator's estimate of catch and discards of each allocated stocks, by stock and broad fishing area.

### Vessel Logbooks

1. Operators of all Tri State Sector participating vessels will turn one copy of their VTRs over to the Dockside Monitor (if one is assigned) at the time of offloading.
2. If there is no Dockside or Roving Monitor assigned to the offload, all participating vessel operators agree to send the Sector Manager one copy of their VTRs and a copy of their offload receipt to the Sector Manger within 24 hours of arriving in port.

### Sector Reporting to NMFS

1. The Tri State Sector will report weekly to NMFS as required using data collected from vessels, VTRs, (and eVTRSs when authorized), dealer reports, dockside monitoring reports and observer reports.
2. The reporting due date for the Sector Manager's weekly report will be increased to daily when either 80% of any of the Sector's ACE is reached, or when, for two consecutive weekly reporting periods 20% or more of the remaining portion any ACE is harvested, whichever occurs first.
3. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed upon by the sector and NMFS.
4. The Tri-State Sector will submit required reports using the format and procedures prescribed by NMFS.

### Data Reconciliation

- The Sector manager will reconcile the data from vessels, VTRs, (and eVTRSs when authorized), the dealers' report, the observer's report and the Dockside Monitor's report on an ongoing basis to closely track the sector's ACE..

### Discard Rate

The Tri State Sector's Sector Manager will apply a sector specific assumed discard rate to all trips as calculated and reported by NMFS.

#### Hot Spot Reporting (areas of high bycatch of allocated species)

1. Each member agrees to report to the Sector Manager any and all areas of high bycatch of any sort, including undersized regulated species, areas of spawning fish, and/or any stock for which the Sector is approaching their threshold.
2. Upon receiving a hot spot report, the Sector Manager will send an alert to all member vessels to stay away from those particular areas.

#### Additional Measures to Prevent ACE overages

1. See daily catch reports (above)
2. The Board reserves the right to prohibit other fishing activities by Members if it determines that those activities undermine or compromise the Sector Plan and the Sector or otherwise conflict with the standards and ethics described in the bylaws and guiding principles.
3. When the Board imposes additional restrictions, they may also direct the Sector Manager to try to lease/buy or trade additional ACE of any stocks of concern by contacting other sector managers.
4. The Sector Manager will issue (and ask NMFS to enforce) a 'Stop Fishing Order' to any member vessels that has fished more than 90% of its individual allocation for any stock until additional allocation for that stock has been acquired or the member has agreed to not fish in that stock area for the rest of the fishing year.
5. The reporting due date for the Sector Manager's weekly report will be increased to daily when either 80% of any of the Sector's ACE is reached, or when, for two consecutive weekly reporting periods 20% or more of the remaining portion any ACE is harvested, whichever occurs first.
6. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed upon by the sector and NMFS.
7. The Tri-State Sector will submit required reports using the format and procedures prescribed by NMFS.

#### ACE Transfers

- The Tri State Sector Sector Manager will track all ACE transfers between members and with other sectors.

#### **Administrative**

##### Days at Sea

1. The vessels of the Tri State Sector will use DAS solely for the purpose of meeting the requirements of the Monkfish FMP.
2. Tri State Sector participating vessels expect to lease DAS for monk fishing from within the sector, from vessels in other sectors that are granted this exemption.

##### Annual Report

- The Tri State Sector will report on the Sector's performance within 60 days after the end of the fishing year as required by NMFS.

#### Data Management

- The Sector will develop and maintain the necessary databases to track and maintain all relevant catch data.

#### Proof of Sector Membership

- Sector Vessels will carry on board at all times a Letter of Authorization (LOA) from the Regional Administrator as proof of their membership in the sector. Vessels must comply with all applicable Federal regulations and laws not specifically exempted in the LOA.

#### **Gear Restrictions**

##### Seasonal or Area Gear Restrictions

- The Tri State Sector Board may institute spatial or temporal gear restrictions to slow down the catch rate of certain allocated stocks.

#### **Monitoring**

- Hail Start Trip Hail and Trip End Hail

#### Daily Reporting to the Sector Manager

- Each Member agrees that all participating vessels will report to the Sector Manager via VMS (or other electronic means such as satellite phone, cellular phone, or NMFS approved reporting software if approved by NMFS) on a daily basis when at sea on a groundfish, monkfish, skates or dogfish trip. The daily report shall consist of an accounting of the vessel's entire catch of allocated groundfish (including discards) by pounds, by species, by broad groundfish statistical area. This will enable the Sector Manager to determine which stocks are being caught on a daily basis, and more closely monitor sector fishing.

#### Dockside Monitoring

1. All members agree to hail trip start and trip end via VMS (or satellite phone, cellular phone, or NMFS approved vessel reporting software) to the Sector Manager and their selected Dockside monitoring company.
2. Vessels will hail trip start to the Sector Manager and the dockside monitoring company when they leave port. The Dockside Monitoring company will forward the Hail Trip Start to NMFS. The vessel operator must wait for the confirmation from the Dockside Monitoring Company and if he does not receive it in the required time frame, then he must notify the DM company using their back up system (phone). Hail trip start will include the following: the permit number, VTR number and trip ID number and estimated trip duration. The trip ID number is defined as the serial number from the first page of the first VTR filled out for the trip.
3. Vessels will Hail Trip End at least 6 hours prior to landing to allow a DM to be present in time to witness offloading. Hail trip end will include the following: permit number, VTR number and trip ID number, specific offloading location including state, port/harbor

and dock for all dealers, estimated time of arrival, estimated time of offloading and length of time for offloading, and estimated weight of each species being landed.

4. For trips less than 6 hours in length or occurring within 6 hours of port, the estimated time of arrival to port and time of off load will be provided in the trip start hail. The trip end hail will be sent upon completion of the last tow with required updated information.
5. The vessel will be notified by the dockside monitoring company when the company sends their confirmation whether they will have a RM or DM present for offloading OR they will be issued a DM Waiver for the trip. The vessel operator must wait for the confirmation from the Dockside Monitoring Company and if he does not receive it in the required time frame, then he must notify the DM company using their back up system (phone). The dockside monitoring company will also immediately notify the Sector Manager and NMFS Law Enforcement with the complete Hail Trip End information (including a breakdown of species to be landed and estimated weight of each species on board) and whether the vessel will have a DM / RM present at offloading or not.
6. If the Vessel is issued a Waiver, the vessel operator will provide the Sector Manager with their VTR and Dealer receipt within 24 hours of offloading.
7. If the vessel is selected for dockside monitoring, then the vessel will not offload unless a DM or RM is present.
8. If a sector vessel decides to offload at more than one facility, and that trip has been selected for having a Dockside Monitor, then they agree to have a DM present during offload at each location.

Upon meeting the vessel at the offloading site, the DM will:

1. take copies of all VTRs for the trip;
2. record whether the scales are certified;
3. observe and record whether ice and box weights are tared before catch is weighed; and
4. ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The DM will 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. The DM or Dealer will record and sign a report of the weight of offloaded fish by species.
6. The DM will send the Sector Manager a copy of the VTRs and a copy of the DM report and dealer receipts (if separate from the DM report) electronically and within 24 hours of the end of the offloading event.
7. The DM Company will keep an electronic copy of the DM report.

If a vessel is selected for having a DM, and is offloading at a remote port, (meaning their fish will be trucked before it is weighed), the vessel may enter port and tie at safe berth but no offloading can commence until the RM or DM is present. If the truck does not have scales, then members agree to have a RM present when the vessel offloads to the truck and a DM to record

weights when the truck is offloaded at the dealer's location. The DM and RM of a trip that is unloaded in a remote location will follow all requirements described for dockside monitoring (above) to ensure all groundfish from the trip are accounted for and accurately reported to the Sector Manager.

If the offload is weighed at the offload site in front of the RM before being loaded into the truck the event must follow the protocol for offload at a dealer. Upon meeting the vessel at the remote offloading site, the RM will:

1. take copies of all VTRs for the trip;
2. record whether or not the scales are certified; and
3. observe and record whether ice and box weights are tared by the dealer before the catch is weighed, and.
4. Ask the captain whether all fish have been offloaded, and whether any are being retained for personal use. The RM will 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 RM or dealer will record the weight of offloaded fish, by species (and market class, if culled), in a report. This report will be signed by the RM and the RM will keep a copy of the signed report.
6. The RM will send copies of the VTR(s), the RM's report, and the dealer receipt(s) (if separate from the RM's report), to the Sector Manager within 24 hours of the end of the offloading event.
7. The DM Company will keep an electronic copy of the RM report.

If the offload is not weighed at the offload site in front of the RM before being loaded into the truck, then all fish must be weighed in the presence of a DM at the receiving dealer(s) when the truck offloads following the same procedures as a vessel offloading at a dealer, and the RM will:

1. take copies of all VTRs, and
2. 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: vessel name and permit number, serial number of first VTR page filled out for that trip, RM name, tote number, and species.
6. The RM will send copies of the VTR(s), the RM report and the driver manifest(s) (if separate from the RM's report) to the Sector Manager within 24 hours of the end of the offloading event.
7. The DM Company will keep an electronic copy of the RM report.

All members agree to hail trip start and trip end via VMS or other authorized electronic means to the Sector Manager and their selected Dockside monitoring company. Members shall agree to allow the DM or RM to board the vessel to confirm that all fish have been offloaded.

### **Designated Landing Ports**

- a. Tri State Sector Members agree to offload sector trips in the following ports:
  - Chatham, MA
  - Harwichport, MA
  - Gloucester, MA
  - New Bedford, MA
  - Provincetown, MA
  - Scituate, MA
  - Beverley, MA
  - Salem, MA

### **Remote Ports (Offloading Fish to a Truck)**

- Members may offload landings from sector trips onto a truck at the following ports:
  - Scituate, MA
  - Provincetown, MA
  - Beverley, MA
  - Salem, MA

### **Landing Port Exceptions and Safe Harbor Protocol**

1. To promote safety at sea and ensure the safety of vessel and crew, certain circumstances beyond a vessel operators control may occasionally occur which require Tri State Sector vessels to enter port somewhere other than the designated landing ports listed above.
2. If a Tri State Sector participating vessel is required to enter port somewhere other than a designated landing port, then the vessel operator will notify the Sector Manager and the Dockside Monitoring Company by appropriate means as soon as it is safe to do so.
3. Such circumstances include but are not limited to severe weather, mechanical failures, compromised hull integrity, instances of pump failures and danger of sinking, crew injury or life threatening illness and any other emergency situations that may arise.
4. In these circumstances, the vessel agree to not offload fish until a dockside monitor is present, and members will (a) notify the Sector Manager, NMFS and the DM in accordance with the procedures described in the Harvesting Plan (Exhibit D), and (b) pay any additional costs for the required DM as may accrue as a result of invoking the landing port exception.

## **Exhibit E: CONTRACT WITH SIGNATURES**

In Witness whereof, by signing this page, the undersigned has enrolled the listed permits in the Tri-State Sector and executed the Agreement known as the Tri-State Sector Operations Plan for the 2010 fishing year, as of the date written below.

The undersigned reserves the right to withdraw from this agreement by written notice to the Board of the Tri-State Sector, provided such notice is postmarked no later than December 31, 2009.

Pursuant to Section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1881a(b)(1)(F), the undersigned hereby authorizes the release to the Sector Manager of the Tri-State Sector of information regarding the catch of various species of fish associated with the limited access Northeast multispecies permit with the Moratorium Right Identifiers (MRI) listed below submitted to the National Marine Fisheries Service in compliance with 50 CFR 648.7 and § 648.87 that the undersigned 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.*

**Please see attached pages.**



**ADDENDUM**  
**AMENDMENT 1 TO**  
**TRI-STATE SECTOR**  
**FY 2010**  
**OPERATIONS PLAN**

**AMENDMENT 1 TO THE TRI-STATE 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 recognizes MRAG Americas and Atlantic Catch Data as the authorized dockside monitoring service providers for the Tri-State Sector for fishing year 2010. Specific contact information for these providers is:

MRAG Americas  
65 Eastern Ave.  
Unit B2C  
Essex, MA 01929  
Phone (978) 768-3880  
Fax (978) 768-3878

Atlantic Catch Data Ltd.  
99 Wyse Road, Suite 815  
Dartmouth, Nova Scotia  
CANADA, B3A 4S5  
Phone 1+(902) 422-4745  
Fax 1+(902) 422-9780

This amendment also officially recognizes Cindy Smith as the Sector Manager for the Tri-State Sector. Specific contract information for Ms. Smith is:

Cindy Smith  
Tri-State Sector Manager  
New England Sector Solutions LLC  
PO Box 6403  
Brunswick, ME 04011

## **AMENDMENT 2 TO THE TRI-STATE SECTOR OPERATIONS PLAN**

APPROVED BY THE NATIONAL MARINE FISHERIES SERVICE JUNE 24 2010

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

This amendment officially replaces Section 1.4 of the approved 2010 operations plan for the Tri-State Sector with the following:

### Section 1.4    **Definition of Sector as Three Entities**

Amendment 16 to the NE multispecies Fishery Management Plan (FMP) defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector. This criteria has been fulfilled with permit number **320266** under the distinct ownership of **Roanoke Fish Co. Inc.**; permit number **320287** under the distinct ownership of **Joseph L Rose**; and permit number **150611** under the distinct ownership of **Jeffrey Carver**.

### **AMENDMENT 3 TO THE TRI-STATE 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 Tri-State Sector membership based on the final sector roster, submitted on April 30, 2010. The final roster is summarized below:

<b>COUNT</b>	<b>OWNER</b>	<b>PERMIT</b>	<b>MRI</b>	<b>VESSEL NAME</b>
1	Joe Birarelli	231525	201	SHOOTING STAR
2	Hiwall Inc	310988	578	VICKIE II
3	James Craddock	320266	585	CAPT RALPH
4	Joe Rose	320287	591	SUSAN ROSE
5	Steve Daniels	320549	635	BAILEY BOY
6	Bill Callaway	330153	721	C-VENTURE
7	Fishermans Wharf Fillet Co	330812	723	BALD EAGLE II
8	Bryan Daniels	330161	724	JOYCE D
9	Hiwall Inc	330786	752	SASSY SARAH
10	Delores of Wanchese	330823	785	PACIFICS
11	Captain Malc Inc	410584	788	LADY ANNA
12	Esther Joy Inc	330873	875	BRIDGOT DENISE
13	Jim Bergstrom	150767	1619	1973 SEA RAY
14	Mike Birarelli	222163	1833	JEAN B
15	Jeff Carver	150611	1852	SALLY J
16	Chuck Harris	241823	2122	CHARLIE III
17	Jeff Carver	150797	2325	TRI WERX
18	Mike Ginley	150529	2692	BEACON
19	Mike Ginley	149404	3015	DH BOATWORKS

**AMENDMENT #4 TO THE TRI-STATE 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 Tri-State 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 Tri-State 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).