



# New Hampshire Fish and Game Department

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April 17, 2015

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, NH 03301

## REQUESTED ACTION

Authorize the New Hampshire Fish and Game Department (NH FGD) to enter into a Transfer Agreement with the Northeast Fishery Sector XI for the transfer of Annual Catch Entitlement (ACE) of groundfish from federal fisheries permits residing in the New Hampshire State Permit Bank (NHSPB) from Governor and Council approval through April 30, 2016.

## EXPLANATION

The goal of the NHSPB program is twofold: 1) provide short-term economic assistance to small commercial fishing vessels operating from rural NH ports, and 2) potentially providing future access to rebuilt stocks for NH's commercial fishing industry and associated coastal communities. The NHSPB was able to purchase four federal fishing permits in 2012 with funds provided by NOAA Fisheries (NMFS) with allocated groundfish ACE that can be transferred and used by the New Hampshire commercial fishing sector (Northeast Fishery Sector XI). The ACE of a federal fisheries permit/vessel is calculated based on the groundfish landings history attached to each permit. The ACE relating to the four permits can be transferred and applied to a sector's total shared ACE, which is the amount (weight) of each groundfish stock that can be harvested by a fishing sector within a fishing year.

The NH FGD and the Sector Management of the Northeast Fishery Sector XI have developed and signed a Transfer Agreement (Attachment 1) that establishes the terms and conditions of ACE transfer from the NHSPB to the Northeast Fishery Sector XI, which is managed by a Sector Board and manager.

NH FGD will continue to work closely with the New Hampshire Fishing Sector Management to support New Hampshire's traditional and important fishing industry while supporting conservation management decisions to maintain sustainable fisheries. The fishing privileges and ACE attached to the permits that reside with the NHSPB will be equally distributed annually to commercial fishing vessels in New Hampshire groundfish sector that meet the requirements defined in the MOA jointly signed by NH FGD and NOAA (Attachment 2). The statement of work is outlined Attachment 3.

Respectfully submitted,

Glenn Normandeau  
Executive Director

Kathy Ann LaBonte, Chief  
Business Division

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ATTACHMENT 1: Transfer Agreement between the New Hampshire Fish and Game Department and the Northeast Fishery Sector XI for the transfer of Annual Catch Entitlement from the State of New Hampshire Permit Bank to qualifying Sector XI vessels.



# **TRANSFER AGREEMENT**

**Between**

**New Hampshire Fish and Game Department**

**And**

**The Northeast Fishery Sector XI**

**For The**

**Transfer of Annual Catch Entitlement**

**From the State of New Hampshire Permit Bank**



**April 2015**

## I. Parties to the Agreement

This document constitutes an agreement between the New Hampshire Fish and Game Department (NH FGD) and XI Northeast Fishery Sector Inc. (Attachment A). This agreement shall be referred to herein as the Agreement.

The NH FGD was established to act as stewards of the fish, wildlife and marine resources of the State of New Hampshire, to protect, propagate, and preserve the fish, game and wildlife resources of the State, and to adopt rules for the adequate and effective control, management, restoration, conservation and regulation of the fish, game, bird and wildlife resources of the State, and the regulation and promotion of both recreational and commercial marine fishing in the salt waters of the State.

XI Northeast Fishery Sector Inc. was organized pursuant to Amendment 16 to the Northeast Multispecies Fishery Management Plan and regulations promulgated by the National Oceanic and Atmospheric Administration Fisheries Service (NMFS).

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

## II. References and Authorities

- 1) N.H. Rev. Stat. Ann. 206:23-a, which states the executive director, with the consent of the commission, shall have the power and authority to enter into agreements with individuals, partnerships, and corporations, whether resident or nonresident, for the purpose of implementing fishways or fish ladders and any other matters relative to the protection, propagation, and preservation of fish, game, and fur-bearing animals of this state.

## III. Purpose

New Hampshire's State Permit Bank (NHSPB) allocates Annual Catch Entitlements (ACE) based on purchased federal fishing vessel permits, under the terms and conditions of the applicable Federal grant agreements and memoranda of agreement established between the State of New Hampshire and NMFS, for the purpose of enhancing the fishing opportunities available to sector members by:

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

- Creating and protecting sustainable local fisheries;
- Supplementing existing access rights held by fishermen in small New Hampshire communities; and
- Mitigating the effects of fishing effort consolidation on small-scale fishermen and rural fishing communities in New Hampshire.

This Transfer Agreement establishes the terms and conditions of transfers of ACE to XI Northeast Fishery Sector Inc.

#### IV. Definitions

*Annual catch entitlement (ACE)*, means the share of the annual catch limit (ACL) for each Northeast (NE) multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

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

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

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

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

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

*Sub Annual Catch Entitlement* (Sub ACL) means smaller portions of the overall ACL for a stock attributed to specific fisheries. The ACL for each groundfish stock is broken into three sub-ACLs: State; Groundfish; and Other. The State sub-ACL accounts for catch in state waters by state-permitted fisheries. The Groundfish sub-ACL accounts for all catch under the Northeast Multispecies FMP (including recreational catch by recreational vessels and commercial catch by sector vessels and common pool vessels). The Other sub-ACL accounts for assorted catch not otherwise accounted for, such as bycatch in exempted fisheries. The Groundfish sub-ACL is further broken into at least two sub-components, Common Pool and Sector, and may also include a Recreational sub-component. Sub-components are further divisions of a sub-ACL that are not considered ACL's.

*NH State-operated permit bank* means a depository established and operated by NH FGD through an agreement between NMFS and NH in which Federal grant funds have been used by NH to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified vessels and that meets the requirement of 50 CFR 648.87(e).

## V. Terms and Conditions

1. The State of New Hampshire, acting through its Fish and Game Department, agrees to transfer to XI Northeast Fishery Sector Inc. the ACE held by the NHSPB based on the federal fishing vessel permits acquired by NH FGD. Said transfers shall be effective contingent upon NMFS's approval of the allocation proposal pursuant to paragraph 4, below, and shall expire on April 30, 2016.
2. The utilization of the transferred ACE from a NHSPB fishing vessel permit(s) by XI Northeast Fishery Sector Inc. does not imply any permanent transfer or sale, nor that the NH FGD will provide or surrender any of the rights and privileges associated with the permit.
3. In addition to the specific terms and conditions described herein, XI Northeast Fishery Sector Inc. warrants each individual sector member shall fish in a responsible and sustainable manner and shall fully comply with all applicable Federal and State laws and regulations, and specifically those concerning the NHSPB.
4. As a prerequisite for the transfer of the ACE, and at least 45 days prior to the transfer, the Sector Manager shall submit to the NH FGD contact representative (Attachment B) a proposal describing how the Sector plans to allocate the ACE from the NHSPB to qualified fishing vessel owners and/or the Sector and how the allocation is consistent with the Memorandum of Agreement between NH FGD and NOAA's National Marine Fisheries

Service. Any changes to the allocation proposal must be made in writing and submitted to NH FGD prior to implementing the revised allocation plan.

5. XI Northeast Fishery Sector Inc. warrants that at least 75% of the vessels enrolled in the Sector are based principally in New Hampshire (Attachment C). XI Northeast Fishery Sector Inc. further warrants that at least 75 percent of the fishing vessels enrolled in the Sector, and the owners of said vessels, individually

- a. Owns and materially participates in the operation of a fishing vessel permitted to fish in the Federal limited access Northeast multispecies fishery;
- b. Is not more than 55 feet in registered length overall, according to the vessel baseline specifications as documented in the NMFS vessel permit database at the time allocation proposal is submitted;
- c. Has documented landings of at least 1,000 pounds of groundfish in at least one of the preceding three fishing years;
- d. Has, for the current fishing year and at least the preceding 3 fishing years, no record of substantial Federal permit sanctions or major violations of any Federal fishing regulations;
- e. Resides in, operates their fishing vessel(s) from, and/or lands fish within the State of New Hampshire.

6. XI Northeast Fishery Sector Inc. warrants that no fishing vessel shall be utilized to fish under ACE transferred from the NHSPB in accordance with this Agreement unless that fishing vessel meets a, b, c, d, and e criteria identified in terms and conditions #5 above.

7. The Sector Manager hereby identifies the specific active fishing vessels enrolled in the Sector that are intended to utilize the transferred ACE (Attachment D).

8. XI Northeast Fishery Sector Inc. shall not sub-transfer the ACE initially provided to each qualified Sector vessel from the NHSPB until the NH FGD is notified which vessel(s) will be receiving the transferred ACE and the vessels must fully comply with the terms and conditions of 5 and 6 above.

9. On or before March 1 of each Northeast multispecies fishing year (May 1-April 30), the Sector Manager shall submit to the NH FGD contact representative (Attachment B) a written declaration for each Federal fishing vessel permit subject to the terms and conditions of this Agreement identifying whether the fishing access rights associated with that permit are to be used in the coming fishing year. Such declaration shall be binding for the duration of the coming fishing year.

10. Changes to either party's contact representative (Attachment B), or contact information for that representative, shall be made by written notification to each party within 30 days of the change.

11. The XI Northeast Fishery Sector Inc. agree to jointly and severally indemnify, defend and hold the NH FGD harmless from and against any third party claims, damages, fines, penalties

and liabilities of any kind whatsoever asserted against the NH FGD in connection with the Sector's Board, Manager's, or Members' actions under this Agreement.

12. Upon dissolution of the NHSPB or termination of this Agreement by either NH FGD or XI Northeast Fishery Sector Inc., the NMFS Regional Administrator, Greater Atlantic Regional Fisheries Office, may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, obtained by the NHSPB using a Federal grant award for the purposes of the NHSPB, provided, however, that any ACE transferred to a Sector, by the NHSPB prior to the effective date of such termination shall not be affected by such termination for the duration of the fishing year for which the transaction was made.

#### VI. Period of Performance

This Agreement shall be effective on the date it is signed by all parties and shall terminate on April 30, 2016.

#### VII. Funding, Payments, and Program Revenue

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

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

All revenue generated through the operation of the Permit Bank, either through the leasing of DAS or transferring of ACE, or through other means, shall be considered as program income, as defined in Department of Commerce regulations at 15 CFR 24.25, and shall be retained by NH FGD and used to offset costs incurred by NH FGD in the operation and administration of the Permit Bank program, consistent with the terms of Department of Commerce regulations at 15 CFR 24.25. Any unexpended program income remaining at the end of the agreement period shall remain with NH FGD to be used by it for purposes not inconsistent with this Agreement.

#### VIII. Performance Reports

The Sector Manager shall prepare, and submit to the NH FGD contact representative, a report regarding the NHSPB ACE transactions with XI Northeast Fishery Sector Inc. Such report shall be due to NH FGD on June 15, 2015, and shall include, at a minimum, the following information:

- a. For each Permit Bank transaction in the preceding fishing year for the Sector:

- 1) The Federal permit number of the permit held by the NHSPB and whether the fishing access rights associated with the permit were used for (1) DAS leasing or (2) ACE transfers;
  - 2) The number of DAS leased or amount of ACE transferred (by stock);
  - 3) The federal fishing vessel permit number(s) of the fishing vessel(s) that received either the DAS lease or ACE transfer associated with the NHSPB's permit(s);
  - 4) For ACE transfers to another State Permit Bank and/or sub-transfers to a vessel within the Sector, the name of the State Permit Bank or vessel, and a copy of the transfer agreement with the State Permit Bank or the necessary qualifications for a Sector vessel;
  - 5) The price paid, if any, by the Sector for the transaction (by DAS or, for ACE, by stock);
  - 6) The effective date of the transaction.
- b. Summary information for the preceding fishing year, including:
- 1) The total number of transactions;
  - 2) The total number of DAS leased;
  - 3) The total amount of ACE transferred, by stock;
  - 4) The number of unique vessels receiving the transactions;
  - 5) The total program income generated by NHSPB from the DAS leases and ACE transfers.
- c. An evaluation of the impact of the Permit Bank program, including:
- 1) The degree to which the operation of the NHSPB achieved the purposes and objectives of the NHSPB identified in section III above;
  - 2) Issues, concerns, or problems related to the operation of the NHSPB; and
  - 3) Suggestions/recommendations to improve the operation of the NHSPB to more fully achieve the purposes and objectives.

## IX. Enforcement

NH FGD shall be authorized to take appropriate actions if XI Northeast Fishery Sector Inc., as recipient, fails to meet its obligations under the terms and conditions of this Agreement.

## X. Amendments and Review

This Agreement may only be amended in writing signed by NH FGD, XI Northeast Fishery Sector Inc. and Office of the NH Attorney General.

## XI. Other Provisions

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

Nothing herein is intended to conflict with the Agreement between NH FGD or XI Northeast Fishery Sector Inc.'s directives. If the terms of this Agreement are inconsistent with existing directives of the organizations entering into this Agreement, then those portions of this Agreement that are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. Should such an inconsistency be identified, the parties shall, at the first opportunity, amend this Agreement consistent with section X above.

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

The terms and conditions described in this Agreement regarding the operation of the NHSPB, particularly as to the qualifying criteria of individual fishing vessels, vessel owners, and Sector for access to the DAS and/or ACE held by the Permit Bank, are intended to serve as minimum criteria. NH FGD may decide to impose more restrictive criteria, or additional requirements, on potential participants, but will consult with XI Northeast Fishery Sector Inc. Sector Management (Attachment A) prior to imposing such additional restrictions.

## XII. Terms of the Agreement

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

The terms of this agreement shall remain in effect until terminated by: Mutual agreement, in writing; or the ending date of the period of performance, whichever shall occur first.

For the purposes of this Agreement, all Federal fishing vessel permits obtained by the State of New Hampshire for the purpose of operating the NHSPB shall be considered "intangible property" under the terms of 15 CFR 24.34(b). Accordingly, such permits shall be used for the originally authorized purpose as long as needed for that purpose (determined as the period of effectiveness of this Agreement) and the State of New Hampshire, or its agents, shall not dispose of or encumber its title or other interests. When no longer needed for the originally intended purpose, and upon mutual agreement by all parties, disposition of such permits shall be made as provided in 15 CFR 24.32(e).

APPROVED:

XI Northeast Fishery Sector Inc.



By: \_\_\_\_\_  
James Hayward  
President

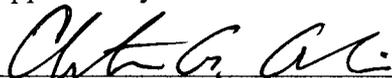
Date: 4/24/2015

New Hampshire Fish and Game Department

By:  \_\_\_\_\_  
Glenn Normandeau  
Executive Director

Date: April 30, 2015

Approved by the ATTORNEY GENERAL this 12<sup>th</sup> day of May, 2015.

 \_\_\_\_\_  
Assistant Attorney General

Attachments

- A. XI Northeast Fishery Sector Inc. – Sector Management.
- B. Contact Representatives.
- C. Vessels enrolled in Sector XI.
- D. Active Sector XI vessels that can receive annual catch entitlement from New Hampshire State Permit Bank.

Attachment A: XI Northeast Fishery Sector Inc. - Sector Management.

XI Northeast Fishery Sector Inc.  
PO Box 118  
Portsmouth, NH 03802  
(office) 401-932-0070  
(fax) 603-601-6767

Sector Manager – Daniel Salerno

Board of Directors:

James Hayward-President; Treasurer  
Jayson Driscoll  
Randy Gauron  
Peter Lagerstrom  
Tom Lyons  
Geordie King  
Kurtis Lang  
Joe Bills

Attachment B: Transfer Agreement Contact Representatives

New Hampshire Fish and Game Department  
Contact:

Cheri Patterson  
Supervisor Marine Programs  
Marine Fisheries Division  
225 Main St.  
Durham, NH 03824  
(603) 868-1095 (phone)  
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XI Northeast Fishery Sector Inc.  
Contact:

James Hayward  
President, XI Northeast Fishery Sector Inc.  
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(office) 207-752-4479 (fax) 603-617-6767  
[jamienjolyn@comcast.net](mailto:jamienjolyn@comcast.net)

Attachment C: Vessels enrolled in Northeast Fishery Sector XI in fishing year 2015.

MRI	Permit	Vessel Name	Vessel Length	Active Member (Y/N)	Principal Port	State	Home City*	State
20	211035	Paniolo	32	Y	Rye	NH	Rye	NH
509	150059	Alanna Renee	36	Y	Portsmouth	NH	Portsmouth	NH
85	151405	Unnamed	23	N	Rye	NH	Hampton	NH
98	221742	Last Penny	38	N	Portsmouth	NH	Rye	NH
101	125236	Sweet Scantum	32	N	Rye	NH	Exeter	NH
193	231422	Wendy Lee	32	N	Portsmouth	NH	Rye	NH
198	231481	Katie-Rue	45	N	Rye	NH	Rye	NH
270	146669	Bridget Leigh	43	Y	Rye	NH	Rye	NH
298	149374	Rimrack	51	Y	Rye	NH	Rye	NH
300	150030	Unnamed	23	N	Seabrook	NH	Seabrook	NH
344	100192	Janice Marie	42	N	Hampton	NH	Hampton	NH
350	149502	Unnamed	23	N	Rye	NH	Hampton	NH
429	136846	Penny B	42	N	Rye	NH	Newington	NH
437	148571	Vicki Mae	16	N	Seabrook	NH	Seabrook	NH
1197	131421	Lady Victoria	42	Y	Seabrook	NH	Seabrook	NH
1390	149302	Red Dog	23	N	Eliot	ME	Eliot	ME
1425	150208	Unnamed	23	N	Rye	NH	Rye	NH
1459	150530	TripBoat	18	N	Rye	NH	Rye	NH
1487	150274	FV Scruffy	32	N	Portsmouth	NH	Portsmouth	NH
1573	151180	Skiff	23	N	Rye	NH	Dover	NH
1694	232278	Marion J	37	Y	Hampton	NH	Hampton	NH
1699	150583	unnamed	23	N	Hampton	NH	Hampton	NH
1735	118675	Sweet Carolyn	23	N	Seabrook	NH	Madbury	NH
1745	149496	Ashley E	43	N	Hampton	NH	Hampton	NH
1765	109689	Lucy Rose	23	N	Seabrook	NH	Seabrook	NH
1781	146759	Hope Lynn	42	Y	Seabrook	NH	Seabrook	NH
1782	148837	Wil-Mar	38	N	Rye	NH	North Hampton	NH
1789	127422	Sweet Misery	42	Y	Rye	NH	Northwood	NH
1821	250667	F/V Seafood	30	N	Hampton	NH	Hampton	NH
1879	147937	Rolling Stone	45	Y	Kittery	ME	Eliot	ME
1891	150511	Cupcake	23	N	Seabrook	NH	Seabrook	NH
1913	144049	Karen Lyn	38	N	Rye	NH	Exeter	NH
1920	146679	Sandi Lynn	42	Y	Rye	NH	Seabrook	NH

1969	148106	Heidi & Elisabeth	43	Y	Kittery	ME	Eliot	ME
1975	250566	Karen Lynn I	56	N	Kittery	ME	Kittery	ME
1990	233539	Jacque and Nicole	39	N	York	ME	York	ME
2007	221526	Christopher K	32	N	Portsmouth	NH	Rye	NH
2058	144354	Wendy Leigh	40	N	Portsmouth	NH	Concord	NH
2178	233317	Miss Delores	41	N	Bath	NC	Greenbackville	VA
47934	148770	Toro	28	N	Rye	NH	Rye	NH
48003	149701	Nathan D	32	N	Kittery	ME	Kittery	ME
209		Unnamed	25	N	Brunswick	ME	Brunswick	ME
253	122647	Jennifer K	46	Y	Portsmouth	NH	Portsmouth	NH
291	240738	Ellen Diane	44.5	Y	Hampton	NH	Hampton	NH
386	151714	Brittany Lynn	46	Y	Portsmouth	NH	Portsmouth	NH
541	310609	Ann Marie	46	Y	Portsmouth	NH	Portsmouth	NH
1419	146928	Judy Marie	35	N	Cape Neddick	ME	Portsmouth	NH
1572	150341	Gipper	25	N	Hampton	NH	Hampton	NH
1582	150021	Marion-Mae	45	Y	Portsmouth	NH	Portsmouth	NH
1747	128235	Kelly Rose	25	N	Portsmouth	NH	Portsmouth	NH
1887	150290	Walrus	25	N	Portsmouth	NH	Portsmouth	NH
2241	150718	Unnamed	25	N	Portsmouth	NH	Portsmouth	NH
47850	135735	F/V Andromeda	30	N	Portsmouth	NH	Portsmouth	NH
47873	146590	F/V Judith E	30	N	Portsmouth	NH	Portsmouth	NH
48009	147189	F/V Helen L	30	N	Portsmouth	NH	Portsmouth	NH

Attachment D: Active Sector XI vessels that qualify for annual catch entitlement from New Hampshire's State Permit Bank for fishing year 2015.

Owner/Entity	Sector	Permit #	MRI #	Doc/Reg #	Vessel Name	LENGTH	HOME PORT	ST	PRIMARY PORT OF LANDINGS	ST	Gear
Yvonne Dobre	XI	122647	253	NH8620BN	Jennifer K	43.8	Northwood	NH	Portsmouth	NH	gillnet
Jayson Driscoll	XI	127422	1789	NH2398 AN	Sweet Misery	42	Kingston	NH	Rye	NH	gillnet
Charles Felch	XI	131421	1197	NH0001 CF	Lady Victoria	42	Seabrook	NH	Seabrook	NH	combo-gillnet/Dragger
Richard Anderson	XI	146669	270	NH3911 AZ	Bridget Leigh	43	Rye	NH	Rye	NH	gillnet
James Hayward	XI	147937	1879	ME6146 T	Rolling Stone	44	Eliot	ME	Kittery	ME	gillnet
Heidi and Elisabeth Fisheries Inc	XI	148106	1969	ME6146 M	Heidi & Elisabeth	43	Eliot	ME	Kittery	ME	gillnet
Kurtis Lang	XI	150059	509	NH0373BM	Alanna Renee	35.6	Portsmouth	NH	Portsmouth	NH	gillnet
King Marine LLC	XI	151714	389	NH2470eI	Brittany Lynn	48	Eliot	ME	Portsmouth	ME	gillnet
Jon Drake	XI	211035	20	656372	Paniolo	31.7	Rye	NH	Rye	NH	gillnet
Thomas Lyons	XI	232278	1694	653821	Marion J	37.3	Hampton	NH	Hampton	NH	gillnet
Yvonne Dobre	XI	310609	541	938382	Ann Marie	50.6	Northwood	NH	Portsmouth	NH	gillnet
Norman Pike	XI	146679	1920	NH3867 AZ	Sandi Lynn	42	Seabrook	NH	Seabrook	NH	gillnet
Norman Pike	XI	146759	1781	NH0733 BA	Hope Lynn	42	Seabrook	NH	Seabrook	NH	dragger
Parental Guidance Inc	XI	149374	298	NH4444 MA	Rimrack	51	Rye	NH	Rye	NH	dragger
Craig Mavrikis	XI	150021	1582	NH0287BM	Marion-Mae	43	Eliot	ME	Portsmouth	ME	dragger
David T. Goethel	XI	240738	291	654949	Ellen Diane	44.5	Hampton	NH	Hampton	NH	dragger

ATTACHMENT 2: New Hampshire Fish and Game Department and NOAA  
Memorandum of Agreement to Administer the New Hampshire  
State Permit Bank Program.





# New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-1438

Governor & Council Approved  
Date: 12-20-13  
Item #: 75

www.WildNH.com  
e-mail: info@wildlife.nh.gov  
TDD Access: Relay NH 1-800-735-2964

November 12, 2013

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, NH 03301

### Requested Action

Authorize the New Hampshire Fish and Game Department (NHFG) to enter into a Memorandum of Agreement with the National Oceanic and Atmospheric Administration's Fisheries Service (NOAA Fisheries) to maintain the NH State Permit Bank in accordance with the conditions agreed to by the two parties upon Governor and Council approval through November 2016.

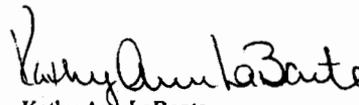
### Explanation

In the interest of retaining the character and historical geographic distribution and structure of the New Hampshire groundfish fishing fleet the NHFG and the NOAA Fisheries collaboratively established a State of New Hampshire Permit Bank (NHSPB) with the advent of catch-share management in Amendment 16 to the Northeast Multispecies Fisheries Management Plan. The goal of the NH permit bank program was twofold: 1) provide economic assistance to small vessels operating from rural NH ports, and 2) potentially provide future access to rebuilt stocks for NH's fishing industry and associated coastal communities.

The NHSPB, initially funded by a NOAA Fisheries grant, maintains four Northeast multispecies fishing vessel permits since 2012, with associated groundfish annual catch entitlement (ACE). The intention of the NHSPB is to have the ACE attached to these permits annually distributed equitably to New Hampshire fishing vessels within the two New Hampshire Fishing Sectors that meet the requirements defined in the MOA.

Respectful submitted,

  
Glenn Normandeau  
Executive Director

  
Kathy Ann LaBonte,  
Business Division

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## I. Parties to the Agreement

This document constitutes an agreement between the Northeast Regional Office (NERO) of NOAA's National Marine Fisheries Service (NMFS), U.S. Department of Commerce, and the New Hampshire Fish and Game Department (NH FGD).

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

The NH FGD was established to act as stewards of the fish, wildlife and marine resources of the State of New Hampshire, to protect, propagate, and preserve the fish, game and wildlife resources of the State, and to adopt rules for the adequate and effective control, management, restoration, conservation and regulation of the fish, game, bird and wildlife resources of the State, and the regulation and promotion of both recreational and commercial marine fishing in the salt waters of the State.

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

## II. References and Authorities

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

NH FGD has authority to participate in this project pursuant to:

- 1) N.H. Rev. Stat. Ann. 206:39, which states the NH FGD is authorized to receive and expend with the approval of the governor and council any gifts and grants from any source including the United States of America and to hold property real and personal, acquired thereunder to complete any project authorized under the provisions of this title;

2) N.H. Rev. Stat. Ann. 206:23, which states that the executive director shall enter into cooperation with the departments of the Federal government and of this and all other states, for the protection, propagation, and preservation of all wildlife in this state, and shall execute all matters pertaining thereto, including a biological survey of the state; and

3) N.H. Rev. Stat. Ann. 206:23a, which states the executive director, with the consent of the commission, shall have the power and authority to enter into agreements with individuals, partnerships, and corporations, whether resident or nonresident, for the purpose of implementing fishways or fish ladders and any other matters relative to the protection, propagation, and preservation of fish, game, and fur-bearing animals of this state.

### III. Background

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

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

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

In 2011, the Council adopted Amendment 17 to the Northeast Multispecies FMP in order to formally recognize and define state-operated permit banks as a collection of permits that are acquired by a state with NOAA grant funding and managed through a

Memorandum of Agreement (MOA) with NMFS. Pursuant to Amendment 17, state-operated permit banks may be allocated ACE and are specifically authorized to provide ACE to approved groundfish sectors and/or provide DAS to sector vessels without having to form or join a sector under the sector restrictions and provisions. This action clarified and streamlined the administrative procedures and requirements that state-operated permit banks must comply with in order to operate outside of the sector process. NMFS approved and implemented Amendment 17 in 2012.

#### IV. Purpose

Both the NH FGD and NMFS have an interest in promoting the effective implementation of catch-share programs in New England, while minimizing any potential adverse socioeconomic impacts to rural fishing communities and small-scale fishing businesses that are sometimes attributed to catch-share programs. Permit banks may be useful to mitigate some of the adverse impacts associated with catch-share programs. Permit banks can be used to preserve fishing opportunities for small-scale harvesters operating in small, rural fishing ports that may otherwise be disproportionately negatively affected by the consolidation of fishing effort that often follows implementation of catch-share programs. Permit banks may help ease the transition to catch-share programs by:

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

NOAA provided funding to the State of New Hampshire, in the form of a Federal grant award to NH FGD, for the express purpose of establishing a bank of Northeast multispecies fishing vessel permits (Permit Bank). The Federal grant award facilitated NMFS and NH FGD, working collaboratively, to establish and operate a permit bank program in New Hampshire to achieve the following objectives:

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

## V. Definitions

*Annual catch entitlement (ACE)*, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's or state-operated permit bank's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

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

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

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

*Groundfish* means one or more of the stocks of fish that comprise the fishery management unit of the Northeast Multispecies FMP, including all stocks of American plaice, Atlantic cod, Atlantic halibut, haddock, ocean pout, pollock, redfish, white hake, windowpane flounder, winter flounder, witch flounder, and yellowtail flounder. For the purposes of this Agreement, the term groundfish does not include the small-mesh multispecies (offshore hake, red hake, and silver hake).

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

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

*State-operated permit bank* means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified vessels and that meets the requirement of § 648.87(e).

#### VI. Terms and Conditions

NH FGD and NMFS do hereby agree to the following terms and conditions for the development, implementation, and operation of the Permit Bank:

1. That as per Federal regulations at 50 CFR 648.4(n), the NMFS Regional Administrator, Northeast Region, retains the authority to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, obtained by the NH FGD using a Federal grant award for the purposes of this Permit Bank if NH FGD, in the use of said permit and/or the operation of this Permit Bank, violates, or deviates in any way from, the terms and conditions of this Agreement.
2. That upon dissolution of the Permit Bank or termination of this Agreement by either party, the NMFS Regional Administrator, Northeast Region, may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, obtained by the NH FGD using a Federal grant award for the purposes of this Permit Bank, provided, however, that any DAS leased to a vessel or Sector, or ACE transferred to a Sector, by the Permit Bank prior to the effective date of such termination shall not be affected by such termination for the duration of the fishing year for which the transaction was made.
3. That the NH FGD may not permanently transfer, sell, or otherwise provide or surrender any of the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by the NH FGD using funds from a Federal grant award for the purposes of the Permit Bank (including, but not limited to DAS and/or ACE) to any individual, Sector, corporation, non-profit organization, or government entity other than NMFS.
4. That the fishing vessel permits obtained by the NH FGD for the purposes of the Permit Bank may not be held on active vessels, such that no fishing or other on-the-

water activities may be engaged by any vessels to which these permits are assigned (e.g., the Permit Bank permits should be held in Confirmation of Permit History).

5. That, in addition to the specific terms and conditions described herein, NH FGD shall operate the Permit Bank such that all transactions regarding leases of DAS and/or transfers of ACE associated with the fishing vessel permits held by NH FGD for use in the Permit Bank fully comply with all applicable Federal regulations.
6. That the NH FGD shall operate the Permit Bank such that all fishing vessel permits held and/or obtained by the NH FGD using funds from a Federal grant award shall only be used for the following purposes: (a) Transfers of ACE to qualifying Sectors; (b) leasing of groundfish DAS to qualifying vessels in qualifying Sectors for the purpose of fishing for monkfish and/or skates; or (c) leasing of DAS to qualifying vessels in the Common Pool to be used while engaged in cooperative research projects, in order to facilitate the completion of the on-the-water cooperative research activities (i.e., DAS leasing may not be used as a form of compensation or to facilitate compensation fishing).
7. That the NH FGD shall submit to NERO at least 30 days prior to any Permit Bank transactions, a proposal describing how NH FGD plans to allocate available DAS and/or ACE from the Permit Bank to fishing vessel owners and/or Sectors from among those applicants that qualify for access to said DAS and/or ACE according to the terms and conditions of this Agreement, as well as any additional terms and conditions imposed by NH FGD. Any changes to the allocation proposal must be made in writing and submitted to NERO prior to implementing the revised allocation plan. NH FGD may adopt administrative rules to implement the Permit Bank program.
8. That the NH FGD shall operate the Permit Bank such that no individual, Sector, corporation, non-profit organization, or government entity may be granted, or have access to, the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by the NH FGD using funds from a Federal grant award for the purposes of the Permit Bank (including, but not limited to DAS and/or ACE), unless that individual, Sector, corporation, non-profit organization, or government entity meets all of the following criteria:
  - a. Owns and materially participates in the operation of a fishing vessel permitted to fish in the Federal limited access Northeast multispecies;
  - b. Has, for the current fishing year and at least the preceding 3 fishing years, no record of substantial Federal permit sanctions or major violations of any Federal fishing regulations;
  - c. Resides in, operates his/her fishing vessel from, and/or lands fish within the State of New Hampshire; and
  - d. Agrees to and signs a contract with NH FGD to fish in a responsible and sustainable manner and comply with all applicable State laws and regulations concerning the Permit Bank.

9. That the NH FGD shall operate the Permit Bank such that no fishing vessel shall be utilized to fish under DAS leased and/or ACE transferred from the Permit Bank in accordance with this Agreement unless that fishing vessel meets all of the following criteria:
  - a. Is permitted to participate in the Federal limited access Northeast multispecies fishery;
  - b. Has documented landings of at least 1,000 pounds of groundfish in at least one of the preceding three fishing years;
  - c. Is not more than 55 feet in registered length overall, according to the vessel baseline specifications as documented in the NMFS vessel permit database at the time the transaction application is submitted; and
  - d. The vessel owner resides in, operates the vessel from, and/or lands fish within the State of New Hampshire.
10. That the NH FGD shall operate the Permit Bank such that no Sector shall be granted, or have access to, the rights and privileges associated with any Federal fishing vessel permits held and/or obtained by the NH FGD using funds from a Federal grant award for the purposes of the Permit Bank, unless that Sector (excluding the membership of NH FGD) meets all of the following criteria:
  - a. That at least 75 percent of vessels enrolled in the Sector are based principally in New Hampshire; and
  - b. That at least 75 percent of the fishing vessels enrolled in the Sector, and the owners of said vessels, individually meet all criteria identified in items 8 and 9 above.
11. That the NH FGD shall obtain, from any qualifying Sector selected to receive ACE transferred from the Permit Bank, an agreement signed by the manager of said Sector identifying the specific fishing vessels enrolled in the Sector that are intended to utilize the transferred ACE.
12. That the NH FGD shall ensure that sub-transfers of ACE and/or sub-leases of DAS initially provided to a qualifying fishing vessel or Sector from the Permit Bank do not occur unless the recipients of the sub-transfers and/or sub-leases fully comply with the terms of conditions 8 and 9 above.
13. That NH FGD may not use the Permit Bank, or any fishing vessel permits held by the Permit Bank, for the purpose of leasing in additional DAS and/or transferring in additional ACE, with the exception that NH FGD may exchange ACE for ACE with, or transfer without recompense ACE to, other state-operated permit banks, provided:
  - a. That any transfer of ACE among state-operated permit banks is done to address a contingency wherein ACE of certain stocks allocated to a state based on the fishing vessel permits held by that state could be better utilized by qualifying fishing vessels participating in another state's permit bank; and

- b. That the states involved in the transferring of ACE among the state-operated permit banks notify the NMFS Permit Bank Contact Representative of any such transfers of ACE, including the amount of each transfer, by stock, identifying both the transferor state and recipient state.
14. That on or before April 1 of each Northeast multispecies fishing year (May 1-April 30), NH FGD shall submit to the NMFS contact representative (see Attachment A) a written declaration for each Federal fishing vessel permit subject to the terms and conditions of this Agreement identifying whether the fishing access privileges associated with that permit are to be used in the coming fishing year for either: (a) DAS leasing to Common Pool vessels for cooperative research purposes; or (b) transferring ACE to qualified vessels in qualifying Sectors (including the leasing of DAS for the purpose of fishing for monkfish and/or skates). Such declaration shall be binding for the duration of the coming fishing year.
15. That if NH FGD, through either State or external funding, acquires additional fishing vessel permits to be used in the Permit Bank, that terms and conditions of this Agreement shall not apply to the operation of the Permit Bank for those additional permits only. However, if additional fishing vessel permits for the Permit Bank are acquired either wholly or in part with funds from a NOAA grant specifically for that purpose, then all the terms and conditions of this Agreement apply.
16. That changes to either party's contact representative (see Attachment A), or contact information for that representative, shall be made by written notification to each party within 30 days of the change.
17. Transfers of ACE or leases of DAS from the Permit Bank to a qualifying Sector and/or fishing vessel (in the case of DAS leases only) may take the form of a lease, licensing agreement, contract, or other negotiated agreement between the State and the Sector (or vessel), but no such transactions may be valid for longer than the fishing year for which the transaction is approved by NMFS.

#### VII. Period of Performance

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

#### VIII. Funding, Payments, and Program Revenue

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

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

All revenue generated through the operation of the Permit Bank, either through the leasing of DAS or transferring of ACE, or through other means, shall be considered as program income, as defined in Department of Commerce regulations at 15 CFR 24.25, and shall be retained by NH FGD and used to offset costs incurred by NH FGD in the operation and administration of the Permit Bank program or used for the purposes and under the conditions of the original grant agreement, consistent with the terms of Department of Commerce regulations at 15 CFR 24.25. Any unexpended program income remaining at the end of the agreement period shall remain with NH FGD to be used by it for purposes not inconsistent with this Agreement.

#### IX. Performance Reports

NH FGD shall prepare, and submit to the NMFS contact representative, annual reports documenting the performance of the Permit Bank. Such reports shall be due to NMFS on August 1 of each year, and shall include, at a minimum, the following information:

- a. For each Permit Bank transaction in the preceding fishing year:
  - 1) The Federal permit numbers of the permits held by the Permit Bank and whether the fishing access privileges associated with the permits were used for (1) DAS leasing or (2) ACE transfers;
  - 2) The number of DAS leased or amount of ACE transferred (by stock);
  - 3) The Federal fishing vessel permit number(s) of the fishing vessel(s) that received either the DAS lease or ACE transfer associated with the subject Permit Bank permit(s);
  - 4) For ACE transfers and/or DAS leases to a Sector, the name of the Sector and a copy of the agreement with that Sector (see item 11 under section VI);
  - 5) The price paid, if any, by the recipient for the transaction (by DAS or, for ACE, by stock);
  - 6) The effective date of the transaction.
- b. Summary information for the preceding fishing year, including:
  - 1) The total number of transactions;
  - 2) The total number of DAS leased;
  - 3) The total amount of ACE transferred, by stock;
  - 4) The number of unique vessels receiving the transactions;

- 5) The total program income generated by NH FGD from the DAS leases and ACE transfers; and
  - 6) Total costs incurred by NH FGD associated with the operation and administration of the Permit Bank, delineated by type (personnel, documentation, travel, facilities, etc.).
- c. An evaluation of the impact of the Permit Bank program, including:
- 1) The degree to which the operation of the Permit Bank achieved the purposes and objectives of the Permit Bank identified in section IV above;
  - 2) Issues, concerns, or problems related to the operation of the Permit Bank; and
  - 3) Suggestions/recommendations to improve the operation of the Permit Bank to more fully achieve the purposes and objectives.

#### X. Enforcement

During the performance of any future NOAA grant to the State of New Hampshire for the purposes of enhancing and/or expanding the Permit Bank, the NOAA Grants Officer, in consultation with the NERO, shall be authorized to take appropriate actions if NH FGD, as grant recipient and not Sector member, fails to meet its obligations under the terms and conditions of the grant award. Such actions include all those stipulated at 15 CFR 24.43, and include, by extension, those actions stipulated at 50 CFR 648.4(n).

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

#### XI. Amendments and Review

This Agreement may be amended in writing at any time by agreement and approval of the Regional Administrator, NMFS Northeast Region, the Executive Director of the NH FGD, and the Office of the NH Attorney General. All necessary changes will be accomplished in writing, either by an amendment to this Agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties. At a minimum, both parties shall review and consult on the terms and conditions of this Agreement once every 3 years.

## XII. Other Provisions

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

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

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

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

## XIII. Terms of the Agreement

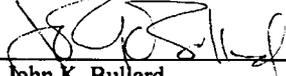
The terms of this agreement shall become effective upon the signature of both the approving officials of the respective agencies entering into this agreement.

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

For the purposes of this Agreement, all Federal fishing vessel permits obtained by the State of New Hampshire for the purpose of operating the Permit Bank shall be considered "intangible property" under the terms of 15 CFR 24.34(b). Accordingly, such permits shall be used for the originally authorized purpose as long as needed for that purpose (determined as the period of effectiveness of this Agreement) and the State of New Hampshire, or its agents, shall not dispose of or encumber its title or other interests. When no longer needed for the originally intended purpose, and upon mutual agreement by all parties, disposition of such permits shall be made as provided in 15 CFR 24.32(e).

APPROVED:

National Marine Fisheries Service  
Northeast Region

By:   
John K. Bullard  
Regional Administrator

Date: 11/21/13

New Hampshire Fish and Game Department

By:   
Glenn Normandeau  
Executive Director

Date: ~~11/21/13~~ 11/21/13

Approved by the ATTORNEY GENERAL this 22 day of November, 2013.

  
Assistant Attorney General  
State of New Hampshire

Attachments

- A. Contact Representatives
- B. Statement of Work from NH FGD

**Attachment A**

**Contact Representatives**

**National Marine Fisheries Service  
Northeast Regional Office  
Contact:**

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Senior Fishery Policy Analyst  
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(978) 281-9135 (fax)**

**New Hampshire Fish and Game Department  
Contact:**

**Cheri Patterson  
Supervisor Marine Programs  
Marine Fisheries Division  
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(603) 868-3305 (fax)**

### ATTACHMENT 3: Approach/Statement of Work

The NH FGD will transfer all the allocated annual catch entitlements (ACL) assigned to federal fishing permits residing in the New Hampshire State Permit Bank as agreed upon by the Sector XI Board and the NHFGD to the qualified active fishing vessels within the New Hampshire fishing sector, XI Northeast Fishery Sector Inc. The terms and conditions of transferring the allocations and other administrative duties are defined both in the Transfer Agreement between the New Hampshire Fishing Sector Management (Sector Board and Manager) and the Memoranda of Agreement jointly signed by NHFG and NOAA.

NH FGD continues to work closely with both the Sector Management and NOAA Fisheries through the transfer procedures and conditions of the ACL's residing in the New Hampshire Permit Bank.