Rhode Island Fluke Sector

2011 Fishing Year

Operations Plan and Agreement

This OPERATIONS PLAN AND AGREEMENT (this "Agreement") is entered into as of this _1st _____ day of ___February _____, 2011 by and among the License owners listed on the signature pages hereto and any other License owners that are admitted pursuant to the terms of this Agreement (each, a "Member" and, collectively, the "Members").

RECITALS

WHEREAS, Fluke are Atlantic Ocean flounder that are objects of significant commercial and recreational fishing by vessels home ported in the State of Rhode Island, including commercial fishermen holding Licenses from the State of Rhode Island and herein identified as Members;

WHEREAS, Pursuant to federal law and regulations administered by the National Marine Fisheries Service ("NMFS"), the State of Rhode Island has the authority to regulate fluke fishing by vessels using Rhode Island ports, including the authorization of a sector for such fishing;

WHEREAS, On February 1, 2011, the Members formed a fishery sector through Rhode Island Fluke Conservation Cooperative (the "Sector"), for the purposes of establishing a legally responsible entity (i) to obtain an aggregate sector allocation of fluke from the State of Rhode Island, and to sub-allocate such aggregate sector allocation among the Members and/or their Licenses and vessels, and (ii) to take such actions as may be necessary to ensure that the Sector, its Members and their vessels conduct harvesting activities in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (the "Act") and applicable regulations promulgated by NMFS and by Rhode Island Department of Environmental Management ("RI DEM"); and

WHEREAS, the Members desire to enter into this Agreement to establish the rights and obligations of the Members' hereunder, in order to account for the circumstances of the 2011 fishing year and to the extent applicable succeeding fishing years.

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

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

Section 1.01 **Eligibility.** Each Member holds a valid Rhode Island multi-purpose license which is in effect and allows the Member to fish the species being the subject of this Agreement. Each such license, which meets the criteria set forth in the foregoing sentence and which the Member intends to enroll in the Sector, is listed below such Member's name on the signature pages hereto (each, a "License"). Further, each Member has assigned its License to a Participating Vessel, which is listed below such Member's name on the signature pages hereto along with the corresponding License. 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 License applies at any given time.

Section 1.02 **Organization and Authority.** Each Member (i) to the extent that it is an entity, is duly organized, validly existing and in good standing in its state of organization and (ii) has all authority, corporate or otherwise, to enter into this Agreement on its own behalf and on behalf of the Participating Vessels that it represents. This Agreement constitutes a legally valid and binding obligation of each Member, enforceable against such Member in accordance with its terms. Each of the

Members represents that its Participating Vessel(s) and License(s) have no sanctions or other restrictions against them that would prevent such Participating Vessels and Licenses from enrolling in the Sector and/or complying with the terms of this Agreement.

Article II. Membership

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

Section 2.02 **Scope of Membership Obligations.** The obligations of the Members set forth in this Agreement shall only apply to the Licenses and Participating Vessels (and not to any other licenses or vessels owned by the Members that are not enrolled in the Sector pursuant to the terms hereof) to the extent that such Licenses or Participating Vessels are fishing commercially (i) in the Area (as hereinafter defined) and (ii) with gear that is capable of harvesting fluke managed under the Plan.

Section 2.03 **Length of Commitment.** Each Member hereby agrees to cause each of its Licenses and the related Participating Vessels to remain enrolled in the Sector for a period that coincides with this Agreement and any amendments thereto (the "Commitment Period"); provided, however, that if RI DEM shall not approve the Sector's Operations Plan and Agreement (the "Plan"), 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 2.03 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 RI DEM. Each Member further agrees that if its License leaves the Sector for any reason during the Commitment Period, (i) such Member shall be subject to the penalty or penalties described on the Schedule of Penalties (as hereinafter defined) and (ii) such Member, its License and the related Participating Vessel shall be ineligible to participate in the Sector for a period of five (5) years following the date of such departure from the Sector. Each Member acknowledges and agrees that each of its Licenses and the

related Participating Vessels must remain in the Sector for the entire fishing year in which such Licenses and/or Participating Vessels are enrolled in the Sector, and that each Member's Participating Vessels may not fish or land in Rhode Island except as authorized by this Agreement during any fishing year in which its Licenses and/or Participating Vessels are enrolled in the Sector.

Section 2.04 **New Members.** The owner of a License that is eligible under the criteria set forth in Section 1.01 hereto, but that is not enrolled as a Member (and/or whose License is not so enrolled) may apply to the Board (as hereinafter defined) for membership in the Sector. Such application shall be made in writing no later than 30 calendar days prior to the first day of the fishing year for which the applicant seeks to be included as a Member (and/or seeks to have its License included as a License) 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 License included as a License. Notwithstanding the foregoing, (i) no such admission shall be effective until such new Member has agreed in writing to be bound by, and to cause its License 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.

Section 2.05 **License 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 License to a party that is not or does not agree in writing to be bound by this Agreement for the remainder of the fishing year in which such sale, lease or transfer is to occur and (ii) shall not transfer, lease or assign any fluke allocated to its License by RI DEM to any non-Sector license. To the extent that a Member sells, leases or transfers its License to another party (for the purposes of this Section 2.05, a "Transferee") in compliance with the foregoing sentence, then (a) such Transferee shall only be permitted to participate in the Sector for the remainder of the fishing year in which the transfer occurred

(the "Transfer Year") and (b) prior to the commencement of the fishing year immediately following the Transfer Year, the Transferee must apply for admission to the Sector pursuant to the provisions of Section 2.04 hereof in order to be admitted to the Sector as a Member.

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

Article III. ADMINISTRATION

Section 3.01 **Sector Manager.** The Board of Directors (the "Board" of the Sector shall appoint a manager of the Sector (the "Manager"), which Manager shall have the authority to manage the day-to-day business of the Sector and to act as its designated agent for service of process.

Section 3.02 **Manager Authority.** The Manager shall have the authority (i) to monitor the activities of the Members and the Participating Vessels and to take such other actions as may be necessary to ensure compliance by the Members and their Licenses 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, (ii) subject to the authority of the Board or a committee delegated thereby pursuant to Section 3.03 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) and (iii) hire such

persons and engage such services as the Manager reasonably believes are required to perform the functions and duties assigned to the Manager hereunder or by the Board. The Manager shall also act as the liaison between RI DEM and the Sector.

Section 3.03 **Infractions Committee.** 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 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 similar in form to Exhibit A hereto (the "Schedule of Penalties"), for any unauthorized fishing activities (whether under applicable laws, rules and regulations or otherwise) and for violations of this Agreement, the Harvesting Rules, the Plan and other Sector requirements as may be adopted under the terms of this Agreement or the Sectors 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 Section 3.04 hereof, shall have the authority to take any number of enforcement measures against the Members for the non-payment of membership dues and/or poundage fees. Such enforcement measures may include requesting expulsion of the violating Member under Section 7.02 and/or issuing a "stop fishing" order against such Member with respect to federal and Rhode Island Licenses that are subject to this Agreement.

Section 3.04 **Procedures for Investigations.** In addition to the Manager's authority to invoke penalties under the Schedule of Penalties pursuant to Section 3.02 hereof, the Manager may, on his own, and shall, at the request of a Member, request that the Committee conduct an investigation of possible infractions of the Agreement, the Harvesting Rules, the Plan or other Sector requirements as

maybe 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. If, upon the conclusion of an 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 (in addition to the imposition of any penalties prescribed in the Schedule of Penalties), invoke sanctions, ranging from letters of warning to 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 6.04 hereof. Each of the Members agrees to cooperate fully with the Manager and the Committee in such investigations and procedures (including cooperation with any requests for information or data that may be made by the Manager or the Committee).

Section 3.05 **Annual Report.** The Manager shall prepare and submit to RI DEM an annual year-end report on the fishing activities of its Members, including the harvest levels of all Participating Vessels for fluke, any enforcement actions taken against the Members, their Licenses or Participating Vessels, and other information necessary to evaluate the Sector's performance.

Article IV. ALLOCATION

Section 4.01 **Annual Distribution.** Each Member hereby acknowledges and agrees that the aggregate allocation of fluke authorized by RI DEM to the Sector (the "Aggregate Allocation") shall be harvested in accordance with the Harvesting Rules, which are set forth

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

Section 4.02 **Reserve.** Each Member agrees that the Board may, in its sole discretion, establish a reserve of fluke in order to ensure that the Sector remains in compliance with its Aggregate Allocation limit; provided, however, that such reserve shall not exceed five percent (5%) of the Aggregate Allocation. The amount of the reserve shall be deducted from the Aggregate Allocation before such Aggregate Allocation is distributed among the Members, their Licenses and their Participating Vessels through monthly quota targets or otherwise.

Section 4.03 **Distribution of Reserve.** If the Board, subsequent to the establishment of a reserve pursuant to Section 4.02 hereof, determines that the Aggregate Allocation, as adjusted pursuant to Section 4.02, will be fully harvested by the Participating Vessels, the Board shall release and authorize the harvesting of the reserve by the Members, their

Licenses and their Participating Vessels, by redistribution of individual allocations of the reserve of fluke. RI DEM will be notified of such release within 48 hours.

Section 4.04 **Fishing History in Sector.** The Members agree that any fishing history, which is accumulated or established by a Member's License while it is participating in the Sector (the "Sector History"), shall be attributed to such Member's License, and not to any other Licenses. Notwithstanding the foregoing, the Members further agree that any future allocations of fluke made within the Sector shall be based on the fishing history of the Members' Licenses that is accumulated during the Qualifying Period.

Article V. CATCH MONITORING AND VERIFICATION; CERTAIN OTHER MEMBERSHIP REQUIREMENTS

Section 5.01 **Participating Vessel Catch Reports.** To enable each Member and the Sector to monitor the Members' compliance with this Agreement, each Member agrees to report each of its Participating Vessels' entire catch (which, for the avoidance of doubt, includes retained and discarded catch) on a landing-by-landing basis, by providing the Manager with a copy of the official Vessel Trip Report or other reporting document or system authorized by RI DEM within 48 hours of offloading fish in the form and manner prescribed by the Manager. The Members agree that these records shall be maintained by the Manager. 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. The Manager shall, on a monthly basis, provide to RI DEM aggregate discard information generated from Vessel Trip Reports, together with the aggregate catch information generated from such dealer weigh-out slips. After 90% of the Sector's Aggregate Allocation has been harvested, the Manager shall provide notice to RI DEM within 48

hours. The Sector Manager shall report to RI DEM with Aggregate TAC Reports on a weekly basis thereafter.

Section 5.02 **Dealer Reporting.** Each Member agrees to (i) sell the catch of its Participating Vessels only to a dealer licensed under the Plan by RI DEM and that is SAEFIS compliant and (ii) cause any such dealer to provide the Manager with a copy of the official dealer weigh out slip or other official reporting document required by RI DEM on a weekly basis. Each Member further acknowledges and agrees that (a) it is responsible for ensuring timely dealer reporting in accordance with the provisions of this Section 5.02 and (b) failure of the dealer to timely deliver the reports for a Member's Participating Vessel in accordance with this Section 5.02 shall be deemed a breach of this Agreement by such Member.

Section 5.03 **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 on a continuing and frequent basis. If the Manager identifies a discrepancy, he shall immediately notify the affected Member and seek to resolve the discrepancy. If the Manager is unable to satisfactorily reconcile the catch records, he shall notify the Committee of the discrepancy for its consideration and resolution. Each Member further agrees to cooperate fully with any requests for information or data that are made by the Manager or the Committee in an effort to resolve such discrepancy. The Manager shall provide RI DEM on a quarterly basis a report on any discrepancies and any corrective actions that were taken to verify and reconcile the discrepancy.

Section 5.04 **Designated Landing Ports.** To enable the Members and the Manager to monitor, observe and verify catches, each Member agrees that each of its Participating Vessels

will only offload fish in the designated ports of Point Judith, Newport and Little Compton, Rhode Island.

Section 5.05 **Landing Port and Unloading Exceptions.** Landings in ports other than those listed in Section 5.04 hereof are permitted on a temporary, case-by-case basis, subject to prior approval of the Manager; provided, that the Manager determines that the excepted landing will not impair effective enforcement and monitoring of the Sector and this Agreement. Such exceptions may be granted in the sole discretion of the Manager. The Manager shall report to RI DEM any landing port exceptions within 24 hours of such exception being granted.

Section 5.06 **Observed Offloading.** Each Member agrees that, in order to enhance the monitoring and enforcement of the provisions in this Agreement, the Manager may timely request that an observer be present during offloading operations. If such a request is made, each Member agrees not to License its Participating Vessels to offload fish until the Manager or his designee is present.

Section 5.07 **Advanced Notice of Offloading.** If appropriate or necessary for purposes of quota monitoring or Sector efficiency, the Members' Participating Vessels may be required to notify the Manager prior to offloading fish.

Section 5.08 **Proof of Sector Membership.** Each Member agrees that its Participating Vessels shall maintain on-board at all times while fishing ,a Letter of Authorization from RI DEM verifying such Participating Vessels' participation in the Sector.

Section 5.09 **Gear Restrictions.** Each Member agrees that its Participating Vessels shall not fish for fluke with any gear other than that which is identified on the applicable federal License.

Section 5.10 **Area Restrictions.** Recognizing that other parties engage in recreational and commercial rod and reel fishing of fluke along and near the shore areas of the State of Rhode Island, the Members agree not to target fluke exclusively in agreed upon areas near Rhode Island shores as delineated in charts produced from time to time and made available by the Cooperative.

Section 5.11 **Operators.** Each Member agrees to ensure that any operators of its Participating Vessels fully comply with the obligations and restrictions set forth in this Agreement. Each Member further agrees to accept responsibility hereunder for the actions of any such operators that result in a violation of this Agreement.

Article VI. ENFORCEMENT

Section 6.01 **Agreement Enforcement.** Each Member agrees that the Sector, by or through its representatives, and/or any other Member may enforce this Agreement on behalf of the Sector and/or its Members. Each Member agrees to take all actions and to execute all documents necessary or convenient to give effect to the enforcement procedures contemplated by this Agreement, the Harvesting Rules and any Schedule of Penalties.

Section 6.02 **Restrictions on Fishing Activity.** The Members acknowledge that a violation of this Agreement or applicable federal of state fishery regulations by one or more Members (or the Members' Licenses, Participating Vessels or Participating Vessels' operators, if any) that causes the Sector to exceed its Aggregate Allocation could subject the Sector and its Members to joint and several liability to RI DEM for fishing violations. 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 (and will cause their Licenses, Participating Vessels and Participating Vessels' operators, if any, to) comply with a "stop fishing" order from the Sector, which shall be issued by the Board, the Manager or the Committee, and each of the Members further agrees

that if any Member (or its Licenses, its Participating Vessels or the Participating Vessels' operators) fails to comply with such order, the Sector shall have the authority to obtain an injunction, restraining order or other equivalent form of equitable relief to give effect to such "stop fishing" order.

Section 6.03 **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 6.04 **Appeal from Committee Decision.** If the Committee (i) has determined, pursuant to the procedures set forth in Section 3.04 hereof, that a Member has violated this Agreement or (ii) makes any other determination with respect to a Member under this Agreement (including, specifically, without limitation Section 5.03 hereof), such violating Member shall have five business days following the date of the Committee's determination to request reconsideration of the enforcement or other action and/or propose an alternative form of penalty. Such request shall be made in writing and shall be addressed to the Board. The Board may, in its sole discretion, grant or deny any request for reconsideration and may, in its sole discretion, approve or disapprove any alternative form of penalty; provided, that the Board shall exercise all reasonable efforts to ensure that penalties and settlements are commensurate with the nature and extent of the violation, are designed to further the purposes of the Plan and are uniform with those reached in similar circumstances.

Section 6.05 **Penalties and Attorneys' Fees.** Penalties for any violations of this Agreement shall, to the extent addressed in the Schedule of Penalties, be limited to the amounts set forth on the Schedule of Penalties plus all costs, fees and expenses, including attorneys fees, incurred by the Sector or, in a case in which the Sector does not take enforcement action, by the Members bringing such action, in enforcing the provisions of this Agreement. To the extent the

Schedule of Penalties addresses such matter, the Members and the Sector hereby waive any claims to actual, direct, or indirect damages, and instead agree that payment of the amounts set forth on the Schedule of Penalties and costs of enforcement shall be their sole remedy for breaches of this Agreement. In connection with any legal proceeding related to this Agreement, the non-prevailing party shall pay the prevailing party's reasonable costs and attorney's fees associated with the proceeding.

Section 6.06 **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 fluke stocks for the benefit of the resource and those that harvest the resource.

Section 6.07 **Dispute Procedures.** Notwithstanding the provisions of Section 6.01 hereof, prior to instituting any litigation or other dispute resolution, the parties shall follow any applicable procedures set forth in this Agreement, including specifically Sections 3.04, 6.04 and 7.02, 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 Superior Court in Providence, Rhode Island or, if said court does not have jurisdiction, in such courts in the State of Rhode Island that do have jurisdiction.

Section 6.08 **Specific Performance.** In furtherance and not limitation of Section 6.02 hereof, each of the Members and the Sector shall have the right to have any provision of this Agreement specifically enforced, through injunction, restraining order or other form of equitable relief.

Section 6.09 **Indemnification.** Each party that violates this Agreement (the "Indemnitor") hereby severally agrees to indemnify, defend and hold harmless the other parties hereto (each, an "Indemnitee") in respect of their respective Losses; provided, that such Losses result or arise from a third party claim or governmental proceeding brought against or involving the Indemnitee, which is based on or relates to such Indemnitor's (or its Licenses', its Participating Vessels' or such Participating Vessels operators, if different from such Indemnitor) (i) violation of applicable laws, rules or federal fishery regulations or (ii) breach of any covenant, agreement or obligation contained in this Agreement, the Harvesting Rules or other Sector requirements as may be adopted under the terms of this Agreement or the Sector's Bylaws. The indemnification obligations of the parties hereto shall be several and not joint and several. For the purposes of this Section 6.09, "Losses" shall mean any and all claims, liabilities, obligations, judgments, liens, injunctions, charges, orders, decrees, rulings, damages, dues, assessments, taxes, losses, fines, penalties, expenses, fees, costs, amounts paid in settlement (including reasonable attorneys' and witness fees and disbursements in connection with investigating, defending or settling any action or threatened action) arising out of any claim, complaint, demand, cause of action, action, suit or other proceeding asserted or initiated or otherwise existing. The obligations under this Section 6.09 shall survive the termination of this Agreement and the expulsion of any Member pursuant to Article VII.

Article VII. EXPULSION OF MEMBERS

Section 7.01 **Cause.** The Members agree that any Member, its Licenses and/or its Participating Vessels may be expelled from the Sector if (i) the actions of such Member and/or its Participating Vessels (or the Participating Vessels' operators) seriously undermine and threaten the existence of the Sector, (ii) the actions of such Member and/or its Participating

Vessels (or the Participating Vessels' operators) have exposed other Members of the Sector to monetary penalties and/or legal actions, (iii) such Member has been convicted of a serious crime, or (iv) such Member has not paid its membership dues and/or poundage fees as required by Section 2.06.

Section 7.02 **Procedure.** Any Member, the Committee or the Manager may submit to the Board a request to have a Member, its Licenses 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 Licenses and/or its Participating Vessels. Expulsion shall be effective immediately upon the receipt of the requisite vote by the Board. A Member, its Licenses and/or its Participating Vessels expelled during any fishing year may not fish outside of the Sector for fluke landed against the Rhode Island State quota during the remainder of such fishing year. Upon expulsion of any Member, its Licenses and/or its Participating Vessels, the Manager shall immediately notify RI DEM via certified mail that the Member's Licenses and/or Participating Vessels are no longer included in the Sector.

Article VIII. TERM/TERMINATION

This Agreement takes effect upon the approval hereof by the Director of RI DEM and terminates on the last day of the 2011 fishing year (the "Term"). The Term of this Agreement may be extended by the written consent of the Members. Such written consent to extend the Term of this Agreement shall be given 20 calendar days in advance of the date by which the Sector's Operations Plan and Agreement for the upcoming fishing year must be submitted to RI DEM. Notwithstanding the

foregoing, if RI DEM shall not approve the Sector's Operations Plan and Agreement, as the same may be amended, for any fishing year during the Term or any extension thereof, then this Agreement shall terminate on the last day of the last fishing year for which the Sector's Operations Plan and Agreement shall have received approval from RI DEM.

Article IX. MISCELLANEOUS

Section 9.01 **Entire Agreement.** This Agreement, including the Exhibits hereto, the Schedule of Penalties and any other documents incorporated by reference herein, constitutes the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof.

Section 9.02 **Succession and Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the Manager, such consent not to be reasonably withheld or delayed, nor is this Agreement intended to confer upon any person except the parties hereto any rights, interests, benefits, obligations or remedies hereunder. Any assignment in contravention of this Agreement shall be null and void.

Section 9.03 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 9.04 **Notices.** All notices, requests, demands, consents, claims and other communications hereunder shall be deemed duly given (i) one business day following the date sent when sent by overnight delivery, (ii) five business days following the date mailed when mailed by registered or certified mail return receipt requested and postage prepaid, and (iii) upon delivery

confirmation when sent by facsimile, at the contact information provided by each such Member to, and maintained by, the Manager.

Section 9.05 **Governing Law.** This Agreement shall be governed by and construed in accordance with federal fisheries laws, to the extent that federal fisheries laws apply, and to the domestic laws of the State of Rhode Island without giving effect to any choice of law provision or rules of any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of Rhode Island.

Section 9.06 **Change in Law.** If and to the extent that any laws or regulations that govern any aspect of this Agreement shall change, so as to make any aspect to this Agreement unenforceable, then the parties agree to make such modifications to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by the parties.

Section 9.07 **Consent to Jurisdiction and Venue.** Subject to and without limiting the dispute resolution procedures set forth in Article VI, each of the Members consent to the exclusive jurisdiction and venue of the Superior Court in Providence, Rhode Island or, if said court does not have jurisdiction, in such courts in the State of Rhode Island that do have jurisdiction, for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Agreement. Each of the Members accepts, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any objection as to venue, and any defense of forum non conveniens.

Section 9.08 **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the Members.

Section 9.09 **Severability.** Any term or provision of this Agreement that is held invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and

provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

Section 9.10 **Expenses.** Except as otherwise provided herein, each of the members shall bear its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with this Agreement.

Section 9.11 **Incorporation of Exhibits and Other Documents.** The Exhibit A Schedule of Penalties identified in this Agreement are incorporated herein by reference and made a part hereof. Such other exhibits, charts and documents referenced herein or subsequently appended to or referenced in this Agreement or any amendments hereto, shall be deemed incorporated in and merged with the Agreement by such attachment and/or reference.

Section 9.12 **Compliance with and Conformance to State Sector Regulation.** The Members agree to comply with such rules and regulations as may be promulgated from time to time by the RI DEM with respect to the creation, administration and operation of the Sector. In the event that any provision of this Agreement shall conflict with such rules and/or regulations, the provisions of the Agreement shall be deemed superseded by and be subordinate to such rules and/or regulations, and this Agreement shall be deemed to be amended to conform to such regulatory provisions. Notwithstanding the foregoing, the Members may agree to, and the Agreement and any amendments hereto may include, provisions that are stricter or impose a greater standard than applicable rules or regulations, provided that such self imposed provisions would not reasonably be deemed to conflict with RI DEM's rules and regulations.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the date first written above.

EXHIBIT B
R.I.F.C.C. Harvesting Rules For 2011

Aggregate Sector Allocation
A hard TAC for fluke of [ ]. The members and participating vessels agree That they will not collectively harvest more than the Sector TAC and once the TAC is reached for the year, all fishing activity will cease. It is further agreed that all vessels will abide by any sub period TAC established for the purposes of this program.

Effective use of Quota
All members and participating vessels agree to utilize as much of their quota as is necessary to eliminate all fluke discards in their Ground fish Fishery.

Full Retention
All legal sized fluke harvested during any and all fishing operations must be retained, landed and counted against the Sector aggregate allocation.

Mesh Size
All members and participating vessels agree to not target fluke with nets that are less than the legal size for ground fish, while fishing throughout the normal range of ground fish stocks. This area will include the SNEYT differential DAS counting area and all of the areas shoreward.

Small Mesh Exemption
All members and participating vessels will be subject to all State and Federal small mesh landing levels for fluke when fishing with small mesh. All Sector participants will be allowed to fish south of the SNE DDAS counting area for fluke when properly enrolled in the Small Mesh Exemption Program.

Trip Limits
There will be no trip limits placed on fluke for the 2011calendar year

Observer Coverage
All members and Sector vessels agree to take any and all observers at all times. This includes Federal, State, and Sector imposed requests for coverage.

Cost of Coverage
Any costs generated through trip monitoring and observation will be the responsibility of the Sector.

Restricted Areas
All members and Sector vessels agree to not target fluke(in amounts that exceed 100 lbs per trip, the State and Federally allowed bycatch level) from June 1, 2011 through September 15th,2011 in the following areas. An area defined as that which is one mile

seaward of the Southern Rhode Island coastline. The baseline is further defined as the shoreline running from Watch Hill to Point Judith , the mouth of Narragansett Bay running from Point Judith to Brenton Point, the south shore of Aquidneck Island , the mouth of the Sakonnett River running from Sachuset Point to Sakonnet Point, and the south shore of Little Compton to the Massachusetts state line. However, there will be no restrictions placed on Sector vessels targeting other species in these areas. These species include squid, scup, mackerel, whiting, black sea bass, tautog, weakfish, butterfish, bonito, and all other commercially available stocks. While fishing in these areas for other species, members may retain fluke up to but not exceeding Federal and State by catch levels. While fishing in this area, during the agreed period, Sector vessels must use nets that employ 12 inch drop chains between the sweep and footrope of the trawl. Sector vessels will be required to use nets of the stated sweep configuration or those that will deliver similar conservation benefits. Specifically, nets that are constructed with mesh of 24 inches or larger exempt from this sweep requirement so long as this mesh (24 inch) is continued for a minimum of 5 meshes beyond the mouth of the net.(In the direction of the terminus) These terms are considered internally enforceable under the Sector contract.

Call in Requirements

All participating vessels must notify the DEM Division of Law enforcement (222-2284 or 222-3070) at least one hour prior, but not more than six hours prior, to all commercial landings in Rhode Island, regardless of whether or not such landings include summer flounder.

EXHIBIT A

Rhode Island Fluke Sector Allocation Penalty Schedule

VIOLATION	First	Second	Third
Violations Regarding Licenses, Reporting, Documentation, Exemption License Requirements			
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 License condition/restriction /letter of authorization or exemption issued by the Sector; providing false statements or failing to comply with observer requirements while fishing unloading (Technical and minor violations may result in a letter of warning).	Up to $500 (and/or stop fishing order)	$500 – $1,000 (and/or stop fishing order)	$1,000 + (and/or stop fishing order)
Violations Regarding Time and Area Restrictions and Fishing Practices			
All violations including, but not limited to: fishing in agreed upon exclusion area closed fisheries and closed season violations; restricted gear/management and sector fishing and discard policies	$2,000 - $50,000 (stop fishing order for 30 days)	$10,000 - $100,000 (unable to fish for the remaining of fishing year)	Expulsion
Violations That Place the Sector Agreement at Risk			
All violations including, but not limited to: violation of a stop order, fishing in 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 Rhode Island Fluke Conservation Coop to be in violation of its Agreement.	Up to $50,000 (loss of fishing rights for 365 days)	Expulsion	

FV Ocean State
By: Glen Westcott and/or Robert Westcott for
Ocean State Fisheries, Inc.
20 Ram Head Road
Great Island, RI 02882
Fed. Permit No. 320139
Fed. Doc. No. 531996
Captain: Robert Westcott RI Multi.
Purpose 000759
Alternate Captain: Glen Westcott RI Multi
Purpose ~~001~~114

FV Kelsi Morgan
By: Charles Brayton for
Heidi & Kristi, Inc.
43 Botka Drive
Charlestown, RI 02813
Fed. Permit No. 250164
Fed. Doc. No. 511573
Captain: Charles Brayton RI Multi.
Purpose 002496
Alternate Captain: None

FV Restless
By: Carl Granquist
66 Fifth Avenue
Narragansett, RI 02882
Fed. Permit No. None
Fed. Doc. No. 253884
Captain: Carl Granquist RI Multi.
Purpose 1031
Alternate Captain: None

FV Thistle
By: William Mackintosh
P.O. Box 961
Little Compton, RI 02837
Fed. Permit No. 221313
Fed. Doc. No. 678788
Captain: William Mackintosh RI Multi.
Purpose 000045
Alternate Captain: None

FV Rebecca Mary
By: Scott Babcock
765 Gravelly Hill Road
Wakefield, RI 02879
Fed. Permit No. 330534
Fed. Doc. No. 656328
Captain: Scott Babcock RI Multi.
Purpose 000116
Alternate Captain: Todd Chappell

FV Wiley Fox III
By: John Shelly
119 Holly Road
Wakefield, RI 02879
Fed. Permit No. 112647
RI Registration RI 45795
Captain: John Shelly RI Multi.
Purpose 000777
Alternate Captain: None

FV Proud Mary
By: Christopher Brown for
Goldenwood Fisheries, Inc.
35 Erica Court
West Kingston, RI 02892
Fed. Permit No. 151069
RI Registration RI 913 OU
Captain: Christopher Brown RI Multi.
Purpose 000305
Alternate Captain: Dean West RI Multi.
Purpose 000749

FV Linda Marie
By: Kenneth Ketcham
44 West Bay Drive
Narragansett, RI 02882
Fed. Permit No. 310473
Fed. Doc. No. 674824
Captain: John Dougherty RI Multi.
Purpose 000068
Alternate Captain: Kenneth Ketcham RI
Multi. Purpose 000172

FV Elizabeth Helen
By: Steven Arnold for
Kingston Trawlers, Inc.
200 Blueberry Lane
West Kingston, RI 02892
Fed. Permit No. 250693
Fed. Doc. No. 659112
Captain: Steven Arnold RI Multi.
Purpose 000627
Alternate Captain: None

FV Virginia Marie
By: Rodman Sykes for
CR Fisheries, Inc.
P.O. Box 242
Peace Dale, RI 02883
Fed. Permit No. 587180
Fed. Doc. No. 310991
Captain: Rodman Sykes RI Multi.
Purpose 00431
Alternate Captain: James Nelson RI Multi.
Purpose 000592

FV Crackerjac
By: Daniel R. Barlow for
Dapper Fisheries, Inc.
Fed. Permit No. 240904
Fed. Doc. No. 678130
Captain: Daniel R. Barlow RI Multi.
Purpose 000926
Alternate Captain: None

FV Oceana
By: Dean Pesante for
FV/ Oceana
Fed. Permit No. 233179
RI Registration No. 11B07347
Captain: Dean Pesante RI Multi.
Purpose 00089
Alternate Captain: None

FV Heather Lynn
By: Stephen Follett for
Heather Lynn, Inc.
145 Thoreau Lane
Wakefield, RI 02879
Fed. Permit No. 410327
Fed. Doc. No. 663840
Captain: Stephen Follett
RI MultiPurpose 000733
Alternate Captain: Kevin Jones

FV Hopefull
By: James M. Jordan Sr. for
JMJ Fisheries, Inc.
47 Inkberry Drive
Wakefield, RI 02879
Fed. Permit No. 320577
Fed. Doc. No. 620064
Captain: James M Jordan Sr.
Alternate: None

FV Nancy Beth
By: Aaron Gewirtz for
Nancy Beth Fisheries.Inc
Wakefield RI 02879
Federal Permit None
Fed Doc. No. 971363
Captain: Aaron Gerwirtz
RI Multi Purpose 000050
Alternate: None