

1 *This document expressly supersedes a previous version of the Sector Operations*
2 *Plan and Agreement (the “Previous FY 2017 Plan”) which was invalidated by*
3 *National Marine Fishery Service (the “Agency”) on November 20, 2017 on the*
4 *stated authoritative basis of 50 CFR 648.87(c)(3). Nothing contained herein shall*
5 *operate to prejudice any rights either party may have which flow from the*
6 *previous version of the Sector Operation Plan and Agreement which was*
7 *previously entered into by the parties for Fishing Year 2017.*

8
9 SUPERCEEDING SECTOR OPERATIONS PLAN AND AGREEMENT

10 Sector IX

11 Remainder of Fishing year 2017 and Fishing year 2018

12 SECTOR OPERATIONS PLAN AND AGREEMENT

13 This NORTHEAST FISHERY SECTOR OPERATIONS PLAN AND AGREEMENT (this “Agreement”) is entered
14 into as of February ~~XX~~, 2018 (the “Effective Date”), by and among ~~WIX~~ Northeast Fishery Sector, Inc.
15 (“NEFS ~~WIX~~”) and each of the Sector members identified on the attached Exhibit C.

16 Recitals

17 A. Pursuant to “Amendment 16” to the Northeast Multispecies Fishery Management Plan and
18 implementing regulations promulgated by the National Marine Fisheries Service (“NMFS”), a group of
19 persons holding limited access multispecies vessel permits may form self-selecting voluntary sectors for
20 fishery management. As a condition to forming a sector under Amendment 16, the persons wishing to
21 do so must enter into a binding sector operations plan and agreement that contains the required
22 elements.

23 B. The parties to this Agreement wish to form a self-selecting voluntary sector under Amendment 16
24 and to do so are voluntarily entering into this Agreement for **Fishing Year 2017 (May 1, 2017-April**
25 **30, 2018) and Fishing Year 2018 (May 1, 2018-April 30, 2019).**

Agreement

Now therefore, for and in consideration of the agreements, covenants, rights and obligations set forth herein and the mutual benefits anticipated by the Members under this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Members and Sector hereby agree as follows:

1. Sector Name. The organization described under this Agreement shall be called the ~~WIX~~ Northeast Fishery Sector, Inc. This is a non-profit organization incorporated in Massachusetts on May 26, 2009 and therefore may be held liable for violations committed by its members.

2. Sector Eligibility and Membership. To be eligible to be a member of the Sector, a person must hold a Limited Access Northeast multi-species permit and meet all other Sector eligibility requirements as established from time to time by the Sector's Board of Directors (the "Board"). Any person wishing to become a Sector member must submit an application no later than sixty (60) days prior to the annual deadline by which Sector contracts must be submitted to NMFS. Sector membership shall be effective upon admission of a member by the Board and acceptance by execution by such member of the Sector's Membership Agreement. Subject to the automatic renewal provisions of Section 12 below, and the disciplinary expulsion provisions of Section 13 below, Sector membership shall expire at the conclusion of each fishing year, unless renewed by the Board in accordance with the Sector's Bylaws and this Agreement. The Sector's members (the "Members"), such Members' "Limited Access Multispecies Permit" (LA MS) as identified by its "Moratorium Rights Identifier" (MRI), and the vessels that will harvest the Sector's Amendment 16 allocations are identified on the attached Exhibit C, which may be amended from time to time in accordance with this Agreement and the Sector's Bylaws.

2.1. Rule of Three Requirement: Amendment 16 to the NE multispecies FMP defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector. This criterion has been fulfilled with permit # 149675 330126 under the distinct ownership of Predator Fisheries, permit # 330236410501 under the distinct ownership of Olivia & Rafaela Fishing Corp., and permit # 150592-330561 under the distinct ownership of P & A Fishing Corp.. Documentation of fulfillment of this criterion for FY 2018 will be located in Exhibit I of this Agreement and will be furnished by the Sector in accordance with NMFS guidance and schedule pertaining to bi-annual operation plan submission.

3. Member and Vessel Permits. The attached Exhibit D is provided in accordance with the requirements of Amendment 16 that all state and federal permits held by Members or assigned to

Commented [EE1]: This section will need to be verified/updated based on final contracts

Commented [AS2]: This permit 330236 was forfeited by Judge Young.

Members' vessels be disclosed in each sector's annual operations plan. Documentation of fulfillment of this criterion for FY 2018 will be located in Exhibit I of this Agreement and will be furnished by the Sector in accordance with NMFS guidance and schedule pertaining to bi-annual operation plan submission.

4. Sector Allocation and Exemptions. Each Member shall take all actions and execute all documents necessary to obtain the Sector's Amendment 16 annual catch entitlement ("ACE"). The Sector shall request all universal exemptions granted to sectors under Amendment 16 and relating multispecies implementing regulations; and any special exemptions the Board deems appropriate. The special exemptions initially requested by the Sector are identified on the "Harvesting Rules" attached hereto as Exhibit A.

5. Distribution of Sector ACE. Each Member acknowledges that the Sector's ACE is composed of allocations for each species of Northeast multispecies groundfish allocated by Amendment 16 (each such species being an "Allocated Species"), and any subsequent Framework or Amendment. Subject to the terms and conditions of this Agreement, each Member shall be entitled to harvest or transfer an amount of the Sector's ACE, as adjusted by the Sector for retainages including but not limited to the Reserve, for each Allocated Species proportionate to the amount of ACE for such species that the Sector receives as a result of such Member's membership in the Sector. The amount of Sector ACE a Member may harvest or transfer, as adjusted by transfers and Sector retainages including but not limited to the Reserve, made in accordance with this Agreement, is referred to hereafter as a Member's "Harvest Share." Each Member may harvest or transfer its Harvest Share only under the terms and conditions of this Agreement and in compliance with the restrictions imposed by the Manager (as defined below), the Enforcement Committee (as defined below) and the Board in accordance with this Agreement. Any other attempted harvest or transfer of a Member's Harvest Share shall be a breach of this Agreement.

6. Sector Manager and Registered Agent. The Board shall from time to time appoint a person to act as the Sector's authorized agent in all NMFS and New England Fishery Management Council matters (the "Manager"), and a person to serve as the registered agent for receiving service of process on behalf of the Sector (the "Registered Agent"). The procedures for appointing the Manager and the Registered Agent shall be as provided in the Sector's Bylaws, as the same may be amended from time to time. The Manager and the Registered Agent may be the same person. The Manager shall be responsible for preparing and filing all reports required of the Sector under Amendment 16 and the

1 related implementing regulations. Virginia Martins will serve as the registered agent for receiving
2 service of process on behalf of the Sector. The Sector will notify NMFS prior to ~~May 1, 2017~~
3 authorization who will be acting as their Manager for FY 2017. Documentation of fulfillment of this
4 criterion for FY 2018 will be located in Exhibit I of this Agreement and will be furnished by the Sector in
5 accordance with NMFS guidance and schedule pertaining to bi-annual operation plan submission.

6 6.1. Communication with Sector. The Manager is the primary point of contact
7 for all communications on behalf of the Sector and all communications regarding NEFS ~~WIX~~ should be
8 directed accordingly. In addition to the Sector Manager Paula Sullivan is authorized to act on behalf of
9 the Sector. At the time in which this Agreement is entered into, the Board of Directors are as follows:

10 President: Virginia Martins

11 Treasurer: Anne Jardin-Maynard

12 Clerk: Cassie Canastra

13 Director: Virginia Martins, Raymond Canastra, Cassie Canastra, Anne
14 Jardin-Maynard, Tor Bendikson, Dan Georgianna, John Reardon

15 In the event that the Board of Directors is modified, the Sector will notify NMFS of such modifications.
16 Additionally, a list of current Board members can also be located at the following link.

17 <http://corp.sec.state.ma.us/corplib/corpssearch/CorpSearch.aspx>

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18 7. Consolidation Plan. The Sector's ACE shall be harvested in accordance with the terms
19 and conditions of this Section 7.

20 7.1. Harvest Share Reserve. No Reserve is required for FY 2017. Sector Members
21 will not harvest sector ACE. The sector manager will utilize Inter and Intra sector transfers to move ace
22 between members and to fully utilize the ACE allocated to the Sector.

23 7.2. Harvest Share Use. This Sector is comprised of non-active Members only,
24 who shall not harvest Sector ACE, including without limitation, their own Harvest Share. Members may
25 transfer (lease) harvest share between members and the sector manager will execute transfers of sector
26 ACE through inter-sector leasing.

27 7.3. Harvest Share Transfer. Subject to the terms and conditions of this
28 Agreement, each Member may transfer some or all of such Member's Harvest Share to one or more

1 **Active Member(s)** on such terms and conditions as the transferor Member and the transferee **Active**
2 **Member(s)** may agree. No transfer of a Member's Harvest Share shall become effective until the
3 Manager has received actual notice of such transfer. No Member may transfer any portion of such
4 Member's Harvest Share, or interest in the Sector's ACE, to any person other than an **Active Member**
5 unless the Board first authorizes such transfer in writing. Any such transfer shall be subject to such
6 terms and conditions as the Board may adopt from time to time, including but not limited to
7 establishment of procedures to implement a Right of First Offer (the "ROFO") that is extended to **Active**
8 **Members** of the Sector, **Active Members** of other Northeast Fishery Sectors, and certain other parties in
9 accordance with the terms and conditions established by the Board. Without limiting the foregoing, the
10 Sector Board of Directors may condition, review, approve and restrict transfers of Harvest Shares to
11 non-Members as it deems necessary to promote the harvest of the Sector's entire ACE allocation and
12 ensure that the Sector's management and administrative costs can be recouped through reasonable
13 Sector membership fees established by the Board.

14 7.4. Harvesting Rules and Fishing Plan. The Board may from time to time adopt
15 such restrictions on harvest of the Sector's ACE as the Board deems necessary to ensure the Sector's
16 compliance with Amendment 16 and related implementing regulations (such restrictions referred to
17 hereafter as "Harvesting Rules"). The Harvesting Rules are set forth on Exhibit A. Each **Active Member**
18 shall conduct their harvest of the Sector's ACE in strict compliance with the Harvesting Rules. Each
19 Member shall exercise their best efforts to ensure such Member's Harvest Share is harvested in
20 accordance with the Harvesting Rules. The Manager shall annually develop a Sector fishing plan that
21 promotes harvest of the Sector's ACE in accordance with the Harvesting Rules and shall make the Fishing
22 Plan available to Active Members prior to the commencement of the fishing season.

23 7.5. Re-direction of Effort. During FY 2015, NEFS IX vessels switched fishing
24 efforts into the follow fisheries:

- 25 • Fishery: Scallop (Gear: Trawl)
- 26 • Fishery: Monkfish (Gear: Trawl)
- 27 • Fishery: Skate (Gear: Trawl)
- 28 • Fishery: Summer Flounder (Gear: Trawl)

29 During the first quarter of FY 2016, NEFS IX vessels switched fishing effort into the following fisheries:

- 30 • Fishery: Scallop (Gear: Trawl)

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1 • Fishery: Squid (Gear: Trawl)

2 During the remainder FY 2017 & 2018~~7~~, NEFS IX anticipates no redirection of effort will take place, since
3 NEFS IX will be operating as a lease only Sector. However, NEFS IX does acknowledge that they may
4 seek approval from NMFS to operate as an active sector in FY 2018, and if such approval is granted they
5 anticipate a similar redirection of effort as seen in FY 2015 & 2016.

6
7 7-5-7.6. Sector Vessel Interactions with Allocated Species in Non-Amendment 16

8 Fisheries. NA

9 7-6-7.7. Consolidation and Redistribution of ACE: Scientific recommendations and

10 new Magnuson requirements will influence the level of consolidation that will take place in the
11 groundfish fishery. The Sector members intend to utilize sector management to mitigate excessive
12 consolidation that may occur in the effort controlled system where overall management measures are
13 based upon the weakest stocks. In FY 2016, ~~93~~6% of the permits enrolled in the NEFS ~~WIX~~ for FYs 2016
14 and 2017 are attached to vessels actively fishing for NE multispecies. For FYs 2017 and 2018, the NEFS
15 ~~WIX~~ sector has ~~50-60~~ permits currently enrolled. Of those permits none are anticipated to actively fish
16 for NE Multispecies in for the remainder of FY 2017. NEFS IX expects that compared to FY 2016~~as~~ there
17 would be a net consolidation beyond what previously occurred among the NEFS IX as the share of ACE
18 contributed by member permits will not be fished by any vessels, compared to 35% of FY 2016. It can be
19 anticipated that because the sector will not have active fishing vessels, there will be resulting in job
20 losses for fishing crews and the associated negative impacts will spread to fishing communities and
21 industries reliant on commercial fishing. While fisheres who remain in the fishery may experience a
22 positive benefit, there will be few active fishers in the NE multispecies fishery.

Commented [AS3]: Need to know how many permits remain following the forfeiture as ordered by Judge Young on 10/11/17. Note, according to that Forfeiture order (document 254) 4 vessel were forfeited. They were the Lady Patricia (4 permits), Bull Dog (8 permits), Southern Crusader (11 permits) and Olivia & Rafaela (11 permits). Need to confirm though.

23 8. Release of Catch Data. Pursuant to section 402(b)(1)(F) of the Magnuson-Stevens
24 Fishery Conservation and Management Act, 16 U.S.C. § 1881a(b)(1)(F), the undersigned hereby
25 authorizes the release to the Manager, and/or designated sector employee(s) of the ~~WIX~~, Northeast
26 Fishery Sector Inc., the Program Director of the Northeast Sector Service Network, and the FishTrax
27 Programmer, information that may be or is considered to be confidential or privileged by the
28 Magnuson-Stevens Act or other federal law regarding the catch of various species of fish associated with
29 the limited access Northeast multispecies permit with the Moratorium Right Identifiers (MRIs) enrolled
30 in the Sector submitted to the National Marine Fisheries Service that the undersigned has authority to
31 access. This information includes data required to be submitted or collected by NMFS, on an individual

1 MRI and/or aggregated scale, including but not limited to days-at-sea allocation and usage, vessel trip
2 reports, dealer reports, Northeast Federal Observer Program data, catch and landings history data for all
3 species harvested by the vessel/MRI, Sector at-sea monitoring data, protected species
4 takes/interactions, enforcement data, vessel baseline data (length, horsepower, etc), VMS information,
5 and all other information associated with the vessel, MRI #, and/or permit records. In addition, this
6 information includes data for species not managed under the multispecies FMP.

7 All confidential Sector data may be released to the Sector Manager, and/or designated sector
8 employee(s), the Program Director of the Northeast Sector Service Network, and the FishTrax
9 Programmer. This statement applies to all confidential data for a two-year time period encompassing
10 FYs 2017 and 2018.

11 9. Catch Monitoring and Reporting. Each **Active Member** shall comply with all catch
12 monitoring and reporting requirements established by the Manager, which may include but are not
13 limited to maintaining and filing copies of accurate catch logs, carrying fishery observers, installing and
14 operating electronic vessel and catch monitoring equipment, delivering fish only at pre-approved
15 landing stations at pre-approved times, and completing and filing accurate delivery reports on a timely
16 basis. Without limiting the foregoing, each **Active Member** shall submit on a timely basis all catch
17 information as required by and necessary for the Manager to complete and file the Sector's weekly
18 reports. Each **Active Member's** harvest of Sector ACE shall be calculated and tabulated in accordance
19 with the catch accounting measures established by NMFS with respect to the Sector's ACE. Absent
20 manifest error, the catch and delivery information produced by the Manager shall be presumed
21 accurate, and absent manifest error, each Member's obligations under this Agreement and all related
22 documents may be enforced to their fullest extent on the basis of such information.

23 10. Breach and Remedies for Breach. The benefits associated with Sector membership
24 will only accrue to the Members if each of them strictly complies with this Agreement. Each Member
25 will make significant operational and financial commitments based on this Agreement, and any
26 Member's failure to fulfill any of its obligations under this Agreement could have significant adverse
27 consequences for some or all other Members. Any failure by a Member to fulfill any of its obligations
28 under this Agreement shall constitute a breach of this Agreement. Each Member shall be bound by the
29 procedures set forth in this Section for determining whether a Member has breached this Agreement.
30 The Sector shall be entitled to the remedies set forth in this Section if a Member is determined by the

Sector to have breached this Agreement. Each Member shall take all actions and execute all documents the Manager deems necessary or convenient to give effect to the provisions of this Section.

10.1. Liquidated Damages Schedule and Schedule Amendments. NA

10.2. Enforcement Committee. Not less than one hundred twenty (120) days prior to each annual Northeast multispecies groundfish season opening date (the "Season Opening Date"), the Manager shall call a meeting of the Board to appoint the Enforcement Committee for the upcoming year, and to address any other matters of Sector business properly before the Board. The Board shall meet for those purposes not less than ninety (90) days prior to the Season Opening Date, and at such meeting shall appoint an Enforcement Committee composed of five (5) persons. If the Board fails to do so, the Manager shall appoint the Enforcement Committee. The Enforcement Committee shall assist the Manager in setting and updating the liquidated damages amounts for breaches of this Agreement and shall hear and decide Members' appeals of the Manager's contract breach determinations and liquidated damages assessments.

10.3. Liquidated Damages Base Value and Multiplier Adoption. NA.

10.4. Liquidated Damages Calculation. NA.

10.5. Notice to Vessel Masters; Assumption of Liability. NA.

10.6. Liquidated Damages Security. NA.

10.7. Manager Action in Response to Apparent Breach. The Manager shall monitor the Members' compliance with the terms and conditions of this Agreement. If the Manager becomes aware of an apparent breach of this Agreement by a Member, the Manager shall investigate the matter, and if the Manager concludes that a Member has breached this Agreement, the Manager shall notify such Member of the apparent breach and (if such breach is reasonably susceptible of cure) provide such Member with an opportunity to cure the breach. If such Member fails to demonstrate to the Manager, in the Manager's sole and absolute discretion, that no breach occurred, or to cure the breach within the time period directed by the Manager, taking into account the magnitude of the breach and the potential consequences of the breach for the Sector and the other Members, the Manager shall notify the Member in writing that the Manager is referring the alleged breach to the Enforcement Committee, and shall notify the Enforcement Committee in writing of the alleged breach and the proposed liquidated damages. Pursuant to Section 14, below, if during the investigation, notice

1 and cure period described above, the Manager concludes it is necessary for the protection of the
2 interests of the Sector and its Members, the Manager may issue a "Stop Fishing Order" to the Member
3 in apparent breach, and if such Member fails to cause the vessels harvesting its Harvest Share to
4 immediately stop fishing, the sector manager may take any action he/she deems necessary including
5 without limitation, self-help or court action which may include the seeking of injunctive relief.

6 10.8. Member Appeals. NA.

7 10.9. Voluntary Compliance. In connection with breaches of this Agreement for
8 which a Member is liable to the Sector or other Sector Members for liquidated damages, the Sector shall
9 provide the breaching Member fifteen (15) days prior notice of its intent to exercise its rights of
10 collection, during which period the Member may propose an alternative method of compensating the
11 Sector and other Sector Members for the damages suffered as the result of such Member's breach. The
12 Enforcement Committee may approve or disapprove any alternative form of compensation in its sole
13 discretion, provided that if the breach at issue is an overharvest of a Member's Harvest Share, there
14 shall be no liquidated damages imposed if the Member in breach obtains sufficient Harvest Share from
15 other Members to offset the overharvest, and tenders conclusive evidence to that effect to the
16 Enforcement Committee. Such Member shall nevertheless remain liable for the costs and fees incurred
17 by the Sector in connection with the alleged breach, and the Sector shall be entitled to collect such costs
18 and fees if such Member fails to pay the same within ten (10) days of receiving the Sector's demand for
19 payment.

20 10.10. Liquidated Damages Collection and Related Expenses. NA.

21 10.11. Consequential Damages for Gross Negligence or Willful Misconduct. NA.

22 10.12. Distribution of Damages. NA.

23 11. Joint Liability and Indemnification. Each Member acknowledges that the Sector's
24 Members may be held jointly liable for ACE overages, discarding of legal-sized fish and misreporting of
25 catch landings or discards. Further, each Member acknowledges that should a hard total allowable
26 catch ("TAC") allocated to the Sector be exceeded in a given fishing year, the Sector's allocation will be
27 reduced by the overage in the following fishing year, and the Sector, each vessel participating in the
28 Sector and each vessel operator and/or vessel owner participating in the Sector may be charged, as a
29 result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 C.F.R.

1 Part 904, and that if the Sector exceeds its TAC in more than one (1) fishing year, the Sector's ACE may
2 be permanently reduced or the Sector's authorization to operate may be withdrawn.

3 In consideration of the foregoing, each Active Member agrees to indemnify, defend and hold the Sector
4 and all other Members harmless from and against all liabilities, claims, fines, penalties and forfeitures of
5 any nature whatsoever arising out of or related to any breach of this Agreement related to such Active
6 Member's harvest of Sector ACE, and each Member agrees to indemnify, defend and hold the Sector
7 and the other Members harmless from and against all liabilities, claims, fines, penalties and forfeitures
8 of any nature whatsoever arising out of or related to such Member's breach of this Agreement. Each
9 Member's indemnification obligation under this Section 11 is separate from and in addition to each
10 Member's liquidated damages and consequential damages obligations under Section 10, above. Each
11 Member authorizes the Board to require that a Member's obligations under this Section 11 be secured
12 by a surety.

13 12. Membership Termination. No Member may terminate its membership in the Sector
14 other than in accordance with this Section 12. A Member that has agreed to join the Sector prior to the
15 Effective Date may withdraw from Sector membership prior to the Effective Date without penalty or
16 prejudice. Thereafter, only a Member that is not in breach of this Agreement and that has no
17 outstanding Sector performance or payment obligations may terminate its membership in the Sector,
18 and may do so only in compliance with the terms and conditions of this Section 12. Notwithstanding the
19 foregoing, the Board may terminate the membership of a Member in breach of its payment or
20 performance obligations under this Agreement, as the Board deems appropriate in its sole discretion.

21 Subject to the provisions of this Section 12 regarding withdrawal prior to the Effective Date, above, a
22 Member that is eligible to terminate such Member's Sector membership may do so only by providing
23 written notice to that effect to all other Members on or before February 18, 2015 or such date as the
24 Board may from time to time establish for that purpose (the "Termination Date") each fishing year. A
25 Member that fails to provide such notice by the Termination Date shall be deemed to have
26 automatically renewed its Sector membership for the following year, and all other Members shall be
27 entitled to act in reliance on such renewal accordingly. If any Member provides a membership
28 termination notice by the Termination Date, each of the other Members shall have ten (10) days from
29 the date they receive such notice to terminate their membership as well, notwithstanding the
30 Termination Date notice deadline. Termination of membership in the Sector shall be effective as of the
31 final day of the current fishing year.

1 If a Member is in breach of this Agreement or has outstanding Sector payment or performance
2 obligations as of the Termination Date, unless the Board takes action to terminate such Member's
3 membership, such Member's membership shall be deemed renewed for the following year,
4 notwithstanding any notice of withdrawal such Member may give, and the Sector shall have the
5 authority to file an application for a Sector allocation including such Member as a Member of the Sector.
6 Each Member hereby grants the Sector a power-of-attorney, coupled with an interest, for such
7 purposes, and authorizes each of the Sector's officers to take any and all actions and execute any and all
8 documents necessary or convenient to give effect to this provision.

9 Termination of membership shall not relieve a person or entity of any obligations under this Agreement
10 related to the period during which such person or entity was a Member, including but not limited to
11 liquidated damages obligations for breach of this Agreement, consequential damages obligations for
12 breaches resulting from acts of gross negligence or willful misconduct, or indemnification obligations
13 related to such person or entity's actions as a Member.

14 13. Expulsion. A Member may be expelled from the Sector at any time for: (i) a knowing,
15 willful breach of this Agreement; (ii) any alleged breach of this Agreement that is either not appealed
16 pursuant to Section 10.8, or is upheld by the Enforcement Committee after being appealed, and which
17 such Member fails to cure through voluntary compliance approved by the Enforcement Committee
18 pursuant to Section 10.9, or by paying liquidated damages in accordance with Section 10.10; (iii)
19 perpetrating a fishery regulation violation that exposes Sector Members to joint liability for such
20 violation. A Member shall be immediately and automatically expelled from the Sector if such Member
21 ceases to be eligible to participate in the Sector or if such Member engages in conduct that exposes the
22 Sector or other Sector Members to antitrust or unfair trade practice liability. As of the date of expulsion,
23 the expelled Member shall lose all rights to harvest any portion of the Sector's ACE unless the expelled
24 Member is re-admitted. Expulsion shall not relieve a Member of the obligation to pay fees that were
25 levied prior to the date of expulsion, or to pay liquidated damages and costs and fees related to an
26 action or omission by the expelled Member that preceded the date of expulsion. The Sector shall notify
27 NMFS immediately upon a Sector Member's expulsion; by electronic email, followed by posted mail.

28 14. Stop Fishing Order; Injunctive Relief. NA.

29 15. Permit Transfer/Sale. A Member may transfer a Permit to a party other than a
30 Member, subject to a Right of First Refusal (the "ROFR"), which may be adopted or amended from time

to time by the Board, in favor of **Active Members** of the Sector, **Active Members** of other Northeast Fishery Sectors, and certain other parties. No Member may transfer such Member's "LA MS" permit or "MRI" permit to a person who is not an **Active Member** unless such person assumes all of the transferring Member's obligations under this Agreement as of the effective date of such transfer. A person other than a Member who receives a Member's "LA MS" permit or "MRI" permit from a Member in accordance with this Section 15 (a "Transferee") shall only be eligible to participate in the Sector for the balance of the fishing year during which the transfer occurs, and thereafter may only remain a Sector Member if such Transferee applies for and is admitted to Sector membership in accordance with Section 2, above.

15.1. The Transferee shall be deemed a **Non-Active Member** of the Sector, with no rights to harvest any Sector ACE, including but not limited to the ACE allocated to the Sector in connection with the assets acquired under the Permit Offer. A Transferee wishing to acquire **Active Member** status during the fishing year in which the permit transfer occurred must submit a written request to the Board for consideration. The Board will have the authority to approve, conditionally approve or deny such request.

16. Release and Waiver of All Claims against Sector Manager; Indemnification and Hold Harmless. Each Member acknowledges that the effectiveness of this Agreement depends on the Manager exercising reasonable independent business judgment in good faith in reviewing and approving or disapproving Members' fishing plans, monitoring harvest of the Sector's ACE, and enforcing the terms and conditions of this Agreement. Each Member hereby waives and releases any and all claims against the Manager arising out of or relating to Manager's performance under this Agreement, other than those arising solely from the gross negligence or willful misconduct by the Manager, as conclusively determined by a court of final and competent jurisdiction. The Sector and the Members agree to jointly and severally indemnify, defend and hold the Manager harmless from and against any third party claims, damages, fines, penalties and liabilities of any kind whatsoever asserted against the Manager in connection with the Manager's performance under this Agreement, other than those arising out of gross negligence or willful misconduct by the Manager.

17. Sector Membership Fees. At least thirty (30) days prior to the Effective Date, and at least thirty (30) days prior to each annual Termination Date thereafter, the Board shall notify the Members in writing of the amount of Sector membership fees that the Board has adopted for the upcoming year of Sector operations.

1 18. Binding Arbitration. Each Member and the Sector agree to exercise their best good

2 faith commercially reasonable efforts to resolve any disputes arising under this Agreement through
3 direct negotiations. Breaches of this Agreement which are not resolved through direct negotiation shall
4 be submitted to binding arbitration upon the request of any party at interest. Any person nominated as
5 an arbitrator hereunder by any person shall be a person of mature, sound and reasonable business
6 judgment and experience and either have (a) held a federal fishing master license for at least ten (10)
7 years, or (b) been an attorney at law practicing in the area of fisheries for at least ten (10) years.

8 The party's written request for arbitration shall include the name of the arbitrator selected by the party
9 requesting arbitration. The respondent party shall have ten (10) days to provide written notice of the
10 name of the arbitrator it has selected, if any. If the other party timely selects a second arbitrator, the
11 two arbitrators will jointly select a third arbitrator within ten (10) days. If the other party does not
12 timely select the second arbitrator, there shall be only the one arbitrator. The single arbitrator or the
13 three (3) arbitrators so selected will schedule the arbitration hearing as soon as possible thereafter. Any
14 arbitrator must have no material ties to the Sector or any Member. The decision of the arbitrator (or in
15 the case of a three (3) arbitrator panel, the decision of the majority) will be final and binding. The
16 arbitration will be conducted under the rules of (but not by) the American Arbitration Association. The
17 parties will be entitled to limited discovery as determined by the arbitrator(s) in his, her or their sole
18 discretion. All costs of arbitration shall be borne by the party requesting the same. Each party shall bear
19 its own costs of preparation and presentation, unless, in the case of the Sector, the Board determines to
20 assess such costs to the applicable Member, which costs shall be immediately due and payable. In no
21 event will arbitration be available pursuant to this paragraph after the date when commencement of
22 such legal or equitable proceedings based on such claim, dispute, or other matter in question would be
23 barred by an applicable statute of limitations.

24 The final decision of the Arbitrators shall not be subject to review or appeal by any other person,
25 including any court, with the exception of NMFS in its oversight role for the purposes of statutory and
26 regulatory compliance and consistency. Any right to any such appeal is hereby irrevocably waived and
27 relinquished. Such final decision shall bind the parties and shall not require any further action of
28 enforcement or collection once docketed with the records of the Sector. In breach by any Member of
29 performance thereof, the Manager may *sua* sponte and without any notice or hearing issues a Stop
30 Fishing Order or an Order of Expulsion respecting such Member in breach.

1 The Sector shall, without limiting the foregoing rights and procedure, also have the right to enforce
2 any decision against any Member in breach by an action for specific performance, declaratory relief, *lis*
3 *pendens* or any other action in a court of law having jurisdiction of the parties, it being understood and
4 agreed that the Federal court for the District of Massachusetts and the Massachusetts Superior Court
5 for the County where the registered office of the Sector is located shall be deemed to have such
6 jurisdiction

7 19. No Collective Marketing. The Members acknowledge that the Sector has not been
8 formed or qualified as a collective marketing association. The Members therefore agree that nothing in
9 this Agreement shall be construed as permitting or obligating Members to collaborate regarding the
10 processing, marketing or sales of the product produced from catch harvested under their Harvest
11 Shares. Each Member shall conduct all sales of such catch in competition with the other Members, and
12 shall hold ex-vessel price information as confidential from other Members until such information
13 becomes public or until such price information is six months old, unless and until the Sector is properly
14 qualified under State and Federal law as a collective marketing association.

15 20. Amendment and Incorporation by Reference. The Exhibits hereto and the collateral
16 documents referred to herein are and shall all be as the same may be amended from time to time. Any
17 amendments thereto or hereto which are approved by the Board shall, as a condition of further
18 membership of any Member in the Sector be deemed without any requirement of acceptance, consent
19 or execution by any such Member to have been adopted, ratified and confirmed by such Member.

EXHIBIT A: HARVESTING RULES FOR FY 2017 and FY 2018

The Members and the Participating Vessels of ~~WIX~~ Northeast Fishery Sector, Inc. agree to be legally bound to follow the Harvesting Rules for the Fishing Year 2017 (May 1, 2017 to April 30, 2018) & Fishing Year 2018 (May 1, 2018 to April 30, 2019) as described herein, in accordance with all provisions of the Sectors Operations Plans and Agreement (herein "Agreement"), notwithstanding those rules and regulations applicable to the common pool Multispecies vessels. The Members and the Participating Vessels will not harvest Sector ACE or engage in other fishing activity for the Fishing Year 2016 . The Sector ACE will only be utilized through Inter-Sector ACE transfers primarily to NEFS II and NEFS III.

1. ANNUAL CATCH ENTITLEMENT: The members agree that they will not collectively lease/transfer more than the Sector ACE, as adjusted by transfers, for any allocated groundfish stocks. The Annual Catch Entitlement, allocated by NMFS to NEFS ~~WIX~~ for FY 2017 & FY 2018 will be available in the Northeast Multispecies Fisheries Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlement Final Rule as published by NMFS.

2. QUOTA MANAGEMENT: Sector members will use a PC based software for collecting data, reporting transfers, and logbook information.

3. DAYS AT SEA: Each participating permit and participating vessel will be allocated Days-At-Sea (DAS) by the Regional Administrator. Sector Member permits will not be subject to the DAS reduction in Amendment 16 for common pool vessels. Members will be required to use a DAS, as specified in controlling FMPs, when conducting fishing operations that are not exempted from DAS usage, for example, when fishing under a monkfish DAS.

4. VESSEL LOGBOOKS (VTRs/e-VTR): All sector members will comply with applicable reporting requirements including submission of Vessel Trip Reports (VTRs). If Electronic Vessel Trip Reports (e-VTRs) are approved by the Regional Administrator, Sector Members will submit e-VTRs in the format required by NERO. Sector Members will execute all documents necessary to meet legal requirements for the purpose of facilitating e-VTR service.

5. WEEKLY/DAILY REPORTS: The Sector Manager, or his/her designated representative, will submit weekly or daily Sector Reports of all landings and discards by sector vessels, to NMFS. The Sector will submit required reports, using the format and procedures prescribed by NMFS. The reports required by NMFS are the *Sector Manager ACE Status Report, Sector Manager Detailed Report, and Sector Manager Trip Issue Report* as codified in §648.87(b)(1)(vi)(B). Specifically, the *Sector Manager Detailed Report* provides information down to the sub-trip level about each sector trip for a given week, regardless of completeness of the data. The information includes stock, gear, mesh categories, landing amounts, discards and total catch. The *Sector Manager Trip Issue Report* provides information about the sector trips for a given week that have enforcement or other issues. The *Trip Issue Report* allows the sector to briefly describe to NMFS any enforcement or reporting

1 compliance issues, violations of the Sectors operations plan and regulation, and general problems
2 with monitoring or sector operations during the reporting period. One *Trip Issue Report* is
3 submitted per reporting period. The *Sector Manager ACE Status Report* documents the ACE status
4 calculations, which allows NMFS to cross check totals as stipulated in Amendment 16. In the event
5 that the Sector triggers daily reporting for a specific allocated stock, the *Sector Manager Daily ACE*
6 *Status* will provide the mean for a sector manager to report their Sectors ACE status calculations on
7 a daily basis if the “trigger point” i.e. thresholds specified in 14.1 have been reached during the
8 current Fishing Year. These reports are cumulative in nature from the start of the fishing year until
9 the current reporting week and are adjusted retroactively as data becomes available or issues
10 documented in JIRA are resolved. JIRA is an issue tracking application implemented by NMFS, which
11 should be used to report all data quality issues to the appropriate people for research and
12 correction process.

13
14 **5.1 REPORTING THRESHOLDS THAT TRIGGER DAILY REPORTING:** The reporting frequency for
15 the sector manager’s ACE Status Report will be increased to daily when 90% of any of the
16 sector’s ACEs is reached. The Sector Manager, or a designated representative, must notify
17 NMFS immediately by email if the threshold that triggers daily reporting has been
18 reached. During the period when a sector has reached or exceeded 90% of any of its ACEs,
19 daily ACE Status and Detailed Reports must be submitted only on a day when a member
20 vessel lands, or when the sector engages in an ACE transfer of a stock that is exceeding the
21 90% threshold.

22
23 An alternative threshold for triggering daily reporting may be implemented during FY 2017
24 or FY 2018 if agreed upon by the sector and NMFS.

25
26 **5.2 ENFORCEMENT ISSUES:** The Members acknowledge that the Sector Manager must include
27 any enforcement or reporting compliance issues, including violations of Operations Plan
28 (excluding those sections identified as administrative provisions in this document as
29 identified in Exhibit D); violations of regulations, or general problems with monitoring or
30 sectors operations in their *Trip Issue Report* which is submitted to NMFS weekly.

31
32 **6. ANNUAL REPORT:** Within sixty (60) days of the end of the fishing year the Sector Manager will
33 submit an annual report to NMFS that summarizes: fishing activities of Members, including harvest
34 levels of all species by sector vessels (landings and discards by gear types); enforcement actions; and
35 any other relevant information required to evaluate the performance of the Sector. The actual date
36 of submission will be specified by NMFS, which has been previously based in part on completeness
37 of various data sets including but not limited to final reconciliation of ACE usage and availability of
38 final fishing year data generated by NMFS. In addition, the Annual Report will report the number of
39 sector vessels that fished for regulated groundfish and their permit numbers (when such disclosure
40 does not violate protection of confidentiality); number of vessels that fished for other species;

method used to estimate discards; landing port used by sector vessels while landing groundfish; and any other additional information requested by the Regional Administrator for inclusion in the Annual Report. The Sector will submit required reports using the format and procedures prescribed by NMFS.

7. DATA RECONCILIATION: The Sector Manager will verify that ACE transfers are reconciled with the Sectors that have participated with the sector for consistency. The Sector will receive the data electronically to expedite and automate data reconciliation. If a discrepancy is detected, the Sector Manager will notify the other sector(s) and NMFS of the discrepancy and will note discrepancies on the weekly report until resolved.

8. RESERVED FOR FUTURE USE:

9. DATA MANAGEMENT: The sector vessels will be transmitting catch data electronically via the email messaging component of their VMS units. All data necessary for sector ACE management, including all elements of VTR logbook and daily / weekly reporting requirements will be sent in compressed formats to minimize characters and maximize message capacity. Notwithstanding reporting requirements that cannot be altered by a sectors operations plan, the Sector's server will be capable of collecting, storing, converting and relay all data elements necessary to meet all reporting requirements in the formats required by the recipients

The Sector, acting through its Manager, will maintain database(s) of vessel trip reports (VTR), dealer, At-Sea (ASM), and NEFOP Observer reports. In addition, the Sector will maintain any other database it determines necessary for its operations. NMFS will maintain a NEFOP/ASM database and will provide the Sector with data from NEFOP and the ASM program.

10. PROOF OF SECTOR MEMBERSHIP: Upon approval of the Sector, each sector vessel will be issued a Letter of Authorization ("LOA"), which will specify the exemptions that have been approved for the Sector. Each Member agrees that its sector vessels must comply with all requirements stipulated in the LOA and all applicable federal regulations and laws not specifically exempted in the LOA.

Furthermore, Member agrees that its sector vessels shall maintain the LOA, and a copy of the Sector Agreement and Harvesting Rules on-board at all times while fishing on a 'sector-trip'.

11. SECTOR SPECIFIC EXEMPTIONS: As referenced in §4.0 of this Agreement all Sectors are granted the following **Universal Exemptions**.

11.1 All Groundfish DAS requirements, including days-at-sea (DAS) reductions, differential groundfish DAS counting, the 3/15 rule for gillnets, and 24-hour DAS counting. NE

multispecies (DAS) requirements to persecute other fisheries as specified in §§ 648.92 and 648.32, such as monkfish and skate continue to apply.

11.2 Trip limits on NE multispecies stocks, except Atlantic Halibut, windowpane flounder, ocean pout and Atlantic wolffish.

11.3 Seasonal Closed Areas (currently Georges Bank seasonal closure in May)

11.4 Additional mortality controls adopted by Amendment 16, including additional seasonal or year-round closures, gear requirements, DAS reductions, differential DAS counting, and/or restricted gear areas.

11.5 Vessels are exempt from GOM Cod Protection Closures IV (October) and V (March), but must comply with GOM Cod Protection Closures I (May), II (June), and III (November, December, and January).

11.6 The 6.5" minimum mesh size restriction for trawl gear specified at § 648.80(a)(4)(i) when using a haddock separator or Ruhle trawl within the GB Regulated Mesh Area (RMA), provided the vessel uses a codend with at least 6" minimum mesh size.

11.7 From all or a portion of ASM coverage if the vessel is fishing on a monkfish DAS with extra-large mesh gillnets (10-inch or greater mesh) exclusively in Southern New England.

In addition to the Universal Exemptions granted to all Sectors, as referenced above and in §4.0 of this Agreement, **Members agree to abide by the following obligations as specified and authorized in their LOA.**

11.8 DAS Leasing Program Length and Horsepower Restrictions

12. RESERVED FOR FUTURE USE:

13. SECTOR UNDERSTANDING AND ACKNOWLEDGMENTS: Sector Members understand and acknowledge that the following provisions have been interpreted by NMFS as applicable to all operating sectors. Sector Members acknowledge this applicability and where appropriate utilize these universal interpretations within their sector management and operations:

13.1 INTRA-SECTOR DAYS AT SEA (DAS) LEASING: Days at Sea may be leased intra-sector (between members) within the guidelines and procedures contained in the FMP and as amended by Amendment 16. The Sector would accept any future relief in the length and horsepower constraints of the program that may be authorized by the RA in the future.

13.2 INTER-SECTOR DAYS AT SEA (DAS) LEASING: Members who wish to lease Days-at-Sea (DAS) outside of the Sector are authorized under this provision to do so, only with Members of other Sectors whom are similarly exempt. Members acknowledge that such DAS leasing would not be exempted from existing length and horsepower constraints as currently contained in applicable regulations.

1 **13.3 PAPER VTR:** Members acknowledge that they are bound to all applicable reporting
2 requirements. Sector vessels shall continue using paper VTRs for FY 2017 & 2018, as
3 required by regulations. However, electronic vessel trip reporting (e-VTR) systems for
4 transmission and submission of required VTR reports have been authorized by the
5 Regional Administrator using a phased implementation process. The Sector and its
6 Members may utilize e-VTR in accordance with the phased implementation process.

7 **13.4 ADDITIONAL EXEMPTIONS:** Members note that NMFS is generating one Environmental
8 Assessment for all sectors seeking authorization for Fishing Year 2017 & 2018, and that
9 NMFS communication has stated that if an exemption is approved for one Sector, all other
10 authorized Sectors can be similarly approved for that specific exemption based on the
11 terms and conditions of the originally requesting sector. In light of this understanding,
12 NEFS ~~may~~ will request authorization for such exemptions it deems beneficial for its
13 operations, prior to the publication of the final authorizing rule.

14 **13.4.1** Furthermore, NMFS has indicated that Sectors will be afforded the opportunity
15 to request additional exemptions for the 2nd year of operations i.e. FY 2018 in
16 accordance with a supplemental schedule to be established by NMFS.

17 **14. MODIFICATION OF HARVESTING RULES:** Members acknowledge that from time to time, the Sector
18 Manager in collaboration with Board of Directors, and at times Membership, may adopt additional
19 requirements or restrictions on the internal reporting requirements or fishing activities of all
20 members in order to ensure effective utilization and management of the Sector's ACE. These
21 modifications may include, but are not limited to, additional notification of planned fishing activity
22 to the Manager, additional internal reporting requirements, gear requirements, and restrictions on
23 locations where fishing may occur during specific times of the year or with specific gear. When such
24 modifications are implemented, all Members will be notified in writing.
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Exhibit B:

Sector Membership Fishing Year 2016 (May 1, 2016 to April 30, 2017)

SECTOR MEMBERS: The following table identifies The NEFS ~~WIX~~ Members:

ACTIVE MEMBERS: NEFS ~~WIX~~ is a lease only sector, there are no active members.

Commented [EE4]: This section & Exhibit C will need to be completed once contracts are signed.

Exhibit C:

Sector Membership Fishing Year 2017 (May 1, 2017 to April 30, 2018)

Sector Member and Vessel Permits Amendment 16 Disclosure Requirements Fishing Year 2017 (May 1, 2017 to April 30, 2019)

Sector Members have enrolled all eligible Limited Access Multispecies Permits into a Sector, except for the following:

Additional Information on federal permits associated with Sector Vessels and Sector Members:

Additional Information on state permits associated with Sector Vessels and Sector Members:

The permits enrolled in NEFS ~~WIX~~ do not have any state permits associated with them.

Exhibit D:

Administrative Provisions Addendum:

Notwithstanding regulatory authority granted in other regulations the following provisions represent those sections of **NEFS** ~~WIX~~ Agreement and related Exhibits & Addendums that are Administrative in nature and therefore not subject to enforcement by the National Marine Fisheries Service, as required to be specified by sector regulations 50 CFR 648.87(b)(2)(x).

SECTOR OPERATIONS PLAN AND AGREEMENT

1. Sector Name.
2. Sector Eligibility and Membership.
4. Sector Allocation and Exemptions.
5. Distribution of Sector ACE.
6. Sector Manager and Registered Agent.
7. Consolidation Plan.
 - 7.1 Harvest Share Reserve
 - 7.2 Harvest Share Use.
 - 7.3 Harvest Share Transfer.
 - 7.4 Harvesting Rules and Fishing Plan. Section 7.4 is administrative except to the extent that it applies to Harvesting Rules Sections 1, 5, 6, 7, and 11 which are enforceable and therefore not considered administrative under this section.
 - 7.5 Re-direction Of Effort.
 - 7.6 Sector Vessel Interactions with Allocated Species in Non-Amendment 16 Fisheries.
 - 7.7 Consolidation and Redistribution of ACE:
8. Release of Catch Data.
9. Catch Monitoring and Reporting.

- 1 10. Breach and Remedies for Breach.
- 2 10.1 Liquidated Damages Schedule and Schedule Amendments. NA
- 3 10.2 Enforcement Committee.
- 4 10.3 Liquidated Damages Base Value and Multiplier Adoption. NA
- 5 10.4 Liquidated Damages Calculation. NA
- 6 10.5 Notice to Vessel Masters; Assumption of Liability. NA
- 7 10.6 Liquidated Damages Security. NA
- 8 10.7 Manager Action in Response to Apparent Breach.
- 9 10.8 Member Appeals. NA
- 10 10.9 Voluntary Compliance.
- 11 10.10 Liquidated Damages Collection and Related Expenses. NA
- 12 10.11 Consequential Damages for Gross Negligence or Willful Misconduct. NA
- 13 10.12 Distribution of Damages. NA
- 14 11. Joint Liability and Indemnification.
- 15 12. Membership Termination
- 16 14. Stop Fishing Order; Injunctive Relief. NA
- 17 15. Permit Transfer/Sale.
- 18 16. Release and Waiver of All Claims Against Sector Manager; Indemnification and Hold Harmless.
- 19 17. Sector Membership Fees.
- 20 18. Binding Arbitration.
- 21 19. Amendment and Incorporation by Reference.

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EXHIBIT C
HARVESTING RULES

- 2. QUOTA MANAGEMENT:
- 7. DATA RECONCILIATION:
- 8. RESERVED FOR FUTURE USE:
- 9. DATA MANAGEMENT:
- 12. RESERVED FOR FUTURE USE:

- EXHIBIT B
- EXHIBIT C
- EXHIBIT D
- EXHIBIT E
- EXHIBIT F

Exhibit E: EXPLANATORY ADDENDUM

Per request by NMFS this **explanatory text** is being provided to identify in one location Right of First Offer (“ROFO”) and Right of First Refusal (“ROFR”). ROFO and ROFR are two separate and distinct provisions that deal with harvest share transfers and permit sales, respectively; it is inaccurate to construe them as meaning the same thing. Nothing within this explanatory addendum should be considered as part of the Sector governing documents which the Members have agreed to follow, all questions regarding these provisions should be directed to their respective sections in the governing documents:

§ 7.3 Harvest Share Transfers: Right of First Offer i.e. ROFO will be used for intra and inter sector harvest share transfers.

§ 15 Permit Transfer/Sale: Right of First Refusal i.e. ROFR will be used for permit sales or transfers.

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Exhibit F: INFORMATIONAL ADDENDUM

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Per request by NMFS the table below identifies specific points of contacts and their responsibilities, which the Agency may utilize to determine

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appropriate communication stream for inquiries.

Sector Communications Contacts					Mailing Address			
Name	Title	Responsibility	Email	Phone	Street 1	City	State	Zip
Virginia Martins	Sector President	Day-to-Day Sector Operations	virgie9862@gmail.com					
Elizabeth Etrie/Vito Giacalone	Program Director, Northeast Sector Service Network	Data Management i.e. questions regarding software systems utilized by Sector for Weekly Report Computation	Libby.Etrie@gmail.com	(978) 491-1848	85 Eastern Ave. Suite 104	Gloucester	MA	01930
Jackie Odell/Vito Giacalone	Executive Director, Northeast Seafood Coalition	Policy	jackie_odell@yahoo.com , vitofish1@gmail.com	(978) 283-9992	4 Parker Street, Flr 2	Gloucester	MA	01930
Captain OR Owner of F/V	Owner of F/V	Sector Specific Research; Fishing Vessel specific research is vessel specific, Reporting i.e. vessel reporting requirements contact vessel						

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- 1 **EXHIBIT G: FY 2018 (MAY 1, 2018-APRIL 30, 2019) Operations Plan Updates**
- 2 [To be completed in accordance with NMFS schedule for year two, FY 2018 (May 1, 2018 – April
- 3 30, 2019) of the Sectors Bi-Annual Operations Plan and Agreement