

**PORTLAND FISH EXCHANGE
RULES & REGULATIONS
NOVEMBER 2024**

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1. **ADMINISTRATION OF THE EXCHANGE**

1.1. **Purpose**

The Portland Fish Exchange provides a major, regional display-type auction facility on the Portland Fish Pier in Portland, Maine, at which any seller of seafood, able and willing to comply with these Rules, may participate as a seller, and at which seat holders, complying with these Rules may buy. It also strives to support, enhance and promote the region’s seafood industry.

1.2. **Hours of Operation**

The facilities of the Exchange are open on such days of the week and at such hours as may be established by the Exchange Manager and approved by the Board of Directors, from time to time.

1.3. **Personnel**

The Exchange will hire and retain such permanent and part-time employees as may be necessary or appropriate. Conflicts with these shall be as follows:

1.3.1. Exchange Manager

An Exchange Manager shall be appointed by the Board of Directors. He/She shall be a disinterested person, or shall not own nor be in the employ of any seat holder of the Exchange, nor any entity owning a vessel which uses the Exchange. He/She shall be knowledgeable as to business matters generally, and the fishing industry in particular. He/She shall also be responsible for the general management of the operations of the Exchange, the enforcement of these Rules (except to the extent otherwise expressly provided herein), the collection and disbursement of funds, the preparation of an annual budget for the Exchange, and such other duties and obligations as the Board of Directors may determine.

1.3.2. Operations Manager; Office Manager

The Exchange shall employ one or more Operations Managers and an Office Manager. The Operations Managers shall be responsible for assisting the Exchange Manager in the performance of his or her duties. The Office Manager shall be responsible for supervising and managing office employees and related office matters. During all regular hours of operation, there shall be present on the Exchange premises, at least one assigned Manager on Duty.

1.3.3. Assistants, Clerks

The Exchange shall employ clerks and assistants as may be necessary or appropriate.

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1.3.4. Other Employees

The Exchange shall further employ such part-time or full-time employees, including cullers and floor personnel, as may be necessary or appropriate.

1.3.5. Auction Management

The Exchange shall employ a minimum of two individuals trained to run and manage the electronic auction system.

1.3.6. Relationships

No employees of the Exchange shall be related by blood or marriage to the Exchange Manager. No employee shall own or be in the employ of any seat holder of the Exchange or any entity owning a vessel using the exchange without the express permission of the General Manager.

2. SEAT HOLDERS – ADMISSION OF BUYERS AND PRIVILEGES

2.1. Seat Holders

All references to a “seat holder” in these Rules shall refer to a person or entity which has been duly admitted to the Exchange, in order to have buying privileges thereon, and is in good standing with the Exchange. Such persons may include any and all sellers of seafood wishing to have the right to bid on and buy either their own or others’ seafood. Seat holder memberships and privileges are non-transferable.

2.2. Privileges

The privileges of a seat holder include the right to admission to the auction room and other Exchange facilities, the ability to bid at Exchange auctions, and, for seat holders who have properly posted a letter of credit the right to receive credit from the Exchange, all in accordance with these Rules.

2.3. Compliance

Seat holders are required to comply fully with these rules at all times. Each seat holder will be required to sign 2 copies of the Rules, acknowledging his knowledge of them, and shall file this acknowledgement with General Manager.

2.4. Purpose

Seats on the Exchange are intended for the accommodation of all fresh seafood dealers and wholesale and retail purchasers, or good credit and business standing who have either posted letters of credit as provided in Section 7.1 hereof or are prepared to provide cash-equivalent deposits and who wish to purchase seafood, discharged by vessels or trucks at the Portland Fish Exchange, in accordance with these Rules.

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2.5. Application Procedure

In order to become a seat holder on the Exchange, a person or entity shall fill out and execute an application for an Exchange Seat and shall provide such additional information to the Exchange Manager or the Board of Directors as either may require. The Board of Directors shall consider the application and vote on the admission of such applicant at a properly convened Board of Directors meeting.

Each application for a regular seat or a shrimp seat as defined under Rule 2.6.1 shall be accompanied by a \$250.00 application fee. Said application fee will be retained by the Exchange if the applicant is accepted as a seat holder by the Exchange, and returned to the applicant if the applicant is not accepted as a seat holder.

2.6. Annual Fee

Eliminated by Board of Directors action.

2.6.1. Shrimp Seat

In addition to the regular seats on the Exchange, as described herein above, the Exchange will issue a shrimp seat permitting holders thereof to purchase only shrimp at any auction to be held nightly or at such other times as may be determined by the Exchange Manager and approved by the Board of Directors. Upon approval of the application by the Exchange, each seat holder shall incur an annually recurring seat holder fee of \$250.00 to cover the period from such approval for the next consecutive twelve (12) month period. In each case, \$250.00 of such fee shall be credited to payment of standard or special product handling fees incurred by the seat holder during the period covered by such fee. Except as otherwise provided in Rule 2.6.1, a holder of any shrimp seat shall have all rights and obligations of a seat holder hereunder and any and all references in these Rules to as “seat holder” shall be deemed to refer as well to a holder of a shrimp seat.” The holder of a shrimp seat may, at its option, apply for a regular seat on the Exchange. Regular seat holders as well may bid at the shrimp auction.

2.7. Representatives

Seat holders may authorize individuals, or representatives, to incur charges on the seat holder’s account, or assign seafood or other items for carriage. Each representative must be identified to the Exchange. Seat holders shall give the Exchange prior notice of any change in representatives. The Exchange retains at all times the right to deny access to its premises or to a seat holder’s account to any person who is unable to provide satisfactory proof that he or she is an authorized representative.

Notwithstanding any of the foregoing it is not the responsibility of the Exchange to police the representatives of either buyers or sellers on behalf of their principals. Any

240 action taken by a person purporting to act on behalf of any buyer or seller shall,
241 insofar as the rights of the Exchange are concerned, be deemed to be the act of such
242 buyer or seller. The Exchange retains at all times the right to deny access to its
243 premises to any person whose presence, in the Exchange's judgment, is detrimental to
244 the operation of the Exchange.

245 246 **2.8. Suspension**

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248 Seat holder privileges may be suspended due to violation of these Rules by the seat
249 holder or its representative, failure to pay the Exchange in accordance with these
250 Rules, or for other good cause. Suspension may be implemented by action of the
251 Board of Directors, and immediate suspension on an interim basis may be
252 implemented by the Exchange Manager or the acting Board President. Interim
253 suspensions shall terminate ten (10) days after the commencement thereof, unless the
254 Board of Directors of the Exchange orders the suspension of privileges prior to such
255 time.

256 257 **3. ADMISSION OF SELLERS AND SELLER REPRESENTATIVES**

258 259 **3.1. Sellers**

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261 Any individual, vessel, or business whether domestic or foreign – may place seafood
262 which meets the requirements of these Rules for sale.

263 264 **3.2. Agent Authorization form**

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266 Prior to (or at the time of) the seller's first auction an agent authorization form must
267 be completed by the seller and provided to the Exchange. The information required is:
268 Vessel Name, Owner's Name, address, telephone number, country of origin,
269 designated seller's representative, and any other information which the Exchange
270 may require. The agent authorization form must be accepted by the Exchange before
271 payment for the fish can occur. Payment will be made as requested on the form.
272 Deviation from the form will require the Exchange Manager's approval.

273 274 **3.3. Sellers As Their Own Representative**

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276 The Exchange encourages vessel owners or captains to represent their own seafood.

277 278 **3.4. Seller's Representatives**

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280 Persons or entities wishing to operate at the Exchange in the role of Seller's
281 Representative must apply for the privilege. A fee, as determined by the Board of
282 Directors, will be charged for the privilege. A Seller's Representative will be
283 interpreted as an entity, not one individual person. Each Seller's Representative must
284 be approved by the Board of Directors. The General Manager may tentatively
285 approve a Seller's Representative pending a Board meeting. Seller's Representatives
286 assume the function of seller in these Rules. Anyone representing a seller who is

287 neither the seller nor in the direct employ of the seller must be a registered seller's
288 representative.

289 **3.5. Independent Agents**

291 While Seller's Representatives must apply to the Exchange for the privilege of
292 representative sellers at the Exchange, Seller's Representatives are representatives for
293 the individual seller. The Exchange makes no warranty as to the ability, business
294 practices, financial stability, or, in any way endorses any Seller's Representative.
295

296 **4. PRE-AUCTION PROCEDURES**

297 **4.1. Types of Fish Accepted**

298 The Exchange will be open to all fresh seafood species as the Board of Directors may
299 deem acceptable. All seafood delivered to the Exchange by vessel or truck must
300 comply with all applicable federal, state and local laws and regulations, including,
301 without limitation, all laws and regulations relating to the size or species of seafood.
302

303 **4.2. Check in Trucks and Vessels**

304 Upon arrival at the Exchange, the captain of a vessel, a truck driver, or his designated
305 representative, shall check in at the office located in the auction building ("Office")
306 where he shall provide the following information: The estimated amount, in pounds,
307 of each species of seafood offered for sale through the Exchange, and such other
308 information as the Board of Directors or Exchange Manager shall require.
309

310 Each new vessel and any fish under any name other than that of a vessel with a valid
311 agent authorization form must specify the Port of Origin, the gear type, and the
312 general length of the trip.
313

314 It is the responsibility of each vessel's captain or truck driver, or any designated
315 representative, to assure that the information provided is complete and accurate. The
316 Exchange assumes no responsibility for incomplete or inaccurate information.
317

318 The Exchange will complete a "receive slip" for all fish arriving by truck,
319 immediately after each individual vessel's fish are removed from the truck. The
320 Exchange Manager may provide for alternate means of check-in of trucks and
321 vessels.
322

323 **4.3. Execution of Rules**

324 Fish will not be accepted by the Exchange on behalf of any seller who has not either
325 himself/herself or through an authorized representative agreed to abide by these Rules
326 by execution of an agent authorization form.
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4.4. **Seafood by Species**

Preference will be given to seafood delivered to the Exchange by vessel or truck, which is separated by species.

4.5. **Hailing by Vessels**

All vessels should hail the Exchange at least 24 hours before arriving at the Exchanges' finger piers. No hail will be accepted more than four days in advance. When hailing, such vessels must state their estimated time of arrival and the estimated amount in pounds of seafood that the vessel will unload and the amount of such seafood, if any, boxed on board and a breakdown of species, if possible. All information provided by a vessel when hailing will be made available to the public. Hails will be accepted in the order received. Unloading times and location will be determined by management.

4.6. **Culling**

Seafood will be offered on auction in accordance with a schedule of species and sizes to be established by the Board of Directors. This cull schedule will be made available to all Exchange customers and conspicuously displayed at the culling stations.

4.7. **Prohibited Fish**

Exchange employees will immediately return to the vessel or truck delivering seafood, all seafood that appears not to comply with federal, state or local laws and regulation which prohibit the taking, possession, or sale of certain species of seafood or of seafood outside specified size limitations, unless otherwise instructed by federal, state or local authorities. The Exchange Manager or on-duty operation manager may reject seafood that he deems contaminated or unfit for human consumption.

4.8. **Containers**

Seafood, other than pre-culled seafood, will be sorted in containers by Exchange employees. Each container will contain no less than a standard weight of one species and one cull of seafood (or "item"). A partial container labeled as such will be made up for each amount of the same item less than the standard weight. Alternately, any item may be chosen by the Board of Directors to utilize exact weights. Each container will be marked with its individual weight, less than the specified tare.

4.9. **Tare**

Each container of each item will contain the standard net weight of the item. If standard weights are not used, each container will be marked with the net weight of the container's contents. The Board of Directors will establish a tare schedule to reasonably ensure that the net weight of the container contents equals its listed weight.

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4.10. Lot Sizes

Totes containing seafood will be divided into lots by Exchange employees. The full lot will be no more than 1,200 lbs. Lot sizes smaller than 1,200 lbs may be specified for any species and cull by the General Manager. Each lot, whether a full lot, a partial lot, or a lot weighed using exact weights, will be tagged specifying its total net weight.

4.11. Labeling Lots

An Exchange employee will prepare and attach to each lot a label bearing the name of the vessel from which the seafood was obtained (or other name supplied) and the species and cull of the seafood.

4.12. Sampling of Pre-Culled/Pre-Weighed Seafood

When pre-culled and pre-weighed seafood is received from a seller, approximately ten (10) percent of the seafood will be selected at random by Exchange employees. The listed weight and the cull will be checked against Exchange weight and cull standards. If the Exchange deems the sample does not comply with Exchange standards, none of the pre-culled seafood may be offered for sale unless it is culled and weighed by the Exchange.

If any of the sampled seafood appears not to comply with federal, state, or local laws and regulations which prohibit the taking, possession, or sale of certain species of seafood, the seller will not be permitted to unload any other seafood of that species unless it is culled and weighed by the Exchange.

4.13. No Warranties by Exchange

The Exchange makes no warranties, express or implied, that any sample of seafood, whether or not labeled as such, is representative, as to weight, cull or quality, of the lot of which it is or purports to be, a sample. Any oral or written representations to the contrary by any Exchange representative shall be without effect.

4.14. Hailing by Trucks

All trucks delivering seafood for sale through the Portland Fish Exchange must hail the Exchange at least 12 (twelve) hours before arriving at the Exchange. On hailing, a truck must state its estimated time of arrival at the Exchange and reserve a time during which it will be permitted to use an unloading bay specified by the Exchange. When hailing, a truck must also state the amount, in pounds, of seafood that it will unload and the port of origin of the seafood and a breakdown of species, if possible. All information provided by a truck when hailing will be made available to the public. Trucks failing to comply with this hailing requirement will be permitted to unload their seafood at the Exchange only as time and space permit.

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4.15. Truck Unloading

There will be three truck bays for unloading seafood. Each truck must deliver its seafood to the tailgate of the truck for receipt by Exchange employees.

4.16. Display of Seafood

Lots of seafood will be transported to the auction floor and arranged in a grid matrix system by seller and cull. At all times, movement of seafood onto or off the auction floor shall be a matter within the discretion of the Exchange Manager or on duty Manager.

4.17. Auction Information

There will be a computer printout (Auction Detail) that will be distributed prior to an auction containing pertinent information for that auction. The contents of this information will be determined by Board of Directors.

4.18. Inspection of Seafood

Inspection of seafood will be permitted at the first buyer's request, not to exceed three hours preceding each auction. Buyers wishing to inspect stacked totes may request that the totes be un-stacked, if time permits. After such inspection, the totes will be re-stacked by Exchange employees. Only Exchange employees may move a tote from its designated lot.

5. AUCTION RULES

5.1. Time of Auction

Seafood auctions will be held on such days of the week and at such times as may be determined by the Board of Directors. Notice of them will be posted on either the Exchange premises or otherwise announced by the Exchange. Special auctions may be held at the discretion of the General Manager. As much advance notice as possible will be given for the buyers to prepare for these auctions.

5.2. Credit Availability

The "Open to Buy" status of all buyers shall be periodically computed during the auction. If the credit availability of such buyer is insufficient to permit the buyer to purchase even the Minimum Purchase (after taking into account all ancillary amounts payable by the buyer as described at Section 5.15 hereof), the buyer may be barred from bidding; and, if allowed, the sale may be annulled by the auctioneer who may reopen bidding on the same lot. Where the credit availability of the buyer is sufficient to purchase at least the Minimum Purchase, such buyer shall promptly determine the amount of seafood to be bought on this bid, which may not be in excess of that bidder's remaining credit availability for that day.

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5.3. Start of Auction

Unless delayed by consent of all bidders or by the Exchange Manager, the auction shall begin promptly at the designated time. The Exchange shall name any new buyers. Rules for the conduct of the auction are:

5.3.1. All products are sold without any representations or warranties by the Exchange

5.3.2. The highest bidders will be acknowledged by the Exchange

5.3.3. The seller shall have the right to reject the final bid (that is, that the auction is “with reserve”), and that the Exchange itself reserves the right to reject any bid

5.3.4. The Exchange will not accept bid or other price instructions in advance of an item being offered for sale from buyers or sellers. The Exchange will not execute bid or other price instructions from buyers or sellers.

5.3.5. The Rules and Regulations of the Portland Fish Exchange and, to the extent not inconsistent with said Rule and Regulations, the Maine Uniform Commercial Code, II M.R.S.A § 2-2328, apply to the auction.

5.3.6. Tax, sales, use tax and customs charges may apply

5.3.7. Such other terms as may be prescribed by the Exchange Manager

5.4. Amounts Subject to Bid

Seafood will be offered for sale in lots. All lots of each species or cull will be offered at one time. Upon the close of bidding, the highest bidder will be deemed to have purchased at least one lot of that cull, and in addition, may have an option to purchase, at the same accepted price, additional lots up to an amount as determined by the Board of Directors.

5.5. Bidding

The Exchange will announce the highest bid and may advance the bidding by any increment. No bid may be retracted by the bidder for any reason. The Exchange reserves the right to reject any bid at its discretion. Upon receiving the highest bid, the Exchange shall signal the close of bidding. Bidders are strictly prohibited from entering into any agreements intending to artificially depress bidding prices. Any seat holder or persons determined by the Exchange to be engaging in such practices may be immediately compelled to leave the Exchange premises, may be immediately barred from participating in auctions, may have their seat holder privileges suspended by the Exchange on an interim basis, and may be subject to indefinite suspension by action of the Board of Directors.

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5.6. Close of Bidding: Designation of Lots: Refusal

Upon the close of bidding, the high bidder shall promptly, as determined by the Exchange, so as not to delay the auction, announce which of the lots under bid, said bidder wishes to purchase. Sellers or their representatives shall promptly decide whether to refuse the bid price with respect to any of their lots under bid. In the event of a refusal by the sellers of a bid, or a lot which receives no bid, the Exchange may solicit follow-up bidding in a manner as determined by the Board of Directors. Refused or no bid fish remains the property of the seller and may be removed by the seller or left for the next auction.

5.7. Further Sales

After completion of the foregoing matters, the Exchange shall then offer for bidding the balance (if any) of that item. When the entire amount of any one item has been offered, the Exchange shall proceed to the next item and shall repeat the foregoing process.

5.8. Sale is Final

Neither the buyer nor seller may, insofar as the Exchange and its entitlement to payment is concerned, annul the sale or reject or revoke acceptance for any reason whatsoever, (The Exchange, however, may annul a sale because of insufficient credit of the buyer or for other good cause.) The opportunity of the buyer to inspect the seafood prior to the auction, as described at Section 4.19 hereof shall, insofar as the Exchange is concerned, conclusively be deemed adequate opportunity to determine any defects in the product. Thus, under no circumstances, may the buyer refuse to take any and all steps necessary to consummate the sale; and if purchasing on the Exchange's credit, to repay the Exchange in accordance with Section 7.3 hereof. However, notwithstanding the foregoing, nothing contained herein shall be deemed a waiver by any buyer or seller of any claims or causes of action that he or she may have against the other.

5.9. Payment of Seller

The clerk shall determine the amount of payment due to such seller, deducting from the sale price the seller's charge as established by the Board of Directors. Any unpaid and applicable tote or boxing charges, storage fees, and any other applicable fees and charges, due and outstanding to the Exchange, will be deducted from the seller's next settlement or billed, if such arrangements have been made with the Exchange. The Exchange shall issue, on the next following business weekday, a check to the seller for the appropriate amount.

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5.10. Removal

No seafood shall be physically removed from the facility before the end of that day's entire auction, unless such early removal is deemed appropriate at the discretion of the Exchange Manager.

5.11. Shipping

After completion of that day's entire auction (or when deemed appropriate by the Exchange), all pallets containing sold seafood will be moved by Exchange personnel to the end of the truck loading dock. Each buyer is responsible for ensuring that his or her seafood is placed on the proper truck, and each assumes all risks of loss or of damage to the seafood. Any sold seafood remaining on the dock more than a reasonable time after the completion of the auction shall be placed in Exchange storage.

5.12. Removal of Lobsters

A buyer of lobsters shall have up to four (4) hours after the beginning of the auction, and prior to removal of the purchase from the auction, to properly inspect and accept the purchase. Any improper cull of the product that is found within the four (4) hour time period provided herein, shall remain the responsibility of the seller.

5.13. Title

The Exchange shall not be deemed to have title to any seafood. The Exchange shall not be required to obtain any insurance for seafood or other property of any person on its premises. Upon acceptance by the seller of the bid price, title to the chosen lots shall pass to the buyer.

5.14. Buyers Billing

The total dollar transaction amount shown on the buyer's invoice for any one day shall include the following:

5.14.1. Pounds of product purchased at bid price

5.14.2. Per pound fees

5.14.3. Any minimum fees applicable

5.14.4. Any additional charges (including, but not limited to, those set forth below) may be billed as individual invoices either daily or weekly

5.14.4.1. Amounts owed for outstanding totes and pallets that have not been returned within a time set by the Board of Directors

622 5.14.4.2. Any fees assessed during the normal course of business at the
623 Exchange

624
625 5.14.4.3. Any services or products requested after purchase and prior to
626 shipping at a fee equal to the current posted price
627

628 5.14.4.4. An appropriate amount for sales or use tax is applicable, except for
629 exempt buyers.
630

631 **5.15. Disclaimer of Warranties**
632

633 The Exchange makes no warranties, express or implied, as to the title, quality,
634 legality, merchantability or fitness for purpose of any seafood sold on its premises nor
635 does it warrant that any sample of seafood, whether or not designated as such, is
636 representative as to weight, cull or quality of the lot of which it is or purports to be a
637 sample. Any oral or written representations to the contrary by any Exchange
638 representative shall be without effect. This section 4.13 shall not negate nor affect any
639 warranty, express or implied, made or deemed made under law by any seller.
640

641 **5.16. Governing Authority**
642

643 The auction shall be governed by the applicable Rule and Regulations of the PFE.
644 These Rules shall be construed in accordance with II M.R.S.A. § 2-328 of Maine's
645 Uniform Code and the general laws of the State of Maine.
646

647 **5.17. Posting**
648

649 Article IV of the Rules, or such abbreviated version thereof as may be approved by
650 the Board of Directors, shall be posted in the auction room or otherwise made freely
651 available to persons using the Exchange. Copies of the Rules shall at all times be
652 available to buyers and sellers at the office.
653

654 **5.18. Merchants**
655

656 Each seat holder and seller participating in sales through the Exchange acknowledges
657 and agrees that he/she is a person who deals in seafood or otherwise holds
658 himself/herself out as having knowledge or skill relating to the seafood business or to
659 the sale or purchase of seafood.
660

661 **5.19. Buyer Responsibility**
662

663 Each buyer is responsible for his or her buyer's invoice immediately following the
664 auction. Buyers are also responsible for confirming lot numbers and for monitoring
665 and staying within their own "open to buy" balance. Failure to do so will result in
666 actions as described in 2.8 of these rules.
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670 **6. DEFERRED DELIVERY AUCTION AGREEMENTS**

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672

6.1. Introduction

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674

This is a procedure intending to assist both buyers and sellers to enter into purchase and sale agreements prior to harvest and delivery of the product. It is available to all auction buyers and sellers. It may not be used for either speculation or trading of contracts.

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Section 6 describes this procedure in which any seller may offer specifically allowed species for future delivery at an auction to all auction buyers. A Deferred Delivery Auction Agreement is required which will bind a buyer and seller to specific written terms in the form approved by the PFE.

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6.2. Seller Requirements

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6.2.1. Call in Daily

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The seller is required to call either the buyer or the Portland Fish Exchange daily in order to confirm whether it will be fishing and also to indicate the estimated time of unloading. In the event that weather, illness, mechanical or net problems prohibit fishing, the operations manager shall be advised as soon as possible.

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6.2.2. Obey All Auction Rules

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The seller agrees to obey all auction rules, including those relating to Deferred Delivery Auction Sales Agreements. The provisions of the Deferred Delivery Auction section shall supersede any other section which may be a contradictory. The seller will be provided with a landing receipt and also with a settlement for every landing. A check (With the seller's fee deducted) will be available to the seller at the end of the business week.

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6.3. Buyer Requirements

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6.3.1. Balance Requirements

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The buyer shall maintain an adequate balance by means of an irrevocable letter of credit or other certified funds to cover 50% of undelivered current contracts.

707

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6.3.2. Obey All Auction Rules:

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711

This is a procedure intending to assist both buyers and sellers to enter into purchase and sale agreements prior to harvest and delivery of the product. It is available to all auction buyers and sellers. It may not be used for either speculation or trading of contracts.

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Section IV describes this procedure in which any seller may offer specifically allowed species for future delivery at an auction to all auction buyers. A Deferred

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718 Delivery Auction Agreement is required which will bind a buyer and seller to
719 specific written terms in the form approved by the PFE.

720

721 6.3.3. Special Conditions Prior To The Offer

722

723 The buyer is required to present any special conditions that they may require (i.e.
724 specific days fished, dock times, etc.) one day prior to the Deferred Delivery
725 Auction (usually Tuesday).

726

727 6.4. **Offers for Contracts**

728

729 6.4.1. Contract Period

730

731 The agreement will begin and end on the dates set forth in the contract. Unless a
732 request for an extension of time has been received in writing prior to a new
733 contract, all future obligations will expire at the end of the specified term.

734

735 6.4.2. Species Available

736

737 The Board shall determine which species of fish are eligible to be the subject of a
738 Deferred Delivery Auction Agreement. Whiting, Shrimp and Dogfish are
739 currently eligible for this auction mechanism. Each species may have different
740 size characteristics, as the market dictates. Any harvester may offer each
741 specifically defined eligible species for bid on the Deferred Delivery Auction.

742

743 6.4.3. Maximum Duration of Contract

744

745 The maximum period that a contract may be in force is two weeks. Contracts shall
746 end on either Thursday or on the day that a new Deferred Delivery Auction
747 should begin, if other than on a Friday.

748

749 6.4.4. Completion of Previous Contract

750

751 Before a seller who is party to a DDSC may offer a new contract, any existing
752 contract must be either satisfactorily completed or extended by mutual agreements
753 of the parties. All contracts will be deemed to have been satisfactorily completed,
754 unless either party should advise the auction manager in writing that a default
755 exists or that the contract has been extended by agreement.

756

757 6.5. **Post Auction Activity**

758

759 6.5.1. Signing Contracts

760

761 Immediately following the Deferred Delivery Auction, the buyer and the seller
762 will sign a Deferred Delivery Auction Sales Contract, and provide an executed
763 copy to the PFE contract administrator.

764

765

766 6.5.2. Ownership/Payment

767

768 Ownership of the product will be transferred from the harvester to the buyer at the
769 time when the product is sold by the auctioneer. Payment for the seller will be on
770 Friday for the entire week's contract.

771

772 6.6. **Defaults**

773

774 6.6.1. Who Determines

775

776 Either party to a DDASC may advise the General Manager in writing of a default.
777 The General Manager will contact both parties to the contract and will make an
778 initial determination, as set forth in the PFE Rules, Section 8, Resolution of
779 Disputes. No notice of default will be considered which is not filed within three
780 (3) days of the expiration of the contract, including Saturday and Sundays, but not
781 holidays.

782

783 6.6.2. Grounds for Default

784

785 Any violation of the terms of the contract may constitute a breach of contract. The
786 lack of good faith effort on the part of either the buyer or the seller to honor the
787 terms of the contract may also constitute a default. Weather, net, or mechanical
788 problems, or the illness of the captain, which prevent either fishing or processing,
789 may constitute extenuating circumstances, justifying a full or partial breach of the
790 agreement.

791

792 6.6.3. Financial Consequences

793

794 In the event the General Manager, after a hearing, should determine that a breach
795 has occurred, he will determine the relief to be afforded. The damages shall be the
796 price differential between the contract price and the cost of replacement product
797 based upon prevailing Portland prices. If a buyer should default, then the seller
798 may sell the product on the spot market. The damages will be the difference
799 between the contract and the sales price. For example, if 1,000 pounds are
800 contracted @ \$.90 and sold at \$.80, then \$.10 differential X 1000 pounds will be
801 paid to the seller.

802

803 6.6.4. Extension of Contracts

804

805 Buyers and sellers may mutually agree to extend the terms of a contract. The price
806 of the original contract and the maximum estimation of catch in paragraph 4 will
807 become the basis for the extension.

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809 6.6.5. Resolution of Disputes

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811 Disputes involving DDASC will be resolved in accordance with the provisions of
812 these by-laws.

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7. PROVISIONAL CREDIT TO AND REPAYMENT BY BUYER

7.1. Letter of Credit – Cash Deposit Requirement

As a prerequisite to becoming a seat holder able to bid at Exchange auctions and as a requirement of maintaining such status, every buyer (including sellers wishing to exercise bidding rights) shall make a cash deposit that is no less than \$15,000 to be held in a non-interest bearing account by the Exchange, and is exercisable upon presentation to the issuer of one or more sight drafts, accompanied by a letter from the Exchange or its designee, stating that the seat holder is in default under Article 5 of these Rules, or, obtain and furnish to the Exchange, from a reputable financial institution acceptable to the Exchange, an irrevocable standby letter of credit, naming as beneficiary the “Portland Fish Exchange” or a designee of the Exchange. Such letter of credit shall have terms acceptable to the Exchange and its lending bank; and

7.1.1. Shall be in an amount no less than \$15,000.00;

7.1.2. Shall recite that it is exercisable upon presentation to the issuer of one or more sight drafts, accompanied by a letter from the Exchange or its designee, stating that the seat holder is in default under Article 5 of these Rules;

7.1.3. Shall clearly indicate that it is irrevocable and that it may not be amended or modified without the written consent of the Exchange or its designee; and

7.1.4. Shall be assignable by the Exchange or its designee.

7.2. Provisional Credit

Credit may be extended by the Exchange for the account of any seat holder not in default under Article 5 of these Rules or in violation of any other provision of these Rules. A seat holder’s credit will consist of the principal amount of the seat holder’s properly posted letter of credit plus any cash deposits. Credit available to a seat holder shall be reduced by:

7.2.1. Any and all amounts paid or payable by the Exchange to any seller of fish and taxing and customs authorities for or on the account of such seat holder;

7.2.2. Purchase charges equal to an amount determined from time to time by the Board of Directors based in part on the pounds of fish purchased by such seat holder;

7.2.3. Box use fees incurred by the seat holder; and

7.2.4. Such other amounts and obligations as may have been incurred by such seat holder to the Exchange;

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In each case, to the extent the seat holder has not paid such amounts to the Exchange, for purposes of this Section 5.2, an amount shall be deemed not paid to the Exchange until it has been paid to the Exchange in cash or by wire transfer or bank or certified check, or by check on account of which funds have actually been finally credited (without condition or reservation) to the Exchange’s account, as determined in accordance with the common banking convention utilized by the Exchange’s lending bank. Such banking conventions are those proposed by the Exchange’s lending bank and accepted by the Exchange’s Board of Directors and shall be binding upon seat holders who will be advised of them. The General Manager, at his/her discretion, may allow a seat holder in good standing with a demonstrated two years anniversary of purchasing, to provide a business check up to \$10,000 allowable for same day buying privileges.

7.3. Repayment of Exchange: Defaults

Each seat holder agrees to repay to the Exchange all amounts charged to his or her account in a timely manner, in order to ensure that collected funds (as defined in Rule 7.2) are available to the Exchange at a time set by the Board of Directors from the date of invoice. If collected funds are not received within said period, the Exchange (i) may assess either a fee or late charge in such amount as the Board of Directors may from time to time prescribe; (ii) may, at its discretion, declare all amounts outstanding immediately due and owing; and (iii) may declare default hereunder. In addition, the following will constitute a default:

7.3.1. The Exchange receives notice of intent not to renew the seat holder’s letter of credit, or such letter of credit will expire within sixty (60) days, or the letter of credit or the issuing financial institution becomes subject to an attachment or trustee process on account of the seat holder;

7.3.2. The seat holder, if an individual, dies or if an entity, dissolves, winds-up, liquidates or terminates its existence;

7.3.3. The Board of Directors determines that a default may be declared because of one or more violations of these Rules or because the Exchange reasonably deems itself insecure or otherwise.

7.4. Remedies

Upon the occurrence of any default, the Exchange may: (i) declare all obligations immediately due and payable, (ii) either itself or its lending bank may draw or cause to be drawn upon the cash deposit or the letter of credit for any or all amounts owed by the defaulting seat holder to the Exchange; (iii) deny such seat holder access to the Exchange facilities; “...(iv) suspend all seat holder privileges, subject to the limitations contained in Rule 2.8; and (v) pursue any and all of its right and remedies by any means permitted by law. Each seat holder agrees to pay to the Exchange all costs of collection arising out of any default, including reasonable attorney’s fees, and all other costs and expenses occasioned thereby. The Exchange may, in its

910 discretion, compel any seat holder in default to enter into arbitration as provided at
911 Section 8.3 hereof.

912

913 **7.5. Other Documents**

914

915 Each seat holder covenants to execute and deliver to the Exchange or its designee
916 upon demand such other and further documents and instruments as may from time to
917 time be requested by the Exchange in order to accomplish the purposes of this
918 Section 7.

919

920 **8. RESOLUTION OF DISPUTES; SANCTIONS**

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922 **8.1. Initial Resolution**

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924 In the event of any dispute arising on the Exchange premises during the conduct of
925 the auction or in connection with the auction, pre-auction or post-auction procedures,
926 the Exchange Manager shall make an initial determination, which shall be binding
927 on the persons involved in the dispute. If the Exchange Manager is absent from the
928 premises at the time of the dispute, an Operations Manager shall be authorized to act
929 in lieu of the Exchange Manager, and if neither is present, then the Office Manager
930 may also act. Decisions of the Exchange Manager, Operations Manager, or Office
931 Manager adverse to any disputant may be appealed by such disputant to the Board of
932 Directors in accordance with Section 8.2 hereof. Notwithstanding the foregoing,
933 matters left to the discretion of the auctioneer shall be finally determined by him/her,
934 and may not be appealed to the Exchange Manager or the Board of Directors.

935

936 **8.2. Appeal**

937

938 Any appeal of any decision to the Board of Directors shall be in accordance with
939 such appeal procedures as may be promulgated from time to time by the Board of
940 Directors. Appeals shall be taken up at the earliest possible time at a duly-convened
941 meeting of the board wherein a quorum of members is present.

942

943 **8.3. Arbitration**

944

945 Disputes in any way connected with the business or operations of the Exchange or
946 arising between persons conducting business on Exchange premises (other than
947 those described at Section 6.1 and disputes solely between the Exchange and its
948 employees) of arising under these Rules, in each case by and between seat holder,
949 sellers, or the Exchange, or by and between any two or more of them (whether or not
950 the Exchange itself is a disputant), shall, at the option of any disputant, or the
951 Exchange, be submitted to arbitration in accordance with the rules of the American
952 Arbitration Association to an arbitrator selected by said Association, provided that
953 the Exchange or its lending bank may collect amounts due to them or either of them
954 from any seat holder or under any letter of credit by civil action without reference to
955 arbitration.

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8.4. Sanctions

Seat holders, sellers, and their representatives in violation of these Rules, may be punished by temporary or permanent suspension of privileges to use Exchange premises. Other than interim suspensions made by the Exchange Manager pursuant to Section 2.8 hereof, decisions to suspend or deny access to any seat holder shall be made by majority vote of the Board of Directors at a duly-convened meeting.

8.5. Conclusive Effect

The auctioneer, as to matters within his discretion, the Board of Directors as to matter appealable to them under Section 8.2, and the arbitrator(s) selected pursuant to Section 8.3 shall, in their respective areas, be deemed arbitrators for all purpose of Maine law and their decisions, in their respective areas, shall be final, conclusive and binding upon all persons, including sellers, seat holders, Portland Fish Exchange and their respective representatives, agents, heirs, personal representatives, successors and assigns.

9. MISCELLANEOUS

9.1. Totes

The Exchange will purchase a sufficient number of totes. Such totes will be issued by the Exchange through a debit/credit system whereby a buyer's account shall be charged for totes upon the purchase of seafood and shall be credited equally upon return of such totes, provided that such return is within a time set by the Board of Directors, and the totes are returned in a clean and undamaged condition. Buyers will be charged the fair market value, as established by the Exchange, for replacement of any damaged or lost totes. Totes returned in a dirty condition will be subject to a cleaning charge in an amount determined from time to time by the Board of Directors. Any totes returned late shall be deemed lost and the seat holder will be assessed a replacement charge therefore.

9.2. Storage

Any seafood, arriving onto the auction floor prior to the commencement of an auction and remaining on the floor more than a reasonable time after the conclusion of such auction, shall be deemed to have been placed in auction storage by the owner thereof. Storage fees shall thereupon commence on account of such seafood at the rate established, from time to time, by the Board of Directors. Any and all stored seafood shall be entitled to remain on the Exchange premises only until the next succeeding auction, at which time the seafood shall either be sold, removed from the Exchange premises by the seller (upon paying the required amounts set forth at Section 5.11 hereof), or, failing either of the foregoing, it may, at the discretion of the Exchange, be discarded by the Exchange. The Exchange may issue a receipt to the owner for any such seafood. The Exchange, as a not-for-profit enterprise intended for the general benefit of fishermen, dealers, and processors alike, shall in no event be deemed a "warehouseman" as such term is defined and used in the

1006 Maine Uniform Commercial Code (II M.R.S.A. 7-101, et seq); and said Article 7
1007 shall not apply to these transactions. Notwithstanding the general inapplicability of the
1008 provisions of the Article 7, the Exchange shall be deemed to be a “warehouseman”
1009 with the right to assert a lien in order to enforce the obligations of owners of
1010 seafood. The warehouseman’s lien will also secure any and all present or future
1011 obligations of such owner to the Exchange. In the event that the owner of any stored
1012 seafood should fail to take steps to sell such seafood at the first auction following the
1013 commencement of the storage period, the Exchange may, without prior notice to
1014 such owner, enforce its lien and security interest granted herein by selling such
1015 seafood at the next auction. The proceeds of such sale will be applied: first to the
1016 satisfaction of all obligations of the owner to the Exchange; and, any balance will be
1017 paid or credited to the owner’s account. If it is unable to sell at such auction, the
1018 Exchange may, in its discretion, discard the seafood (at the owner’s expense) or
1019 attempt again to sell it at the next auction. The Exchange may discard or take other
1020 appropriate action as to any seafood stored on its premises found to be either
1021 contaminated or illegal.

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9.3. Sellers

1025 All sellers, and persons representing sellers, shall at all times abide by these Rules.
1026 Sellers shall indicate their acceptance of these Rules by signing a copy of the Rules
1027 upon their first visit to the Exchange. No more than two representatives of any seller
1028 shall be permitted on the Exchange floor at any one time. Sellers and their
1029 representatives may be barred from access to Exchange facilities by a vote of the
1030 Board of Directors either for failure to abide by these Rules or because of the seller
1031 or its representatives fail to conduct themselves in businesslike fashion, engage in
1032 illegal practices, or poor business practices. For purposes of these Rules, the term
1033 “seller” means persons and entities who bring or cause to be brought seafood onto
1034 the Exchange premises for purposes of selling such seafood at an Exchange auction.
1035 The term “seller” does not refer to the auctioneer or any other agent, employee or
1036 representative of the Exchange.

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9.4. Visitors

1040 Visitors shall be admitted to the Exchange premises only by means of a daily pass. A
1041 limited number of daily passes will be available from, and at the discretion of, the
1042 Exchange Manager. Visitors will be permitted only to observe Exchange business
1043 and may not participate in any aspect of it, including the auction.

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9.5. Purchases or Sales by the Exchange

1047 The Exchange shall not engage in the purchase or sale of seafood either on its own
1048 account or as an agent for the account of others, except as provided by Section 7.2
1049 hereof.

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9.6. Discretion

The Rules contemplate that the Exchange Manager shall retain considerable discretion in order to direct the daily operations of the Exchange. The Exchange Manager (or in his or her absence, an Operations Manager) is vested with authority to close the Exchange, alter the timing of the auctions, or otherwise cancel or suspend operations for causes deemed by him/her to be sufficient, including, without limitation, accidents, flood, storm, public health problems, acts of God, and the like. Any fees or costs provided therein may be changed by the action of the Board of Directors without advance notice, but such changes will be posted conspicuously at the Exchange premises.

9.7. Release and Indemnity

In consideration of being allowed to participate in the activities of the Portland Fish Exchange, seat holders and sellers agree to indemnify and hold harmless the Exchange, its officers, directors, agents, and employees (hereinafter jointly and severally referred to as “Exchange”) from any claim for loss or damage of any kind, including, but not limited to, liability for personal injury, death, property damage, including any monetary loss, as well as consequential damages, incurred or suffered as the result of any act or omission of the Exchange. Without in any way limiting the generality of the foregoing, this release and indemnity, shall include claims and losses arising from any of the following:

- 9.7.1. The sale of seafood which is determined to be illegal, contaminated, or of different quality or quantity from that represented;
- 9.7.2. The sales price of seafood offered for sale is deemed to be too high, too low, or no sale shall occur;
- 9.7.3. Engaging in activity which is either illegal or prohibited by the Rules and Regulations of the Exchange; or
- 9.7.4. Loss or damage of either seafood or any other property on premises of the Exchange, except to the extent such losses may be compensable by liability insurance.

This provision shall not be deemed to waive any immunity to which the Exchange may be entitled under Maine law.

9.8. Indemnification of Exchange

Each seat holder and seller agree to indemnify the Exchange against, and hold it harmless from, any loss, claim, liability, judgment, cost, and legal or other expense which the Exchange may suffer or incur as a direct or indirect consequence of any of the following:

- 9.8.1. The violation of any of these Rules by such seat holder or seller;

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9.8.2. Such seat holder or seller negligently or intentionally causes loss or damage to Exchange property or to business of any other person from activities conducted at the Exchange; and

9.8.3. The fact that any representation, warranty, acknowledgement or other statement of fact by such seat holder or seller was untrue or incomplete when made to the Exchange.

9.9. Statute of Limitations

All seat holders and sellers hereby agree, in accordance with Section 2-725 of the Maine Uniform Commercial Code (11 M.R.S.A. 20725), that the Statute of Limitations for any action brought by any seat holder or seller against any other person or entity (including the Exchange) arising out of any sale taking place on the Exchange shall be one year after the date of the sale in question.

9.10. Amendments

These Rules may be amended in accordance with the Bylaws of the Exchange. Amendments may be made with or without prior notice to or consent by seat holders or sellers, and such persons are deemed to have consented to such amendments by virtue of their continuing use of Exchange facilities or Exchange credit. Upon adoption of any amendment of these Rules by the Board of Directors, the Exchange shall attempt to notify seat holders and sellers promptly of such amendment, but any failure to do so shall not affect the enforceability of the amended or new Rule. When deemed necessary or appropriate by the Board of Directors, the Exchange may print and issue revised Rules or amendments and may require that all seat holders and sellers acknowledge receipt of such revised Rules and amendments as a condition to conduct business at the Exchange.

9.11. Separability

Wherever possible, each provision of these Rules shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of these Rules should be prohibited by, unenforceable or invalid under such law, that provision will be ineffective to the extent of such prohibition, unenforceability or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Rules.

[END]