



**PEASE**

INTERNATIONAL

PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

December 15, 2020

Bait Cooler Users  
1 Peirce Island Rd.  
Portsmouth, NH 03801

Re: Right of Entry - Portsmouth Commercial Fish Pier ("PFP"), Bait Cooler, Portsmouth, NH

Dear Sirs:

This Right of Entry ("RoE") will authorize the 12 signatories ("Users") to enter upon the Premises known as the Portsmouth Commercial Fish Pier ("PFP"), Bait Cooler, 1 Peirce Island, Portsmouth, New Hampshire ("Premises"), as more particularly shown on Exhibit 1, attached hereto and incorporated herein, from June 1, 2021 to May 31, 2023, with two (2) one-year options to extend, for the purpose of utilizing the cooler as cold storage for fresh and frozen lobster bait.

This authorization is conditioned upon the following:

1. Users' agreement herein that use of said Premises is at their sole risk and that their signatures below constitute their agreement to assume full responsibility on a joint and several liability basis for any and all risks of loss or damage to property and injury or death to persons by reason of or incident to its entry or the entry by any of its employees, agents, visitors, volunteers or contractors upon the Premises and/or the exercise of any of the authorities granted herein. Users expressly waive all claims against the State of New Hampshire, Pease Development Authority ("PDA") and the Division of Ports and Harbors ("DPH") for any such loss, damage, personal injury or death caused by or occurring as a consequence of Users' use of said Premises or the conduct of activities or the performance of responsibilities under this authorization. Users further agree to indemnify, save, hold harmless, and defend the State of New Hampshire, PDA and the DPH, their officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgements, costs and attorney's fees arising out of Users' use of said Premises or any activities conducted or undertaken in connection with or pursuant to this authorization.

2. Users' providing to the PDA satisfactory evidence of Protection and Indemnity ("P&I") insurance to a limit to be determined based upon the size of each Users' boat and scope of boat owner's operation. The insurance will provide an endorsement for dockside liability covering piers, docks, gangways, cooler, and employees of each vessel. Said policy will name the Division of Ports and Harbors, Pease Development Authority and the State of New Hampshire as additional insureds. Evidence of workers' compensation coverage to statutory limits. Each such policy or certificate therefor issued by the insurer shall contain: (i) a provision that no act or omission of any employee, officer or agent of Users which would otherwise result in forfeiture or reduction of the

○○○○ TAKING YOU THERE

ph: 603-436-8500

fax: 603-436-2780

www.peasedev.org

insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained; (ii) an agreement by the insurer that such policy shall not be canceled without at least thirty (30) days prior written notice by registered mail to Pease Development Authority; (iii) provide that the insurer shall have no right of subrogation against Pease Development Authority, the Division of Ports and Harbors and the State of New Hampshire; and (iv) a provision that any liability insurance coverage required to be carried shall be primary and non-contributing with respect to any insurance, self-insured or otherwise, carried by PDA.

3. The term for this Right of Entry is June 1, 2021 through May 31, 2023. There are two (2) one-year options to extend the agreement subject to the recommendation of the Division Director and the approval of the Executive Director. The Users will notify the DPH Director in writing by April 30, 2023 and 2024 should they wish to extend the agreement.

4. The fee for the first year rental is \$9,100.00, due by May 1, 2021. Second and third year fees will be negotiated on or about April 1 and payable by May 1<sup>st</sup> of each consecutive year.

5. Authorized signatories must hold a valid berth and pier use permit.

6. Users agree that prior to occupancy, they will inspect the facility, document the current conditions and notify the Division Director or his designee of any areas of concern.

7. Users will be responsible for maintaining the building for any damages occurring after the inspection.

8. Users will maintain the floor drain in working order.

9. Users will maintain the refrigeration with a service provider approved by the DPH.

10. Users shall be responsible for routine cleaning of all areas of the Premises and equipment which is used in connection with its operations at PFP. Users shall be responsible for picking up all garbage and rubbish its operations generate and depositing same at a designated location where DPH can dispose of it.

11. Users shall ensure pallets and barrels are stacked and stored as to not obstruct other activities, and in a manner that is safe.

12. Users may cancel this RoE by giving PDA thirty (30) days' notice in writing.

13. This RoE may be cancelled by DPH by giving Users thirty (30) days written notice of cancellation in the event of the failure of Users to perform, keep and observe any of the conditions of the RoE and the failure to Users to correct the default or breach within the time specified by PDA. This RoE may be cancelled immediately by PDA in the event Users fail to provide proof of insurance coverage or engages in any activity which is deemed to compromise public safety and health.

14. Users' agreement herein that upon the expiration or termination of this RoE, Users shall surrender to DPH the Premises and surrounding areas (Exhibit 1) in good order, condition and repair.
15. In the performance of this RoE, Users are in all respects independent contractors and are neither agents nor employees of the State of New Hampshire, PDA, or DPH. Neither User nor any of their officers, employees, agents or members shall have the authority to bind the State of New Hampshire, PDA, or DPH nor is any RoE holder entitled to any of the benefits, workers' compensation, or emoluments provided by the State of New Hampshire, PDA, or DPH to its employees.
16. In connection with the performance of this RoE, Users agree to comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligations or duty on User.
17. Users will obtain all necessary permits and provide copies of them to DPH at the time of execution of this document. Required documents may include, but are not limited to, Berth Permit and Pier Use Permit.
18. Users' agreement herein to secure all necessary Federal, state, municipal and/or local permits.
19. Users are responsible for providing all necessary and required safety equipment and training to their crew and/or employees as may be required and appropriate to the uses allowed under this RoE.
20. Users' agreement to use the hoist in accordance with the Hoist Safety Recommendations, attached hereto as Exhibit 3, and to ensure all crew/employees do the same.
21. Users' agreement that only vessel owners, captains, and employees of each signatory will be allowed access to the cooler.
22. Users may not self-fuel any boat used in connection with this RoE on the Premises. Users may be allowed to purchase fuel from an approved vendor (diesel only) or from the fuel service available at the PFP (diesel or gasoline). To purchase diesel fuel from an approved vendor, the vessel owner shall have a fuel variance approved by the Office of the State Fire Marshall in accordance with BULLETIN #2015-07, as may be amended from time to time, attached hereto as Exhibit 2. Subject to increases which may be implemented from time to time, the vendor will pay DPH \$0.10 per gallon.
23. This RoE may not be assigned or transferred without the express written approval of the DPH.
24. The Users agree that in the event that any of their members drop out the remaining Users will notify the Port Director immediately and continue to assume full responsibility for performance of all obligations under this RoE.



Bait Cooler Right of Entry  
Effective June 1, 2021

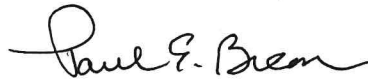
25. Any additional requirements as the DPH may from time to time deem necessary due to prevailing conditions.

26. This RoE has been entered into in the State of New Hampshire and shall be interpreted under New Hampshire law.

27. This RoE may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Please indicate by the signatures of all Users on the enclosed copy of this RoE that each consent to the terms and conditions set forth above and return the same to me with evidence of insurance as required.

Very truly yours,



Paul E. Brean  
Executive Director

PEB:bjt

cc: Geno Marconi, Director of Division of Ports and Harbors  
Anthony Blenkinsop, PDA Deputy Director, General Counsel

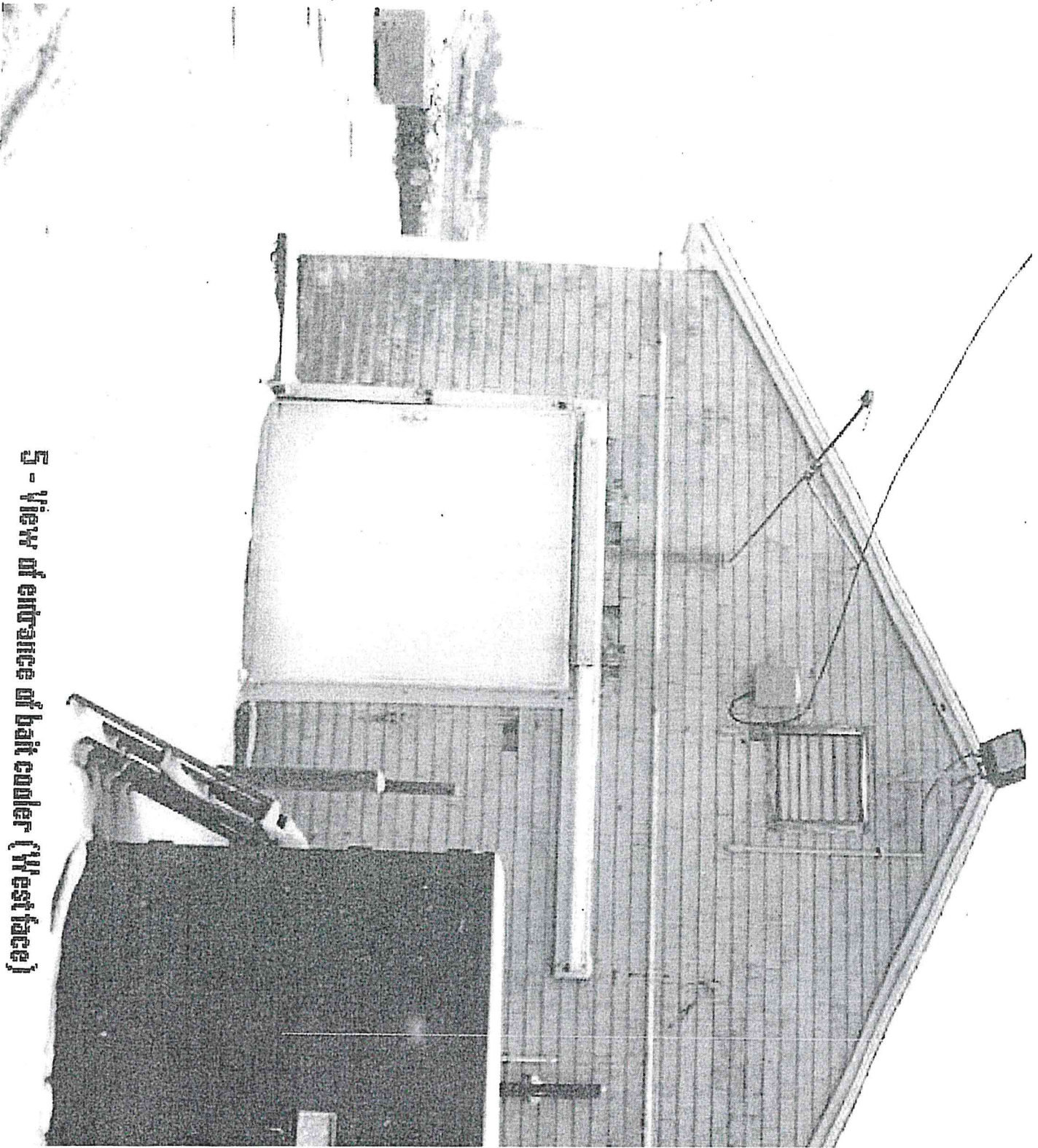
Agreed and accepted this 26 day of January, 2021

1. D.P. Hill  
Dennis Robillard, Jillity LLC, F/V Julie Ann III
2. Gary Glidden  
Gary Glidden, F/V Last Penny
3. Robert M. Bryant  
Robert M. Bryant, F/V Island Lady
4. Wendy Whitney  
Wendy Whitney, F/V Wendy Leigh
5. Chesley Severns  
Chesley Severns, F/V Kelly Marie
6. Josh Ford  
Josh Ford, F/V Restless
7. Kurtis Lang  
Kurtis Lang, F/V Alana Renee
8. Bret Taylor  
Bret Taylor, Taylor Lobster Co., F/V Taylor Lobster
9. Damon Frampton 2/1/2021  
Damon Frampton, Portsmouth Lobster Co., F/V Vivian Mae
10. John Borden  
John Borden, F/V Mary Baker
11. Vincent Prien F/V KATIE RUE  
Vincent Prien, F/V KATIE RUE
12. \_\_\_\_\_
13. \_\_\_\_\_

Bait Cooler Right of Entry  
Effective June 1, 2021

**EXHIBIT 1**

**PREMISES**



**5 - View of entrance of bait cooler (West face)**





Bait Cooler Right of Entry  
Effective June 1, 2021

**EXHIBIT 2**

**BULLETIN #2015-07**

**FUEL VARIANCE**





**Division of Fire Safety**  
**OFFICE OF THE STATE FIRE MARSHAL**  
J. William Degnan, State Fire Marshal

Office: 110 Smokey Bear Boulevard, Concord, NH  
Mailing Address: 33 Hazen Drive, Concord, NH 03305  
603-223-4289, FAX 603-223-4294

BULLETIN #	TITLE			DATE ISSUED
2015-07	Diesel Fueling of Vessels at Piers			October 15, 2015
SUPERSEDES	RELEASED BY	APPROVED BY	SOURCE	SUPERSEDED BY
2015-04	LAC	JWD	NFPA 30A	

**Informational Bulletin 2015-07**  
**Diesel Fueling of Vessels at Piers**

The New Hampshire Code of Administrative Rules, Chapter Saf-C 6000, State Fire Code adopts as rule the National Fire Protection Association Code for Motor Fuel Dispensing Facilities and Repair Garages (NFPA 30A).

The State Fire Code and NFPA 30A provide for the proper refueling of all marine craft by way of stationary aboveground and underground storage tank facilities. Such existing and proposed stationary storage tank facilities are regulated by the New Hampshire Code of Administrative Rules, Env-Wm 1402, Control of Aboveground Petroleum Storage Facilities (UST rules). These rules prohibit the use of tank vehicles for the purpose of on-site storage of oil at a facility. Please contact the DES Oil Compliance Section at [orcb.wmd@des.nh.gov](mailto:orcb.wmd@des.nh.gov) or (603) 271-3899 with questions specific to existing or proposed stationary refueling facilities.

Pursuant to NFPA 30A Chapter 11, Marine Fueling, dispensing of gasoline directly from a tank vehicle to a marine craft is expressly prohibited under any circumstances. Dispensing of diesel fuel from a tank vehicle to a marine craft located at a commercial, industrial, governmental, or manufacturing establishment and used in conjunction with their business may only be accomplished with prior approval by the State Fire Marshal.

- The tank vehicle shall comply with the requirements of NFPA 385, *Standard for Tank Vehicles for Flammable and Combustible Liquids*. [30A - 9.6.2]
- The dispensing hose shall not exceed 50 feet in length. [30A - 9.6.3]
- The dispensing nozzle shall be a listed, automatic closing-type without a latch-open device. [30A - 9.6.4]
- Nighttime deliveries shall only be made in areas deemed adequately lighted by the State Fire Marshal's Office. [30A - 9.6.5]
- The tank vehicle flasher lights shall be in operation while dispensing operations are in progress. [30A - 9.6.6]
- Expansion space shall be left in each fuel tank to prevent overflow in the event of temperature increase. [30A - 9.6.7]
- A locally approved Emergency Action Plan (EAP) along with emergency spill equipment must be available prior to initiating operations. [NFPA 1, 10.9]

Under the NH State Fire Code, Saf-C 6005.01 Availability; The State Fire Marshal shall grant exceptions or variances to the State Fire Code to the extent that such action will provide a degree of safety substantially equivalent to that provided under the provisions for which the exception or variance is granted. To apply for an exception or variance pursuant to Saf-C 6005.03, please visit <http://www.nh.gov/safety/divisions/firesafety/documents/Variance7-31-12.pdf> to complete and submit form DSFM 129 along with additional documents.

This type of request for exception or variance shall include, but not be limited to the following:

- Letter of approval from property owner
- State hardship reason for not complying with prescribed code
- Letter of approval from Fire Department
- Locally approved Emergency Action Plan (EAP)

#### **Emergency Action Plan EAP Checklist**

- \_\_\_\_\_ List of Emergency Spill Equipment/Location
- \_\_\_\_\_ Location of fueling identified and accessible
- \_\_\_\_\_ 24-hour contact for vendor
- \_\_\_\_\_ Type and quantity of product to be dispensed
- \_\_\_\_\_ Impervious surface type (recommendation)
- \_\_\_\_\_ Spill control procedures identified
- \_\_\_\_\_ Fire Department notification procedures
- \_\_\_\_\_ Site plan noting fueling facility/area with drains

Please contact the State Fire Marshal's Office at [FMO@dos.nh.gov](mailto:FMO@dos.nh.gov) or (603) 223-4289 with questions specific to the State Fire Code requirements.



EXHIBIT 3  
HOIST SAFETY RECOMMENDATIONS  
**SAFETY FIRST!!**

January 1, 2021

Dear Commercial Pier User,

The following are excerpts from the OPERATING INSTRUCTIONS AND SAFETY PROCEDURES MANUAL for the electric chain hoists at the commercial piers at Portsmouth, Rye and Hampton Piers. Please read these basic SAFETY PROCEDURES and sign below that you understand the SAFETY PROCEDURES and agree that you and your crew will execute these basic SAFETY PROCEDURES when using the hoists.

- Before picking up a load, check to see that the hoist is **DIRECTLY OVERHEAD**.
- **WHEN APPLYING A LOAD, IT SHOULD BE DIRECTLY UNDER THE HOIST. AVOID OFF CENTER LOADING OF ANY KIND.**
- Take up a slack load chain carefully and start load easily to avoid shock and jerking of hoist load chain. If there is any evidence of overloading, immediately lower the load and remove the excess load.
- **DO NOT** allow the load to swing or twist while hoisting. **USE A TAG LINE** to control the load.
- **DO NOT** use the control handle and the control wire as a tag line.
- **DO NOT** allow the load to bear against the hook latch. Apply the load to the hook bowl or saddle **ONLY**.
- When preparing to lift a load, be sure that the attachments to the hook are firmly seated.
- Continue to lift **ONLY** after you are assured the load is free of all obstructions.
- **DO NOT** wrap the load chain around the load and hook onto itself as a choker chain.
- **DO NOT** load the hoist beyond the rated capacity.
- Stand clear of the load and avoid moving the load over the heads of other personnel. Warn personnel of your intentions to move a load in their area.
- **DO NOT** use the lift for lifting persons.
- **NEVER** operate the hoist when flammable materials or vapors are present. Electrical devices produce arcs or sparks that can cause fire or explosion.
- **STAY ALERT!** Watch what you are doing and use common sense. Do not use the hoist when you are tired, distracted or under the influence of drugs, alcohol or medication causing diminished control.
- Report any operating problems to the Port Authority immediately.

I have read and understand the OPERATING AND SAFETY INSTRUCTIONS as listed above, and agree to exercise all caution and safety practices when operating the electric chain hoists or any hoist at the commercial piers under the management of the Division of Ports and Harbors (Port Authority) and failure to comply with the OPERATING AND SAFETY INSTRUCTIONS may result in revocation of permits.

\_\_\_\_\_  
\_\_\_\_\_  
PRINT NAME

PRINT VESSEL NAME

Signature: \_\_\_\_\_

Date: \_\_\_\_\_