

**Excerpts from Northeast Multispecies Regulations to Implement
Amendment 23 to the Northeast Multispecies Fishery Management Plan**

50 CFR 648.11(h)

(h) Monitoring service provider approval and responsibilities -

(1) **General.** An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website:

<https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs>.

(2) [Reserved]

(3) **Contents of application.** An application to become an approved monitoring service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal conviction(s), Federal contract(s) they have had and the performance rating they received on the contracts, and previous decertification action(s) while working as an observer or monitor or monitoring service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a monitoring service provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for any observers, monitors (at-sea or dockside/roving monitors), or electronic monitoring provider staff who provide electronic monitoring services onboard vessels, whether contracted or directly employed by the service provider, during their period of employment (including during training).

(A) A monitoring service provider must hold Workers' Compensation and Maritime Employer's Liability for observers, monitors, vessel owners, and their operations. The minimum combined coverage required is \$5 million.

(B) An electronic monitoring service provider must hold Worker's Compensation and commercial general liability coverage for electronic monitoring provider staff. The minimum combined coverage required is \$1 million.

(C) Upon request by a vessel owner, operator, or vessel manager, a monitoring service provider must provide a certificate of insurance, or other evidence, that demonstrates they have the required coverages under (A) and (B) of this paragraph as appropriate.

(viii) Proof that its observers or monitors, whether contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Monitoring service providers shall provide any other benefits and personnel services in accordance with the terms of each observer's or monitor's contract or employment status.

(ix) The names of its fully equipped certified observers, monitors, or video reviewers on staff; or a list of its training candidates (with resumes) and a request for an appropriate NMFS-certified Training class. All training classes have a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an emergency with an observer, monitor, or electronic monitoring provider staff on a vessel at sea or in port, including, but not limited to, personal injury, death, harassment, or intimidation. The EAP shall include communications protocol and appropriate contact information in an emergency.

(4) Application evaluation.

(i) NMFS shall review and evaluate each application submitted under paragraph (h)(3) of this section. Issuance of approval as a monitoring service provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a monitoring service provider, as demonstrated in the application information.

A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the monitoring service provider's name will be added to the list of approved monitoring service providers found on the NMFS/FSB website and in any outreach information to the industry. Approved monitoring service providers shall be notified in writing and provided with any information pertinent to its participation in the observer or monitor programs.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, a monitoring service provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved monitoring service providers.

(5) Responsibilities of monitoring service providers. To maintain an approved monitoring service provider status, a monitoring service provider, including electronic monitoring service providers, must demonstrate an ability to provide or support the following monitoring services:

(i) **Certified observers or monitors.** Provide observers or monitors that have passed a NMFS-certified Observer or Monitor Training class pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a fishing vessel, unless the monitoring service provider refuses to deploy an observer or monitor on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section.

(ii) **Support for observers, monitors, or electronic monitoring provider staff.** Ensure that each of its observers, monitors, or electronic monitoring provider staff procures or is provided with the following:

(A) All necessary transportation, lodging costs and support for arrangements and logistics of travel for observers, monitors, or electronic monitoring provider staff to and from the initial location of deployment, to all subsequent vessel assignments, to any debriefing locations, and for appearances in Court for monitoring-related trials as necessary;

(B) Lodging, per diem, and any other services necessary for observers, monitors, or electronic monitoring provider staff assigned to a fishing vessel or to attend an appropriate NMFS training class;

(C) The required observer, monitor, or electronic monitoring equipment, in accordance with equipment requirements, prior to any deployment and/or prior to certification training; and

(D) Individually assigned communication equipment, in working order, such as a mobile phone, for all necessary communication. A monitoring service provider may alternatively compensate observers or monitors for the use of the observer's or monitor's personal mobile phone, or other device, for communications made in support of, or necessary for, the observer's or monitor's duties.

(iii) Deployment logistics.

(A) Assign an available observer or monitor to a vessel upon request. For service providers contracted to meet the requirements of the NE multispecies monitoring program in paragraph (1) of this section, assign available at-sea monitors, electronic monitoring provider staff, and other approved at-sea monitoring mechanisms fairly and equitably in a manner that represents fishing activities within each sector throughout the fishing year without regard to any sector manager or vessel representative preference.

(B) Enable an owner, operator, or manager of a vessel to secure monitoring coverage or electronic monitoring technical support when requested, 24 hours per day, 7 days per week via a telephone or other notification system that is monitored a minimum of four times daily to ensure rapid response to industry requests.

(iv) Observer deployment limitations.

(A) A candidate observer's first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

(B) For the purpose of coverage to meet SBRM requirements, unless alternative arrangements are approved by NMFS, a monitoring service provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(C) For the purpose of coverage to meet IFM requirements, a monitoring service provider may deploy any observer or monitor on the same vessel for more than two consecutive multi-day trips and more than twice in any given month for multi-day deployments.

(v) Communications with observers and monitors. A monitoring service provider must have an employee responsible for observer or monitor activities on call 24 hours a day to handle emergencies involving observers or monitors or problems concerning observer or monitor logistics, whenever observers or monitors are at sea, stationed portside, in transit, or in port awaiting vessel assignment.

(vi) Observer and monitor training requirements. Ensure all observers and monitors attend and complete a NMFS-certified Observer or Monitor Training class. Requests for training must be submitted to NMFS 45 calendar days in advance of the requested training. The following information must be submitted to NMFS at least 15 business days prior to the beginning of the

proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS minimum eligibility standards for observers or monitors as described on the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(vii) Reports and Requirements.

(A) Deployment reports.

(1) Report to NMFS when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to requirements outlined by NMFS. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(2) Ensure that the raw (unedited) data collected by the observer or monitor is provided to NMFS at the specified time per program. Electronic data submission protocols will be outlined in training and may include accessing government websites via personal computers/devices or submitting data through government issued electronics.

(B) Safety refusals. Report to NMFS any trip or landing that has been refused due to safety issues (e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's or monitor's safety checklist) within 12 hours of the refusal.

(C) Biological samples. Ensure that biological samples, including whole marine mammals, sea turtles, sea birds, and fin clips or other DNA samples, are stored/handled properly and transported to NMFS within 5 days of landing. If transport to NMFS Observer Training Facility is not immediately available then whole animals requiring freezing shall be received by the nearest NMFS freezer facility within 24 hours of vessel landing.

(D) Debriefing. Ensure that the observer, monitor, or electronic monitoring provider staff remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office of Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload or electronic monitoring trip report submission. If requested by NMFS, an observer or monitor that is at sea during the 2-week period must contact NMFS upon his or her return. Monitoring service providers must pay for travel and land hours for any requested debriefings.

(E) Availability report. The monitoring service provider must report to NMFS any inability to respond to an industry request for observer or monitor coverage due to the lack of available

observers or monitors as soon as practicable. Availability report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week.

(F) Incident reports. Report possible observer, monitor, or electronic monitoring provider staff harassment, discrimination, concerns about vessel safety, or marine casualty; concerns with possible electronic monitoring system tampering, data loss, or catch handling protocols; or observer or monitor illness or injury; or other events as specified by the Regional Administrator; and any information, allegations, or reports regarding observer, monitor, or electronic monitoring provider staff conflict of interest or breach of the standards of behavior, to NMFS within 12 hours of the event or within 12 hours of learning of the event.

(G) Status report.

(1) Provide NMFS with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer or monitor is “in service,” indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program.

(2) Place any Federally contracted observer not actively deployed on a vessel for 30 days on Leave of Absence (LOA) status (or as specified by NMFS) according to most recent Information Technology Security Guidelines.

(3) Ensure Federally contracted observers on LOA for 90 days or more conduct an exit interview with NMFS and return any NMFS issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS. NMFS requires 2-week advance notification when a Federally contracted observer is leaving the program so that an exit interview may be arranged and gear returned.

(H) Vessel contract. Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and those entities requiring monitoring services.

(I) Observer, monitor, or video reviewer contract. Submit to NMFS, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the monitoring service provider and specific observers, monitors, or video reviewers.

(J) Additional information. Submit to NMFS, if requested, copies of any information developed and/or used by the monitoring service provider and distributed to vessels, observers, monitors, or electronic monitoring provider staff such as informational pamphlets, payment notification, daily rate of monitoring or review services, description of observer or monitor duties, etc.

(K) **Discard estimates.** Estimate discards for each trip and provide such information to the sector manager and NMFS when providing monitoring services to meet catch estimation and/or at-sea or electronic monitoring service requirements in paragraph (I) of this section.

(L) **Data system.** If contracted to meet the groundfish sector monitoring program in paragraph (I) of this section, maintain an electronic monitoring system to record, retain, and distribute to NMFS upon request for a minimum of 12 months after receiving notice from NMFS that catch data are finalized for the fishing year, the following information:

- (1) The number of at-sea monitor deployments and other approved monitoring equipment deployments or video reviews, including any refusal to provide service when requested and reasons for such refusals;
- (2) Incident/non-compliance reports (e.g., failure to offload catch);
- (3) Vessel hail reports and landings records;
- (4) Electronic monitoring data and reports; and
- (5) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.

(M) **Data retention.** Ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data are finalized for the fishing year. NMFS will notify monitoring service providers of the catch data finalization date each year. The electronic monitoring service provider must provide NMFS access to electronic monitoring data or reports upon request.

(N) **Software requirements.** Provide NMFS with all software necessary for accessing, viewing, and interpreting the data generated by the electronic monitoring system, including submitting the agency's secondary review data to the application programming interface and maintenance releases to correct errors in the software or enhance software functionality. The software must:

- (1) Support a "dual user" system that allows NMFS to complete and submit secondary reviews to the application programming interface.
- (2) Allow for the export or download of electronic monitoring data in order for the agency to make a copy if necessary.

(O) **Software training.** Provide software training for NMFS staff.

(P) **Facilitation.** Provide the following to NMFS upon request:

- (1) Assistance in electronic monitoring system operations, diagnosing/resolving technical issues, and recovering lost or corrupted data;

- (2) Responses to inquiries related to data summaries, analyses, reports, and operational issues;
- (3) Access to video reviewers for debriefing sessions;

(Q) Litigation support. Provide technical and expert information substantiating electronic monitoring system data, testing procedures, error rates, peer review or other issues raised in litigation, including but not limited to, a brief summary of the litigation and any court findings on the reliability of the technology.

(viii) Refusal to deploy an observer or monitor.

(A) A monitoring service provider may refuse to deploy an observer or monitor on a requesting fishing vessel if the monitoring service provider does not have an available observer or monitor within the required time and must report all refusals to NMFS/FSB.

(B) A monitoring service provider may refuse to deploy an observer or monitor on a requesting fishing vessel if the monitoring service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The monitoring service provider may refuse to deploy an observer or monitor on a fishing vessel that is otherwise eligible to carry an observer or monitor for any other reason, including failure to pay for previous monitoring deployments, provided the monitoring service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) Limitations on conflict of interest. A monitoring service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, and/or fishery advocacy group (other than providing monitoring services);

(ii) Must assign observers or monitors without regard to any preference by representatives of vessels other than when an observer or monitor will be deployed for the trip that was selected for coverage; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of monitoring service providers.

(7) Removal of monitoring service provider from the list of approved service providers. A monitoring service provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved monitoring service providers. Such notification shall specify the reasons for the pending removal. A monitoring service provider that has received notification that it is subject to removal from the list of approved monitoring service providers may submit written information to rebut the reasons for removal from the list. Such

rebuttal must be submitted within 30 days of notification received by the monitoring service provider that the monitoring service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the monitoring service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the monitoring service provider shall be automatically removed from the list of approved monitoring service providers. The decision to remove the monitoring service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved monitoring service providers does not necessarily prevent such monitoring service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Observers and monitors under contract with observer monitoring service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers or monitors are deployed at the time the monitoring service provider is removed from the list of approved monitoring service providers. A monitoring service provider removed from the list of approved monitoring service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if a monitoring service provider may remain on the list of approved monitoring service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of monitoring service providers specified in paragraphs (h)(5) and (6) of this section;
- (ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;
- (iii) Evidence of criminal convictions related to:
 - (A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - (B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing monitoring services under this section; and
- (iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and
- (v) Evidence of any history of decertification as either an observer, monitor, or monitoring service provider.

50 CFR 648.11(i)

(i) **Observer, monitor, or video reviewer certification.**

(1) **Requirements.** To be certified as an observer, or monitor, or video reviewer, a monitoring service provider employee or contractor must meet the criteria in paragraphs (i)(1) through (3) of this section for observers, or paragraphs (i)(1), (2), and (4) of this section for monitors, and paragraphs (i)(1), (2), and (5) of this section for video reviewers, respectively. In addition, observers must meet NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: <https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer>.

(2) **Training.** In order to provide observer or monitor services and be deployed on any fishing vessel, a candidate observer or monitor must have passed an appropriate NMFS-certified Observer or Monitor Training course and must adhere to all NMFS program standards and policies. In order to perform electronic monitoring video review, a candidate video reviewer must have passed an appropriate NMFS-certified Video Review Training course and must adhere to all NMFS program standards and policies. NMFS will immediately notify any candidate that fails training and the monitoring service provider. Observer or monitor training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Contact NMFS for the required number of program specific observer and monitor training certification trips for full certification following training.

(3) **Observer requirements.** All observers must:

(i) Have a valid NMFS fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section;

(iv) Hold a current Red Cross (or equivalence) CPR/First Aid certification;

(v) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment; and

(vi) Report unsafe sampling conditions, pursuant to paragraph (m)(6) of this section.

(4) **Monitor requirements.** All monitors must:

(i) Hold a high school diploma or legal equivalent;

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section;

(iii) Be physically and mentally capable of carrying out the responsibilities of a monitor on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

(iv) Have successfully completed all NMFS-required training and briefings for monitors before deployment, pursuant to paragraph (i)(2) of this section;

(v) Hold a current Red Cross (or equivalence) CPR/First Aid certification if the monitor is to be employed as an at-sea monitor;

(vi) Accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment; and

(vii) Report unsafe sampling conditions, pursuant to paragraph (m)(6) of this section.

(5) Video reviewer requirements. All video reviewers must:

(i) Hold a high school diploma or legal equivalent;

(ii) Have a valid NMFS certification pursuant to paragraph (i)(1) of this section; and

(iii) Accurately record sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(6) Probation and decertification. NMFS may review observer, monitor, and video reviewer certifications and issue observer, monitor, and video reviewer certification probations and/or decertifications as described in NMFS policy.

(7) Issuance of decertification. Upon determination that decertification is warranted under paragraph (i)(6) of this section, NMFS shall issue a written decision to decertify the observer, monitor, or video reviewer to the observer, monitor, or video reviewer and approved monitoring service provider via certified mail at the observer's, monitor's, or video reviewer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

50 CFR 648.11(l)

(l) NE multispecies observer coverage -

(1) **Groundfish sector monitoring program goals and objectives.** The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. The following goals and objectives of groundfish monitoring programs are equally-weighted secondary goals by which monitoring programs established for the NE multispecies are to be designed to be consistent with:

(i) Improve documentation of catch:

(A) Determine total catch and effort, for each sector and common pool, of target or regulated species and ocean pout; and

(B) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(ii) Reduce the cost of monitoring:

(A) Streamline data management and eliminate redundancy;

(B) Explore options for cost-sharing and deferment of cost to industry; and

(C) Recognize opportunity costs of insufficient monitoring.

(iii) Incentivize reducing discards:

(A) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(B) Collect information by gear type to accurately calculate discard rates.

(iv) Provide additional data streams for stock assessments:

(A) Reduce management and/or biological uncertainty; and

(B) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(v) Enhance safety of monitoring program.

(vi) Perform periodic review of monitoring program for effectiveness.

(2) **Sector monitoring programs.** A sector must develop and implement an at-sea and/or electronic monitoring program that may be approved by NMFS as both sufficient to monitor

catch, discards, and use of sector ACE; and as consistent with the sector monitoring program goals and objectives. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph § 648.87(b)(2)(xi), and must meet the operational standards specified in paragraph (l)(10) of this section. Maximized retention electronic monitoring and audit electronic monitoring models, meeting the requirements in paragraph (l)(10) of this section, may be used in place of at-sea monitoring to ensure a sector's monitoring programs may be approved. Other types of electronic monitoring may be used in place of at-sea monitors if the technology is deemed sufficient by NMFS, in a manner consistent with the Administrative Procedure Act, for a specific trip type based on gear type and area fished. The Regional Administrator will approve or disapprove at-sea/electronic programs as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act.

(3) Pre-trip notification. For the purpose of selecting vessels for observer or at-sea monitor deployment, as instructed by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advance notice to NMFS at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85 of the following: The vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer or at-sea monitor deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used, unless otherwise specified in this paragraph (l) or notified by the Regional Administrator. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly pre-trip notification, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the vessel's trip-plans for that week, including each trip's date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used. Pre-trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued either an observer notification, an at-sea monitor notification, or a waiver by NMFS.

(4) Vessel selection for observer or at-sea monitor coverage. NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer or at-sea monitor for the specified trip within 24 hr of the vessel owner's, operator's or manager's pre-trip notification of the prospective trip, as specified in paragraph (l)(2) of this section. All pre-trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the vessel's trip plan that was called in to NMFS. Confirmation numbers and the vessel's observer or observer waiver status for pre-trip notification calls remain valid for 48 hr from the intended sail date. After a trip begins, that trip's confirmation number and observer or observer waiver status remains valid until the trip ends. If a trip is interrupted and the vessel returns to port due to bad weather or other circumstance beyond the operator's control, the vessel's observer or observer

waiver status and confirmation number for the interrupted trip remains the same if the vessel departs within 48 hr from the vessel's return to port. If the layover time is greater than 48 hr, the vessel owner, operator, or manager must provide a new pre-trip notification. If an observer or at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board, unless NMFS issues a waiver. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it may not leave port without an operational electronic monitoring system on board, unless NMFS issues a waiver.

(5) Sector monitoring coverage levels. Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (l)(5)(i) of this section.

(i) At-sea monitoring coverage target. The at-sea monitoring coverage target for the sector monitoring program will be set as a percentage of all eligible sector trips based on available federal funding for NMFS and industry cost responsibilities as defined in paragraph (g)(3) of this section. Sectors are responsible for industry costs for at-sea monitoring coverage up to the coverage target for all trips not observed by a Northeast Fishery Observer Program observer. In fishing years 2022, 2023, 2024, and 2025, the ASM coverage target will be set at the highest level that available federal funding for NMFS and industry cost responsibilities supports, up to 100 percent of trips. Beginning in fishing year 2026, the target coverage will be set at 40 percent of trips, unless replaced by the Council after a review, as detailed in paragraph (l)(5)(v) of this section. In the absence of available federal funds sufficient to fund both NMFS costs and industry costs associated with a coverage target of at least 40 percent of all sector trips, sectors must pay the industry's costs for coverage necessary to achieve a 40-percent coverage target. As an example, if, after paying NMFS costs, available federal funding is sufficient only to fund industry costs for 15-percent coverage, sectors must pay the industry costs for the remaining 25-percent coverage to achieve a 40-percent coverage target. Any coverage provided by the Northeast Fisheries Observer Program through deployment of an observer would be deducted from the industry's cost responsibility. To ensure coverage is both sufficient to monitor sector catch, discards, and sector ACE; and consistent with sector monitoring goals and objectives, at-sea monitoring coverage may be higher than the at-sea monitoring coverage target, up to 100 percent of all eligible trips, if available federal funding is sufficient for NMFS and industry cost responsibilities, respectively. NMFS will announce the coverage target at least 3 weeks before the annual sector enrollment deadline set by NMFS, if federal funding information is available.

(ii) Gear-based exclusion from the at-sea monitoring program. A sector vessel that notifies NMFS of its intent to exclusively fish using gillnets with a mesh size of 10-inch (25.4-cm) or greater in either the Inshore GB Stock Area, as defined at § 648.10(k)(3)(ii), and/or the SNE Broad Stock Area, as defined at § 648.10(k)(3)(iv), is not subject to the coverage level for at-sea monitoring specified in § 648.11(l)(5)(i) provided that the trip is limited to the Inshore GB and/or SNE Broad Stock Areas and that the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater. When on such a trip, other gear may be on board provided that it is stowed and not available for immediate use as defined in § 648.2. A sector trip fishing with 10-inch (25.4-cm) mesh or larger gillnets will still be subject to at-sea monitoring coverage if the trip declares its intent to fish in any part of the trip in the GOM Stock area, as defined at § 648.10(k)(3)(i), or the Offshore GB Stock Area, as defined at § 648.10(k)(3)(iii). Vessels using

electronic monitoring to satisfy the sector monitoring requirement must have their system turned on and comply with their vessel monitoring plan on all trips, including a trip that is limited to the Inshore GB and/or SNE Broad Stock Areas where the vessel only uses gillnets with a mesh size of 10-inches (25.4-cm) or greater.

(iii) **Geographic exclusion from the at-sea monitoring program.** Vessels fishing exclusively west of 71° 30' W. Longitude on a sector trip are excluded from the requirement to carry an at-sea monitor. Vessels on a trip excluded from the at-sea monitoring requirement under this provision must comply with the VMS declaration requirements at § 648.10(g)(3), and the transiting requirements at § 648.81(e) when east of 71° 30' W. Longitude. Vessels using electronic monitoring to satisfy the sector monitoring requirement must have their system turned on and comply with their vessel monitoring plan on all trips, including trips fishing exclusively west of 71° 30' W. Longitude.

(iv) **Waivers.** In addition to the safety waivers in § 648.11(c), NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for the following reasons.

(A) **Funding waivers.** NMFS will issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements if coverage is unavailable due to insufficient funding for NMFS cost responsibilities as defined in paragraph (g)(3) of this section.

(B) **Logistics waivers.** NMFS may issue a waiver for a sector trip exempting the vessel from the sector monitoring program coverage requirements for logistical and technical reasons, including, but not limited to: No monitor is available; the assigned observer is unable to make the trip; the trip will have no fishing effort; and electronic monitoring system technical problems.

(C) **Set-only trip waivers.** Vessels on a set-only trip, as defined at § 648.2, are excluded from the groundfish sector monitoring program requirements in § 648.11(l). If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, that vessel may turn off its cameras on a set-only trip.

(v) **Review of exclusions from the at-sea monitoring program.** A Council review of the exclusions from the at-sea monitoring program in § 648.11(l)(5)(ii) and (iii) will evaluate whether the exclusions continue to meet the intent of the Council to exclude trips with little catch of regulated species and ocean pout. The review will be conducted using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and every 3 years after the initial review.

(6) **Groundfish sector monitoring program review.** A Council review of the NE multispecies monitoring program will evaluate whether the monitoring program is meeting the goal of improved accuracy of catch data, while maximizing value and minimizing costs of the program, using complete data from 2 fishing years once the data are available (fishing years 2022 and 2023) and periodically after the initial review. The review process should be flexible and general, and include establishing metrics and indicators of how well the monitoring program improved accuracy while maximizing value and minimizing costs.

(7) **Hail reports.** For the purposes of the monitoring requirements specified in paragraph (1)(2) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to their respective contracted monitoring service providers. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (1)(2) of this section, or specified in the annual sector operations plan, consistent with § 648.87(b)(5).

(8) **Notification of monitoring service provider change.** If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in paragraph (1)(2) of this section, the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved monitoring service providers in conjunction with the submission of the next weekly sector catch report specified in § 648.87(b)(1)(v)(B). A sector may use more than one monitoring service provider at any time, provided any monitoring service provider employed by or contracted with a sector meets the standards specified in paragraph (b)(4) of this section.

(9) **Discards.** A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in § 648.87(b)(1)(v). Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each regulated species allocated to a sector.

(10) **Sector monitoring program operational standards.** In addition to the monitoring service provider standards specified in paragraph (h)(5) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (1)(2) of this section must meet the following operational standards to be approved by NMFS:

(i) **Vessel requirements.**

(A) **Electronic monitoring system requirements.** A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must do the following:

(1) Ensure that the electronic monitoring system is fully operational for every sector trip, which means it is operating, recording, and retaining the recording for the duration of every trip. A vessel may not fish without a fully operational electronic monitoring system, unless issued a waiver by NMFS for that trip;

(2) Conduct a system check of the electronic monitoring system prior to departing on a fishing trip. An electronic monitoring system check must show that the electronic monitoring system is fully operational;

(3) Maintain clear and unobstructed camera views at all times. Ensure lighting is sufficient in all circumstances to illuminate catch so that catch and discards are visible and may be identified and quantified as required; and

(4) Ensure no person tampers with, disconnects, or destroys any part of the electronic monitoring system, associated equipment, or recorded data.

(B) Vessel monitoring plan requirements for electronic monitoring vessels. A vessel must have a NMFS-approved vessel monitoring plan to use electronic monitoring to meet sector monitoring requirements. NMFS will approve a vessel monitoring plan that sufficiently describes how the electronic monitoring system is configured on a particular vessel applying for approval and how the fishing and monitoring operations will be conducted in a manner to effectively monitor catch in accordance with the EM program requirements and standards. Vessels must submit vessel monitoring plans and revisions to vessel monitoring plans for NMFS review and approval, as instructed by the Regional Administrator.

(1) The vessel monitoring plan must be onboard the vessel at all times.

(2) The vessel owner, operator and crew must comply with all catch handling protocols and other requirements described in the vessel monitoring plan, including sorting catch and processing any discards within view of the cameras and consistent with the vessel monitoring plan.

(3) Modifications to any vessel monitoring plan must be approved by NMFS prior to such vessel fishing under the conditions of the new vessel monitoring plan.

(4) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must submit all electronic monitoring data to the monitoring service provider in accordance with the electronic monitoring program requirements in § 648.11, or as otherwise instructed by the Regional Administrator.

(5) A vessel owner or operator must make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request.

(6) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must turn on its camera for 100 percent of sector trips.

(7) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must comply with the requirements in § 648.11(l)(10)(ii)(A) and (B) or the Regional Administrator may withdraw approval for the vessel to use electronic monitoring.

(8) The Regional Administrator may revise vessel monitoring plan requirements and approval standards consistent with the Administrative Procedure Act. Any revisions will be published on the agency's website.

(C) **Safety hazards.** The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(1) of this section prior to leaving port. A vessel may not begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(D) **Dockside monitoring.** Vessels using maximized retention electronic monitoring must participate in either an independent third party dockside monitoring program approved by NMFS, or the dockside monitoring program operated by NMFS, as instructed by NMFS.

(E) **Retention of fish.** Vessels using maximized retention electronic monitoring must retain all fish from each allocated regulated species, regardless of length.

(ii) **Sector monitoring plan monitoring service provider requirements.** In addition to the monitoring service provider standards in paragraph (h) of this section, sector monitoring plans must include the following operational requirements for any monitoring provider contracted to meet sector monitoring program requirements in this paragraph (l):

(A) **At-sea monitoring report.** Within 48 hours of the completion of a trip, or as otherwise instructed by the Regional Administrator, electronic submission to NMFS and the sector a report detailing the area fished and the amount of each species kept and discarded. A standard format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(B) **Electronic monitoring report.** A report detailing area fished and the amount of each species discarded must be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 10 business days of a trip being selected for video review, or as otherwise instructed by the Regional Administrator. The format for submission shall be specified by NMFS and distributed to all monitoring service providers and sectors. NMFS will accept only monitoring data that passes automated NMFS data quality checks.

(C) **Vessel feedback report.** A report must be submitted to the vessel owner following a trip with detailed feedback on the vessel operator's and crew's catch handling, camera maintenance, and vessel monitoring plan compliance. A copy must be submitted to NMFS upon request.

(D) **Safety hazards.** Completion by an at-sea monitor of a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (l)(10)(ii)(E), an at-sea monitor cannot be deployed on that vessel for that trip.

(E) **Gear.** Provision of all equipment specified by the Northeast Fisheries Science Center to each at-sea monitor before the at-sea monitor may be deployed on a vessel. A list of such equipment is available from the Northeast Fisheries Science Center upon request. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (i)(2) of this section.

(F) Adjustment to service provider requirements and approval standards. The Regional Administrator may revise monitoring service provider requirements and approval standards consistent with the Administrative Procedure Act.

(iii) Sector requirements. Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (1)(10)(iii). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(v) of this section. Unless otherwise specified in this paragraph (1)(10), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each regulated species stock regardless of the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (1)(10), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, for example, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the appropriate non-groundfish component, such as the other sub-component or the appropriate yellowtail flounder stock's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(iv) Dealer requirements. Federally permitted NE multispecies dealers must allow dockside monitors access to their premises, scales, and any fish received from vessels participating in the maximized retention electronic monitoring program for the purpose of collecting fish species and weights of fish received by the dealer, fish length measurements, and the collection of age structures such as otoliths or scales.

(A) Facilitation. Federally permitted NE multispecies dealers must facilitate dockside monitoring for vessels participating in a maximized retention electronic monitoring program, including, but not limited to, the following requirements:

(1) Provide a safe sampling station, including shelter from weather, for dockside monitors to conduct their duties and process catch, that is equivalent to the accommodations provided to the dealer's staff.

(2) Allow dockside monitors access to bathrooms equivalent to the accommodations provided to the dealer's staff.

(3) Allow dockside monitors access to any facilities for washing equipment with fresh water that are provided to the dealer's staff.

(B) Processing, sorting, labeling, and reporting. Federally permitted NE multispecies dealers must process fish for vessels participating in a maximized retention electronic monitoring program consistent with and including, but not limited to, the following requirements:

(1) Offload from vessels participating in the maximized retention monitoring program all fish below the minimum size specified at § 648.83 report fish below the minimum size specified at § 648.83 by species, and provide the dockside monitor access to those at the safe sampling station.

(2) Sort by species all unmarketable fish from other fish, when identifiable to species.

(3) Clearly identify, mark, or label all containers with fish below the minimum size specified in § 648.83 as containing undersized fish, the fishing vessel from which they were offloaded, and the date of offloading.

(4) Report all fish below the minimum size specified in § 648.83, and all unmarketable fish, as instructed by NMFS.

(v) Adjustment to operational standards. The at-sea/electronic monitoring operational standards specified in paragraph (l)(10) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.
