



NOAA  
FISHERIES  
SERVICE

NORTHEAST  
REGIONAL  
OFFICE

## Sector Operations Plan, Contract, and Environmental Assessment Requirements

### Fishing Year 2013



THE HADDOCK FISHERY.

Baiting trawls on deck of Gloucester haddock schooner Mystic. (Sect. v, vol. 1, p. 237.)  
From a photograph by T. W. Sullis.

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## Introduction

Each sector is required to submit an Operations Plan and contract to NOAA's National Marine Fisheries Service (NMFS) by September 1 (unless otherwise instructed by NMFS) for the following fishing year (FY), which starts on May 1. The sector must do this to be considered for approval to fish in the following FY, and to be allocated annual catch entitlements (ACE). The Operations Plan shows how the sector proposes to operate in the upcoming FY. In addition, a sector must develop and submit an appropriate National Environmental Policy Act (NEPA) analysis. However, for FY 2013, NMFS will prepare the NEPA analysis for those sectors that provide the required information to assess the impacts of their sector operations. This document provides guidance for preparing Operations Plans, sector contracts, and the required information for the environmental assessment (EA).

## Confidentiality

The information required in these documents is not considered confidential information, as set forth in section 402(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These documents will be available to the public upon publication of the proposed and final rules approving and implementing FY 2013 sectors, consistent with the Administrative Procedure Act, and final versions will be posted at: <http://www.nero.noaa.gov/sfd/sfdmultisectorinfo.html>.

## Regulatory Basis

The Northeast (NE) Multispecies Fisheries Management Plan (FMP) meets the requirements of the Magnuson-Stevens Act and its related statutory mandates. Amendment 16 to the FMP made revisions to several management measures, including significant revisions to the requirements that apply to sectors, including expanding the requirements for Operations Plans. Framework Adjustment 45 to the FMP revised submission dates, as summarized in this document.

Citations that show you where you can find the corresponding regulatory requirements are included in this document.

## Disclaimer

This document provides a plain-language summary of how to satisfy the regulatory requirement for each sector to submit an Operations Plan, contract, and the required EA information.

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**Note:** Any language that NMFS previously provided to the sectors for FY 2012 is included (in *italics*) in the requirement descriptions in this document. This language must be included in the FY 2013 Operations Plan and contract, unless alternative language is approved by NMFS in advance.

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## Submitting the Required Information

This section tells you what you need to know in order to fulfill the regulatory requirements for the Operations Plan.

### What Information Do I Need to Provide?

#### ➤ Operations Plan

Each sector must submit a plan that explains how the sector will operate for the stated fishing period (1 or 2 years). The requirements for an Operations Plan are explained in this guidance document. You can find copies of previously approved Operations Plans from FY 2010-2012 on the web at <http://www.nero.noaa.gov/sfd/SectorManagers.html> in the “Other Resources” tab page.

#### ➤ Contract

Sectors must submit a contract signed by all participants indicating their agreement to abide by the Operations Plan. The Operations Plan and contract may be a single document. However, some sectors choose to have separate documents for the Operations Plan and contract. Either of these approaches will satisfy the regulations, as long as you provide the required information.

#### ➤ EA Information

For FY 2013, NMFS will produce the EA document, but each sector must contribute information used to produce the EA. You must submit this information along with the operations plan and contract. Guidance for preparing the EA information is included in this document.

#### ➤ Sector Roster Information

Sector roster information is part of the Operations Plan and contract, but the sector submits the roster information separately. This allows the roster to be submitted later, giving permit holders more time to decide whether or not to join a sector for the following FY. Think of the sector roster information as Part II of the Operations Plan and contract. Guidance for preparing the sector roster information is included in this document.

## When Do I Submit the Information?

Following are some critical dates to be aware of:

### ➤ Operations Plan

An Operations Plan may cover a 1- or 2-year period and must be submitted to NMFS **by September 4, 2012** (due to the Labor Day holiday). If submitting a separate Operations Plan and contract, please also submit the preliminary contract.

### ➤ Sector Contract

A preliminary sector contract must be submitted **by September 4**, along with the Operations Plan. A final signed sector contract must be submitted **by December 3** (because December 1 is a Saturday in 2013).

### ➤ Sector Roster Information

A final sector roster must be submitted **by December 3**.

### ➤ NMFS Rulemaking Information

NMFS will solicit public comment on the Operations Plan by publishing a proposed rule in the Federal Register. After the close of the comment period, the Regional Administrator will approve or disapprove sector operations and publish a final rule in the Federal Register.

## How Do I Prepare the Information?

### ➤ Operations Plan

The Operations Plan should be prepared as a Microsoft Word file.

### ➤ Contract

Each signature page for the contract must be submitted as a searchable (i.e., run Optical Character Recognition [OCR]) file in Adobe Acrobat format. If the contract is a separate document from the Operations Plan it should be prepared as a separate Microsoft Word file.

### ➤ EA Information

The EA information must be prepared as Microsoft Word files, as explained below.

### ➤ Sector Roster Information

The sector roster information must be prepared as a Microsoft Excel file.

## Where Do I Send the Information?

Send electronic copies of all documents to: [mark.grant@noaa.gov](mailto:mark.grant@noaa.gov).

Also, submit a single paper copy of each electronic file to NMFS at the following address:

John Bullard, Regional Administrator  
c/o Sustainable Fisheries Division Sector Team  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

The printouts must be clearly labeled. Operations Plan information may be hand delivered or mailed.

## Preparing the Operations Plan

The Operations Plan and contract must contain at least all of the information listed in the following subsections.

- [General Provisions](#)
- [Monitoring Provisions](#)
- [Enforcement Provisions](#)

## General Provisions

Listed in this section are administrative requirements for Operations Plans. The requirements fall into the following minimum general categories:

- [Management and Membership](#)
- [Allocation of ACE](#)
- [ACE Management](#)
- [Discipline Procedures](#)
- [Reporting](#)
- [ACE Thresholds](#)
- [Other Administrative Requirements](#)
- [Confidential Data Statement](#)
- [Consolidation of ACE and Redirection of Effort](#)

These categories and the requirements in each are listed in the following sections.

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**Note:** The categories are provided for ease-of-reference only. You do not need to create these categories in your Operations Plan; you need only include all the individual provisions of each category.

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## Management and Membership

The Operations Plan must include the following management and membership information:

- Clearly specify the length of member commitment and the voluntary nature of membership. Sectors may submit Operations Plans for 1-year or 2-year periods (§§ 648.87(a)(3), 648.87(b)(1)(iv)(B), and 648.87(b)(2)).
- A preliminary list of members (§§ 648.87(b)(2)(i) and 648.87(b)(2)(iii)).
- The name of a designated representative or agent of the sector for service of process (§ 648.87(b)(2)(iv)). This must be a specific, named individual, i.e., it is not acceptable to simply state “the manager.”
  - Sectors must also submit a document listing the members of the Board of Directors of the sector, and identifying one individual, other than the sector manager, who is able to act on behalf of the sector. This is necessary so that NMFS knows who to contact if the manager is unavailable and from whom to accept official communications on the sector’s behalf in addition to the sector manager. A single individual must be named. It is not acceptable to name a group.
  - The Operations Plan must also include a table of sector points of contact, and their responsibilities, as an appendix (see [Table 1](#) for an example; please note that the information provided in the table is for example only and does not represent an actual sector). This will ensure that we contact the proper sector staff for issues beyond the sector manager’s responsibility. This requirement can be fulfilled through the inclusion of an Excel table, similar to the following:

**Table 1: Example of Sector Points of Contact**

Sector Communications Contacts for SEAPORT SECTOR 1 for Fishing Year 2013								
Name	Title	Responsibility	Email	Phone	Street Address	City	State	Zip
John Doe	Manager	Day-to-day sector operations, policy issues, outreach	john.doe@email.net	555-555-5555	5 Rock Street	Gloucester	MA	01930
Henry King	Data Specialist	Data management, reporting	henry.king@email.net	555-555-5556	155 Pond Street	Rockport	MA	01966
William Conch	Public Relations Expert	Research	bill.conch@email.net	555-555-5557	709 Marlborough Road	Gloucester	MA	01930

### ***Allocation of ACE***

The Operations Plan must account for the original distribution of ACEs among member permits and/or vessels (§ 648.87(b)(2)(viii)). For example, at the start of the FY, how will ACEs be allocated and in what amounts?

### ***ACE Management***

The Operations Plan must include a plan and analysis to show how the sector will avoid exceeding its allocated ACEs (§ 648.87(b)(2)(vi)). This plan should include provisions for monitoring and enforcement of the sector regulations, including documentation of both landings and discards. Please include the following text in this section to fulfill this requirement:

*“The Sector manager (or his/her designated representative) will derive stock specific discards for each trip. If the trip is observed by either an at-sea monitor or a Northeast Fisheries Observer Program (NEFOP) observer, discards will be derived based on data collected during that trip and will account for all hauls (observed and unobserved) on that trip. If the trip is not observed, discards will be derived using the NMFS-provided discard rate resulting from the NMFS method to estimate 'in-season' discard rates.”*

## **Discipline Procedures**

The Operations Plan must include the following information about discipline procedures:

- A plan that describes the discipline procedures for sector members that do not abide by the sector rules (§ 648.87(b)(2)(vii)).
- An explanation of how the sector will immediately notify NMFS if a member is expelled (§ 648.87(b)(2)(vii)).

## **Reporting**

The Operations Plan must include the following reporting requirements:

- A statement explaining that the JIRA issue tracking application should be used to report all data quality issues to the appropriate personnel for research and correction activities. The use of JIRA will allow issues to be monitored throughout the correction process.
- A statement explaining that the sector manager will submit a weekly, or daily, report (§ 648.87(b)(1)(vi)(B)) to NMFS that includes the:
  - Sector Manager Detail Report: This provides information down to the sub-trip level about each sector trip for a given week, regardless of the completeness of the data. The information includes stock, gear, mesh categories, landing amounts, discards, and total catch.
  - Sector Manager Trip Issue Report: This provides information about sector trips for a given week that have enforcement or other issues. The sector manager submits one Issue Report per reporting period.
  - One of the following:
    - Sector Manager ACE Status Report: This provides the means for sector managers to report their ACE status calculations. This allows NMFS to cross-check totals, as stipulated in Amendment 16.
    - Sector Manager Daily ACE Status Report: This provides the means for sector managers to report their ACE status calculations on a daily basis if *either* of two "trigger points" (thresholds) has been reached in the current FY.

More detailed information on the requirements for the weekly report can be found in the Fisheries Data Services Division (FDSD) Publication: "Preparing the Sector Manager Report", available online at: <http://www.nero.noaa.gov/sfd/SectorManagers.html>.

## ACE Thresholds

The Operations Plan must include the following information about ACE thresholds:

- ACE thresholds that may trigger revisions to reporting frequency (§ 648.87(b)(2)(xii)):  
*“The reporting due date for the sector manager’s weekly report will be increased to daily when either 80% of any of the sector’s ACEs is reached, or when, for two consecutive weekly reporting periods 20% or more of the remaining portion any ACE is harvested, whichever occurs first. Thus, for the latter trigger point, if a sector in one week harvests 25% of the remaining ACE for Gulf of Maine cod for that sector, and the following week harvests 22% of that ACE, the trigger will have been reached and sector reporting will be changed to daily.*

*An alternative threshold for increasing reporting frequency may be implemented during FY 2013 if agreed upon by the sector and NMFS.”*

An alternate threshold may be included in the Operations Plan if previously agreed upon by the sector and NMFS.

- Details (including method and timing) of the sector’s plan for notifying NMFS once the specified ACE threshold (above) has been reached (§ 648.87(b)(2)(xii)).
- A description of how groundfish will be avoided while participating in other fisheries that have a bycatch of groundfish, if the sector does not have ACE for the stocks caught (§ 648.87(b)(2)(xiv)).
  - Note, this is only required if the sector wishes to participate in a fishery where the sector would normally be required to apply any groundfish catch against the sector’s ACE (see Amendment 16 EIS Section 4.2.3.4) and the sector does not anticipate being allocated ACE or acquiring the needed ACE through transfers, or plans to continue fishing after the ACEs of one or more species are taken. The regulations (§ 648.87(b)(2)(xiv)) currently restrict this provision to participation in other fisheries (e.g., dogfish, monkfish, and skate). However, we intend to propose a correction to that regulation to make it consistent with section 4.2.3.4 (Mortality/Conservation Controls) of Amendment 16. Therefore, sectors may propose a plan to operate targeting allocated species, or in other fisheries, once the ACEs of one or more species are taken.
  - Sector proposals must include an analysis, using observer data, to demonstrate that their proposed operations (location, time, gear type) will have **zero** catch of any stock for which they do not have ACE. Further, the ASM program proposed by the sector must include coverage of these operations to document that zero catch occurs of any stock for which they do not have ACE. This high standard is required to ensure all catch is accurately accounted for in sector ACEs.
  - We can only approve operations without ACE for one or more species if it is practical for us to implement those operations.

## Other Administrative Requirements

The Operations Plan must meet the following additional administrative requirements.

- Harvest Rules detailing sector operations and any additional exemptions requested by the sector beyond the universal exemptions approved in Amendment 16 (§ 648.87(b)(2)(xv)). These rules must:
  - Include a brief rationale for all requested exemptions. The rationale is simply why the sector wants the exemption. What will the sector do differently if granted the exemption, and why? You do not need to provide a justification or analysis of the exemption in the Operations Plan. The justification should be provided separately to NMFS for use in the analyses that will be incorporated in the EA. See the section [Preparing the Information Needed for NMFS to Produce the EA](#) for more details.
  - List and sort administrative provisions into the following categories:
    - Monitoring (dockside and at-sea)
    - Quota Monitoring
    - Administrative
    - Gear Requirements
- Please use the following text to fulfill the requirement to clearly specify that sector members must comply with all rules not specifically exempted as part of the Letter of Authorization (§ 648.87(b)(1)(iv)):

*“Upon approval, each sector vessel will be issued a Letter of Authorization (LOA) specifying the exemptions granted. Vessels must comply with all requirements stipulated in the LOA and all applicable Federal regulations and laws not specifically exempted in the LOA.”*

### **Confidential Data Statement**

NMFS has drafted example text allowing for the release to the sector of otherwise confidential data collected under the provisions of the Magnuson-Stevens Act. You may alter this language to fit the sector’s needs. In particular, please specify information not associated with current sector activity, such as historic landings data, that is to be released. However, the following language, or similar release language, should be included in the FY 2013 Operations Plan:

*“Pursuant to section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C §1881a(b)(1)(F), the undersigned hereby authorizes the release to the manager of [SECTOR NAME] of information that may be or is considered to be confidential or privileged by the Magnuson-Stevens Act or other federal law regarding the catch of various species of fish associated with the limited access Northeast multispecies permit with the Moratorium Right Identifiers (MRIs) enrolled in the sector submitted to the National Marine Fisheries Service that the undersigned has authority to access. This information includes data required to be submitted or collected by NMFS, including but not limited to days-at-sea allocation and usage, vessel trip reports, dealer reports, Northeast Fishery Observer Program data, catch and landings history data, sector dockside and at-sea monitoring data, and all other information associated with the vessel, MRI #, and/or permit records.”*

Please indicate the names of any staff in addition to the sector manager who may access confidential sector data.

### **Consolidation of ACE and Redirection of Effort**

The Operations Plan must include a detailed plan for the initial allocation of ACE among members that explains any consolidation and any redirection of effort that will result from sector operations.

### **Consolidation of ACE**

The Operations Plan must include the following template text regarding the quantity and duration of any redistribution of ACE within the sector (§ 648.87(b)(2)(v)):

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#### Consolidation and Redistribution of ACE

In FY 2012, \_\_\_\_\_% of the permits enrolled in the (fill in the sector name) for FY 2013 are attached to vessels actively fishing for NE multispecies. For FY 2013, the (fill in the sector name) sector has (insert number of permits) permits currently enrolled. Of those permits (insert number of permits) are anticipated to actively fish for NE multispecies in FY 2013. While these numbers may change, the (fill in the sector name) sector expects that, compared to FY 2012, there would be (insert either A or B)

- A.) A net consolidation beyond what previously occurred among the (fill in the sector name) as the share of ACE contributed by member permits is fished by fewer active vessels than in FY 2012. It can be anticipated that fewer active fishing vessels would result in job losses for fishing crews and the associated negative impacts could spread to fishing communities and industries reliant on commercial fishing. While fishers who remain in the fishery may experience a positive benefit, there would be fewer active fishers in the NE multispecies fishery.
- B.) No change from the consolidation that previously occurred among the members during FY 2012. The member permits that are not attached to active NE multispecies vessels in FY 2013 are the same permits that leased out their ACE in FY 2012. In **(choose one: all/most)** cases, a member who owns multiple permits fished the ACE (or DAS if in the common pool) of all those permits on a single hull and will now continue to fish the ACE contributed by all those permits on the same single hull, resulting in **(choose one: little/no)** additional consolidation.
-

### Redirection of Effort

The Operations Plan must propose limitations to eliminate adverse effects of any redirection of effort (§ 648.87(b)(2)(xiii)).

For FY 2013, this section must include the following template text regarding observations from FY 2011, observed qualitative changes in the first quarter of FY 2012, and predictions for FY 2013.

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Redirection of Effort

During FY 2011, \_\_\_\_\_ (fill in the sector name) \_\_\_\_\_ sector vessels switched fishing efforts into the following fisheries:

(Please list the fishery and describe what gear was used)  
(Please list the fishery and describe what gear was used)  
(Please list the fishery and describe what gear was used)

During the first quarter of FY 2012, \_\_\_\_\_ (fill in the sector name) \_\_\_\_\_ sector vessels switched fishing efforts into the following fisheries:

(Please list the fishery and describe what gear was used)  
(Please list the fishery and describe what gear was used)  
(Please list the fishery and describe what gear was used)

During FY 2013, \_\_\_\_\_ (fill in the sector name) \_\_\_\_\_ sector anticipates (choose a, b, c, or d, or some combination):

- a) Similar redirection of effort to the fisheries listed above, or
- b) Similar redirection of effort to fisheries listed above and

(Please list the fishery and describe what gear will be used)  
(Please list the fishery and describe what gear will be used)

- c) that some vessels may switch fishing efforts into the following fisheries:

(Please list the fishery and describe what gear will be used)  
(Please list the fishery and describe what gear will be used)

- d) that no redirection of effort will take place.
-

## Monitoring Provisions

This section gives you information about the monitoring information you need to supply as part of your Operations Plan.

- Dockside Monitoring (DSM) Program
- At-Sea Monitoring (ASM) Program

### ***Dockside Monitoring (DSM) Program***

DSM is scheduled to resume in FY 2013. Therefore, the following information must be included in the September 4 Operations Plan.

- Detailed information about a monitoring program for landings and discards, including:
  - The development and implementation of an independent, third-party weigh-master/dockside monitoring system for monitoring landings and ACE.
    - A list of specific ports where members will fish.
    - Specific exceptions should be noted (e.g., safety, weather) and allowed, provided there is reasonable notification of a deviation from the listed ports.
      - Explain how NMFS and the DSM service provider will be notified of when the landing port exception is used.
    - Whether or not the sector will allow offloading at remote locations and, if so, a list of the remote locations that will be allowed.
    - Sectors are not required to submit provider application materials in the FY 2013 Operations Plan. However, the following template text will fulfill the requirement for detailed information on DSM providers:

*“[Insert Sector Name] will contract one or more of the companies approved by NMFS to provide dockside monitoring and will notify NMFS of its selection no later than May 1, 2013.”*

- Detailed information on DSM program (§ 648.87(b)(2)(xi)).
- A statement that dockside monitors will be deployed in such a way as to achieve the coverage level funded by NMFS (§ 648.87(b)(1)(v)(B)(3)(i)).
- The following template text describes hail requirements for short-duration trips or occurring within 6 hours of port:

*“For trips less than 6 hours in length or occurring within 6 hours of port, the estimated time of arrival to port will be provided in the trip start hail. The trip end hail will be sent upon completion of the last tow with required updated information. An alternative timing for the trip end hail may be implemented during FY 2013 if agreed upon by the sector, the monitoring provider, and NMFS.”*

## ***At-Sea Monitoring (ASM) Program***

The goal of ASM is: “To verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization.” The regulations at 50 CFR 648.87(b)(1)(v)(B)(3), contain the following objectives for an ASM program:

- Objective 1: It must provide coverage that is fair and equitable.
- Objective 2: It must be distributed in a statistically random manner among all trips.
- Objective 3: Coverage must be representative of fishing activities and operations by all vessels within the sector throughout the entire FY.

The Regional Administrator will approve or disapprove proposed ASM programs through each sector’s Operations Plan. NMFS will not be creating a single ASM program that must be adopted by each sector in its Operations Plan. However, the ASM program implemented by NMFS in 2010 through 2012 will be the default ASM program for all sectors.

Attachment 3 includes a detailed description of the NMFS ASM program. A sector may use the NMFS ASM program as an example to design a new ASM program in its Operations Plan or choose to adopt the NMFS ASM program in its Operations Plan. NMFS will consider any ASM proposal in the September 4 Operations Plan to be a draft and will work with the sector to resolve any concerns. If a sector proposes a new ASM program that NMFS ultimately does not approve, then the sector will default to the NMFS ASM program so the sector can be approved to operate in 2013. The goal of this approach is to allow the flexibility for sectors to develop ASM programs while providing a default ASM program as a fail-safe so that, if a sector designs an unapprovable ASM program, the sector relies on the default NMFS-designed program.

Following is the ASM information you need to supply as part of your Operations Plan:

- Sectors will not be required to submit provider application materials in the FY 2013 Operations Plan. However, the following template text will fulfill the requirement for detailed information on ASM providers:  
*“The [Insert Sector Name] will contract one or more of the companies approved by NMFS to provide at-sea monitoring and will notify NMFS of its selection no later than May 1, 2013.”*
- The following template text indicating that at-sea monitors will be deployed in such a way as to achieve the ASM coverage level of trips, as specified by NMFS, that is random and representative of the fishing activities of the sector (§ 648.87(b)(1)(v)(B)(3)(i)). This coverage level will be provided separately and must be used to complete the text below:  
*“The [Insert Sector Name] will deploy at-sea monitors in a way to achieve X% of trips that is random and representative of fishing activities of the sector.”*
- If the sector elects to use the NMFS-designed program, attach the standards to the Operations Plan, and use the following template text to fulfill this requirement:  
*“The [Insert Sector Name] will use the NMFS-designed ASM program for FY 2013.”*
- If electing to design a program, please include the following statement indicating that the sector will use the NMFS-designed program if the sector-designed program is not approved. Please also reference the standards, and attach the standards to the Operations Plan.

*“In the event that the sector-designed ASM program is not approved, the [Insert Sector Name] will use the NMFS-designed ASM program for FY 2013.”*

## Enforcement Provisions

This section gives you information about the enforcement provisions you need to include as part of your Operations Plan.

- Detailed information about overage penalties or other actions to be taken if the sector exceeds its ACE (§ 648.87(b)(2)(x)). An ACE overage means the catches by a sector’s vessels exceed the ACE possessed by the sector after considering all ACE transfers that take place for the current FY (including those that occur up to 2 weeks into the following FY, as allowed by the ACE transfer provisions).
- Detailed information about its individual administrative provisions that would not be subject to enforcement by NMFS. This requirement is distinct from the grouping of harvest rules as “administrative,” used for analyses in the EA. Operations Plans must identify which provisions are exclusive to the administration of the sector, and would include provisions such as dues, allocations to individual members by the sector, etc; but do not include required provisions such as reporting, ACE overages, and prohibited activities.
- A description of the discipline procedures for sector members that do not abide by the sector rules (§ 648.87(b)(2)(vii)).
- A statement that the sector is a legal entity (specify type, e.g., corporation) and is therefore subject to NMFS enforcement action for violation of sector regulations (§ 648.87(b)(1)(iv)(A)), including proof of the sectors status as a legal entity, i.e., state incorporation documentation (can be a print-out from state website).
- A statement that sector members may be held jointly and severally liable for violations of the following Operations Plan requirements (§ 648.87(b)(1)(iv)(A)):
  - ACE overages
  - Discarding of legal-sized fish
  - Misreporting of catch (landings or discards)
- A statement that enforcement issues must be included in weekly reports, similar to the following text:

*“Weekly reports must include any enforcement or reporting compliance issues, including violations of Operations Plans (exclusive of defined administrative provisions), violations of regulations, or general problems with dockside monitoring or sector operations during the reporting period.”*



- New FY 2013 exemption requests should include a citation of the specific regulation(s) from which an exemption is requested. If requesting an exemption for a specific gear type, please refer to the regulatory definitions provided in Attachment 1.
- If requesting one of the following exemptions, the sector's justification must include specific information on the usage and utility of the exemption:
  - Prohibition on hauling another vessel's hook or gillnet gear.
  - Submission of daily catch reports by sector managers for vessels fishing in the Closed Area I Hook Gear Haddock Special Access program.
  - Prohibition on fishing inside and outside the Closed Area I Hook Gear Haddock Special Access Program (SAP) on the same trip.
  - Requirement to declare intent to fish in the Eastern U.S./Canada SAP and Closed Area II Yellowtail Flounder/Haddock SAP from the dock.
- For all exemptions requiring justification, including new FY 2013 exemptions and FY 2012 exemptions requiring justification, please answer the following questions:
  - How often was/will the exemption (be) used (seasonality)?
  - How many members of the sector used/will use the exemption?
  - How did/will the exemption affect fishing operations?
  - What does the sector expect the resulting impact to be on sector operations?
  - Provide supporting data, if available.
- If a provision of the Operations Plan was not analyzed in the Amendment 16 final environmental impact statement or subsequent framework EAs, analysis must be provided for inclusion in the FY 2013 EA (§ 648.87(b)(2)(ix)).

Because sector roster information for FY 2013 may be submitted as late as December 3, 2012, information for the EA may be submitted in two parts. Please submit **Items 1-5** (excluding participant information) by **September 4, 2012**. Please submit **Item 6** (participant information) by **December 3, 2012**, and confirm the information for Items 1-4 previously submitted. For example, if an additional port is added due to a new member, please update the list of ports and provide that by December 3, 2012.

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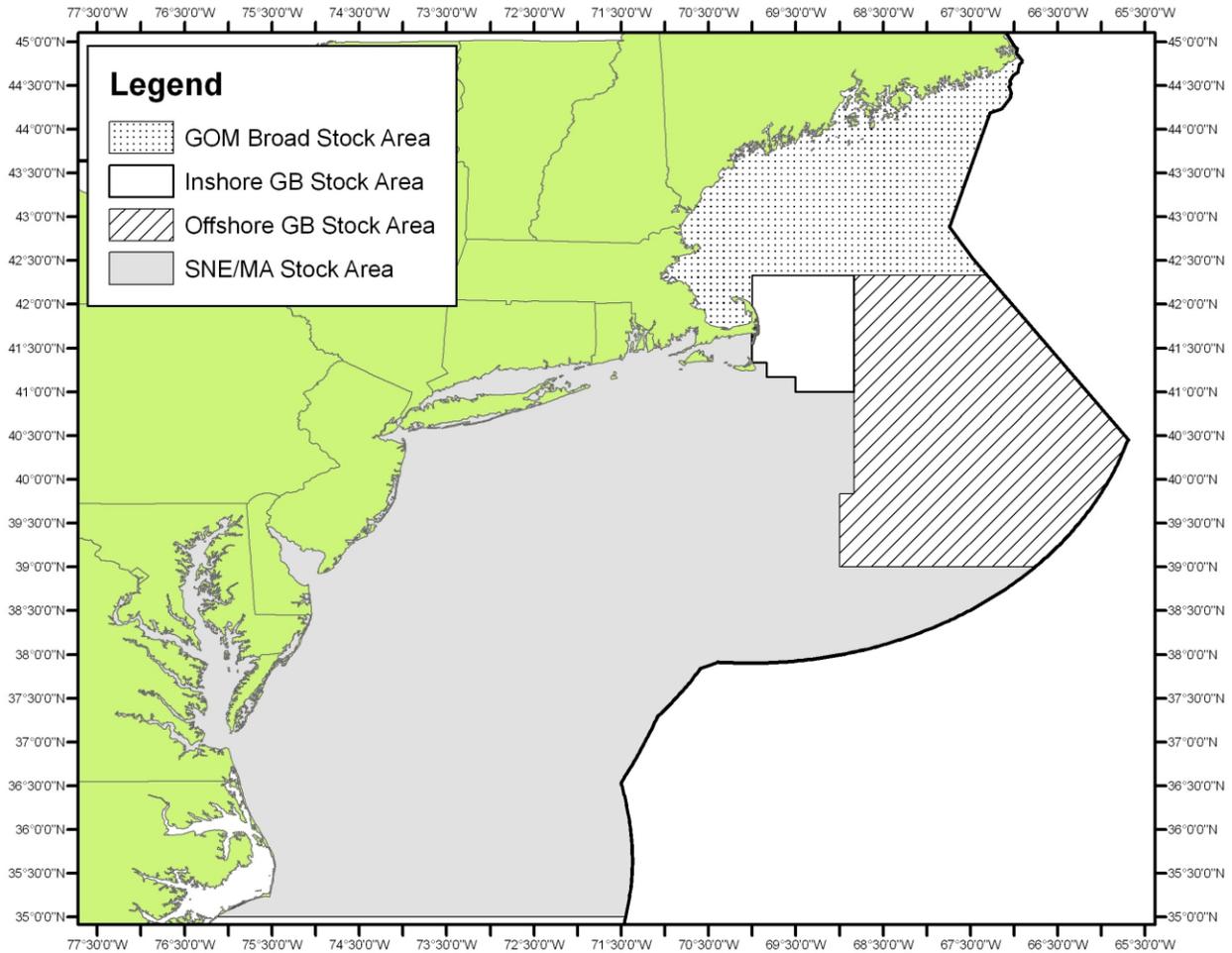
**Note:** Requested exemptions and justifications may be provided below or in a separate document.

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### ***Instructions for Completing the EA Information***

Please provide the following information using the template provided:

1. **Primary Fishing Locations** — Please indicate the Broad Stock Areas, depicted in [Figure 1](#) below, in which the majority of the active fishing vessels (vessels intending to land groundfish during FY 2013) will be fishing. The four Broad Stock Areas are: Gulf of Maine (GOM), Inshore Georges Bank (GB), Offshore GB, and Southern New England/Mid-Atlantic (SNE/MA).



**Figure 1: Northeast Groundfish Broad Stock Areas**

2. **Gear** — Gear should be listed for active vessels only, and should be listed as a percentage of time used. Please see Attachment 1 for gear types and definitions that may be included in each category. Bolded gear in Attachment 1 should be included in your table. For those vessels using multiple gear types, information should be provided based on a rough estimation of their anticipated use, as indicated in the following examples. **Example 1:** If there are 50 active vessels in a sector, with 20 vessels using trawl gear, 20 using gillnet, and 10 using hook, the sector should respond 40% trawl, 40% gillnet, and 20% hook.

$$20 \text{ trawl vessels} \div 50 \text{ active vessels} = 0.4$$

$$0.4 \times 100 = 40\%$$

$$20 \text{ gillnet vessels} \div 50 \text{ active vessels} = 0.4$$

$$0.4 \times 100 = 40\%$$

$$10 \text{ hook vessels} \div 50 \text{ active vessels} = 0.2$$

$$0.2 \times 100 = 20\%$$

$$40\% + 40\% + 20\% = 100\%$$

**Example 2:** If there are 50 active vessels in a sector with 10 using trawl gear exclusively, 20 using gillnet gear exclusively, 10 using hook exclusively, and 10 vessels using trawl gear 70% of the time and hook gear 30% of the time, the sector should respond 34% trawl, 40% gillnet, 26% hook.

$$10 \text{ trawl-only vessels} \div 50 \text{ active vessels} = 0.2$$
$$0.2 \times 100 = 20\%$$

$$20 \text{ gillnet-only vessels} \div 50 \text{ active vessels} = 0.4$$
$$0.4 \times 100 = 40\%$$

$$10 \text{ hook-only vessels} \div 50 \text{ active vessels} = 0.2$$
$$0.2 \times 100 = 20\%$$

$$10 \text{ mixed gear vessels} \div 50 \text{ active vessels} = 0.2$$
$$0.2 \times 70\% \text{ of time using trawl gear} = 0.2 \times 0.7$$
$$0.2 \times 0.7 = 0.14$$
$$0.14 \times 100 = 14\%$$

$$0.2 \times 30\% \text{ of time using hook gear} = 0.2 \times 0.3$$
$$0.2 \times 0.3 = 0.06$$
$$0.06 \times 100 = 6\%$$

$$\text{trawl} = 20\% + 14\% = 34\%$$

$$\text{gillnet} = 40\%$$

$$\text{hook} = 20\% + 6\% = 26\%$$

$$34\% + 40\% + 26\% = 100\%$$

3. **Primary homeports and landing ports** — Provide only those ports used to land the majority of catch from active vessels.
4. **Secondary homeports and landing ports** — All remaining ports that may be used by sector vessels should be provided here.
5. **Number of Participants** — Provide participant information by December 3, 2012, as an estimate of the total number of permits enrolled in the sector and the number of active vessels (vessels intending to land groundfish during FY 2013).
6. **Exemptions Requested** — Sectors must submit any other exemption requests in their Operations Plan in a Microsoft Word document, either in the same document as the table, or in a separate document. Sectors are automatically granted the Universal Exemptions listed in the final rule for Amendment 16 (see Attachment 2) and, therefore, these do not need to be requested. The non-universal exemptions granted during FY 2012 need to be specifically requested. Most non-universal exemptions granted during FY 2012 do not require additional justification, with the exception of the prohibition on hauling another vessel's gillnet gear, submission of daily catch reports by sector managers for vessels fishing in the Closed Area I Hook Gear Haddock SAP, prohibition on fishing inside and outside the Closed Area I Hook Gear Haddock SAP on the same trip, and the requirement to declare from the dock intent to fish in the Eastern U.S./Canada SAP and the Closed Area II Yellowtail Flounder/Haddock SAP. Sectors must include specific information on

the usage and utility of the exemption if requesting these two exemptions. Any new exemption requests or modifications to previous exemption require justification.

**Note:** Disapproved exemption requests from previous years will not be granted a review for 2013 unless new information or data is provided.

## Preparing Sector Roster Information

Framework Adjustment 45 to the FMP altered the due date for sectors to submit some of the information required for inclusion in the Operations Plan. Any language that NMFS previously provided to the sectors for FY 2012 is included (in *italics*) in the requirement descriptions below. This language must be included in the FY 2013 Operations Plan and contract, unless alternative language is approved by NMFS in advance.

## General Provisions for Roster Information

The following must be submitted to NMFS by **December 3, 2012**.

- A list of all participants and a contract signed by all participants indicating their agreement to abide by the Operations Plan accompanying the proposal (§§ 648.87(b)(2)(i) and 648.87(b)(2)(iii)).
- A list of all Federal and state permits held by sector members, including:
  - Whether the permit is enrolled in the sector or any other sector;
  - An indication for each vessel of whether it would actively fish within the sector (§ 648.87(b)(2)(ii)); and
  - The following template text to show fulfillment of the ownership provision requiring at least three distinct owners has been met (§ 648.87(a)(4)) and a copy of the corporate documents or Federal permits for the three distinct owners:

*“Amendment 16 to the NE multispecies FMP defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector. This criterion has been fulfilled with PERMIT NUMBER under the distinct ownership of OWNER NAME, PERMIT NUMBER under the distinct ownership of OWNER NAME, and PERMIT NUMBER under the distinct ownership of OWNER NAME.”*

The regulations (§648.87(b)(2)(ii)) require that a sector roster be submitted as a list. Photocopies of permits will not be accepted. This requirement can be fulfilled through the inclusion of an Excel table, similar to the following:

**Table 3: Sector Membership Requirement List**

Sector Member	MRI	Fed Permits	State Permits	Enrolled in Sector
Member A	1	Lobster, Fluke	Lobster, Mults	Yes
Member A	2	Mults, Scallop	Scallop, Urchin	No
Member A	3	Mults	None	Enrolled in Sector B

Member B	4	Mults, Monkfish	Mults	Yes
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## Attachment 1: Gear Definitions

This defines the terminology used for gear and mesh definitions in § 648.2.

### Mobile Gear

Gear Type	Description
<b>Trawl</b>	Gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

### Fixed Gear

Gear Type	Description
<b>Hook gear</b>	Fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.
Jigging	With respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved ("jigged") with an up and down motion.
Longline gear	Fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.
Rod and reel	A hand-held (including rod holder) fishing rod with a manually operated reel attached.
Handgear	With respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.
Handline or handline gear	Fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.
Tub-trawl	With respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.
<b>Gillnet gear</b>	Gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at §648.81(f)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

Flatfish gillnets	Gillnets that are either constructed with no floats on the float line, or that are constructed with floats on the float line and that have tie-down twine between the float line and the lead line not more than 48 inches (18.90 cm) in length and spaced not more than 15 feet (4.57 m) apart.
Roundfish gillnets	Gillnets that are constructed with floats on the float line and that have no tie-down twine between the float line and the lead line.
<b>Pots and Traps</b>	No specific definition is included in the regulations at 648.2 pertaining to the Northeast Multispecies fishery.

## Attachment 2: Exemptions

Attachment 2 provides information about the exemptions that have previously been approved for those preparing the Operations Plan. Sectors do not need to apply for the Amendment 16 universal exemptions. Sectors will need to include any previously approved exemptions, along with justification for novel FY 2013 exemption requests, in their FY 2013 Operations Plan.

### Amendment 16 Universal Exemptions

1. Exemption from groundfish DAS requirements, including DAS reductions, differential groundfish DAS counting, the 3/15 rule for gillnets, and 24-hour DAS counting.
2. Exemption from trip limits on stocks for which a sector receives an allocation, except for the following:
  - a. Halibut: Trip limit would continue to be one fish per trip;
  - b. No vessel, whether in the Common Pool or in any sector, would be allowed to possess any windowpane flounder (both stocks), ocean pout, wolffish, or SNE/MA winter flounder on board at any time. When caught, these species must be returned.
3. Exemption from the Georges Bank Seasonal Closure in May.
4. Exemption from any additional mortality controls adopted by Amendment 16, including additional seasonal or year-round closures, gear requirements, DAS reductions, differential DAS counting, and/or restricted gear areas.
5. Gulf of Maine Rolling Closures in specific blocks as identified in Amendment 16 (specifically Section 4.2.3.9).
6. Exemption from the requirement to use 6.5-inch mesh in the codend in haddock separator trawl/Ruhle trawl when targeting haddock in the Georges Bank Regulated Mesh Area (i.e., authorized to use 6-inch mesh in the codend).

### FY 2012 Approved Sector Exemptions and Justification

7. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels.  
 This measure was implemented in 1997 under FW 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types (the proposed rule for this action erroneously stated that this action had been implemented in 1996 under Amendment 7). Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120

days must be taken between June 1 and September 30. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. Because sector vessels are prohibited from discarding all legal-sized allocated fish when on a sector trip, and are restricted by their ACE, vessels will likely fish more selectively, which in turn, can increase each vessel's catch per unit of effort (CPUE) and reduce the number of days that fixed gear is in the water. Similarly, protected species (such as harbor porpoise and humpback whales) may benefit from less fishing effort and fewer gear days.

8. 20-Day Spawning Block

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning of cod is most prevalent in the GOM. While this measure was designed to reduce fishing effort on spawning fish stocks, sector vessels will utilize an ACE to restrict their fishing mortality. Undersized fish caught by sector vessels cannot be kept and, additionally, the catch will count against the sector's ACE. This creates a strong incentive for sectors to avoid catching undersized fish. In addition, there are minimal temporal and spatial restrictions associated with this regulation, and allowing vessel owners to select any 20-day period out of the fishery does not necessarily prevent them from harvesting spawning fish.

9. Limitation on the Number of Gillnets for Day Gillnet Vessels

Vessels are allowed to fish up to 150 gillnets (any combination of flatfish or roundfish nets) in each of the groundfish regulated mesh areas (RMAs). Current gear restrictions in the RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)(B)(2)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)(B)(2)); and 75 gillnets in the SNE and MA RMAs (§ 648.80(b)(2)(iv)(B)(1), and § 648.80(c)(2)(v)(B)(1), respectively). Regulations require nets to be marked with either one or two tags per gillnet depending on the type of net and RMA fished, for the purpose of enforcing gillnet limits. These restrictions were implemented in 1996 under Amendment 7 and revised in Amendment 13 to prevent an uncontrolled increase in the number of nets being fished, thus undermining the applicable DAS effort controls. Because this measure was designed to control fishing effort, NMFS believes that a net restriction is no longer necessary, since the sector is confined to an ACE for each stock, which caps overall fishing effort. Vessels are also exempt from the current tagging requirements and, instead, will be required to mark their gear with one tag per net. An LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

10. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

This exemption allows one vessel to hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84). These sectors argued that the regulations pertaining to gear-marking controls, setting, and hauling responsibilities are no longer necessary, because the sector would be confined to an ACE for each stock, and that "community" fixed gear would allow vessel owners greater flexibility. In addition, the sectors argued that shared fixed-gear fishing effort could potentially reduce the amount of gillnet gear in the water and minimize the use of gear to "hold" additional bottom ground. Sectors

specify in their Operations Plans that all vessels participating in community fixed gear will be held jointly liable for any violations associated with that gear. An LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

11. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

This is an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv)(B), which prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB, were implemented as a groundfish mortality control under Amendment 13. This exemption would increase efficiency of gillnet vessels by allowing them to haul additional nets per trip—nets which are already permitted in the water under the Monkfish FMP. This exemption does not permit the use of additional nets; it only allows nets deployed under existing net limits in the NE Multispecies and Monkfish FMPs to be hauled more efficiently by vessels dually permitted under both FMPs.

12. Limitation on the Number of Hooks that May Be Fished

This is an exemption from the number of hooks that a vessel may fish on a given fishing trip. This measure, which was initially implemented through an interim action (67 FR 50292, August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort and, therefore, is no longer necessary because the sector is confined to an ACE for each stock, which restricts fishing mortality. Current regulations (§648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA. The potential for gear interactions between protected resources and longline/hook gear is much lower than the interaction potential from bottom trawl or gillnet gear. In addition, the use of longline/ hook gear minimizes fishing impacts on benthic habitat.

13. Length and Horsepower Restrictions of the DAS Leasing Program

While Amendment 16 exempts sector vessels from the requirement to use NE multispecies DAS to harvest groundfish, some sector vessels will still need to use NE multispecies DAS under specific circumstances; for example, when fishing for monkfish. This is an exemption from the DAS Leasing Program length and horsepower restrictions. Sector ACEs eliminate the need to use vessel characteristics to control fishing effort and that removal of this restriction would allow sector vessels more flexibility. Leasing under this exemption is without regard to baseline characteristics and only occurs between vessels of the same sector or vessels of any other sector that is also granted this exemption.

14. Sink Gillnet Mesh Size Restrictions in the GOM from January through April

This exemption is functionally equivalent to a fishery-wide pilot program that was proposed by the Council in Amendment 16 to allow vessels to target haddock seasonally in the GOM. The regulations currently require a minimum mesh size of 6.5-inches (16.51-cm) in gillnets in the GOM RMA (50 CFR 648.80(a)(3)). Minimum mesh size requirements have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding and improve survival of

sub-legal groundfish. This exemption allows sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1 to April 30 to target haddock. Sector vessels utilizing this exemption are prohibited from using tie-down gillnets during this period. There is no limit on the number of nets that participating Trip gillnet vessels can fish with, possess, haul, or deploy, during this period. Day gillnet vessels utilizing this exemption and participating in a sector that has not been approved for the general net limit exemption are restricted to the limit of 50 stand-up sink gillnets during this period. However, Day gillnet vessels participating in sectors granted the exemption from Day gillnet net limits are exempt from the general net limit in the GOM RMA and would be able to fish up to 150 nets in the GOM RMA. The LOA issued to the sector vessels that qualify for this exemption will specify the net restrictions to ensure they are enforceable provisions.

15. Extension of the Sink Gillnet Mesh Size Restrictions in the GOM Through May  
This exemption allows the use of 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from May 1 through May 31. Please see Exemption 9 for a full description of all provisions associated with this exemption.
16. Prohibition on Discarding  
Current regulations prohibit sector vessels from discarding legal-sized fish of any of the 14 stocks allocated to sectors while at sea (§ 648.87(b)(1)(v)(A)). Amendment 16 contained this provision to ensure that the sector's ACE is accurately monitored. NMFS approved a partial exemption from the requirement to retain all legal-sized fish, which will allow sector vessels to discard these fish. NMFS defined "unmarketable" fish as "any legal-sized fish the vessel owner/captain elects not to retain because of poor quality as a result of damage prior to, or from, harvest," and the determination of what fish should be discarded under this exemption is at the discretion of the vessel operator, but must be based on physical damage to the fish. The definition of unmarketable fish is included in the sector's LOA. All vessels in a sector opting for this exemption will be required to discard legal-sized unmarketable fish at sea on all trips (i.e., not just on select trips).
17. Daily Catch Reporting by Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP  
The regulations at § 648.85(b)(7)(v)(C) require that sector vessels that declare into the CA I Hook Gear Haddock SAP submit daily catch reports to the sector manager, and that the sector manager report catch information to NMFS on a daily basis. This reporting requirement was originally implemented through Framework 40A, to facilitate real-time monitoring of quotas by NMFS. Amendment 16 granted authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. For FY 2010 - 2012, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), but reporting requirements were retained for the CA I Hook Gear Haddock SAP, because NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP. NMFS granted this exemption to sectors managers, provided that participating vessels submit daily VMS catch reports directly to NMFS, analogous to the requirements for common pool vessels, to satisfy this reporting requirement.

18. Trawl Gear Requirements in the U.S./Canada Management Area

Current regulations require that a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area must fish with a Ruhle trawl, a haddock separator trawl, or a flounder trawl net. The final rule implementing Amendment 13 clarified that the restriction to use a haddock separator trawl or a flounder trawl net was designed to “ensure that the U.S./Canada TACs are not exceeded. The requirement to utilize a Ruhle trawl in the Eastern U.S./Canada Area was implemented through several inseason actions, and made permanent in Amendment 16. These gear restrictions were authorized to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. NMFS approved an exemption from these gear requirements, noting that any trawl gear not currently approved for the U.S./Canada Management Area, but utilized under this exemption, will be included in the standard otter trawl discard rate strata.

19. Requirement to Power a VMS While at the Dock

The regulations at § 648.10(b)(4) require that a vessel issued certain categories of NE multispecies permits, or participating in a sector, must have an operational VMS unit onboard. Additionally, the regulations at § 648.10(c)(1)(i) require that the VMS units onboard a NE multispecies vessel transmit accurate positional information (i.e., polling) at least every hour, 24 hr per day, throughout the year. Under certain circumstances, the regulations at § 648.10(c)(2) allow NMFS to issue a LOA allowing vessels to sign out of the VMS program for a minimum of 30 consecutive days. Because sector managers are ultimately responsible for ensuring that their sector members adhere correctly to the Operations Plans requirements, an exemption from the requirement to power a VMS while at the dock was approved, provided the vessel is at the dock and not underway. Vessels granted this exemption and electing to power down must submit the appropriate VMS declaration, as specified on the sector’s LOA. Since sectors may only request exemptions from NE multispecies regulations, this exemption only applies to NE multispecies requirements; vessels must continue to comply with the requirements of other FMPs for which the vessel is permitted. For instance, a vessel in a sector granted this exemption that has a surfclam/ocean quahog permit would still need to have an active VMS 24 hr a day, 7 days a week.

20. Dockside Monitoring (DSM) Requirements for Vessels Fishing West of 72°30’ W. long.

Upon receiving requests for an exemption from the DSM requirement (§ 648.87(b)(1)(v)(B)(1)) for vessels fishing in SNE and MA waters during FY 2010, the Regional Administrator, in a September 4, 2010, letter to the Council, requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. At its November 18, 2010, meeting, the Council considered this request and voted to remove DSM from the list of prohibited exemptions. NMFS granted an exemption from DSM requirements for vessels fishing exclusively west of 72°30’ W. long; noting that an exemption area based on a longitudinal line will better facilitate enforcement. Vessels fishing under this exemption must stow all gear capable of catching groundfish, consistent with the regulations at § 648.23(b), while steaming to or from areas west of 72°30’ W. long. Sectors electing to utilize this exemption must coordinate with their contracted DSM providers to establish a method to exclude these trips from DSM. Trip start and trip end hails are used by NMFS to coordinate the

deployment of enforcement resources in monitoring offloads. Therefore, NMFS will continue to require vessels utilizing this exemption to comply with all hail requirements.

21. DSM Requirements for Handgear A-Permitted Sector Vessels

Framework Adjustment 45 removed DSM requirements in for Handgear A- and B-permitted vessels, as well as for Small Vessel-permitted vessels (Category HA, HB and C, respectively) in the common pool, because the small quantities of groundfish landed by these permit categories would make monitoring such trips uneconomical. Consistent with flexibility provided for Handgear-permitted vessels in Framework Adjustment 45, NMFS has approved an exemption from DSM requirements for limited access Handgear A-permitted sector vessels. Trip start and trip end hails are used by NMFS to coordinate the deployment of enforcement resources in monitoring offloads. Therefore, NMFS will continue to require vessels utilizing this exemption to comply with all hail requirements.

22. DSM Requirements for Monkfish trips in the monkfish SFMA

Amendment 13 specified that sectors are responsible for monitoring sector catch, and Amendment 16 expanded this requirement. Unless a vessel is fishing in a NE multispecies exempted fishery specified in § 648.80, directed monkfish, skate and spiny dogfish trips are considered a sector trip. Trawl vessels fishing on a NE multispecies DAS or on a sector trip in the Southern New England RMA must use a minimum 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh through the body and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of a trawl net (648.80(b)(2)(i)). Day and Trip gillnet vessels must fish with a minimum mesh size of 6.5 inches (16.5 cm) throughout the entire net (§ 648.80(b)(2)(iv)). Monkfish measures at § 648.91(c)(1)(i) require vessels fishing under the monkfish DAS program with trawl gear in the SFMA to utilize a minimum 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend and for at least 45 continuous meshes forward of the terminus of the net. The monkfish regulations also require vessels fishing under the monkfish DAS program with gillnet gear to fish with a minimum diamond mesh size of 10 inches (25.4 cm) or larger (§ 648.91(c)(1)(iii)). Vessels that are issued both monkfish limited access and NE multispecies limited access permits must comply with the more restrictive set of management measures. Therefore, a vessel that is fishing under concurrent monkfish DAS and NE multispecies DAS on a sector trip must abide by the more restrictive monkfish gear requirements. NMFS approved an exemption from DSM for sector trips declared into the monkfish SFMA when fishing on a concurrent monkfish/NE multispecies DAS trip provided that the vessel fishes the entirety of its trip in the SFMA. Sector vessels utilizing this exemption must have non-conforming gear stowed as specified in § 648.23(b), and comply with dockside monitoring hail requirements specified at § 648.87(b)(5)(i)(A). Sector vessels utilizing this exemption must determine with their DSM provider how to notify their provider that a given sector trip is utilizing this exemption.

23. Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP to allow additional access to healthy stocks on a category B DAS using selective gears. This SAP had quotas for groundfish stocks to prevent overfishing. Under the rules implementing FW 40A, NE multispecies vessels fishing on a trip within this SAP were prohibited from deploying

fishing gear outside of the SAP on the same trip when they declared into the SAP (§ 648.85(b)(7)(iv)(G)). This restriction was established to avoid potential quota monitoring and enforcement complications that could arise when a vessel fishes both inside and outside the SAP on the same trip. An exemption was granted from the prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP on the same trip. However, to ensure accurate accounting of catch in this SAP, vessels using this exemption are prohibited from hauling or setting fixed gear across the border of the SAP. The intent is that each haul of gear occurs entirely inside, or entirely outside, the SAP boundaries. Vessels participating in this SAP are already required to send a daily VMS catch report that NMFS will use to identify catch from inside the SAP separately from catch outside the SAP on the same trip. Vessels fishing both inside and outside this SAP on the same trip must report only catch within the SAP in their daily VMS catch report. Vessels will send their daily VMS catch report to NMFS if their sector is also granted an exemption from the requirement for daily catch reporting by the sector manager for vessels participating in the CA I Hook Gear Haddock SAP.

24. 6.5-inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

The 6.5-inch (16.5-cm) minimum mesh size was initially adopted through interim rules in 2001 and 2002 (67 FR 21140, April 29, 2002; 67 FR 50292, August 1, 2002), and made permanent through Amendment 13. FW 42 further modified the mesh regulations in the SNE and MA regulated mesh areas (RMA) to reduce discards of yellowtail flounder. The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs. Minimum mesh size restrictions have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. These requirements were intended to protect spawning fish and increase the size of targeted fish. Mesh selectivity is only one of a number of factors that influences the overall selection pattern in a fishery. Fishermen can influence the size of the fish they catch by fishing at different times of the year, in different locations, or by using different gear or techniques. An exemption from the 6.5-inch (16.5-cm) minimum mesh size for trawl net cod ends to allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets in all regulated mesh areas to target redfish was approved. The exemption is intended to increase the catch of redfish, increase the operational flexibility of sector vessels, and increase the profit margins of sector fishermen. Sector vessels participating in the directed redfish fishery under this exemption will be required to declare their intention to the Sector Manager at least 48 hr prior to departure, comply with the pre-trip notification system (PTNS) requirements, and may only use this exemption on trips carrying either an at-sea monitor or NEFOP observer to monitor catch and bycatch. Daily catch reports must be submitted to the Sector Manager to ensure that all catch is harvested within the sector's ACE.

25. Prohibition On A Vessel Hauling Another Vessel's Hook Gear

Current regulations prohibit one vessel from hauling another vessel's hook gear (§ 648.14(k)(6)(ii)(B)). The regulations were developed to facilitate the enforcement of existing hook regulations that were created as effort and mortality controls, and no provisions exist in the regulations allowing for multiple vessels to haul the same gear. The increased flexibility afforded by this exemption may increase efficiency. An exemption from the prohibition on a vessel hauling another vessel's hook gear was

approved. This exemption will allow fishermen from within the same sector to haul each other's hook gear. The exemption from hook limits and implementation of ACE as a mortality control make it unnecessary to prevent a vessel from hauling another vessel's gear as an effort control. Consistent with the exemption approved for community gillnets, all vessels utilizing community hook gear will be jointly liable for any violations associated with that gear. This joint liability would assist in the enforcement of regulations. Additionally, each member intending to haul the same gear will be required to mark the gear, consistent with §§ 648.14(k)(6)(ii)(B) and 648.84(a).

26. Requirement to Declare Intent to Fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP Prior to Leaving the Dock  
NE multispecies vessels are required to declare that they will be fishing in either the Eastern U.S./Canada Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (§§ 648.85(b)(8)(v)(D) and 648.85(b)(3)(v)). This measure was included in the final rule implementing Framework 40A to ensure that vessels fishing exclusively in those areas could be credited DAS for their transit time to and from these SAPs. Because sector catch is limited by ACE, DAS credit for trips in these SAPs is no longer necessary. An exemption from the requirement to declare intent to fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock was granted to allow sector vessels to declare their intent to fish in these SAPs while at sea.

## Attachment 3: ASM Standards and Description of NMFS ASM Program

For FY 2013 (May 1, 2013, through April 30, 2014), sectors must develop, implement, and pay for an ASM program.

### Program Goals and Objectives

The goal of the ASM program, as identified in Amendment 16 to the NE Multispecies FMP, is to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization.

The regulations contain the following objectives for any ASM program (see 50 CFR 648.87(b)(1)(v)(B)(3)):

**Objective 1:** An ASM program must provide coverage that is fair and equitable.

**Objective 2:** An ASM program must be distributed in a statistically random manner among all trips.

**Objective 3:** Coverage must be representative of fishing activities and operations by all vessels within the sector throughout the entire fishing year.

### ASM Program Approval Process

The Regional Administrator will approve or disapprove proposed ASM programs through each sector's operations plan. This attachment includes the regulatory requirements for an ASM program and a detailed description of the NMFS ASM program. A sector may use the NMFS ASM program as an example to design a new ASM program in its operations plan or choose to adopt the NMFS ASM program.

NMFS will consider any ASM proposal in the September 4 Operations Plan to be a draft and will work with the sector to resolve any concerns.

### ASM Provider Approval Process

ASM providers must be approved by NMFS to provide ASM services to sectors. Applications should be submitted to:

John Bullard, Regional Administrator  
c/o the Sustainable Fisheries Division Sector Team  
55 Great Republic Drive  
Gloucester, MA 01930

## ASM Service Provider Standards

### Qualifications

The regulations require the following information be submitted as part of an ASM application (see § 648.87(b)(4)(i)):

- Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;
- Contact information for official correspondence and communication with any other office;
- A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;
- A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;
- A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;
- A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer ASM services;
- Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider. Based on prior insurance coverage levels it has approved, NMFS has determined such insurance to be adequate if it meets at least the following provisions and conditions:
  - Sufficient insurance to cover injury, liability, and accidental death for at-sea monitors;
  - A minimum amount of maritime employers' liability coverage of \$5,000,000 to cover the at-sea monitors, vessel owners and ASM provider; and
  - A current insurance certificate.
- Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;
- Proof that the service provider's at-sea monitors have passed NMFS ASM training program;
- An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and Evidence that the company is in good financial standing. This

information can be obtained from the Secretary of State's Office in the state where the business is registered. Any legal business entity must be registered with a state.

### **Performance Requirements**

The regulations require ASM Service providers be able to document compliance with the following criteria and requirements (see § 648.87(b)(4)(ii):

- A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors according to the coverage level specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:
  - A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;
  - A service provider must be able to deploy at-sea monitors to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;
  - A service provider must report at-sea monitor deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;
  - A service provider must assign at-sea monitors without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors;
  - A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;
- The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip;
- The service provider must report within 12 hours any possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS. *Please see the section on [Additional Laws Applicable to ASM Programs](#) for further information.*
- The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific at-sea monitors;
- The service provider must submit to NMFS, if requested, within 5 days if possible, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.
- A service provider may refuse to deploy an at-sea monitor on a selected fishing vessel for any reason including, but not limited to, the following:

- If the service provider does not have an available at-sea monitor within the advanced notice requirements established by the service provider;
- If the service provider is not given adequate notice of vessel departure from the sector manager or participating vessels, as specified by the service provider;
- If the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and
- Failure to pay for previous deployments of dockside, roving, or at-sea monitors.
- With the exception of a service provider offering reporting, dockside, and/or ASM services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may 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 service providers;
- A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:
  - At-sea monitor deployment levels, including the number of refusals and reasons for such refusals;
  - Incident/non-compliance reports; and
  - Hail reports, landings records, and other associated interactions with vessels and dealers.
- All data collected by at-sea monitors must be reported electronically in a standard acceptable form from the at-sea monitors to NMFS within 48 hours of the completion of the trip. Electronic submissions must pass NMFS-programmed automated checks to be accepted into the system (i.e., all required fields must be complete, within range, and match with other databases such as with the permit number entered).
- A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and
- A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

## ASM Operational Standards

ASM programs developed as part of a sector operations plan must meet to following operational standards, in addition to the monitoring provider standards above (see § 648.87(b)(6)):

- Each at-sea monitor must be provided with all of the equipment specified by the NEFOP. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training. Each at-sea monitor must be provided with all of the equipment in the Observer Equipment list at <http://www.nefsc.noaa.gov/fsb/>.
- An at-sea monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors in a statistically random manner consistent with the coverage level specified by NMFS. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.
- In advance of each sector trip, the operator of a vessel must provide the ASM provider with sufficient notice for the service provider to determine whether an at-sea monitor will be deployed on each trip and allow the at-sea monitor to prepare for the trip and get to port. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of the sector's operations plan. The notice to the ASM provider must contain at least the following information:
  - Vessel name;
  - Permit number;
  - Trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS; and
  - An estimate of the date/time of departure.
- A vessel assigned an at-sea monitor may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel.
- At-sea monitors who encounter captains or owners of vessels operating in fisheries requiring mandatory at-sea monitor coverage who refuse to accept them on their vessel for deployments shall provide documentation of the refusal to NMFS. This documentation shall be provided via an incident report to the specified personnel of the Fisheries Sampling Branch and the Office of Law Enforcement within 12 hours from the time the vessel owner refuses to accept them on his/her vessel. This documentation shall be of sufficient substance and detail as to be usable for NMFS Enforcement actions. Narrative shall be provided to completely answer the following guideline questions: who, what, when and where.
- Upon receipt of a pre-trip notification, an ASM provider must inform the vessel operator whether an at-sea monitor has been assigned or an ASM waiver is being issued for that trip.
- All at-sea monitoring programs in 2012 will be coordinated by the pre-trip notification system (PTNS) used to select vessels for NEFOP observer coverage.

- The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues, until the identified safety deficiency has been resolved.
- An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port on board a vessel on a sector trip. If the vessel fails a review of safety issues, an at-sea monitor cannot be deployed on that vessel for that trip.

## Individual At-Sea Monitor Requirements and Responsibilities

### Qualifications

The regulations require ASM providers to demonstrate that each individual potential at-sea monitor meets the following standards (see § 648.87(b)(4)(iv)):

- A high school diploma or legal equivalent;
- Successful completion of all NMFS-required training and briefings before deployment;
- Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:
  - Susceptibility to chronic motion sickness;
  - Ability to live in confined quarters;
  - Ability to tolerate stress;
  - Ability to lift and carry heavy objects up to 50 lb;
  - Ability to drag heavy objects up to 200 lb; and
  - Ability to climb a ladder.
- NMFS has set standards for the physical and mental capacity of an at sea monitor (see § 648.87(b)(4)(iv)(C)). NMFS retains the right to reject any at-sea monitor proposed by the ASM provider if his or her qualifications do not meet the required standards, or if their behavior on other projects has been disruptive. The established standards are:
  - A licensed physician must certify that the observer candidate is physically capable of serving as an observer not more than 12 months prior to the start of the observer training. Any physical condition that could limit an individual from completing any at-sea monitor duties while at sea or ashore may be grounds for a failed medical certification. The physician must understand the at-sea monitor's job and working conditions. Physical considerations include (in addition to those listed above), but are not limited to:
    - Ability to climb a ladder.
    - Ability to swim 100 meters;
    - Ability to tread water for three (3) minutes;
    - Ability to don an immersion suit in 60 seconds or less; and
    - Ability to perform various water survival skills (i.e., boarding life raft, cold water skills, etc.).

- An at-sea monitor must be able to work independently, while following technical instructions, and must be able to get along well with others.
- An at-sea monitor must have the capability and aptitude to accurately identify fish species encountered and to demonstrate this ability by successfully completing and maintaining the Species Identification Verification Program requirements as specified by NMFS.
- An at-sea monitor must never have been decertified as an at-sea monitor, or an observer, due to problems with data quality or standards of conduct, in any NMFS observer program. At-sea monitor's references of previous employment as NMFS at-sea monitors or observers shall be verified by the ASM provider as qualifying for this requirement.
- An at-sea monitor must qualify for a Transportation Worker Identification Credential (TWIC). TWIC information is available at:  
[http://www.tsa.gov/what\\_we\\_do/layers/twic/twic\\_faqs.shtm](http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm).
- A current Red Cross (or equivalent) CPR/first aid certification;
- Absence of fisheries-related convictions, based upon a thorough background check; and independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest. This to mean an at-sea monitor may not have direct financial interest, other than the provision of observer services, in the fishery, including, but not limited to:
  - Any ownership, mortgage holder, or other secured interest in a vessel or processor involved in the catching, taking, harvesting or processing of fish;
  - Any business selling supplies or services to any vessel or processor in the fishery; and
  - Any business purchasing raw or processed products from any vessel or processor in the fishery.

## At-Sea Monitor Training

At-sea monitor candidates must undergo a training session with NMFS and are tested prior to certification (see § 648.87(b)(4)(iv)). At-sea monitor candidates must meet all training standards and maintain these standards as certified at-sea monitors. Candidates must demonstrate their potential to collect accurate field data, exercise astuteness, and react to unfamiliar situations at sea in a professional manner. Training is conducted by NMFS personnel as well as specialists in fields such as vessel safety. Interest in (or requests for) training must include a justification of need and a firm commitment to a number of seats. The minimum size for a training class is 8 and the maximum class size is 16 (total candidates). NMFS may waive the class size depending on program needs. Trainings will include monitors employed by multiple vendors. Refresher trainings are conducted when data logs or protocols change. These trainings are infrequent; however attendance is mandatory. At-sea monitors may be required to attend refresher training sessions, at the discretion of NMFS, to maintain certification(s), such as annual trainings in safety, species identification, and updated data collection procedures. The service providers must have a representative at each day of training (initial, annual and refresher trainings). All coordinators and Program Managers must attend all refresher trainings.

NMFS training curriculum includes:

- At-sea monitors mission and purpose;
- At-sea monitors guidelines and responsibilities;
- At-sea monitors duties;
- Fishing operations;
- Data collection procedures;
- Cetacean identification;
- Pinniped identification;
- Sea turtle identification;
- Fish identification;
- Sub-sampling procedures;
- Safety aboard commercial fishing vessels;
- Conduct at sea;
- Electronic data submission;
- Vessel training trips;
- Regulatory compliance; and
- Conflict Resolution.

NMFS will create a schedule prior to training sessions for planning purposes for the ASM providers. NMFS will consider additional training times if needed by the ASM providers. Prior to each training session, NMFS will evaluate the number of trainees that will attend the training. Once the curriculum is stable, training at remote sites may be possible.

The ASM providers must submit to NMFS thirty working days before the beginning of the training the following information:

- A list of the individuals attending;
- A copy of each person's resume;
- Reference checks (name of individual providing reference, association with at-sea monitor, contact information (phone number, e-mail), and information about the at-sea monitor's past performance);
- Security checks must be initiated (NMFS will provide Form 65-7 Request for Security Assurance) ;
- A copy of each candidates transcripts; and
- Supporting documentation to verify candidates.

The ASM providers shall provide a notification of new hires to NMSF two weeks prior to the contractor/employee(s) projected start date for US Citizens. The notification requirement for all Foreign Nationals is a minimum of 30 days. The following information must be provided for each contractor/employee: Full name, phone number, and electronic mail address. NMFS understands that a new hire list may change frequently before the start of training; however, a final list of candidates and a copy of a valid CPR and first aid certificate must be provided to NMFS one week prior to the start of training. NMFS retains the right to reject any at-sea monitor proposed by the ASM providers if his or her qualifications do not meet the qualifications or if their work has been performed at an unsatisfactory level on previous projects, or if their behavior on other projects has been disruptive.

The ASM providers must provide NMFS with proof that a licensed physician has certified that each observer candidate is physically capable at initial training and with each subsequent renewal.

A pre-test will be developed and issued by NMFS to the potential trainees seeking ASM certification. The pre-test will be designed for adults to test basic reading, writing, and math skills. The entrance exam must be passed as outlined by NMFS for acceptance into the training program. At-sea monitor candidates will undergo an initial training provided by NMFS that will last 11 days. They are tested for understanding and ability to perform the required at-sea monitor duties.

An at-sea monitor's first 3 deployments and the resulting data shall be immediately edited and approved after each trip by NMFS prior to any further deployments by that at-sea monitor. One of the monitor's first 3 deployments will be accompanied by a NMFS staff member (shadow trip). The purpose of these shadow trips is to provide guidance to the new trainee. NMFS may request an additional shadow trip if they feel the at-sea monitor would benefit from it. During the at-sea monitor's first 3 deployments their data must be received, edited, and the at-sea monitor must be "cleared" by NMFS to sail on their next trip. This notification will be sent via e-mail to the ASM provider. The at-sea monitor cannot be deployed until the e-mail notification has been sent by NMFS. If the data quality is considered acceptable the at-sea monitor would become certified. NMFS may require additional training trips (beyond 3) if the data quality is not considered acceptable enough for certification. If the data quality is not considered acceptable at any point during the initial deployments the at-sea monitor would not be certified by NMFS.

At-sea monitors will be required to attend an annual refresher course (approximately a year after they are originally certified) for data collection, species identification, and vessel safety. This is expected to be 3 days long for at-sea monitors in good standing and will be provided by NMFS. Failure to attend the annual refresher course will result in an expiration of an at-sea monitor's certification.

## Additional Laws Applicable for ASM Programs

The Magnuson Stevens Act (MSA) and the Marine Mammal Protection Act (MMPA) specifically cover and protect at-sea monitors.

The MSA uses the word “observers” synonymously with “at-sea monitors.” Under the MSA, fishing vessels are prohibited from (see 50 CFR 600.725):

- Harassing or sexually harassing an authorized officer or an observer;
- Failing to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or failing to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746;
- Failing to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at 600.746;
- Fishing without an observer when the vessel is required to carry an observer;
- Assaulting, opposing, impeding, intimidating or interfering with a NMFS-approved observer;
- Prohibiting or barring by command, impediment, threat, coercion or refusal of reasonable assistance, an observer from conducting his/her duties aboard a vessel; or tamper with or destroy samples or equipment; and
- Failing to maintain safe conditions for the protection of observers including compliance with all USCG and other applicable rules, regulations or statutes applicable to the vessel which pertain to safe operation of the vessel.

In addition, under NE Multispecies Fishery Management Plan, it is unlawful for any person to (see 50 CFR 648.14):

- Assault, resist, oppose, impede, harass (including sexually harass), intimidate or interfere with or bar by command, impediment, threat or coercion, any NMFS-approved observer or sea sampler aboard a vessel conducting his/her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his/her duties, including those duties authorized in 648.7(g).
- Refuse to carry an observer if requested to do so by the Regional Administrator.
- Refuse reasonable assistance to either a NMFS-approved observer conducting his/her duties aboard a vessel.

## Coverage and Selection Protocols

### Coverage Levels

Coverage levels for at-sea monitoring programs will be specified by NMFS, but will be less than 100 percent of all sector trips (see § 648.87(b)(1)(v)(B)(3)). The coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

Sector vessels must submit hail reports for a sector trip to their ASM provider. To fulfill the hail requirements, sector vessels will notify through the PTNS, and provide all required information. The PTNS was designed for the following reasons:

- To assign observer and at-sea monitor coverage randomly in fisheries where coverage is required.
- To provide an efficient, flexible and user friendly tool for vessels to notify of their intent to fish.
- For NMFS to notify observer and monitor service providers of trip selections;
- For observer and monitor service providers to report on their assignment activity;
- To estimate achieved coverage rates and compare to targeted rates; and
- To establish and report on vessel notification compliance levels.

Within the PTNS selection process there are levels of selection tiers that determine the type of coverage the vessel will receive. Many of the tiers are stratified by gear/mesh and fishing region. Once a trip is selected at one selection tier it exits the selection tier process. A coverage type is then assigned (i.e., NEFOP “complete” observer coverage for fish discards, NEFOP “limited” observer coverage for mammal bycatch, ASM coverage). Vessel selection in FY 2012 will follow a protocol similar to FY 2010 and FY 2011.

Service providers can access and view trip details for all of their completed trips. After initial entry the service providers will also need to modify sail and land dates based on the actual dates the vessel sailed and landed. Trip cancellations known by the service providers must be reported by them to the PTNS Coordinator within 24 hours via e-mail.

Every sector should at a minimum be covered at the level specified by NMFS. At-sea monitors will be systematically assigned by NMFS to a vessel to ensure the coverage is fair and even. A monitored trip must be a sector trip, including those taken in which a NE multispecies day-at-sea is used to target other fisheries such as monkfish or skates. Coverage levels will be in terms of number of sea-days.

### ***Pre-Trip Notification System (PTNS)***

The owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) fishing on a sector trip must provide advanced notice to NMFS at least 48 hours prior to departing port, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment (see § 648.11(k)). The notice must include:

- Vessel name;
- Permit number;
- Contact name and telephone number for coordination of observer deployment;
- Date, time, and port of departure;
- Estimated trip duration;
- Area to be fished, including special management programs; and
- Gear type to be used.

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 hours prior to the vessel's departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

NMFS will notify the vessel owner, operator, or manager whether the vessel is preliminarily selected for overage or if a waiver is issued 24 hours prior to the sail time of the prospective trip. All trip notifications will be issued a unique confirmation number. A vessel may not fish in an area with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notifications are valid for 48 hours from the intended sail date for multiday trips only.

In order to meet multiple coverage needs, NMFS uses an algorithm within the PTNS to randomly select individual trips based on their sector, broad stock area, and gear type. Target coverage levels for each selection tier are set at the start of the fishing plan year, monitored closely, and adjusted as needed to ensure coverage objectives are met.

## **NMFS ASM Program Description**

Attached is a description of the contract NMFS made with at-sea monitoring providers to implement NMFS ASM program. This contract included provisions above and beyond the regulatory requirements.

**Description of the At-Sea Monitoring Contract**

**National Marine Fisheries Service, Northeast Fisheries Science Center**

The At-Sea Monitoring Contract is an indefinite delivery indefinite quantity type contract with firm fixed price task orders for services.

**DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**C. CAR 1352.211-70 STATEMENT OF WORK/SPECIFICATIONS (DECEMBER 2009)**

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified) to perform the following the Statement of Work/Specifications:

C.1 Background

C.1.1 Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process established in the FMP to update status determination criteria for all NE multispecies (groundfish) stocks; adopt rebuilding programs for groundfish stocks newly classified as being overfished and subject to overfishing; and revise management measures necessary to end overfishing, rebuild overfished groundfish stocks, and mitigate the adverse economic impacts of increased effort controls. In addition, Amendment 16 would implement new requirements for establishing allowable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed by the FMP, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as revised. This action is necessary to address the results of the most recent stock assessment that indicates that several additional groundfish species are overfished and subject to overfishing and that stocks currently classified as being overfished require additional reductions in fishing mortality to rebuild by the end of existing rebuilding periods.

C.1.2 The Northeast Fisheries Science Center (NEFSC), National Marine Fisheries Service (NMFS) is required to collect scientific, management, regulatory compliance and economic data for fisheries by placing at-sea monitors aboard U.S. domestic fishing vessels participating in the groundfish multispecies Fisheries Management Plan. These data cannot be obtained at the dock or on Government research vessels. These data are needed for the management and monitoring of Annual Catch Limits and groundfish sectors.

C.1.3 Every sector should equally be covered at 30% and common pool at 22%. The coverage rates apply to the seaday level. At-sea monitors will be systematically assigned by NMFS to

## Sector Operations Plan, Contract, and Environmental Assessment Requirements (FY 2013)

a vessel to ensure the coverage is fair and even. Several types of fishing gear may be used: longline, trawl, and gillnet. A monitored trip must be a trip where landings of groundfish occur (a "groundfish", "skate" or "monkfish" trip as defined in Amendment 16). Coverage levels will be in terms of number of seadays.

- C.1.4 At-sea monitoring standards will be consistent with the final regulations implemented under Amendment 16, unless further specified by NMFS.
  - C.1.5 As described in the rule, Northeast Fisheries Observer Program (NEFOP) observers take precedence over at-sea monitors for vessel placement when deployments overlap.
  - C.1.6 At-sea monitors cannot provide dockside monitoring services for the same trip for which they are monitoring.
- C.2 General Requirements
- C.2.1 Groundfish vessels routinely operate out of ports from New York to Maine. Trips can range from 1-14 days in duration. The vessels operate in ocean waters, 3-200 miles offshore in all weather conditions. Vessels are generally 30-100 feet in length. Crew members and at-sea monitors live and sleep in cramped quarters, often in damp conditions and share common facilities. On some vessels, the crew does not speak English. Because of the size of the vessels, motion sickness can be debilitating for some individuals. At-sea monitors must be willing to travel occasionally to cover locations other than their primary ports.
  - C.2.2 At-sea monitor candidates shall undergo a training session with NMFS and are tested prior to certification. At-sea monitor candidates must meet all training standards (Attachment 2) and maintain these standards as certified at-sea monitors. Candidates must demonstrate their potential to collect accurate field data, exercise astuteness, and react to unfamiliar situations at sea in a professional manner (Attachment 6.B). Training is conducted by NMFS personnel as well as specialists in fields such as vessel safety. Interest in (or requests for) trainings must include a justification of need and a firm commitment to a number of seats. Training class minimum is 8 and maximum class size is 30 (total candidates). Trainings will be multi-vendor. Refresher trainings are conducted when data logs or protocols change. These trainings are infrequent; however attendance is mandatory and supersedes the accomplishment of sea days. At-sea monitors may be required to attend refresher training sessions, at the discretion of NMFS, to maintain certification(s), such as annual trainings in safety, species identification, and updated data collection procedures.
  - C.2.3 NMFS training curriculum includes (Attachment 6.B):
    - At-sea monitors mission and purpose
    - At-sea monitors guidelines and responsibilities

At-sea monitors duties  
Fishing operations  
Data collection procedures  
Cetacean identification  
Pinniped identification  
Sea turtle identification  
Fish identification  
Sub-sampling procedures  
Safety aboard commercial fishing vessels  
Conduct at sea

C.2.4 At-sea monitor training will initially occur at least every month after the award of the contract. NMFS will create a schedule prior to training sessions for planning purposes for the Contractor. NMFS will consider additional training times if needed by the Contractor. Prior to each training session, NMFS will evaluate the number of trainees that will be allotted in the training. In the event that demand for training exceeds NMFS capacity, NMFS may add more than 30 at-sea monitors to each training or work with providers to "train the trainers" by providing a standard curriculum and auditing training course components. Once the curriculum is stable, training at remote sites may be possible.

C.2.5 The Contractor shall submit to NMFS, at least 7 working days before the beginning of training (prior to May 1, 2010) or thirty working days before the beginning of the training (after May 1, 2010), the following information (Attachment 6.B):

- a list of the individuals attending
- a copy of each person's resume
- reference checks (name of individual providing reference, association with at-sea monitor, contact information (phone number, e-mail), and information about the at-sea monitor's past performance)
- security checks must be initiated (NMFS will provide Form 65-7 Request for Security Assurance)
- A copy of a valid CPR and First Aid certificate prior to the start of training.

C.2.6 The Contractor shall provide a notification of new hires to NEFOP two weeks prior to the contractor/employee(s) projected start date for US Citizens. The notification requirement for all Foreign Nationals is at a minimum 30 days. The following information must be provided for each contractor/employee: Full Name, Phone Number, and E-mail address. NMFS understands that new hire list may change frequently before the start of training, however, a final list of candidates must be provided to NMFS one week prior to the start of training. The Government retains the right to reject any at-sea monitor proposed by the Contractor if his or her qualifications do not meet the qualifications specified in paragraph C.2.10a, Qualifications, or if their work has been performed at an unsatisfactory level on

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previous projects, or if their behavior on other projects has been disruptive.

- C.2.7 An at-sea monitor's first 3 deployments and the resulting data shall be immediately edited and approved after each trip by NMFS prior to any further deployments by that at-sea monitor. During the at-sea monitor's first 3 deployments, in order for them to go on their next trip, their data must be received, edited and the at-sea monitor must be "cleared" by NMFS to sail on their next trip. This notification will be sent via e-mail to the at-sea monitor provider. The at-sea monitor cannot be deployed until the e-mail notification has been sent by NMFS. If the data quality is considered acceptable the at-sea monitor would become certified. If the data quality is not considered acceptable the at-sea monitor would not be certified by NMFS.
- C.2.8 The Contractor shall provide medical fitness screening for each prospective at-sea monitor candidate. At-sea monitors must be able to work at sea for extended and uncertain durations without medical restrictions (Attachment 2). Proof of passing a medical fitness examination shall be supplied to NMFS with each trainee and with each subsequent renewal.
- C.2.9 At-sea monitors collect data for fishing effort, location, and retained and discarded catch for each tow while aboard the vessel. They may also collect length measurements from segments of the catch. At-sea monitors record, collect, and photograph marine mammals, sea turtles and sea birds incidentally caught in the fishing gear.
- C.2.10 At-sea monitors
- C.2.10a Qualifications
- C.2.10a.1 The following represent the minimum educational qualifications required to work as an observer (NMFS Policy Directive 04-109-01), which includes at-sea monitors:
- a bachelor's degree from an accredited college or university with a major in one of the natural sciences
  - and a minimum of 30 semester hours or equivalent in the biological sciences.
  - at least one undergraduate course in math or statistics
  - experience with data entry on computers. All relevant course work must have been completed and performed at a level equivalent to similar course requirements at the candidate's academic institution.

NMFS may waive the education and experience requirements of this section if an observer candidate has acquired the

required skills to be considered eligible for observer training through a NMFS authorized alternative training program. The alternate training program must include activities and functions including, but not limited to:

- a. participating in or/and observing ocean fishing activities consistent with those that would be required during observer work performance.
- b. participating in fisheries research cruises.
- c. recording data on marine mammal sightings and fishing activities.
- d. tallying incidental take of marine mammals, sea turtles, and sea birds from fishing platforms.
- e. collecting biological samples and specimens from postmortem animals.
- f. entering data into a database using computers.
- g. completion of a biological training program, equivalent to that received as part of a bachelor's degree, conducted by or approved by NMFS with the specific objective of preparing potential candidates for observer training.

To be consistent with Amendment 16, the minimum eligibility standards for an education for an at-sea monitor is a high school diploma. In order to meet the National Standards and endorse the Amendment 16 rule, NMFS will review educational qualifications of each candidate, and those with only a high school diploma will be evaluated and waived on a case by case basis. The educational requirement for a high school diploma rather than a college degree is a minimum eligibility requirement and does not necessarily require vendors to hire only those candidates with the minimum qualifications. NMFS will grant the waiver on a case-by-case basis to ensure that the most qualified, educated, and experienced candidates are selected.

C.2.10a.2 Be certified by a physician to be physically fit to work as an at-sea monitor on a domestic commercial fishing vessel. The physician must understand the at-sea monitor's job and working conditions (see Attachment 2). Physical considerations include, but are not limited to:

- a. ability to swim 100 meters
- b. ability to tread water for three (3) minutes
- c. ability to don an immersion suit in 60 seconds or less

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- d. ability to perform various water survival skills (i.e., boarding life raft, cold water skills, etc.
- e. ability to climb a ladder
- f. ability to lift and carry 50 pounds correctly
- g. susceptibility to chronic motion sickness
- h. ability to live in confined quarters

A licensed physician must certify not more than 12 months prior to the end of the observer training that the observer candidate is physically capable of serving as an observer. Any physical condition that could limit an individual from completing any at-sea monitor duties while at sea or ashore may be grounds for a failed medical certification.

- C.2.10a.3 Pass the NEFSC At-sea monitor Certification Training Course (approximately 10 days) and maintain all training standards (see Attachment 2).
- C.2.10a.4 Be able to work independently, while following technical instructions.
- C.2.10a.5 Be able to get along well with others.
- C.2.10a.6 May not have a direct financial interest, other than the provision of observer services, in the fishery, including, but not limited to (Attachment 2):
  - a. any ownership, mortgage holder, or other secured interest in a vessel or processor involved in the catching, taking, harvesting or processing of fish.
  - b. any business selling supplies or services to any vessel or processor in the fishery.
  - c. any business purchasing raw or processed products from any vessel or processor in the fishery.
- C.2.10a.7 Be a U.S. citizen, or a non-citizen who has a green card, TN authorization, H1 visa, or valid work visa, and a social security card.
- C.2.10a.8 Obtain and maintain current certification for CPR by the American Red Cross. Completion of a basic First Aid class is also required before certification. A copy of CPR and First Aid certification for all at-sea monitors will be provided to NMFS prior to the first day of training class and annually thereafter.

Certifications may also be obtained through the American Heart Association (AHA). Successful completion of the course through either AHA or American Red Cross will fulfill the certification requirement.

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- C.2.10a.9 Have the capability and aptitude to accurately identify fish species encountered and to demonstrate this ability by successfully completing and maintaining the Fish Verification Program requirements.
- C.2.10a.10 Has never been decertified as an at-sea monitor, or an observer due to problems with data quality or standards of conduct, in any NMFS observer program (Attachment 2). At-sea monitor's references of previous employment as NMFS at-sea monitors or observers shall be verified by the contractor as qualifying for this requirement.
- C.2.10a.11 The Government retains the right to reject any at-sea monitor proposed by the Contractor if his or her qualifications do not meet the required standards, or if their behavior on other projects has been disruptive.
- C.2.10b Conduct
- At sea, at-sea monitors work in a self-supervised capacity and must maintain high standards of conduct. At-sea monitors must maintain a professional, objective demeanor at all times. The Contractor shall develop and enforce standards of conduct for at-sea monitor employees. At-sea monitors must comply with these standards and those set forth in the attached Northeast Fisheries Program Training Standards (Attachment 2).
- C.2.10c At-Sea Monitor Responsibilities
- C.2.10c.1 A pre-test will be developed and issued by NMFS to the potential trainees seeking at-sea monitoring certification. The pre-test will be designed for adults to test basic reading, writing, and math skills. The entrance exam must be passed as outlined by NMFS for acceptance into the training program. At-sea monitor candidates will undergo an initial training provided by NMFS that will last 10 days. They are tested for understanding and ability to perform the required at-sea monitor duties. At-sea monitor's first 3 deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS prior to any further deployments by that at-sea monitor. If data quality is considered acceptable the at-sea monitor would become certified.
- C.2.10c.2 At-sea monitors will be required to attend an annual refresher course for data collection, species identification, and vessel safety. This would be expected to be 3 days long for at-sea monitors in good standing and will be provided by NMFS. Compensation for the at-sea monitor's time at the initial training and refresher trainings as well as meals & reimbursement (M&I) and lodging will be provided by NMFS. Costs for travel to and from the training center will not be covered by NMFS.
- C.2.10c.3 At-sea monitors collect scientific, management, compliance, and other data at sea through interviews of vessel captains

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and crew, observations of fishing operations, photographing catch, and measurements of selected portions of the catch and fishing gear. At-sea monitoring coverage is mandated under the Magnuson-Stevens Act and requirements are detailed in Amendment 16 to the Northeast Multispecies Fishery Management Plan and are an integral part of the monitoring of Annual Catch Limits in the groundfish fishery. These authorities empower the at-sea monitor to perform certain functions aboard vessels as well as afford protection to the at-sea monitor against interference and intimidation in the course of performing his/her duties.

- C.2.10c.4 The at-sea monitor's primary responsibility will be collect accurate actual weights on the discard portion of the catch, as well as account for all catch (kept and discarded) on each tow. The data collected by at-sea monitors will be used to quantify the discards that occurred on that trip. The data will also be used to estimate the discards that occur by sector vessel trips and common pool that were not selected to take an at-sea monitor. The data fields to be observed and methods used to collect the data will be detailed in the training and published in an At-Sea Monitoring Manual by NMFS.
- C.2.10c.5 At-sea monitors would be expected to work no more than 12 hours per day at sea, and several hours on shore after a trip.
- C.2.10c.6 Data collected once per trip include data pertaining to the vessel, fishing practices, and trip costs. The at-sea monitor describes various aspects of the gear(s) and records the catch composition and the corresponding weights on a haul by haul basis.
- C.2.10c.7 All data must be reported electronically in a standard acceptable form from the at-sea monitors to NMFS within 48 hours of the completion of the trip. Electronic submissions must pass NMFS-programmed automated checks to be accepted into the system (i.e. all required fields must be complete, within range, and match with other databases such as with the permit number entered) (Attachment 6.A).
- C.2.10c.8 At-sea monitors who encounter captains or owners of vessels operating in fisheries requiring mandatory at-sea monitor coverage who refuse to accept them on their vessel for deployments shall provide documentation of the refusal to NMFS. This documentation shall be provided via E-mail to the Branch Chief of the Fisheries Sampling Branch within 24 hours from the time the vessel owner refuses to accept them on his/her vessel. This documentation shall be of sufficient substance and detail as to be usable for NMFS Enforcement actions. Narrative shall be provided to completely answer the following guideline questions: who, what, when and where.
- C.2.10c.9 The Contractor is expected to maintain the corps of at-sea monitors needed to complete the sea day coverage

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requirement. The best candidates must be selected for the program. NMFS expects 90% of new recruits to pass the training session and successfully complete certification.

- C.2.10c.10 At-sea monitors shall be expected to remain as active at-sea monitors or serve in other capacities directly related to the Northeast Fisheries Observer Program (e.g. program management) for at least one year after training.
- C.2.10c.11 At-sea monitors must maintain regular contact with their assigned NMFS debriefer. All at-sea monitors shall call their debriefer prior to making a trip in a fishery or program covered for the first time. At-sea monitors must return phone calls or reply to email questions as soon as realistically possible. No regular in-person debriefings will be required by the provider, however, NMFS can request that an in-person meeting occur with an at-sea monitor at any time.
- C.2.10c.12 NMFS staff will provide written memo updates to the Contractor regarding any new or changed sampling protocols, data collection procedures, or other collection or reporting procedures. At-sea monitors shall comply with changes as applicable.
- C.2.10c.13 Under the Magnuson Stevens Fishery Conservation and Management Act - 50 CFR 600.725, fishing vessels are prohibited from (the language in the act uses the "observers" synonymically with "at-sea monitors"):
- Harass or sexually harass an authorized officer or an observer.
  - Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to 600.746.
  - Fail to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at 600.746.
  - Fish without an observer when the vessel is required to carry an observer.
  - Assault, oppose, impede, intimidate or interfere with a NMFS-approved observer.
  - Prohibit or bar by command, impediment, threat, coercion or refusal of reasonable assistance, an observer from conducting his/her duties aboard a vessel; or tamper with or destroy samples or equipment.
  - Fail to maintain safe conditions for the protection of observers including compliance with all USCG and other

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applicable rules, regulations or statutes applicable to the vessel which pertain to safe operation of the vessel.

In addition, under 50 CFR 648.14, it is unlawful for any person to:

Assault, resist, oppose, impede, harass (including sexually harass), intimidate or interfere with or bar by command, impediment, threat or coercion, any NMFS-approved observer or sea sampler aboard a vessel conducting his/her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his/her duties, including those duties authorized in 648.7(g).

Refuse to carry an observer if requested to do so by the Regional Director.

Refuse reasonable assistance to either a NMFS-approved observer conducting his/her duties aboard a vessel.

Under the Marine Mammal Protection Act at 50 CFR 229.3, it is prohibited to:

Assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile or offensive environment.

Tamper with or destroy observer equipment in any way.

Violate any regulation in this part or any provision of section 118 of the Act.

See 50 CFR 229.7© for Section 118 regulation and provisions relating to carriage of observer.

Observers or any employee of the contractor must report to the contractor's Program Manager immediately (NTE more than 12 hours after occurrence or 12 hours after returning from a trip) any of the above prohibited activities if encountered during vessel selection or during an observed trip.

NMFS must approve any individual who the provider is recommending to be the Program Manager.

The following represent the minimum qualifications required to work as a Program Manager (provider required to carry):

- A bachelor's degree from an accredited college or university with a major in one of the natural

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sciences and a minimum of 30 semester hours or equivalent in the biological sciences.

- At least one undergraduate course in math or statistics
- Experience with data entry on computers. All relevant course work must have been completed and performed at a level equivalent to similar course requirements at the candidate's academic institution.

NMFS may waive the education and experience requirements of this section if the candidate has acquired the required skills to be considered eligible for the position. Those skills must be documented and presented to NMFS in written form.

C.2.10c.14 At-sea monitors will have to sign a non-disclosure statement (confidentiality agreement) at the commencement of training (see Attachment 7).

### C.3 Statement of Work

C.3.1 The Contractor shall:

C.3.1a Not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may 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 service providers (Attachment 2). This does not apply to corporations providing reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations.

C.3.1b Communicate with NMFS within 12 hours (after being selected by NMFS) if an at-sea monitor is available for the selected trip.

C.3.1c Be able to determine total catch and discard weights for each trip.

C.3.1d Ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement (OLE), for a debriefing for at least 2 weeks following any monitored trip/offload.

C.3.1e Support, as specified herein, the at-sea monitors during each phase of their employment period including training, briefing, travel, accomplishing requisite land duties, data

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collection aboard fishing vessels, while working dockside and during debriefings.

C.3.1f Have all at-sea monitors complete Attachment 2, Northeast Fisheries Training Standards, and submit to NMFS.

C.3.1g Locate vessels and deploy at-sea monitors to vessels, following NMFS vessel selection protocols. Specific vessel selection protocols will depend on target coverage levels but should be proportional to expected distribution of effort within the sector, by gear, mesh category, and season/quarter.

All vessels must be subject to coverage. All participating vessels must be able to accommodate an at-sea monitor (i.e. must meet safety checklist detailed in Attachment 3.

Travel will be reimbursed (according to Federal Travel Regulations as specified herein) when at-sea monitors travel greater than fifty miles from their primary port to locate vessels for deployment or landing. "Primary port" here means the at-sea monitor's assigned port where they will be covering most of their trips.

C.3.1h Provide all logistical and administrative support necessary to deploy at-sea monitors to ports from which fishing vessels depart.

C.3.1i Make at-sea monitors available to NMFS Law Enforcement staff for the purpose of investigating the circumstances of alleged refusals or any other violation of law recorded by the at-sea monitor in the course of his/her duties.

C.3.1j Obtain adequate insurance to cover injury, liability, and accidental death for at-sea monitors during the contract period of performance. Maritime Employer's Liability insurance must be provided to cover the at-sea monitor, vessel owner and Contractor. Minimum Maritime Employer's Liability coverage required is \$5,000,000. Current insurance certificate(s) shall be provided to NMFS within 10 days of contract award and updated annually or sooner if there is a change.

C.3.1k Ensure the at-sea monitor has notified NMFS within the required time frame for any refusals by a vessel owner or captain to accommodate an at-sea monitor.

C.3.1l Assure at-sea monitors are made available, when requested, for debriefing by NMFS staff. Ensure that the at-sea monitor has all NMFS required equipment with them for their debriefing.  
Travel expenses will be reimbursed under the travel provisions stated herein.

C.3.1m Provide adequate documentation to determine travel expenses are in accordance with current Federal Travel Regulations.

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Total travel costs may not exceed 10% of billed sea day costs.

- C.3.1n Trip data shall be received from at-sea monitors at the conclusion of each deployment and transmitted electronically; using NMFS supplied equipment, to NMFS within 48 hours of the completion of the trip (Attachment 6.A). Paper data logs will not be accepted from the contractor; however paper worksheets may be mailed to NMFS. Paper should be mailed within three (3) days of landing to be received at NMFS within 5 days of the trip landing. Data must be submitted electronically from the contractor within 48 hours of the trip landing date.
- C.3.1o Report any complaints made by the industry regarding at-sea monitor activities, as well as any at-sea monitor injuries aboard vessels or on docks to NMFS.
- C.3.1p Report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS (Attachment 2).
- C.3.1q Comply with all NMFS safety standards and require strict adherence to the NMFS safety checklist (see Attachment 3).
- C.3.1r Request that any at-sea monitor who leaves the program complete all exit procedures including an exit interview with NMFS (see Attachment 4).
- C.3.1s The contractor, through the Program Manager, shall notify the Chief of the Fisheries Sampling Branch (or their designee) and the NMFS Office of Law Enforcement liaison to the Fisheries Sampling Branch, of any potential violation to the MSFCMA 50 at CFR 600.725 or 50 CFR 648.14, or the MMPA at 50 CFR 229.3, as described in C2.10c.16. This notification applies to potential violations that become known to the contractor and/or become known to any employee of the contractor.
- Notification shall be immediately (NTE 12 hours) upon knowledge of the occurrence of any of the prohibited activities as described in C.2.10c.16. Initial notification shall contain the following information: Date, time, and location where the incident occurred; names of the persons involved and names of any vessels involved; brief narrative description of the incident. Initial notification shall be made via return receipt electronic mail. At-sea monitors and contract employees shall be made available to the NMFS Office of Law Enforcement in order to gather additional information and/or evidence.
- C.3.1t Provide the primary port and contact information of all of their at-sea monitors (both full time and part time). This would include names, addresses, phone number(s), and e-mail addresses. If there is a change made to any variables in

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the list, an updated list shall be provided to NMFS immediately.

- C.3.1u Provide NMFS a quarterly report on all applicants that have applied as an at-sea monitor, whether or not they were rejected and the reason why they were rejected.
- C.3.1v Demonstrate good financial standing by submitting a copy of a "Certificate of Good Standing", which can be obtained from the Secretary of State's Office in the state where your business is registered. Any legal business entity (such as Corp, Partnership, LLC, Sole Proprietor, etc.) must be registered with a state.
- C.3.1w Submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e. sectors and participating vessels) and between the service provider and at-sea monitors.
- C.3.1x Submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc. within 5 business days of distribution.
- C.3.1y Refuse to deploy an at-sea monitor on a selected fishing vessel for any reason including, but not limited to, the following:
  - a) If the service provider does not have an available monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor within the advanced notice requirements established by the service provider.
  - b) If the service provider is not given adequate notice of vessel departure.
  - c) If the service provider has determined that the selected vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.
- C.3.1z Update daily (business days) the NMFS developed web-based system with at-sea monitor deployments.
- C.3.1aa Replace any government issued equipment that is damaged or lost.

### C.4 Data Quality

The NMFS COTR will, through the Quality Assurance Surveillance Plan, monitor all aspects of contractor performance as described below:

- C.4.1 The Contractor shall interact with vessels which have carried at-sea monitors. They shall interview the captain, using NMFS issued workbooks with a pre-determined set of

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questions, and determine if the at-sea monitor performed his/her job in a professional manner and carried out all required tasks. Unless otherwise instructed by NMFS, a random of 10% of each at-sea monitor's trips will have follow-up interviews. Format questions will be provided by NMFS. Trip Interview Reports will be provided to NMFS electronically within two working days of the interview.

- C.4.2 If an at-sea monitor has been identified by NMFS to have questionable data, i.e., fraudulent or not complete, the Contractor shall meet boats at the dock when carrying that at-sea monitor, if requested by NMFS. Specific information will be discussed with the captain based on questionnaires provided by NMFS. A report of the interaction shall be provided to NMFS within two working days of the trip.
- C.4.3 An at-sea monitor's ability to work will be based on his/her certification. An at-sea monitor will be certified, put on probation or decertified, as described in the NMFS policy statement regarding certification (see Attachment 5).
- C.4.4 NMFS Responsibilities
- The Government will:
- C.4.4a Train, test, and certify at-sea monitor candidates. Retrain, refresh, and test certified at-sea monitors to maintain skills and to provide updated methods, priorities, and protocols.
- C.4.4b Notify the Contractor of candidates who have been certified. Provide a letter of introduction, signed by the NEFSC Director, or his/her designee, for each at-sea monitor.
- C.4.4c Decertify at-sea monitors who fail to abide by established standards of conduct and conflict of interest, or whose performance is determined to be unsatisfactory. At-sea monitors must complete at least one trip per year as a NEFSC certified at-sea monitor on any gear type they are certified in to maintain certification. If not, the at-sea monitor's certification will expire. The at-sea monitor will be required to attend a refresher training if they do not deploy on a gear type they were originally certified in for over a year.
- C.4.4d Reimburse the contractor for the costs of the at-sea monitor's initial training, all refresher trainings, travel for in-house debriefings, M&I during trainings, lodging during trainings.
- C.4.4e Pay for the security background check. However, as it is a mandatory requirement for appointment to the position, the contractor/employee shall not be reimbursed salary or travel expenses for completing necessary documents. Clearances are based on investigations requested by Federal

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agencies, appropriate to specific positions and their duties. Until a person is offered such a position, the government will not request or pay for an investigation for a clearance. Once a person has been offered a job (contingent upon satisfactory completion of an investigation), the government will require the person to complete the necessary documents initiate the investigation, adjudicate the results, and issue the appropriate clearance.

- C.4.4f Notify the Contractor of Government compliance debriefings with NMFS Enforcement or NOAA General Counsel personnel. Notify also of depositions, hearings, and the Contractor's personnel required to attend the debriefings, depositions, and hearings.
- C.4.4g Communicate with the Contractor to facilitate program operations and attainment of goals.
- C.4.4h Provide scheduling of trips.
- C.4.4i Provide an evaluation report for each active at-sea monitors twice a year (See Quality Assurance Surveillance Plan herein)
- C.4.4j Conduct exit interviews with each at-sea monitor leaving the At-Sea Monitoring Program (See Attachment 4).
- C.4.4k Brief at-sea monitors prior to a deployment to a vessel using gear with which the at-sea monitor is unfamiliar.
- C.4.4l Review and approve contractor developed standards of conduct.
- C.4.4m Contact contractor to inform at-sea monitors who have been placed on pre-probation, probation, or have been decertified. The contractor will be notified within a week after NMFS decides to place an at-sea monitor on probation or to be decertified.
- C.4.4n Provide all at-sea monitors equipment listed in Attachment 6.
- C.4.4o Vessels selected to carry an at-sea monitor will be based on a random stratification scheme. Assignment of trips to providers will be systematic and based proportionately on the number of certified at-sea monitors that are in service. A primary provider will be selected and a secondary provider may opt to take a trip that can't be covered by the primary provider assigned.