

Rationale: This option clarifies regulatory text to indicate that sectors are jointly liable for overages of the TAC, and clarifies the repercussions of such overages.

4.2.3.5.3 Sector Monitoring Requirements

Sector operations plans will specify how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation. At the end of the fishing year, NMFS will evaluate catch using IVR, VMS, and any other available information to determine whether a sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan.

The next paragraphs describe the requirements necessary for monitoring both landings and discards. These sections add additional requirements to those currently in place (such as weighmasters/dockside monitors for all landings, improved discard monitoring systems, etc.). These provisions are in addition to other sector requirements currently in place or adopted through this action.

Monitoring of Landings and Discards

Sectors are responsible for developing mechanisms in their operations plans that satisfy monitoring requirements for catch and landings. Certain requirements will begin in FY 2010, and others will be phased in over the ensuing three-year period.

Sector operations plans must provide detailed information about how landings in the fishery will be monitored, reported, and enforced within the sector.

- Sectors are required to land *all* legal-sized fish from stocks managed by the FMP that are specifically allocated to the sector.
- Sectors must comply with other rules regarding broad reporting areas as specified in this Amendment, including demonstrating the ability to accurately attribute landings to a specific statistical area.
- Sectors are required to report all landings and discards by sector vessels to NMFS on a weekly basis.
- Sectors are required to develop and implement an independent third-party weighmaster/dockside monitoring system that is satisfactory to NMFS for monitoring landings and utilization of ACE. The details of the weighmaster/dockside monitoring system must be provided in the sector's operations plan.
- The sector operations plan also must include a list of specific ports where members will land fish; specific exceptions should be noted (e.g., safety, weather) and allowed, provided there is reasonable notification of a deviation from the listed ports.

The industry will be responsible for the development of and costs associated with a program, including an observer program that will satisfy the monitoring rules. Such a program should include the use of an independent private contractor(s) to coordinate roving and dockside monitor deployment, summarize trips validated by dealer reports, oversee the use of electronic monitoring equipment, and review data associated with the program. Either the contractor or sector manager should maintain a database of VTR, dealer, observer, and electronic monitoring reports. In addition, that entity should determine all species landings by stock and statistical areas, apply discard estimates to landings, deduct catch from sector TACs, and submit weekly reports detailing status, catch, and discards, including compliance concerns to the sector and NMFS. Any

sector monitoring program will not replace the current VTR and dealer reporting requirements of the existing law nor any additional reporting requirements proposed in this Amendment.

In FY 2010 and FY 2011, sectors will be responsible for meeting all existing reporting requirements, including any requirements associated with NMFS Observer Program coverage. A dockside monitoring program will also be implemented in order to verify landings of a vessel at the time it is weighed by a dealer, to certify the landing weights are accurate as reported on the dealer report. Pre-sailing and pre-landing hails will be required in order to coordinate the deployment of dockside or roving monitors, and reports of those hails will be made to the sector manager/monitoring contractor (and other entities if directed by NMFS). A dockside monitor will meet vessels upon landing and validate the dealer report. For offloads to trucks, a roving monitor may meet the vessel and confirm the landings.

In FY 2012 and beyond, all of the requirements previously in place will remain. In addition, an industry-funded observer or at-sea monitor program will be implemented along with the use of electronic at-sea monitoring. The primary goal of observers or at-sea monitors for sector monitoring is to verify area fished, catch, and discards by species, by gear type. This data will be reported to the sector managers and to the NMFS. Electronic monitoring may be used in place of actual observers or at-sea monitors if the technology is deemed sufficient for a specific trip based on gear type and area fished. When a vessel issues a pre-sailing hail, the monitoring contractor will decide whether that vessel is required to carry an observer or will be subject to electronic monitoring. If either is assigned, a vessel will not be allowed to leave port without the appropriate equipment. The industry-funded observer or at-sea monitor program will not replace the NMFS Observer Program. In the event a NMFS observer and a third party observer or at-sea monitor are assigned to the same trip, the NMFS observer will take precedence and the third party observer or at-sea monitor will stand down. Observers or at-sea monitors will be required to submit reports on catch, discard, and other data elements to NMFS and/or the sector manager and/or the monitoring contractor.

For dockside monitoring, the required coverage will be as follows:

FY 2010: Random dockside monitoring of 50% of trips in each sector.

Subsequent years: Random dockside monitoring of 20% of trips in each sector.

For observer or at-sea monitor coverage, minimum coverage levels must meet the coefficient of variation in the Standardized Bycatch Reporting Methodology. The required levels of coverage will be set by NMFS based on information provided by the Northeast Fisheries Science Center (NEFSC) and may consider factors other than the SBRM CV standard when determining appropriate levels. Any electronic monitoring equipment or systems used to provide at-sea monitoring will be subject to the approval of NMFS through review and approval of the sector operations plan. Less than 100% electronic monitoring and at-sea observation will be required.

Assumed discard rates will be applied to sectors unless an at-sea monitoring system (such as a sector's independent monitoring program, a federal monitoring program, or other program that NMFS determines is adequate) provides accurate information for use of actual discard rates. Sector operations plans must provide detailed information about how discards in the fishery will be monitored, reported, and enforced within the sector.

- Discards will not be counted when determining the sector's ACE/permit PSCs but will be counted against the ACE during the fishing year. When data is available from an adequate at-sea monitoring program (such as a federal observer program, a sector provided program, or

other program that NMFS determines is adequate), in-season discard rates will be determined using a procedure specified by NMFS.

- A sector must develop an adequate monitoring system and demonstrate to NMFS that discards can be accurately monitored and counted as part of the ACE, at the sector's expense, by FY 2012. Details about such a monitoring system must be provided in the sector's operations plan. This system will enable the sector to deduct annual discards from the ACE instead of using assumed discard rates.
- Discard rates used if data from an adequate at-sea monitoring program is not available will be determined using a sector-specific discard rate. A sector-specific discard rate will be calculated for each stock and gear based on observer data from the previous year. If NMFS determines there are insufficient data to estimate discard rates at this fine of a scale, the fleet-wide stock and gear discard rate would be used for those sector-gear combinations. When calculating discard rates, regulatory discards of legal-sized fish caused by trip limits will be excluded.
- Assumed discards will be calculated for the gear/species combinations shown in Table 19. If other discards are observed they will be counted against sector ACE regardless of whether the specific gear/species combination is listed in this table. While it is possible that discards may be observed with other gear/species combinations shown in Table 19, the absence of data makes it impossible to develop an assumed discard rate and apply it to landings. This is an element of uncertainty that should be considered in setting sector ACLs.
- Discards will be counted at the previous assumed discard rate, calculated as often as is practicable, by gear. The calculated discard rate will be used to add a discard estimate to each landing by sector vessels so that total catch can be determined for each trip.
- If a trip is observed, the discards reported by the observer or at-sea monitor on that trip will be counted as the discards for that trip. Unobserved trips will use a discard estimate calculated from the observed trips.

Other requirements of sector monitoring plans may be implemented as directed by the Regional Administrator. The exact details of sector monitoring plans will be included in the sector's operations plan, and NMFS will approve the monitoring plan as part of the review of the operations plan.

Rationale: The only fishing mortality control for sectors is the hard TAC that, if caught, results in the sector vessels not being allowed to fish. Effective management of sectors requires that catch be accurately known. This is important not only for managers but also so that each sector is confident that all sectors are being held to the same standards. The provisions in this section are designed to ensure that landings are accurately monitored. The weighmaster/dockside monitoring system provides an independent verification of landed weights. A portion of catch could be comprised of discards. A two-step approach is being taken to monitor discards if at-sea monitoring is not available. First, initially an estimated discard rate will be developed that will be used to inflate sector landings to total catch. This approach is required because there is only limited experience with what discard rates will be for vessels operating in sectors. Sectors are next required to develop an adequate at-sea monitoring program so that each sector's discards can be determined. This implementation is phased in so that sectors have time to develop these systems, locate qualified vendors, and have their programs approved by NMFS.

4.2.3.5.4 Standards for Sector Monitoring and Reporting Service Providers

Amendment 13 did not establish any requirements for the service providers that help sectors monitor catches. This section proposes those requirements. These provisions are in addition to other sector requirements currently in place or adopted through this action.

The following standards would be used by NMFS to evaluate service providers employed by sectors to comply with the dockside and at-sea monitoring and reporting requirements outlined in this section. NMFS will certify/approve service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services based upon criteria specified below and can decertify/disapprove service providers and/or individual monitors if such criteria are no longer being met. A service provider is not required to offer both dockside and at-sea monitoring services to be approved/certified by NMFS to provide sector monitoring services. NMFS will publish a list of approved service providers consistent with the APA. In its yearly operations plan, each sector must demonstrate that its sector monitoring program adheres to the sector monitoring and reporting requirements outlined in this section, including the use of an approved service provider for sector reporting and dockside, roving, and/or at-sea monitoring services before the operations plan can be approved by NMFS. The following standards and criteria for approval can be further modified by a future Council action.

Sector monitoring program service providers, including those providing dockside, roving, and at-sea monitor services, must apply for certification/approval from NMFS. NMFS shall approve or disapprove a service provider based upon the completeness of the application and a determination of the applicant's ability to perform the duties and responsibilities of a sector monitoring service provider, as further defined below. As part of that application, potential service providers must include the following information:

- 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. This includes, but is 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 dockside and/or at-sea monitoring services.
- Evidence of adequate insurance to cover injury, liability, and accidental death for dockside, roving, and at-sea monitors (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the dockside, roving, and at-sea monitors; vessel owner; and service provider. Service

providers shall provide copies of the insurance policies to dockside, roving, and at-sea monitors to display to the vessel owner, operator, or vessel manager, when requested.

- Service providers shall provide benefits and personnel services in accordance with the terms of each monitor's contract or employment status.
- Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course that is consistent with the curriculum used in the current NEFOP training course, unless otherwise specified by NMFS.
- An Emergency Action Plan (EAP) describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation.
- Evidence that the company is in good financial standing.

Monitoring service providers must be able to document compliance with the following criteria and requirements:

- A comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, including the following requirements:
 - A service provider must be available to industry 24 hours 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 dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by this section, or a subset of ports as part of a contract with a particular sector.
 - A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism 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 dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms in a fair and equitable manner 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 and other at-sea monitoring mechanisms.
 - A service provider's dockside, roving, and at-sea monitor assignment must be representative of fishing activities within each sector and must be able to monitor fishing activity throughout the fishing year.
 - For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip, and provide such information to the sector manager and NMFS, as appropriate and required by this section.
- The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload.
- The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor

conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS.

- Service providers 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 dockside, roving, or at-sea monitors.
- Service providers must 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.
- A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:
 - If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider.
 - If the service provider is not given adequate notice of vessel departure or landing 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 at § 600.746.
 - For any other reason, including failure to pay for previous deployments of dockside, roving, or at-sea monitors other approved at-sea monitoring mechanism.
- 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. This does not apply to corporations providing reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations.
- A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS:
 - Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals
 - Incident/non-compliance reports (e.g., failure to offload catch)
 - Hail reports, landings records, and other associated communications with vessels
- A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act.
- A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

Standards for Approval/Certification of Individual Dockside/Roving Monitors

For an individual to be certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

- A high school diploma or legal equivalent.
- Successful completion of all NMFS-required training and briefings before deployment.
- Physical capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as a dockside/roving monitor. The physician must understand the monitor's job and working conditions, including the possibility that a monitor may be required to climb a ladder to inspect fish holds and/or trucks.
- Absence of fisheries-related convictions based upon a thorough background check
- 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

Standards for Approval/Certification of Individual At-Sea Monitors

For an individual to be certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

- 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. The physician must understand the monitor's job and working conditions. Physical considerations include, but are not limited to the following:
 - 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 pounds;
 - Ability to drag heavy objects up to 200 pounds; and
 - Ability to climb a ladder.
- A current Red Cross (or equivalent) CPR/first aid certification.
- Absence of fisheries-related convictions based upon a thorough background check
- 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

4.2.3.6 Sector Annual Report Requirements

Current regulations require an annual report but Amendment 13 was unclear on the requirements for that report. This section expands on those requirements.

The annual report is intended to provide information necessary to evaluate the biological, economic, and social impacts of sectors and their fishing operations. As such, information must be provided that described the catch and characteristics of the sector.

Approved sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year that summarizes the fishing activities of its members, including harvest levels of all species by sector vessels (landings *and* discards by gear type), enforcement actions, and other relevant information required to evaluate the performance of the sector. The annual report must report the number of sector vessels that fished for regulated groundfish and the permit numbers of those vessels (except when this would violate protection of